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Procedures and Practices

Relevant to Parliamentary Scrutiny



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Introduction

This is the Tenth Bi-annual Report from the COSAC Secretariat.

COSAC's Bi-annual Reports

The XXX COSAC decided that the COSAC Secretariat should produce factual bi-annual reports, to be published ahead of each plenary conference. The purpose of the reports is to give an overview of the developments in procedures and practices in the European Union that are relevant to parliamentary scrutiny.

All the bi-annual reports are available on the COSAC website http://www.cosac.eu/en/documents/biannual/

The four chapters of this report are based on information provided by the national parliaments and the European Parliament. The COSAC Secretariat is very grateful to them for their cooperation.

Chapter one looks at the current state of play in the ratification process of the Treaty of Lisbon. It illustrates the different reactions and expectations of national parliaments and the European Parliament regarding the Treaty and its ratification, especially in the light of the outcome of the Irish referendum. This chapter also examines how European affairs are perceived by the general public in the Member States, in particular with a view to the tools that parliaments have at their disposal to raise public interest in the issues of the European Union. Moreover this chapter casts a glance at parliaments' preparations for the possible entry into force of the Treaty of Lisbon.

Chapter two reports on the results of the working group of national parliaments' representatives to the EU, set up by the XXXIX COSAC that took place on 7 and 8 May 2008 in Brdo pri Kranju. The chapter is in three parts: an introduction, a synthesis of the discussions of the working group drafted under the supervision of the French Presidency and a final section containing complementary ideas raised by national parliaments at the working group meetings and in the written contributions of national parliaments.

Chapter three presents the systems operated by national parliaments and the European Parliament for scrutiny of European Security and Defence Policy (ESDP). Taking account of the information on this contained in the 4th and 5th COSAC Bi-annual Reports, it first investigates the new developments on ESDP that might have occurred in the scrutiny systems of national parliaments since. Secondly, it focuses on the provisions of the Treaty of Lisbon regarding Common Security and Defence Policy (CSDP, the new designation of ESDP) and how these would affect the way parliaments

deal with this area. Beyond the changes that might be foreseen by each parliament in its own scrutiny system, particular attention is paid to the cooperation between parliaments through the possible implementation of Article 10 of Protocol 1 to the Treaty of Lisbon which would allow COSAC to organise interparliamentary conferences, in particular, on CSDP matters.

Chapter four describes the numerous agreements that the European Community concludes with non Member States and international organisations. These agreements have a significant impact, not only on the Community, but also individual Member States. The complexity of this decision-making process is further intensified by the international dimension of the European Union. This chapter focuses mainly on those international agreements of the European Community which have an impact on individual Member States. This Chapter also examines the role of the national parliaments and the European Parliament in relation to these agreements.

A note on numbers

Of the 27 Member States of the European Union, 14 have a unicameral parliament and 13 have a bicameral parliament. Due to this mixture of unicameral and bicameral systems, there are 40 national parliamentary chambers in the 27 EU Member States.

Although they have bicameral systems, the national parliaments of Austria, Ireland, Italy and Romania each sent a single response to the COSAC questionnaire. The COSAC Secretariat received responses to its questionnaire from 38 national parliamentary chambers of 26 Member States. These answers are published in a separate annex which is also available on the COSAC website.

Summary

Chapter one: The ratification of the Treaty of Lisbon falls into the exclusive competence of each Member State of the European Union. Therefore parliaments have reacted to the outcome of the Irish referendum with **respect**, but have also expressed their **disappointment** about the result.

As regards communication with citizens on European affairs in general and the Treaty of Lisbon more specifically, many **parliaments play an important complementary role to governmental communication campaigns**. As far as additional parliamentary communication efforts are concerned, following the outcome of the Irish referendum, most parliaments in the European Union are not considering additional communication efforts. Most parliaments are simply carrying on established communication strategy on European affairs.

The degree of preparedness of parliaments for the potential coming into force of the new Treaty **varies** considerably. This does not only reflect the different political and institutional situation in which each of the parliaments operates but is also an echo of the uncertainties concerning the ratification of the Treaty.

Chapter two: The chapter presents **a check list of the national parliaments' ideas** that could lead to **better cooperation in the application of the Protocol 2** on the principles of subsidiarity and proportionality, and the synthesis of the debates of the **working group** of national parliaments' representatives to the EU. COSAC itself is invited to **select the ideas it wishes to discuss further and the political conclusions it wishes to draw.**

National parliaments share an interest in engaging in a debate on the **concept of subsidiarity.** However, opinions vary on whether national parliaments should in their individual scrutiny try to converge and apply the same criteria for evaluating the compliance with the principle of subsidiarity. Some parliaments are in favour of developing common methodologies; others consider the subsidiarity principle to be political in nature, and as such do not wish to establish any general rules.

The debates of the working group indicate a broad agreement among national parliaments to engage in information exchange as early as possible, with a view to alerting each other of any subsidiarity concerns. For that purpose, national parliaments agree on establishing **flexible, *ad hoc* modes** of information exchange and having **a reliable database** with complete information on the state of play in national parliaments. In this regard there is a clear support for further development of IPEX.

A large majority of national parliaments propose different ways for conducting **an early forward-looking analysis of draft legislation** (using, *inter alia,* the Commission's Annual Policy Strategy and Legislative and Work Programme). This is a field of cooperation that would clearly benefit from further development.

The main contentious issues, which seem to need special attention of COSAC itself, include the extent to which COSAC should concentrate on subsidiarity issues. Some

parliaments are strongly in favour of such a focus, while others would prefer COSAC to concentrate on concrete policy issues.

Chapter three: 4th and 5th Bi-annual Reports of COSAC (2005 and 2006) analysed the systems operated by national parliaments for scrutinising documents on Common Foreign and Security Policy (CFSP) and European Security and Defence Policy (ESDP). Since then, **there has not been fundamental shift in the approaches** taken by national parliaments to scrutiny of their government's European Security and Defence Policy. At the same time, in the context of the possible entry into force of the Treaty of Lisbon, which includes new provisions on defence, it appears that a vast majority of parliaments do not intend to modify their current ESDP scrutiny system.

If focus is put on the involvement of parliaments in the decision to engage national military capabilities in a European operation, it is clear that **governments have a prominent power** in the decision-making-process in a majority of Member States. Parliaments having extended responsibility in this area are the exception.

CFSP/ESDP is of intergovernmental nature. **The Treaty of Lisbon will not modify that**. The European Parliament will retain limited powers in the conduct of the CSDP, though is granted by the new Treaty a general right to be informed and consulted.

If implemented, Article 10 of Protocol 1 on the role of the national parliaments in the EU of the **Treaty of Lisbon** would allow COSAC to "*organise interparliamentary conferences on specific topics, in particular to debate matters of common foreign and security policy, including common security and defence policy*". That **new possibility would be a chance for the parliaments** of the European Union to get more involved in European Defence Policy. Most parliaments are **in favour of a deepened cooperation** in that field. However, given the pre-existence of multiple interparliamentary *fora* on CFSP/ESDP, it seems that a reflection on a better and more structured cooperation on European Defence Policy between parliaments cannot be avoided.

Chapter four: A vast majority of national parliaments do not scrutinise the entire process of negotiating agreements that fall either under exclusive or shared competence of the Community. It should be possible for Members of national parliaments who wish to do so, to scrutinise their government's position even before the Council authorises the Commission to start negotiations with third countries.

However, in some cases **national parliaments can increase their influence** in the field of common commercial policy by taking into account the tight deadlines in the EU decision-making process. A good example is French Parliament, where *Assemblée nationale* and *Sénat* have developed a special scrutiny procedure for anti-dumping measures.

If the Treaty of Lisbon enters into force, the **European Parliament** will gain a reinforced role in the negotiation process, especially in the field of **the common commercial policy**, which will be decided under the ordinary legislative procedure (equivalent to the current co-decision procedure).

Chapter 1: The Treaty of Lisbon and its ratification - Expectations of national parliaments and the European Parliament

This chapter looks at the current state of play in the ratification process of the Treaty of Lisbon. It illustrates the different reactions and expectations of national parliaments and the European Parliament regarding the Treaty and its ratification, especially in the light of the outcome of the Irish referendum.

Taking into account the result of the referendum, this chapter also examines how European affairs are perceived by the general public in the Member States, in particular with regard to the tools that parliaments have at their disposal to raise public interest in the issues of the European Union.

Moreover this chapter will cast a glance at parliaments' preparations for possible entry into force of the Treaty of Lisbon.

1.1. THE TREATY OF LISBON AND ITS RATIFICATION - STATE OF PLAY

At the moment, 24 Member States have concluded parliamentary ratification of the Treaty of Lisbon. Sweden plans to ratify it in autumn 2008. In the Czech Republic the question whether the Treaty of Lisbon is in compliance with the Czech Constitution, is pending before the Constitutional Court.[1]

Following the confirmation of the negative outcome of the referendum in Ireland on 12 June 2008 the European Council agreed at its meeting on 19-20 June that the ratification process should continue.[2] Further discussions about this issue took place at the European Council on 15-16 October 2008. The Heads of State and Government, who were primarily concerned with the world financial crisis, took note of an analysis of the results of the referendum, presented by the Irish Taoiseach, Mr Brian COWEN, and agreed to return to this matter at its meeting in December 2008 "with a view to defining the elements of a solution and a common path to be followed".[3]

1.2. REACTIONS AND EXPECTATIONS OF THE COSAC PARLIAMENTS

The ratification of the Treaty of Lisbon is an internal affair for each Member State and is conducted according to national constitutional arrangements. Therefore this chapter

[1] As of 13 October 2008.
[2] The European Council will come back to this issue at its meeting of 15 October 2008. Presidency Conclusions – Brussels, 19/20 June 2008. The Conference of the Speakers of European Union Parliaments (20 - 21 June 2008) came up with the similar conclusion also adding that the ratification process continues.
[3] Brussels European Council, 15 and 16 October 2008, Presidency Conclusions.

does not evaluate the Irish situation. It attempts to illustrate the different reactions and expectations of parliaments to the state of the ratification process.[4]

The majority of parliaments express the support for pursuing the ratification process. Respect for the outcome of the Irish referendum seems to be balanced by respect for those Member States that had already ratified. Some national parliaments have concluded their ratification processes following the Irish referendum. Their ratification could, therefore, be interpreted as support for continuing the ratification process as a whole.

The Dutch *Senate* and the *Congreso de los Diputados* in Spain perceive the speedy finalization of the process of ratification after the non-vote in Ireland as an important restarting moment. According to the Latvian *Saeima* the fact that the ratification process is almost complete demonstrates that, given the serious economic and security challenges, ratification of the Treaty of Lisbon is not an option but a necessity.

Most national parliaments have reacted with a mixture of disappointment and respect for the result of the Irish vote. The *Camera Deputatilor* and *Senatul* of Romania remark that neither the Member States nor the EU Institutions would be entitled to take action or propose measures, with a view to influencing the outcome of the ratification. The Belgian *Chambre des Représentants* refuses any pressure on Ireland, nor its stigmatisation, because in other Member States the result might have been the same had there been a referendum.

The majority of the parties represented in the Portuguese *Assembleia da Repùblica* expressed their respect for the outcome of the Irish referendum. However they also encouraged the pursuit of the ratification process. On the other hand, the reply from the Portuguese *Assembleia da Repùblica* also points to a minority opinion arguing that, the appropriate response to the result of the Irish referendum should be the end of the ratification process.

Other national parliaments called upon the Irish Government for appropriate action. For example, the Committee on Foreign Affairs and the Committee on European Affairs of the Estonian *Riigikogu* are expecting a thorough analysis from the Government of Ireland in October. And the majority of Greek MPs in the Greek *Vouli Ton Ellion* hopes that, in the meantime, the Irish Government will work out a solution that would enable the EU to keep up its course and achieve institutional reform.

