

Report on developments in European Union procedures and practices relevant to parliamentary scrutiny



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Foreword

The COSAC Secretariat, in accordance with the decision of the COSAC in Rome in November 2003, is required to compile a factual report on developments in European Union procedures and practices relevant to parliamentary scrutiny every six months in order to provide the basis for debates in the Conference of European Affairs Committee.

This first report has been prepared for the period January 15 - the commencement of the work of the Secretariat - to June 2004 coinciding with the Irish Presidency of the European Union.

The aim of this report is to update and enhance the national parliaments' working knowledge and understanding of the EU's decision-making process with a view to increase the influence of national parliaments in shaping Community policies.

The European Council in the Treaty of Nice set the reform agenda when it asked:

- how to establish and monitor a more precise delimitation of powers between the European Union and the Member States, reflecting the principle of subsidiarity;
- the status of the Charter of Fundamental Rights of the European Union;
- a simplification of the Treaties; and
- the role of national parliaments in the European architecture.

The European Commission, when presenting the "Strategic Objectives 2000 – 2005: Shaping the New Europe", announced its intention to launch a series of important reforms in the domain of public governance. The European Council, following the experience in negotiating the Treaty of Nice, announced at Laeken in December 2001 a major review of the purpose and workings of the European Union and established a Convention on the Future of Europe to prepare the way for a new treaty.

At its 2002 meeting in Seville, the European Council requested the Council of Ministers to propose measures to improve the transparency and efficiency in the Council's decision making process.

The Convention on the Future of Europe completed its work in July 2003 when it presented the European Council with a draft Constitutional Treaty. The Intergovernmental Conference (IGC) began its work in October 2003 under the Italian Presidency and is expected to complete its work by 17 June 2004. If adopted, it will introduce important changes in the role and responsibilities of national parliaments in the European architecture. Pending the final conclusions of the IGC the report presents the relevant sections of the Draft Treaty and of the Post