The European Parliament, the Belgian *Chambre des Représentants* and the *Chambre des Députés* of Luxembourg underlined that the European Parliament's elections in June 2009 should be organised under the new Treaty. The President of the European Parliament, Mr. Hans-Gert PÖTTERING, declared in his reaction to the Irish referendum, that the European Parliament's goal remains entry into force of the Treaty before the elections in June 2009. As the provisions of the Treaty will considerably affect the work of the European Parliament, which is due to be a co-legislator of the EU on an equal footing with the Council, it has an increased interest in having a predictable

[4] The Irish *Houses of the Oireachtas* decided not to reply to the question on this Chapter in the view of the ongoing discussions within the Irish system regarding the Lisbon Treaty and the referendum result.

timetable for the ratification process in order to advance the necessary internal preparations.

1.3. ENGAGING A DEBATE WITH CITIZENS ON EUROPEAN AFFAIRS

With a view to the negative outcome of the Irish referendum, the Committee on European Affairs of the Greek *Vouli Ton Ellion* feels that parliaments have failed to provide the necessary information on the benefits of the Treaty of Lisbon and to widen the public discourse so as to include all citizens.[5]

Most of parliaments reported using information measures, such as different types of discussion, either parliamentary or involving the public, and holding other events for the citizens. Parliaments also made remarks concerning the transparency of their work, publications, press releases or distribution of materials.

Some national parliaments mentioned that they had created their own **EU Information Centres** for the public (e. g. Denmark – 1994, Latvia – 1997, Lithuania – 2002, who all have also set up public telephone hotlines). On the other hand, the Finish *Eduskunta* replied that public information on the EU is the task of Finland's EU Information Bureau, and thus, falls within the competence of the Government. While passing the ratification bill the Italian *Camera dei Deputati* and *Senato della Repubblica* explicitly engaged their Government to ensure broad and effective provision of public information on the Treaty of Lisbon.

In 2005 the Austrian *Nationalrat* modified its rules of procedure in order to enhance European debates in parliament by **creating "EU plenaries" exclusively for EU issues**. These are held in public. Different standing committees in the Hungarian *Országgyűlés* regularly organise **open-days** on European topics (such as wine-reform, EU Cohesion Fund projects, environmental protection and regional development policy), where NGO's, stakeholders and citizens have the opportunity to express themselves. The Belgian *Chambre des Représentants* organised in February 2007, a **citizens' consultation** as set up at European level in the framework of Plan D. The main target group and the priority of the Luxembourg *Chambre des Députés* is young people. Thus it **invites young people inside its premises** to discuss topical European issues. Members of Parliament also undertake round table discussions in schools.[6]

Following the priority of the Slovenian Presidency to monitor the ratification process of the Treaty of Lisbon, the French Presidency also actively engages in order to improve further the communication of Europe to its citizens.
The Committee on European Affairs of the French *Sénat*, which is dealing with topics of direct concern for the citizens, is publishing all its conclusions on the Sénat's website.

[5] See the answer of the *Vouli Ton Ellion* to this question.
[6] For the other interesting information on the parliamentary activities, we recommend you to go into the answers of the COSAC parliaments / chambers annexed to this report.

The French *Assemblée nationale* has also taken advantage of the French EU Council Presidency in order to further enhance its communication on European affairs. Numerous briefing notes and background documents on the European Union and its Member States have been prepared for the Members of Parliament in order to raise their awareness on European issues. Next to the hemicycle a special room has been installed in order to provide up-to-date information on the EU. Moreover, the Members of Parliament take part in many debates on the European Union organised in the main French cities. A direct way to communicate with the citizens is also possible via the French Presidency's website dedicated to the parliamentary aspect of the Presidency. A documentary film about the history of European integration and its achievements is broadcasted every evening on the pediment of the Assembly (while a European flag has been displayed in the hemicycle).

The European Parliament, with its specific position as the only directly elected EU Institution, tries to get closer to the EU citizens by using a whole host of modern communication technologies. Since 17 September 2008, **the Parliament's WEB TV** has been available on the website of the European Parliament. This will be an additional tool to communicate European politics to citizens across Europe. There is also a **network of 33 Information Offices with the mission to "go local"**, closer to the citizens to ensure a permanent dialogue and feedback of the citizens' views.

1.4. ADDITIONAL PARLIAMENTARY COMMUNICATION EFFORTS

A majority of the parliaments in the European Union considers it **neither essential nor opportune - at this moment - to undertake additional communication efforts** (i.e. Danish *Folketinget,* UK House of Lords or Polish *Senat*). Some national parliaments, such as the Hungarian *Országgyűlés*, the Slovenian *Državni zbor* or the Spanish *Congreso de los Diputados,* underline that, as they have successfully concluded the ratification process, extra communication on the Treaty itself is not required. The *Eduskunta* points out that, in the Finnish tradition, the provision of public information is not a suitable parliamentary task.[7]

Another significant group of parliaments refers to the **communication efforts already accomplished** or in the process of implementation, irrespective of the state of play of the Treaty's ratification. Special public hearings (e.g. German *Bundestag*) or public debates (e.g. Swedish *Riksdagen or the* Greek *Vouli Ton Ellinon*) on the Treaty in general as well as its specific components are among those communication efforts.[8] On the whole the measures of this group of parliaments seem to be **part of a much broader and ongoing communications strategy on European affairs** and are not limited to the specific communications needs which might arise from the state of play in the Treaty's ratification.

In addition there is a third group of parliaments who plan or **are actually in the process of realising additional communication measures**. For example the Portuguese *Assembleia da República* sees further need to clarify the content of the Treaty and foresees the organisation of at least two conferences.[9] In Luxembourg the

[7] See the *Eduskunta's* answer to question 1.4 of this report.
[8] See the answers of the *Bundestag*, the *Riksdagen* and the *Vouli Ton Ellinon*.
[9] See the answer of the *Assembleia da República*.

Chambre des Députés is considering various steps. Among those is a debate at the level of the chamber and a dialogue with citizens in the Grand Duchy's electoral circumscriptions.[10] Also the Cypriot *Vouli ton Antiprosopon* intends to conduct further activities with a view to increasing public knowledge on the Treaty of Lisbon and its provisions.

Communicating the Treaty of Lisbon, especially to reflect its enhanced role under the Treaty's new provisions, has been and continues to be an **important subject for the European Parliament.**[11] Information offices in countries where the ratification is still pending are considering pursuing new actions: either in the form of further public debates or additional communication initiatives on the internet. The scope and form of these activities depends on the evaluation of the political sensitivity of the issue in the country concerned.

1.5. POLITICAL ADJUSTMENTS AND PROCEDURAL FINE-TUNING IN PARLIAMENTS

Given the individual political, constitutional and legal frameworks in which they operate, it is not surprising that parliaments in the European Union have responded rather differently to the challenges the Treaty of Lisbon might pose for their own functioning. The degree of preparedness of parliaments for the potential coming into force of the new Treaty varies considerably.

Some parliaments already **seem to have all necessary measures in place or will only need minor adaptations to the already existing arrangements. Others are in the process of adopting concrete measures. A third group of parliaments is currently studying the potential consequences of the Treaty of Lisbon for their internal functioning and especially for their relations with government**.

Depending on the individual national political and institutional context, the following categories of measures are evident the answers:

- Measures focusing on the relationship between national parliaments and government (e.g. with a view to the Treaty revision procedures and the *passerelle* procedure).
- Measures aiming at the relationship between two parliamentary chambers of a national parliament and their interaction in specific areas.
- Measures regarding the interaction between different levels of governance (e.g. national level – regional level).
- Measures relating to the internal decision-making of a national parliament (e.g. liaison between committees and the plenary).
- Measures with reference to the interaction of committees within a national parliament (e.g. Committee on European Affairs and specialised committee) or the setting up of new committee structures.

[10] See the answer of the Luxembourg *Chambre des Députés*.
[11] See the answer of the European Parliament. Most of the information offices have organised seminars and citizens' *fora* specially dedicated to the subject in 2007 and the first half of 2008, whereas some information offices have produced specific brochures or opened a specific section on the Treaty on their internet page.

- Measures concerning internal administrative capacities of a parliament and the flow of documents.

It is also of some relevance that several parliaments had brought measures either into place at the time of the ratification procedure of the previous Constitutional Treaty or had at least thoroughly prepared to do so. Though ratification of that Treaty failed, a number of these measures have either been put into practice or have been preserved as a political agreement.

The potential impact of the Treaty of Lisbon on the relationship between parliament and government is an issue of considerable relevance. This is reflected by several parliaments. The German *Bundestag*,[12] for example, in September 2006 put a measure into place to improve cooperation between the Federal Government and the Bundestag. During the ratification of the Treaty of Lisbon the constitution was revised with a view to a further enhancing the competences of the *Bundestag* and the *Bundesrat vis-à-vis* the Federal Government. In France the ratification of the Treaty has lead to modifications of the constitution which will have an impact on cooperation between the legislative and the executive. Generally speaking such measures focus mainly on those areas of a constitutional nature, where, revisions of the Treaty, changes to the decision-making procedure and a move from unanimity to qualified majority voting are concerned.[13]

Reviews and adjustments in the cooperation between parliament and government are also part of the political agenda in the Czech Republic and in Poland. The Czech *Poslanecká Sněmovna* and the *Senát* are currently preparing a draft "Act on the Principles of Conduct and Relations between both Chambers and in their External relations"[14]. This is designed to strengthen the link between parliamentary scrutiny and government responsibility in EU affairs, especially with a view to the sensitive issue of the transfer of national competences to the European Union.

Not surprisingly the Treaty of Lisbon will also have an **impact on the cooperation of the legislature in two-chamber systems** as well as the interaction between different levels of government. With regard to the latter a cooperation agreement was concluded between the different federal and regional legislative assemblies in Belgium.

An issue of a more internal nature is parliamentary decision making: the role of the plenary and the interaction of parliamentary committees. In the case of the potential application of Protocol 2 to the Treaty of Lisbon the Polish *Sejm* and *Senat* are considering whether reasoned opinions on the compliance of a draft legislative act of the European Union with the principle of subsidiarity should be "adopted by the plenary of each chamber or by their authorised EU Committees"[15].

At the Finnish *Eduskunta*, for example, changes to the rules of procedure have been drafted. These concern the distribution of EU legislative proposals to the Grand Committee and the sectoral committees. The latter may decide that the Grand

[12] For further information see the "Act on Cooperation between the Federal Government and the German *Bundestag* in matters concerning the European Union" (September 2006).
[13] See also the arrangements made in the UK as part of the European Union (Amendment) Bill.
[14] For further information see the answers of the *Poslanecká Sněmovna* and *Senát*.
[15] For further information see the answers of the Polish *Sejm* and *Senat*.

Committee has to carry out a scrutiny check. With a view to the deadlines in the context of the so-called "early warning mechanism" of Protocol 2, the German *Bundesrat* has introduced a written procedure for its Chamber of European Affairs (*Europakammer*). In particularly urgent cases the Chamber of European Affairs may take decisions by written procedure without holding a formal meeting. It is important to point out that the Chamber of European Affairs may also take decisions instead of the plenary of the *Bundesrat*.

Last, but by no means not least, a number of parliaments have put into place changes to their administrative capacities. The Belgian *Sénat* has increased its staff dealing with European affairs from two to six persons, and the German *Bundestag* has created a new administrative unit in charge of analysis of EU documents and early warning. Other parliaments, such as the Luxembourg *Chambre des Députés*, are in the process of improving internal data processing, management of dossiers and the administrative correlation between parliamentary committees and their secretariats.

1.6. CONCLUSIONS

The ratification of the Treaty of Lisbon falls into the exclusive competence of each Member State of the European Union. Therefore parliaments have reacted to the outcome of the Irish referendum with respect, but have also expressed their disappointment about the result.

In the communication with citizens about European affairs in general and the Treaty of Lisbon more specifically, parliaments play an important complementary role besides governmental communication campaigns. "Traditional" tools of communication, such as topical seminars, (public) meetings, and committee meetings open to the public or with the direct involvement of a targeted section of the public, and publications, still play an important role in engaging the public. But modern information technologies, such as the internet, are increasingly becoming a key tool for involving the citizens more effectively and comprehensively. Generally speaking the answers of parliaments reveal a variety of rather different communications approaches.[16]

As far as additional parliamentary communication efforts are concerned, following the outcome of the Irish referendum, the picture is equally patchy. A majority of parliaments considers it neither essential nor opportune to undertake additional communication efforts. Most parliaments are continuing their ongoing communications strategy on European affairs, while some parliaments are in the process of realising additional communications measures.

The degree of preparedness of parliaments for the potential coming into force of the new Treaty varies considerably. This does not only reflect the different political and institutional situation in which each of the parliaments operates but is also an echo of the uncertainties concerning the ratification of the Treaty. Generally speaking the Treaty of Lisbon has already started to generate a number of political and administrative consequences for parliaments, touching especially upon the relations with government and the internal functioning of parliaments.

[16] For further information please also refer to the annex to this chapter and to the answers to Chapter 1 of the 9th Bi-annual Report.

Chapter 2: Report on the results of the Working Group of the National Parliaments' Representatives to the EU on the Implementation of the Protocol 2 on the Application of the Principles of Subsidiarity and Proportionality as attached to the Treaty of Lisbon

This chapter reports on the results of the working group of national parliaments' representatives to the EU, set up by the XXXIX COSAC that took place on 7-8 May 2008 in Brdo pri Kranju under the Slovenian Presidency. The chapter consists of three parts: an introduction, a synthesis of the discussions of the working group drafted under the supervision of the French Presidency and a section containing complementary ideas from national parliaments as discussed at the working group meetings and in the written replies of national parliaments.

2.1. INTRODUCTION

Paragraph 1.6 of the Conclusions of the XXXIX COSAC provides that:

> "COSAC calls on the incoming French Presidency to make a check list of the national parliaments' ideas that could lead to better cooperation in the application of Protocol 2 on the principles of subsidiarity and proportionality.
>
> COSAC calls on the French Presidency to invite a working group of the national parliaments' representatives to the EU, the discussions of which will form the basis of a report on how these opportunities can best be implemented by national parliaments, and on whether any collective arrangements may be needed, while respecting each national parliament's right to determine its own working practices.
>
> The Report will be written by the COSAC Secretariat and will form the basis of a discussion at the XL COSAC Meeting under the French Presidency."

Based on the mandate of the XXXIX COSAC, the French Presidency invited a working group of the national parliaments' representatives to the EU. The working group consisted of 41 members representing either national parliaments or their chambers. The Spanish Parliament was not represented at the working group. The working group was chaired by the Permanent representatives of the French Parliament: Ms. Anne MARQUANT representing the *Sénat* and Mr. Frank BARON, representing the *Assembée nationale*. The permanent member of the COSAC Secretariat Ms. Loreta RAULINAITYTĖ attended the working group meetings as an observer.

The working group had five meetings: on 2 July 2008, 17 July 2008, 5 September 2008, 18 September 2008 and 29 September 2008.

To facilitate the debate, the French Presidency drafted and sent to national parliaments a set of questions to be answered.

An informal exchange of views with the Director in charge of interinstitutional relations of the General Secretariat of the European Commission Mr. Fernando FRUTUOSO DE MELO took place at the working group meeting on 5 September 2008. A further meeting was held on 18 September 2008 with the European Parliament. This was attended by the Head of Unit of the Multilateral Relations Unit of the Directorate for relations with National Parliaments, Mr. Krzystof BERNACKI.

The list of participants of the working group, replies of national parliaments, and additional documents are presented in the Annex 2, which is published as a separate document.

For the detailed analysis of the provisions of the Treaty of Lisbon with regard to the role of national parliaments in the European Union, please see Chapter 2 of the Ninth Bi-annual Report of COSAC on EU Procedures and Practices. [17]

2.2. SYNTHESIS OF THE DISCUSSIONS OF THE WORKING GROUP OF THE REPRESENTATIVES OF THE NATIONAL PARLIAMENTS IN BRUSSELS ABOUT THE IMPLEMENTATION OF THE PROTOCOL 2 ON SUBSIDIARITY AND PROPORTIONALITY

(Drafted under the supervision of the French Presidency[18])

After the hearing from the services of the European Commission and of the European Parliament, the Working group of the National Parliaments Representatives to the European Union that was created by the XXXIXth COSAC in Brdo pri Kranju on the 7th and 8th of May 2008, has produced a synthesis of its discussions concerning the implementation of Protocol 2 on the principles of subsidiarity and proportionality. The COSAC Secretariat will give an account of these works in its next report which will be the basis for the discussions of the XLth COSAC that will take place in Paris on the 3rd and 4th of November 2008. This work will also be a contribution for the next Conference of Speakers of the European Union Parliaments which will take place in Paris on the 27th and 28th of February 2009.

The National Parliaments Representatives to the European Union wish to inform the COSAC and the Conference of Speakers of the European Union Parliaments that they stand ready to carry on working for the implementation of Protocol 2, especially through mutual exchange of information about the best practices existing in different Parliaments, and to play a watching role. It would indeed make it possible to share information rapidly and would facilitate the effectiveness of the new powers granted to the Parliaments in the European legislative procedure.

[17] http://www.cosac.eu/en/documents/biannual/

[18] The text of the Synthesis has been incorporated into this report without being edited by the COSAC Secretariat.

1) The early exchange of information on the proposals from the European Commission

1) National Parliaments find that the best way to cooperate is to inform each other, at the earliest possible stage, about which texts they intend to scrutinize on subsidiarity grounds, where possible before the adoption of an official position.

2) This would apply to proposals selected through an analysis of the legislative and work programme of the European Commission or through other means, and to every proposal which catches the attention of a National Parliament when it is adopted by the European Commission. The objective of early exchange of information is to alert other National Parliaments before the expiry of the eight-week period mentioned in Protocol 2 of the Treaty of Lisbon.

3) A common reflection by National Parliaments on the notion of subsidiarity could begin by taking the form of a seminar of experts of National Parliaments to implement the Presidency conclusions of the Conference of Speakers of the EU Parliaments in Lisbon in 2008: "the Speakers, taking into account the work of the COSAC WG, consider it appropriate to start a joint reflection regarding the criteria and procedures for the implementation of the new powers vested in the National Parliaments by the Treaty of Lisbon, so that they can be implemented as soon as the progress with the process of ratification allows it. Thus, they hope that it will be possible to establish a fruitful dialogue with the European Institutions on these matters".

4) Furthermore, the provision of early information to other National Parliaments can be extended to dossiers, including the consultation papers, selected for an in-depth scrutiny on grounds other than subsidiarity, in the framework of the political dialogue opened by the initiative of President Barroso and including, in particular, scrutiny of dossiers for proportionality and on substantive grounds.

2) The modalities for exchange of information between National Parliaments

Decisions formally adopted

1) All National Parliaments consider IPEX to be the most appropriate platform to transmit information on the official decisions of National Parliaments on subsidiarity.

2) National Parliaments find the best practice is to produce at least a summary, in English or in French, of each reasoned opinion they adopt.

3) It would be very useful to use the existing subscription functionality provided by IPEX to create a system of e-mail alerts to warn every interested user when a text is the object of a reasoned opinion.

Early exchange of information

4) The functionalities of IPEX should be fully exploited in order to take into better account the necessity of an early exchange of information among the National Parliaments. To this end the existing symbol for the subsidiarity or proportionality aspects as well as the symbol concerning "important information to exchange" are useful. These signals would be updated when a National Parliament concerned ends its scrutiny with the adoption of an official position or removed when it decides not to intervene. In addition the IPEX Board has already decided to introduce a new symbol for the adoption of a reasoned opinion by National Parliaments.

5) After a consultation with the users, the IPEX Board should promote a common use of the symbols on the IPEX website.

6) National Parliaments could set up an email list of contact persons to exchange information when a text from the European Commission is linked to one or more reasoned opinions.

7) The Representatives of National Parliaments in Brussels could gather to exchange information on selected texts or texts under scrutiny. These meetings would be regular enough to exchange information on subjects mentioned in paragraphs 1.2 and 1.4 above. This is a substantial aspect of early information exchanges.

8) An inventory of all the texts under examination on which the National Parliaments have pointed out a possible problem regarding the principle of subsidiarity could be created and circulated at the latest 2 weeks before the expiry of the eight-week period of examination to enable a stock take of the views of National Parliaments to be carried out.

9) Early signals posted on IPEX, information sent by mail or displayed at a meeting in Brussels will not be deemed to be an official position of a National Parliament in the absence of a political decision taken by one of the organs of that Parliament.

3) The role of the European Commission

1) National Parliaments have expressed their views to the European Commission in the paragraphs 2.1 to 2.5 of the contribution of COSAC of Brdo pri Kranju adopted in May 2008. The European Commission was invited, in particular, to inform National Parliaments when the final translation of a legislative proposal is published and to point out the expiry date of the 8 weeks to submit reasoned opinions.

2) The European Commission could facilitate the implementation of the Protocol 2 of the Treaty of Lisbon by publishing and transmitting simultaneously to IPEX its own reasoned opinions, as well as the replies to the reasoned opinions of National Parliaments as soon as they are adopted. There should be at least a translation into one of the working languages of the European Union. The reasoned opinions of the European Commission referred to in the article n°7 paragraph 3 of the Protocol 2 of the Treaty of Lisbon should also be published.

3) The European Commission is invited to inform regularly the National Parliaments about the priorities of its legislative action and the opening of consultations on the legislative projects mentioned in the article n°2 of the Protocol 2 of the Treaty of Lisbon. This information could take the form of regular exchanges between the services of the Commission and the National Parliaments Representatives to the European Union.

4) The Working group welcomes the European Commission approach to the implementation of Protocol 2 in a constructive and qualitative manner rather than a strictly quantitative one, and its willingness to take any reasoned opinion of a National Parliament as an input in the political dialogue between National Parliaments and the European Commission.

4) The cooperation with the European Parliament

1) Considering the need for cooperation with the European Parliament, National Parliaments could exchange information with the European Parliament on subsidiarity aspects on various levels.

2) The Working Group underlines the fact that the European Parliament could take no first reading decision on a legislative proposal before the expiry of the eight-week period mentioned in Protocol 2 of the Treaty of Lisbon.

3) Before Protocol 2 is implemented, the Working Group wishes that the services of the European Parliament communicate the opinions of the National Parliaments to the relevant committees as soon as they are uploaded on IPEX so that these opinions can be fully taken into account in the legislative work.

5) The role of the COSAC

1) National Parliaments consider the pilot exercises organised by COSAC necessary in advance of the implementation of the Treaty of Lisbon. However, when the Treaty of Lisbon enters into force, the cooperation between National Parliaments should take a regular form, with informal exchanges as outlined above.

2) The number of COSAC meetings should not be increased but these meetings could be used as meetings for exchanges of good practices between National Parliaments on the best means to apply the protocol 2 of the Treaty of Lisbon.

3) Furthermore, a number of suggestions relating to the role of COSAC itself were made. Any decision on whether and how to change the role of COSAC is clearly a matter for COSAC itself and so the full list of the options presented to the Working Group is set out below in order to facilitate the debate at the COSAC meeting:

a) to make no organisational changes at all as it was put forward not to create new bodies inside COSAC also taking into consideration the competencies of COSAC as they are stated in the Treaties and in the Rules of Procedures;

b) to create a "COSAC subgroup" specifically in charge of subsidiarity, which could meet more often than the COSAC itself;

c) to create "common tools for a coordinated control of the principle of subsidiarity", through the organization of meetings just before or after the regular meetings of the COSAC and the designation of "rapporteurs in charge of the subsidiarity matters";

d) to devote more time to political exchanges on subsidiarity in the regular COSAC, particularly monitoring the development of the use of the subsidiarity mechanism, as laid out in Protocol 2, over the longer term;

e) to give the priority in the determination of the agenda of the COSAC meetings to the initiatives of the Parliaments asking to discuss texts that are problematic in regards to the principle of subsidiarity;

f) the COSAC could play a part in the application of the article n°7 paragraph 2 and 3 of the Protocol 2 of the Treaty of Lisbon (yellow or orange card) by taking position when the required threshold is reached;

g) the Secretariat of the COSAC could play a part by providing a concise and objective summary of the reasoned opinions delivered by the Parliaments, which could serve as a useful historical record of the use of the subsidiarity mechanism. This summary would be available online.

2.3 COMPLEMENTARY IDEAS OF NATIONAL PARLIAMENTS

This section expands on the ideas of national parliaments that were discussed at the working group meetings or were expressed in the written replies of national parliaments to the questions drafted by the French Presidency. Part 2.3 is complementary to Part 2.2.

2.3.1 Proposed measures to be taken before of the Treaty of Lisbon comes into force

1) A COSAC reflection on common criteria or reference points for the concept of the 'principle of subsidiarity', which would facilitate convergence of the opinions of national parliaments within the eight week period.

2) An agreement sought between national parliaments and the Commission on the terms of the implementation of Protocol 2. In particular, that the counting of reasoned opinions should be cumulative and that all reasoned opinions on non-compliance of a proposal with the principle of subsidiarity should be taken into account when counting towards the threshold for a 'yellow card' or an 'orange card'.

3) Clarification from the European Parliament to national parliaments on practical terms of the implementation of the Protocol 2: in particular, how reasoned opinions should be sent to the European Parliament.

4) The European Parliament could consider setting up a special database for its committees' opinions dealing with the issue of subsidiarity.

5) The COSAC coordinated subsidiarity checks would continue but in a more flexible manner reflecting changes in the legislative planning of the Commission and specific content of proposals as opposed to selection of proposals based purely on titles. Their frequency would increase.

6) Sectoral committees of national parliaments would take part in the COSAC meetings where subsidiarity issues within their competence are debated.

2.3.2. Proposed measures to be taken once the Treaty of Lisbon comes into force

The ideas presented below are grouped in accordance with the timeline, which corresponds with the procedural timeline set out in the provisions of the Protocol:

1. The pre-publication stage;
2. Within the eight-week stage;
3. The post-eight-week stage.

The pre-publication stage

1) National parliaments would examine the Commission's Annual Policy Strategy and the Legislative and Work Program in order to produce a forward-looking analysis highlighting certain proposals, which merit scrutiny on the grounds of subsidiarity. The COSAC Secretariat would be entrusted with compiling and updating the list of selected proposals - as is currently being done for the subsidiarity checks - and with making the list available to all national parliaments.

2) COSAC would formulate a strategic approach regarding current and upcoming proposals by focusing COSAC meetings on the current legislative agenda of the Commission.

Within the eight-week stage

1) National parliaments would exchange the initial subsidiarity concerns raised by their legal advisors and other preparatory documents before the issue is considered in their competent committees.

2) National parliaments would exchange and/or post on IPEX not only their reasoned opinions but also official positions expressed by non-parliamentary actors.

3) The COSAC Secretariat would inform competent committees of the European Parliament on subsidiarity concerns identified preliminarily by national parliaments regarding proposals to be adopted by ordinary legislative procedure.

4) A time slot would be reserved at COSAC meetings to allow for debate on urgent subsidiarity concerns raised by parliaments.

5) Parliaments or chambers with possible subsidiarity concerns six weeks after the publication of the proposal in question would decide how to further exchange information: through IPEX, through national parliaments' representatives in Brussels, at the meetings of Members of Parliament.

6) In case a substantial number of national parliaments (substantial in relation to the thresholds of ¼, ⅓ and/or ½ of the national parliaments) have subsidiarity concerns on a proposal, a meeting would be convened within the period of eight weeks to discuss the concerns and objections. Such a meeting should preferably be held within the framework of COSAC or a COSAC-related body. In case the threshold for the 'yellow card' or 'orange card' is reached, the meeting would entrust the COSAC Presidency or the COSAC Secretariat with notifying the Commission, the European Parliament and the Council about the shared concerns and that the threshold has been reached.

7) National parliaments would adopt their reasoned opinions in a unified form to facilitate exchange and comparison.

The post-eight-week stage

1) Where the threshold for the 'yellow card' or 'orange card' is reached, a meeting of interested national parliaments would be convened to consider the reasons expressed and shared by the majority of national parliaments. Such a meeting would be held within the framework of COSAC or a COSAC body or otherwise. In case of the 'orange card' such a meeting would be convened before the first reading in the European Parliament and the Council.

2) Each national parliament or chamber would nominate a "subsidiarity *rapporteur*" who would attend ordinary COSAC meetings and follow developments in regards to subsidiarity issues in his or her chamber in the half year preceding the COSAC meeting. The *rapporteurs* would send their reports to COSAC before the ordinary COSAC meetings. Based on the reports, the COSAC Secretariat would compile a document on the proposals found to be in breach of the principle of subsidiarity, the procedures used, the reasoned opinions and other relevant information.

3) An analysis of the application of Protocol 2 by national parliaments and of the operation of the subsidiarity checking system would be carried out within the framework of the bi-annual reports of COSAC and subsequently debated at the COSAC meetings.

2.4. CONCLUSIONS

The debates of the working group and the written replies of national parliaments indicate diverging opinions between national parliaments on their cooperation in the application of the Protocol 2.

However, the synthesis of the discussions of the working group shows that there does seem to be broad agreement between national parliaments to exchange information at

the earliest possible point: to alert each other of any subsidiarity concerns; and to establish flexible and *ad hoc* modes of information exchange. At the same time there is a clear need for a reliable database with complete information on the state of play in national parliaments. In this regard there is support for further development of IPEX.

There is a widely shared interest to engage in a debate on the concept of subsidiarity. However, there is no general consensus over whether national parliaments should in their individual scrutiny try to converge and apply the same formula or criteria for evaluating the compliance of proposals with the principle of subsidiarity. Some parliaments are in favour of developing common methodologies; others consider the subsidiarity principle to be a political matter which does not require any general rules.

The large majority of national parliaments propose different ways for conducting an early forward-looking analysis of draft legislation (using, *inter alia,* the Commission's Annual Policy Strategy and Legislative and Work Programme). This is a field of cooperation that clearly requires further development.

It should also be noted that very few concrete proposals have been put forward for the post-eight week period once the 'yellow card' or 'orange card' mechanisms are triggered. This is probably due to the fact that such a situation is still hypothetical and national parliaments, apart from the COSAC coordinated subsidiarity checks, do not have any experience to build their proposals on. This point needs further consideration by national parliaments. Such a debate could be launched once clarifications on the practical and political aspects of the application of the Protocol are reached with the Commission and the European Parliament.

The main contentions which seem to need special attention of COSAC itself include the extent to which COSAC should concentrate on subsidiarity issues. Some parliaments are strongly in favour of such a focus, while others oppose in favour of concentrating on policy issues. There seems to be a need to find a structural solution that would accommodate the demands of those who wish to concentrate on subsidiarity but at the same time not making it the single and rigid focus of COSAC. For this purpose, the synthesis of the working group proposes different options, ranging from no change at all to the creation of a sub-group of COSAC.

It is obvious that all parliaments are sovereign in determining not only their own internal procedures but also the degree to which they are willing to commit themselves to interparliamentary coordination in the implementation of the Protocol.

Another issue that seems to need addressing is the continuation of COSAC coordinated subsidiarity checks before the entry into force of the Treaty of Lisbon and the possible modifications of this joint exercise (i.e. more flexibility in choosing the proposals, more proposals to undergo the check, etc.)

Recognising the mandate of the COSAC Secretariat in respect of this report, the selection, further consideration and drawing of conclusions on the most suitable ideas from the check list presented above are left to the political decision of COSAC.

Chapter 3: Involvement of parliaments of the European Union in European Defence Policy

This chapter reviews the systems currently operating in national parliaments and the European Parliament for scrutinising European Security and Defence Policy (ESDP). Taking account of the information on these systems presented in the 4th and 5th COSAC Bi-annual Reports, the chapter begins with an investigation of any new developments in ESDP scrutiny that have occurred. Then it reviews the provisions of the Treaty of Lisbon on Common Security and Defence Policy (CSDP, the new designation of ESDP) and how these might affect the actions of parliaments. Looking beyond the changes foreseen by each parliament to its own scrutiny system, it pays particular attention to the cooperation between parliaments through the possible implementation of Article 10 of Protocol 1 to the Treaty under which COSAC may organise interparliamentary conferences, in particular, on matters of CSDP.

3.1. DEVELOPMENTS IN ESDP SCRUTINY SYSTEMS IN THE NATIONAL PARLIAMENTS

3.1.1. Mostly unchanged scrutiny procedures

Compared to the scrutiny procedures outlined by national parliaments for the 4th and 5th Bi-annual Reports (published in 2005 and 2006), it appears that there is no fundamental shift in the approaches taken by national parliaments to scrutiny of their government's European Security and Defence policy (See table 1). Broadly, and dependent of the specifics of each country's constitutional set up, national parliaments continue to monitor their government's policies and actions at national level.

On the specific issue of deploying national troops in ESDP operations, there are two approaches. The key difference between these approaches is the level of involvement of the national parliaments in European defence policy.

- **Mostly, the decision to engage national military capabilities belongs to the government; national parliaments scrutinise this decision in different ways depending on the degree of control they are granted through their national constitutional arrangements.**

National parliaments may just be **informed** prior to (the Belgian *Chambre des Représentants* and *Sénat*, the Dutch *Eerste Kamer*, the Portuguese *Assembleia da República*), or in some cases after their government's decision to deploy (the French *Sénat* and the *Assemblée nationale* since the constitutional review of 23 July 2008).

In some cases a **debate** takes place in plenary session (express of position as in Cyprus or exchange of oral or written questions and answers). However, for the most part, the debate takes place in the competent committees (often this competence is shared between the Committee on Defence and Committee on Foreign Affairs). In some cases these committees also organise hearings with ministers (Cypriot Committee on Defence).

Scrutiny may also extend to the requirement of an **approval** - in the case of the Czech *Senát* and *Poslanecká Sněmovna,* and the German *Bundestag* – or even of an **authorisation** - as in the case of the Spanish *Congreso de los Diputados.* In France such authorisation is (since the constitutional review of 23 July 2008) required where the military operation lasts more than 4 months. In Austria, authorisation is required from the main committee of the *Nationalrat* for any dispatching of peace keeping forces in the framework of an international organisation and explicitly of the ESDP.

Such scrutiny means may also be complemented by a **vote of confidence** (in the *Chambre des Représentants* of Belgium, where CFSP/ESDP issues can be the subject of an interpellation, followed by a vote of confidence).

- **But some national parliaments have an extended responsibility in the decision to deploy military capabilities in ESDP operations.**

In Estonia, the *Riigikogu* mandates the Ministers before Council meetings. Thus, under paragraph 128 of the Constitution, it is the *Riigikogu*, rather than the executive, which declares, on a proposal from the President, a state of war and decides to deploy the armed forces.

In Lithuania, the procedure is different according to the sort of decision which has to be taken. So far as the engagement of military troops is concerned, the *Seimas* adopts a resolution which is submitted to the President of the Republic. Otherwise - such as in the case of specific ESDP engagement of military capabilities or the involvement in international operations - the decision is taken by the Defence Minister in the frame of the mandate he received from the *Seimas* or in joint meetings involving parliamentary committees, the Defence Minister and the President of the Republic.

In Poland, the role of the *Sejm* is also very important. The *Sejm* may deliver a mandate to the government to negotiate, at European level, decisions concerning ESDP. However, this occurs only in certain circumstances (legal Act of 11 March 2004). Moreover, according to Articles 116 and 117 of the Polish Constitution, the *Sejm* can, through a resolution, decide to declare war, but only if there is aggression from outside the borders, and not if the aggression is from inside. Consequently, the *Sejm* does not participate in the decision to engaging military capabilities inside the frontiers (of either Poland itself or the European Union); such a decision belongs to the President of Republic.

The lack of any fundamental change in the scrutiny procedures - except for some modifications introduced by constitutional review as in France - is due to the fact that ESDP belongs, since the Treaty of Maastricht, to the second pillar and is intergovernmental. According to Article 3 of the current EU-Treaty, *"The Union shall in particular ensure the consistency of its external activities as a whole in the context of its external relations, security, economic and development policies. The Council and the Commission shall be responsible for ensuring such consistency and shall cooperate to this end. They shall ensure the implementation of these policies, each in accordance with its respective powers*." The Council of the European Union (with the main role played in particular by the COPS) and the European Commission (DG RELEX) are in charge of the coherence of the policy and cooperate in this direction. They decide on

common positions (article 15 EU-Treaty), common actions (article 14 id) and a common strategy (article 13 EU-Treaty).

Table 1: Scrutiny of CFSP/ESDP in the national parliaments (updated)

The modifications in bold reflect the changes introduced in regard to the table of the 4th Bi-annual Report (October 2005). Entries on the new Member States are coloured in grey.

Member State	Scrutiny of CFSP/ESDP ?	Using standard EU scrutiny procedures ?	Scrutiny of Common actions ?	Scrutiny of Common positions ?	Scrutiny of Common strategies ?
Austria *Nationalrat*	Yes	Yes	Yes	Yes	Yes
Belgium *Chambre des Représentants*	Yes	No	Yes	Yes	Yes
Belgium *Sénat*	Yes	No	Yes	Yes	Yes
Bulgaria *Narodno Sabranie*	**Yes**	**No. Joint Committee (Committee on Defence and EU Affairs)**	**Yes**	**Yes**	**Yes**
Cyprus: *Vouli ton Antiprosopon*	Not as such, but hearing in front of the Committee on Defence of the Minister of Defence	-	-	-	-
Czech Republic *Poslanecká Sněmovna*	Yes	No	Yes	Yes	Yes
Czech Republic *Senát*	Yes	No	Yes	Yes	Yes
Denmark *Folketinget*	Yes	No	Yes	Yes	Yes
Estonia *Riigikogu*	Yes	Yes	Yes	Yes	Yes
Finland *Eduskunta*	Yes	Yes, **carried out by the** Committee on Foreign Affairs	Yes	Yes	Yes
France *Assemblée nationale*	Yes	Yes	Yes	Yes	Yes
France *Sénat*	Yes	Yes	Yes	Yes	No
Germany *Bundestag*	Yes	No	Yes	Yes	Yes
Germany *Bundesrat*	No	-	-	-	-
Greece *Vouli Ton Ellion*	Yes	Yes	-	-	-
Hungary *Országgyűlés*	No	-	-	-	-
Ireland *Houses of the Oireachtas*	Yes	No, but a Joint Committee on European Scrutiny **can consider CFSP/ESDP measures & the parliament must approve participation in ESDP operations.**	Yes	Yes	No
Italy *Camera dei Deputati*	Yes	Yes	Yes	Yes	Yes
Italy *Senato della Repubblica*	Yes	Yes	Yes	Yes	Yes
Latvia *Saeima*	Yes	Yes	Yes	Yes	Yes

Member State	Scrutiny of CFSP/ESDP ?	Using standard EU scrutiny procedures ?	Scrutiny of Common actions ?	Scrutiny of Common positions ?	Scrutiny of Common strategies ?
Lithuania *Seimas*	Yes	**Yes, by the Committee on Foreign Affairs in cooperation with the Committee on European Affairs and the Committee on Defence**	Yes	Yes	Yes
Luxemburg *Chambre des Députés*	No	-	-	-	-
Malta *Kamra Tad-Deputati*	No	-	-	-	-
The Netherlands *Tweede Kamer*	Yes	Yes	Yes	Yes	Yes
The Netherlands *Eerste Kamer*	No	-	-	-	-
Poland *Sejm*	Yes	Yes	No	Yes	No
Poland *Senat*	No	-	-	-	-
Portugal *Assembleia da República*	**Not systematically, but tools are available for that**[19]	-	-	-	-
Romania *Camera Deputator and Senatul*	**Yes**[20]	**Yes**	**Yes**	**Yes**	**Yes**
Slovakia *Narodna Rada*	Yes	Yes, in cooperation with the Committee on Foreign Affairs	Yes	Yes	Yes
Slovenia *Državni svet*	Yes	Yes	Yes	Yes	Yes
Slovenia *Državni zbor*	Yes	Yes	Yes	Yes	Yes
Spain *Congreso de los Diputados*	No	-	-	-	-
Sweden *Riksdagen*	Yes	Yes	Yes	Yes	Yes
United Kingdom *House of Commons*	Yes	Yes	Yes	Yes	Yes
United Kingdom *House of Lords*	Yes	Yes	Yes	Yes	Yes

3.1.2. Specific cases - new Member States, neutrality and non-alignment traditions, European Parliament's reinforced scrutiny means

Although there has broadly been very little change in the scrutiny procedures operated by national parliaments, there are three specific cases:

- the new Member States;
- some States have a neutrality or non-alignment policy;
- the European Parliament.

19 No institutional change: the Portuguese Parliament can scrutinise and has the tools for that monitoring, but not in a systematic way.

20 Current draft Law on cooperation between the Parliament and the Government of Romania in European Affairs should allow the Parliament to examine the CFSP/ESDP issues.

- **Practices of the new Member States**

On 1 January 2008 Bulgaria and Romania acceded to the Union.

In Bulgaria, the government can send troops abroad without any parliamentary scrutiny only where they are being deployed as part of a NATO-mission. In other cases, parliamentary authorisation is necessary. Currently the rules of procedure enable the Committee on European Affairs and the Committee on Defence to hold a joint session to discuss the government's position on military deployment to a European mission.

In Romania, a draft Law on cooperation between the Romanian parliament and the government on European topics has been adopted by the Committee on European Affairs, but has yet to be accepted by the parliament. This would allow the parliament to examine all EU proposals including those involving national military engagement in a European operation.

- **The impact of neutrality and non-alignment traditions**

The CFSP/ESDP and its development take on a particular dimension for the Member States of the European Union who have a tradition of neutrality (Ireland and Austria) or of non-alignment (Finland, Sweden). If these four countries are in favour of a development of the CFSP/ESDP, they strictly control this policy and, in particular, its military aspect.

Some of these States make a clear distinction between sending troops under a mandate of the UN or the OSCE and military engagement in the framework of other international agreements.

Thus in Ireland the engagement of national military capacities is locked at three levels: a governmental decision, a parliamentary approval and a UN authorisation are needed. Therefore the national parliament has a central role in this process. However Irish participation in any military aspect of CFSP/ESDP depends on the position of the UN.
Although Sweden does not forbid troop engagement without UN approval, it does require that strict conditions are respected. According to the Swedish Act (Lag 2003: 169), the government can take the decision to engage the armed forces following a demand from the UN or a decision in the OSCE. This happens without the consent of the Swedish *Riksdagen.* However consent is essential where troops are sent abroad under any other international agreement, including CFSP /ESDP.

The role of the parliament is also predominant in the framework of CFSP/ESDP in Austria. On one hand, any dispatch of Austrian peace keeping forces needs the authorisation of the main committee of the Austrian Parliament from the moment it happens in the framework of an international organisation. On the other hand, an explicit reference to the CFSP/ESDP in the Austrian Constitution (article 23f.) concerning military aspect underlines the strict control of the parliament in this field.

The parliamentary scrutiny of the CFSP/ESDP is strict in Finland too: the government is obliged to inform the Committee on Foreign Affairs of all proposals made in the field of CFSP/ESDP regardless of the specific legal base.

- **Extended scrutiny practices for the European Parliament**

Since the 4th and 5th Reports the European Parliament has developed new scrutiny means. Given that it approves, through the EU budgetary procedure, the finances for the ESDP (in excess of 250 million per year, with a budget foreseen 2007-2013 of 1740 billions), the role of the European Parliament has never been insignificant. However the January 2007 Inter Institutional Agreement between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management, foresaw the meetings between the Presidency and the Parliament to facilitate the adoption of an annual CFSP budget, as well as the exchange of letters between the European Parliament and the Presidency stating that "*timely information on planned individual ESDP actions and decisions will continue to be provided also in future, in regular contacts with the European Parliament*". This has improved the position of the European Parliament as regards ESDP scrutiny notably.

Otherwise, the European Parliament's AFET/SEDE Committee publishes an Annual report on CFSP that will be completed with the publication of a new "*Annual Report on implementation of ESS and ESDP*". It welcomes as well the High Representative for the ESDP, Javier Solana, to hearings presenting the burden issues of the European Defence Policy.

Furthermore, the recent events in Georgia confirmed concretely this evolution. The European Parliament proved it was able to monitor, in real time and efficiently, the policy lead at European level (through resolutions, *in situ* observer missions) even if this does not yet constitute full parliamentary scrutiny at European level.

Table 2 - The Crisis in Georgia: the action of the European Parliament

The crisis in Georgia and the creation of an ESDP-Mission is the occasion to see in which ways the European Parliament is involved in the definition of the ESDP.

* **Enquiry mission** from the 12th to the 17th of August 2008: done by the Delegation for the relations with the South Caucasus of the European Parliament. Its purpose was to observe the situation and to participate to the peace negotiation in Tbilisi.

* **Extraordinary common meeting of the Committee on Foreign Affairs, of the Subcommittee on Security and Defence and of the Delegation for the relations with South Caucasus on the 20th August 2008:** exchange of views with Jean Pierre Jouyet, the Minister of State in charge of European Affairs and Eka Tkeshelashvili, the Georgian Minister for the Foreign Affairs. For the first time, representatives of national parliaments were invited.

* **Extraordinary European Council on the 1st of September**. The French Minister for Foreign Affairs presents its conclusions to the European Parliament, particularly the will to send international monitors to Georgia

* **Discussion at the Plenary and adoption of a resolution** (549 votes in favour, 68 votes against and 61 abstentions). The European Parliament asked Russia to respect its engagements and to withdraw its troops from Georgia and supports the sending of a Monitoring and Observer Mission in Georgia in the framework of the ESDP.

*** Meeting of the President of the European Parliament and the leaders of the politic groups with the French President the 10th of September**: information of the evolution of the negotiations between the European Union, Russia and Georgia and of the results of his visit in Moscow and Tbilisi At the same time, Javier Solana was meeting the Committee on Foreign Affairs for the same purpose.

*** Extraordinary session of the Committee on the Foreign Affairs on the 16th of September: hearing of M. Jouyet** for the Presidency informing the Parliament of decision to send an autonomous civilian monitoring mission in Georgia and to nominate Pierre Morel as the special UE representative for the crisis in Georgia (conclusions of the Council for Foreign Affairs the 15th and 16th September 2008)

*The crisis in Georgia has shown the capacity of the European Parliament to **follow in real time the ESDP decision-making** in a moment of crisis, thanks to its internal procedures.*

3.2. BUILDING INTERPARLIAMENTARY COOPERATION ON DEFENCE MATTERS WITHIN THE FRAMEWORK OF THE TREATY OF LISBON

One of the objectives of the questionnaire was to know if the implementation of the new provisions of the Treaty of Lisbon regarding the European Defence Policy would affect the way parliaments deal with this issue. Given the replies to the questionnaire, it appears that an overwhelming majority of parliaments, often after having debates and discussions on the new measures, are not considering any change in their approach (including scrutiny procedure of ESDP texts). In that context, the implementation of Article 10 of Protocol 1 of the Treaty of Lisbon on the role of national parliaments in the European Union might represent the most significant and promising improvement as regards the involvement of parliaments of the European Union in European Defence Policy. However, the possibility to organise interparliamentary conferences within COSAC on matters of CSDP, as Article 10 of Protocol 1 would allow, needs to be considered with regard to the pre-existing interparliamentary *fora* in the field of defence.

3.2.1. The light impact of the future CSDP on the scrutiny procedures of parliaments

The Common Security and Defence Policy (CSDP) is designed by the Treaty of Lisbon to succeed the existing European Security and Defence Policy (ESDP).

According to Article 42 of the Treaty on European Union[21], the new CSDP will remain part of the Common Foreign and Security Policy (CFSP). It is described as a tool which will provide the Union with an operational capacity drawing on civilian and military assets to carry on missions outside the Union for "*peace-keeping, conflict prevention and strengthening international security in accordance with the principles of the United Nations Charter*".

[21] Consolidated versions of the Treaty on European Union and the Treaty on the functioning of the European Union : *http://consilium.europa.eu/cms3_fo/showPage.asp?id=1296&lang=en*

As regards CSDP, the Treaty of Lisbon refers also to "*the progressive framing of a common Union defence policy which could lead to a common defence when the European Council, acting unanimously, so decides*". Indeed, as with foreign policy, defence policy remains intergovernmental and will operate under unanimity in the European Council. In this regard, though it gains a general right to be informed and consulted, the European Parliament still has no decision-making powers in this field. This is explicitly pointed out in declaration n°14 annexed to the Treaty: "*the provisions covering the Common Foreign and Security Policy*[22] *[…] do not increase the role of the European Parliament*".

Beyond the creation of a "High Representative of the Union for Foreign Affairs and Security Policy" and a European External Action Service (EEAS) which are key institutional innovations concerning CFSP as a whole, the Treaty of Lisbon contains a set of provisions which deals more specifically with defence matters.

a) the introduction of new provisions on defence by the Treaty of Lisbon

- **The extension of the « Petersberg Tasks »** (Article 42, paragraph 1, TEU):

The "Petersberg Tasks", introduced in the Treaty of Amsterdam, refer to tasks including "*humanitarian and rescue tasks, peacekeeping tasks and tasks of combat forces in crisis management, including peacemaking*". Within the Treaty of Lisbon, the scope and range of the "Petersberg Tasks" are extended to "*joint disarmament operations, military advice and assistance task, conflict prevention tasks and post-conflict stabilisation missions*" and furthermore, contribution to combating terrorism "*in supporting third countries in their territories*" is also enacted.

- **Acknowledgement of the European Defence Agency (EDA)** (Article 42, paragraph 3, TEU):

The European Defence Agency (EDA), created in July 2004, is inserted within the legal framework of the CSDP (Article 42, paragraph 3), reinforcing its role in pushing forward the development of EU operational capabilities and the EU as a military actor on the international scene.

- **New features regarding cooperation in the field of defence**:

The Treaty of Lisbon broadens "**enhanced cooperation**" including in the field of defence. As established in the Treaties of Nice and Amsterdam, the enhanced cooperation mechanism enables a group of willing States to create closer association in order to deepen their cooperation. It requires the support of one-third of Member States i.e. nine states (Article 329, paragraph 2, TFEU).

Specifically designed for the CSDP, "***permanent structured cooperation***" is a flexible, unique and permanent measure, which unlike "enhanced cooperation" does not require a threshold of participants to proceed.

[22] which includes Common Security and Defence Policy

"Permanent structured cooperation" (Article 42, paragraph 6, TEU; Article 46 TEU; Protocol on Permanent Structured Cooperation) is intended to allow those Member States "*whose military capabilities fulfil higher criteria and which have more binding commitments to one another in this area with a view to the most demanding missions*" to establish "*permanent structured cooperation within the Union framework*" (These higher criteria are not defined).

- **Implementation of a mission by a group of Member States** (Article 42, paragraph 5, TEU ; Article 44, TEU):

Not to be mistaken with the previous measures, the Treaty of Lisbon also institutionalizes the implementation of a mission by a group of Member States that are willing and have the necessary capability for such a task on behalf of the Union and "*entrusted*" unanimously by the Council (like it was the case for the Artemis mission led by the French in the Democratic Republic of Congo in September 2004).

- **The solidarity clause** (Article 42, paragraph 6, TEU):

The solidarity clause represents a new legal mechanism of assistance between Member States when one of them is the victim of terrorist attack, natural or man-made disaster. The EU will mobilize all the instruments at its disposal, including military resources made available by Member States, to assist.

- **The mutual defence clause** (Article 42, paragraph 7, TEU):

The mutual defence clause in the Treaty of Lisbon binds all Member States to provide aid and assistance « *by all means in their power* » in the event of another Member State becoming a victim of armed aggression, without prejudicing the neutrality or relationship to NATO that some Member States may enjoy.

b) Limited changes of the current ESDP scrutiny practices of the parliaments

A great number of parliaments report that they did not carry out a debate on the provisions of the Treaty of Lisbon regarding the new CSDP and that they do not foresee a change or an adaptation of their scrutiny procedure on ESDP with respect to the new measures.

Among the respondents, some parliaments indicate that this subject was discussed as a part of the general debate they hold on the Treaty of Lisbon. Within this framework, the Dutch *Eerste Kamer* says that special attention was paid to the questions of "*the institutional balance (role and mandate of the High Representative), the need to speak with one voice in foreign affairs and the need for more (defence) cooperation between the EU and NATO*". As for the Austrian Parliament, it discussed the provisions of the CSDP mainly with regard to its impact on the military neutrality of Austria.

In several parliaments (the Czech *Poslanecká Sněmovna*, the Finnish *Edukunsta*, the French *Assemblée nationale*, the German *Bundestag*, the Hellenic *Vouli Ton Ellion*, the Italian Parliament, the Lithuanian *Seimas*, the Portuguese *Assembleia da República*, the Swedish *Riksdagen*, the UK House of Commons), provisions on CSDP were also or

only considered within the committee specialised in defence matters or, more rarely, within the Committee on European Affairs.

A very few parliaments or chambers may consider a change or an adaptation of their scrutiny procedure, but it appears to be too early to give details on what would be the new coming procedure. However, in Poland, the new Treaty could lead the *Senat* to join the scrutiny procedure of ESDP proposals (*expert opinions are being prepared at the moment to assess this possibility*) which remains for the moment only in the hands of the *Sejm.*

The European Parliament conducted debates and discussions on CSDP in several of its committees. It also organized a workshop on "*The impact of the Treaty of Lisbon on ESDP*" which included expert presentations. With regard to its scrutiny procedure, the European Parliament stresses in its reply that it should continue to adopt a recommendation or resolution prior to the launch of any ESDP (CSDP) operation. It also calls for more flexibility when the European Parliament is not in plenary session or rapid deployment is deemed necessary, so that its Rules of Procedure should be adapted with a view to authorising its responsible committee to adopt a recommendation or resolution on its behalf.

3.2.2. What future for interparliamentary cooperation in the field of defence?

a) State of play of the interparliamentary cooperation in the field of CFSP / ESDP

The interparliamentary cooperation in the field of CFSP / ESDP is at present implemented through the following structures and bodies:

- **The Western European Union Parliamentary Assembly (WEU PA)**

The Western European Union was created by the Treaty of Brussels in 1948 and amended by the Protocol signed in Paris in 1954 which completed it in order to create a plan for Common Defence. According to the Treaties of Maastricht and Amsterdam, from 1999, some of the tasks of the WEU have been progressively transferred to the European Union, within the second pillar.

The WEU Parliamentary Assembly is at present the only interparliamentary body which monitors EU activities in the ESDP domain. Despite the transfer of the main tasks of the WEU to the EU, it retains certain legitimacy for exchange on the military question in the EU.

The Assembly examines intergovernmental activities at European level in all areas of European security and defence including cooperation on defence equipment. Moreover, the governments write an annual report on their security and defence activities which is examined by the Assembly and on which the parliamentarians can make recommendations. The governments are bound to reply to them.

However there may be some problems:

- ✓ The question of the composition of the Plenary: not only Members of the European Union are members of the assembly of the WEU. Iceland, Norway

and Turkey are associate members; Albania, Moldavia, Serbia, Bosnia and Herzegovina, Montenegro, the Former Yugoslav Republic Of Macedonia (FYROM), Croatia, the Russian Federation and Ukraine are associate partners countries; and Armenia, Azerbaijan, Georgia, the European Parliament, the NATO Parliamentary Assembly and the OSCE Parliamentary Assembly are Observers.

- ✓ The new rules of procedures adopted by the Standing Committee on the 6th of May 2008 has made all EU Member States members, including the countries that have now only been observers (Austria, Denmark, Finland, Ireland and Sweden). However Austria has not ratified the text, as the Austrian Parliament has not yet decided whether to accept the new status.
- ✓ The status of the Assembly of the WEU is fragile as the Treaty creating the WEU expired in 2004 and therefore could be reneged on at any moment.

- **The COFACC**

The COFACC (Conference of Foreign Affairs Committee Chairpersons) is a forum gathering the chairpersons of the Committees on Foreign Affairs of the various national parliaments and of the European Parliament. This joint meeting is hosted by the national parliament of the country which holds the Presidency of the European Union. It usually allows discussion with the Presidency (foreign minister and/or Prime Minister) and various experts in the field of foreign affaires and defence. It is common for a representative of the European Commission to attend the meeting, as well as the High Representative for Common Foreign and Security Policy.

- **The Conference of the Defence Committee Chairpersons of the national parliaments and the European Parliament**

On the very same pattern, there is a Conference of the Defence Committee Chairpersons of the national parliaments and the European Parliament, which focuses on defence topics.

- **European Parliament's AFET/SEDE**

In addition the European Parliament Committee on Foreign Affairs (AFET) and its Sub-committee on Security and Defence (SEDE) holds at least one meeting each year to which members of national parliament Committees on Foreign Affairs and Committees on Defence are invited to discuss current issues of EU external relations.

- **Article 10 of the Protocol 1 of the Treaty of Lisbon**

In addition to these current interparliamentary *fora* on matters of foreign affairs and defence, according to Article 10 of the Protocol 1 on the role of the national parliaments in the EU of the Treaty of Lisbon, COSAC, which only gathers members of the Committees on European Affairs, would be entitled to arrange special meetings on CFSP and/or CSDP. Article 10 states indeed that COSAC may "*organise interparliamentary conferences on specific topics, in particular to debate matters of common foreign and security policy, including common security and defence policy*".

With regard to this innovation, the purpose of the questionnaire was to collect contributions from the parliaments on the organisation of the interparliamentary cooperation in the field of CFSP / CSDP.

b) National parliaments' views concerning the form of enhanced cooperation in matters of European Defence Policy

According to the replies to the questionnaire, most national parliaments welcome the idea of enhanced cooperation in the field of European Defence Policy, but some are reluctant to present their position on this matter, in so far as no stance has been taken by their political authorities. It is actually often considered as a sensitive issue. In that context, the Hungarian *Országgyűlés* underlined that a possible interparliamentary Conference should have "*no binding nature*". The Irish *Houses of the Oireachtas* notes furthermore "*that contributions from such a conference shall not prejudice the position*" of national parliaments; they "*should respect and be careful not to compromise the defence policies of certain Member States*".

However, a large part of the national parliaments (Belgian *Sénat*, Bulgarian *National Assembly*, Dutch *Eerste Kamer*, Portuguese *Assembleia da República*, Finnish *Eduskunta*, Swedish *Riksdagen*) considers also the existing Conference of Foreign Affairs Committee Chairpersons (COFACC), not COSAC, as the most appropriate framework to organise this cooperation, so far "*the specialists of the national parliaments and the MPs have the competence to perform parliamentary control*". The COFACC "*forms already a well functioning platform for interparliamentary debates*", according to the *Eduskunta* that "*feels quite strongly that there is no need to create a new forum which would only duplicate the existing system*".

In other respects, a number of national parliaments focus on the role of the Parliamentary Assembly of the Western European Union. The Hellenic *Vouli Ton Ellion* considers it as "*the only ground for reinforced and structured cooperation among parliamentarians on European Defence issues*". And if the Treaty creating the WEU expired in 2004, a reflection has to be organised on its future. The Polish *Sejm* highlights the two open possibilities: either the extinction of the Assembly of the WEU and the creation of a completely new form of cooperation, or the integration of the Assembly of WEU with the EU parliamentary conferences. According to the Lithuanian *Seimas,* this issue "*deserves more careful consideration with the view of identifying and defining the most effective methods of such a cooperation*".

National parliaments also underline the fact that there are too many structures, so that there is a risk of "*overlapping of COFACC and WEU PA's functions*" (Polish *Senat*). This situation makes apparent a "*need of coordination*" (Austrian *Nationalrat*). In a new configuration, the Belgian *Chambre des Représentants* considers the WEU could play an "*alert function*" for the COSAC and the national parliaments, which could use it as a "*centre of intelligence*" providing COSAC all experts' information needed to organise debates in ESDP matters.

The European Parliament expresses a clear-cut position regarding the cooperation with the WEU PA. It underlines that the Treaty of Nice has codified the "demise" of the WEU and the "transfer of its core function to the European Union", and that the Treaty of Lisbon should confirm this process through article 42, paragraph 7, which is very similar to article 5 of the 1954 modified Treaty of Brussels. Therefore, the Treaty of Lisbon will match all the aspects of the Treaty of Brussels. Moreover, it goes beyond it with a reference to NATO. In line with this, the Committee on Constitutional Affairs of

the European Parliament adopted a position which proposes the winding-up of the Western European Union Parliamentary Assembly once the Treaty of Lisbon comes into force. On the same level, the Portuguese *Assembleia da República* reports that "*considering the political process to extinguish the WEU, there does not appear to be any need to develop a relation with the WEU PA*".

3.3. CONCLUSIONS

The features of the scrutiny systems operated by national parliaments on CFSP/ESDP have not much evolved since the publication of the 4th and 5th Biannual Reports (2005 and 2006) which dealt with that issue. Besides, in a context where the number of ESDP missions is growing, the focus put on the involvement of the parliaments in the decision of engaging national military capabilities in a European operation shows that, in a majority of Member States, governments have a prominent power in the decision-making-process. In a few Member States, Parliaments have however an extended responsibility in that process.

ESDP, as CFSP, keeps being monitored by national parliaments through the scrutiny of the governments' policies and actions, according to the specifics of each country's constitutional set up. As for the European Parliament, it has only substantial powers as regards the ESDP through the budgetary procedure; a recent Inter Institutional Agreement has fostered by the way its ability in that field. CFSP/ESDP is indeed of an intergovernmental nature. The Treaty of Lisbon is not designed to introduce any modification on that matter. It, though, grants the European Parliament with a general right to be informed and consulted. In addition, the recent crisis in Georgia showed that the European Parliament had the capacity to follow in the ESDP decision-making through different tools and that the European Council and the High Representative for the Common and Foreign Policy were willing to involve it.

According to the replies, the new provisions of the Treaty of Lisbon regarding CSDP (the new appellation of ESDP) will not entail changes in the current scrutiny procedures implemented by national parliaments. In that context, the implementation of the Article 10 of Protocol 1 on the role of national parliaments in the European Union might represent an opportunity for national parliaments to get more involved in the European Defence Policy. In that respect, it is worth noticing that most of them are in favour of a deepened interparliamentary cooperation. However, a rationalisation regarding the multiplicity of the existing structures is needed. At present, in addition to the European Parliament's AFET/SEDE, 4 interparliamentary *fora* co-exist, what prevents from having a clear readability and visibility of their competences and added values. Thus, it seems that a reflection on the best and more efficient structuring for interparliamentary cooperation on the European Defence Policy cannot be avoided.

Chapter 4: Scrutiny of the agreements negotiated by the European Community

The European Union is a significant global actor which has developed a substantial network of relations that can influence international affairs. Each year the European Community engages in numerous agreements with the third countries and international organisations. These agreements have a significant impact, not only on the Community, but also on individual Member States. The complexity of this decision-making process is further intensified by the international dimension of the European Union.

The aim of this Chapter is to focus mainly on those international agreements of the European Community[23] which have an impact on individual Member States. This Chapter will also examine the role of the national parliaments and the European Parliament in these agreements.

4.1. INTRODUCTION

Before the European Community (henceforth, the Community) or any other contracting party gets involved in the negotiations that would lead to the conclusion of an agreement, at least two aspects should be examined - the existence of Community competence and the ability to be a party in the negotiations.

The legal basis for the Community's ability to take action in the internal as well as in external arena is Article 281 of the Treaty establishing the European Community[24] (henceforth, the Treaty). This stipulates that the Community has a legal personality. The Treaty does not explicitly confer legal personality to the European Union, yet the ability to engage in international agreements is set out in Article 24 of the Treaty on European Union. Since the legal personality of the Union is only explicitly defined in the Treaty of Lisbon, the present chapter will focus on those agreements, concluded by the Community.

According to the Treaty the Community may act only in certain areas in which it has been conferred competence. While competences in some areas are conferred exclusively to the Community, in other areas the Community shares this competence with the Member States.

Exclusivity refers to those competences which have been surrendered by the Member States and granted in their entirety to the Union. For example, the Community has exclusive competence in the areas of common commercial policy and common fisheries policy in regard to the conservation of the biological resources of the sea. In such areas the Community may act alone as legislator. Consequently there is no obligation to adhere to the principle of subsidiarity.

[23] This Chapter also excludes agreements involving the participation of the European Atomic Energy Community.

[24] It is meant the consolidated version of the Treaty establishing the European Community.

The Treaty of Lisbon provides a list of the areas in which the European Union shall have the exclusive competences. These areas are: customs union; establishing the competition rules necessary for the functioning of the internal market; monetary policy for the Member States whose currency is the euro; the conservation of marine biological resources under the common fisheries policy; and common commercial policy.

Most competences are rather shared than exclusive and in some articles non-exclusivity of these powers is explicit. When a competence in a specific area is shared between the Community and the Member States, both may legislate and adopt legally binding acts in that area. One aspect of shared competence is that a Member State loses its power to take decisions when the Community decides to regulate. In these cases the Community legislation both replaces the content of national laws and removes the right of the national legislator to legislate.

Under the current Treaty shared competences can be found in various articles. A thorough examination is required to identify them. The Treaty of Lisbon, on the other hand, provides a comprehensive list of shared competences. These will apply in the following principal areas: internal market; social policy, for the aspects defined in the Treaty; economic, social and territorial cohesion; agriculture and fisheries, excluding the conservation of marine biological resources; environment; consumer protection; transport; trans-European networks; energy; the area of freedom, security and justice; and common safety concerns in public health matters, for the aspects defined in the Treaty.

For research, technological development, and space, both the EU and the Member States may decide on programmes and take action. For development co-operation and humanitarian aid the Union will have the competence to take action and conduct a common policy without preventing the Member States from exercising their competence.

In addition to these competences, the Community also reserves the right of authority granted to it by implied powers[25] or Article 308[26] of the Treaty or when the Treaty does not confer upon the Community the power to harmonize laws. In these cases the Community still has supporting, coordinating and supplementing competences by which it can adopt legally binding rules. These will not be affected by the application of the Treaty of Lisbon.

The limitation of competence and powers of the Community become even more cumbersome when the external aspect of the competences is added. The Community has the power to conclude agreements with one or more non-member States or International Organizations if it is authorized by the Treaty to take action. This competence may be characterized as external Community competence. While some of

[25] The existence of a given power implies also the existence of any other power which is reasonably necessary for the exercise of former.

[26] If action by the Community should prove necessary to attain, in the course of the operation of the common market, one of the objectives of the Community, and this Treaty has not provided the necessary powers, the Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament, take the appropriate measures.

the Community's competences are *expressly* stipulated in the Treaties, the others are not; rather they derive from internal competences.

The founding Treaties only contained a small number of provisions which expressly provide for the conduct of international relations by the Community. They were provisions on common commercial policy (Article 133) and on association agreements (Article 310). Since then the number of provisions, which express the external competence of the Community, has expanded and now includes the maintenance of the relations between the Community and international organizations such as UN, GATT, Council of Europe, OECD (Articles 302-304), development policy (Article 181), environmental policy (Article 174), research and technology (Article 170), monetary and foreign exchange policy (Article 111), and economic, financial and technological cooperation with third countries (Article 181a). There are also Treaty provisions on fostering co-operation with third-party countries and international organisations concerning matters such as education, vocational training, culture, health and trans-European networks. In addition to the above were the Community powers in matters of fisheries and recognition of travel documents.

Apart from classifying external competences as expressed or derived, it is important from the view of the Member States to classify them as exclusive or shared external Community competences.

4.2. TYPES OF AGREEMENTS

After the competence of the Community is established, it has the power to negotiate and conclude the (international) agreements which can be:

- concluded by the European Community with third-party countries or with international organisations in their specific areas of responsibility (exclusive Community competence);
- Mixed type agreements, concluded jointly by the Member States and the European Communities in areas of shared responsibility (shared competence);
- decisions of joint committees set up pursuant to an international agreement and comprising representatives of the signatories for the purpose of administering the agreement.

In addition, Conventions may be concluded between the Member States of the European Union in various fields, such as Company Law and Double Taxation[27].

[27] Article 293 of the Treaty

4.3. AGREEMENTS CONCLUDED BY THE EUROPEAN COMMUNITY WITH NON-MEMBER COUNTRIES OR WITH INTERNATIONAL ORGANISATIONS IN THEIR SPECIFIC AREAS OF COMPETENCE (EXCLUSIVE COMMUNITY COMPETENCE)

In the exercise of its international powers the Community may conclude international agreements in the areas of its exclusive competence. The scope of international exclusivity corresponds to that of internal exclusivity.

In that aspect the Treaty of Lisbon makes a step forward by listing in the same article the areas where the Union has exclusive competence and adding that the Union shall also have exclusive competence for the conclusion of an international agreement when the conclusion is provided for in a legislative act of the Union or is necessary to enable the Union to exercise its internal competence, or insofar as its conclusion may affect common rules or alter their scope.

The procedure to engage in negotiations and their conclusion is set out in the articles which stipulate the exclusive competence. Where this is not the case, Article 300 is to be used. These agreements can be trade agreements under Article 133 (e.g. Agreement between the European Community and the republic of South Africa on trade in wine OJ 2002 L28/4); Agreements on technical and scientific cooperation under Article 178 (e.g. Agreement on scientific and technical cooperation between European Community and the State of Israel, OJ 2003 L 154/80); etc.

4.3.1. Scrutiny in the national parliaments

As mentioned above, the most transparent example of exclusive Community competence is the common commercial policy. In this area the national parliaments' influence is limited to scrutiny of their Government's position in the Council.

A vast majority of national parliaments do not scrutinise the entire process of negotiating the agreements. If scrutiny is conducted, the ordinary procedure for scrutiny of EU affairs applies with an added focus on Government reporting of the progress of negotiations between the Commission and third countries.

National parliaments are therefore usually not involved in the phase when the Council authorises the Commission to open the necessary negotiations. Some national parliaments claim that this could be due to the confidential nature of the documents containing draft negotiating mandate. It is true that Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents stipulates that the institutions of the EU shall refuse access to a document where disclosure would undermine the protection of, among others, economic interests of the Community. In case of common commercial policy, the Commission's draft negotiating mandates are classified as restraint documents. Nevertheless, the members of national parliaments should be authorised to access these classified EU documents, if they would like to influence their Government in the early, but crucial phase of negotiating the agreements. Modalities of the right to access EU classified documents are regulated by the domestic law of a Member State.

However, in the German *Bundesrat* and Bulgarian *Narodno Sabranie* the Committees on European Affairs may present parliament's position to their Government before the Council authorises the Commission to start negotiations with third countries.

While in most cases the competent committee for scrutiny of the common commercial policy is the Committee on European Affairs, in some national parliaments the pivotal role is played by the committee competent for industry and trade (Swedish *Riksdagen*, Spanish *Cortes Generales*) or Committee on Foreign Affairs (Portuguese *Assembleia da República*) or both (Lithuanian *Seimas*). In the Belgian *Chambre des Représentants* the work of international organisations like the WTO is followed-up by a special Committee on Globalisation; and the Irish *Houses of the Oireachtas* formally consider these proposals in the plenary session. In the French *Sénat* commercial matters involving European aspects are deliberated on by the Committee on Economic Affairs which designates one or more Senators to ensure a follow-up of the negotiations. In addition some Senators who are members of the Delegation for the European Union participate to the follow-up of negotiations, since the *Sénat* Rules of Procedure provide for that option.

As regards the other instruments of common commercial policy, the French *Assemblée nationale* and French *Sénat* have developed a special procedure for anti-dumping measures. Since Council Regulation No 384/96 on protection against dumped imports from countries not members of the European Community envisages very short deadlines for the Council's response to the Commission's action in the relevant field, both chambers have adopted a silent procedure, where the Government's proposal for a position becomes French official position should the Committee on European Affairs not react in 72 hours.

4.3.2. Scrutiny in the European Parliament

Under the provisions of the existing Treaty referring to common commercial policy, the European Parliament is not involved in the decision making process. In other cases the role of the European Parliament differs depending on the content of the agreement. Parliament's assent to the decision to conclude an agreement is required for the conclusion of Association Agreements, agreements establishing a specific institutional framework by organising cooperation procedures, agreements with important budgetary implications for the EU or agreements which would imply the modification of an act adopted under the co-decision procedure.

Nevertheless the Framework Agreement on relations between the European Parliament and the Commission foresees some transmission of information. Paragraph 19 of this Agreement states that the Commission should provide early information to Parliament both during the phase of preparation of the agreements and during the conduct and conclusion of international negotiations. This information covers the draft negotiating directives, the adopted negotiating directives, the subsequent conduct of negotiations and the conclusion of the negotiations for all types of agreements, including trade agreements. Following an exchange of letters between both Institutions, the Committee on International Trade is informed about negotiations by the Commission. The meetings are held *in camera*. The Framework Agreement also states that some Members of the European Parliament could be included as observers in delegations

negotiating multilateral agreements, where the Commission represents the European Community.

4.4. MIXED TYPE AGREEMENTS, CONCLUDED JOINTLY BY THE MEMBER STATES AND THE EUROPEAN COMMUNITIES IN AREAS OF SHARED COMPETENCE

Many international agreements encompass different subject matters. Powers of the Community being limited and the distribution and extent of Community competences seldom easy to determine, many agreements are concluded jointly by the Community and the Member States as "mixed agreements". Parties to such agreements can be all the Member States or just those with a special interest in a particular agreement. In some rare cases the Community and the Member States even act independently of each another[28]. In practice the mixed agreements give the possibility of overcoming the Community's limited powers. It is also safe to say that mixed agreements, which were not foreseen in the Treaty of Rome, have become the daily life of the Community's external relations.

4.4.1. The nature of mixed type agreements

Mixed agreements allow the Member States to be equally represented in the negotiations and in any institutions created by the agreements. This makes concerted action possible and gives the Community and the Member States more political weight. Examples of mixed agreements are the WTO Agreements or the European Association Agreements.

4.4.2. Scrutiny in the national parliaments

When the agreements, negotiated by the Community, are scrutinised in national parliaments, the competence of the Community, be it either exclusive or shared, makes no procedural difference. The scrutiny procedure for both types of agreements is the same in national parliaments. The majority of the national parliaments consider that agreements concluded in areas of shared competence are a matter for the national government. In this case mere information on the progress in particular dossier suffices.

Nevertheless, the standard procedure for parliamentary ratification of international agreements applies once the agreement has been signed by the representatives of the Community, representatives of Governments of Member States and representatives of third countries. However at this stage it is impossible for national parliaments to have an influence on the EU decision making process.

4.4.3. Scrutiny in the European Parliament

The European Parliament has no competence to intervene when negotiations directives are defined and when the negotiations are in progress. Nonetheless the abovementioned Framework Agreement clearly states that the Parliament is informed by the European Commission also in case of agreements that fall under shared competence between the

[28] In the area of the intellectual property.

Community and the Member States. The European Parliament can also make political comments through parliamentary resolutions.

4.5. DECISIONS MADE WITHIN INTERNATIONAL ORGANISATIONS

The European Community can establish relations and even become a member of international organisations such as the United Nations (UN), the World Trade Organisation (WTO) and the Council of Europe (CoE). In all these organisations, whose members are also the EU Member States, the Community is present at least as an observer and is able to present a position on behalf of the European Union or make a statement.

In the UN the Member State, that holds the Presidency of the Council of the European Union, presents the Union's position to the General Assembly, whether in negotiations or debates, in the form of a Presidency statement. The Community, represented by the European Commission, can also take the floor as a permanent observer at the General Assembly. In cases involving trade, agriculture and fisheries, the European Commission negotiates and makes statements at the UN on behalf of the EU and can also do so in other cases involving predominantly European Community competences. Coordination now encompasses the six main committees of the General Assembly and its subordinate bodies, including ECOSOC and its subsidiary functional commissions. Therefore the Member States, the Council and the Commission have to meet regularly to coordinate their positions on various issues.

European Union is also a key player in the WTO because of its common trade policy, where the European Commission negotiates on behalf of the Union's 27 Member States. The EU is a WTO member in its own right as are each of its 27 Member States. The European Commission alone speaks for the EU and its members at almost all WTO meetings and in almost all WTO affairs. However, sometimes references are made to specific Member States, particularly where their laws differ. This is the case in some disputes when an EU Member State's law or measure is cited, or in notifications of EU Member States' law, such as in intellectual property law. Individual EU Member States speak in committee meetings or sponsor papers, particularly in the Committee on Budget, Finance and Administration. Similar arrangements apply to the Community's position in the CoE.

4.6. INVOLVEMENT OF THE PARLIAMENTS OF THE EU IN APPOINTMENT OF THE SPECIAL COMMITTEES UNDER ARTICLE 300 OF THE TREATY ESTABLISHING THE EUROPEAN COMMUNITY

The Article 300[29] of the Treaty stipulates that the Commission, after Council's authorisation, may open the necessary negotiations which it conducts in consultation with special committees appointed by the Council to assist it in this task. These special committees are composed of representatives from the Member States. The purpose of the question in the questionnaire was to get information on whether national

[29] Procedures for specific agreements are often stipulated in a specific article of the Treaty, as for instance in Article 133, which nevertheless also envisages the application of the Article 300.

parliaments are involved in any form in their work: are national parliaments involved in preparing the mandates for them before the negotiations?

Parliaments of the EU are not involved in appointment of the special committees under Article 300 of the Treaty Establishing the European Community. The only exception to this general rule is German *Bundesrat,* which may also send its own representatives to the Government's delegation for negotiations in various bodies in the Council (*Ad hoc* Article 133 Committee on Services; Working Group Enlargement) and in some cases to third pillar coordinative bodies (Article 36 Committee on Police and Judicial Cooperation in Criminal Matters; the Working Group Substantive Criminal Law).

4.7. CHANGES FORESEEN AFTER THE TREATY OF LISBON COMES INTO FORCE

The new provisions on agreements negotiated by the Community do not affect the role of national parliaments, and consequently they do not envisage any change in the scrutiny of these agreements.

When the Treaty of Lisbon enters into force the European Parliament will have a reinforced role in the negotiation process, especially in the field of the common commercial policy.

The Treaty of Lisbon unifies the procedure for concluding international agreements in Article 218 of the Treaty on the Functioning of the European Union. As previously, the European Parliament will have to give its assent for the conclusion of association agreements, agreements establishing a specific institutional framework by providing for cooperation procedures and agreements with important budgetary implications for the EU. Furthermore the European Parliament would also increase its influence on agreements covering fields to which either the ordinary or the special legislative procedure applies. The European Parliament would, as well, have to give its assent to a potential EU accession to the European Convention on Human Rights.

Furthermore, common commercial policy will be decided under the ordinary legislative procedure which is equivalent to the current co-decision procedure. As a result, the European Parliament will be formally informed with regard to progress in negotiations and should also be informed of the work of the 133 Committee. At present even the formal consultation of the European Parliament before the conclusion of an agreement is excluded when it comes to agreements concluded in the field of common commercial policy.

4.8. CONCLUSIONS

A vast majority of national parliaments do not scrutinise the entire process of negotiating the agreements that fall either under exclusive or shared competence of the EU. If scrutiny is conducted, the ordinary procedure for scrutiny of EU affairs applies with additional focus on government reporting of the progress of negotiations of the Commission with third countries. Nevertheless it should be possible for Members of the national parliaments to scrutinise their Government's position even before the Council

authorises the Commission to start negotiations with third countries, regardless of the confidential nature of the Commission's proposal.

However, in some cases national parliaments can increase their influence in the field of common commercial policy by taking into account tight deadlines in the EU decision-making process. A good example is French Parliament, where *Assemblée nationale* and *Sénat* developed a special procedure for anti-dumping measures. Due to the very short deadlines for the Council's response to the Commission's action, both chambers adopted a silent procedure, where their Government's proposal for a position becomes the French official position, should the Committee on European Affairs not react in 72 hours.

The provisions on agreements negotiated by the Community as stipulated by the Treaty of Lisbon do not affect the role of national parliaments, which consequently do not envisage any change related to the scrutiny of these agreements. In this aspect the European Parliament will have a reinforced role in the negotiation process, especially in the field of common commercial policy, which will be decided under the ordinary legislative procedure which is equivalent to the current co-decision procedure.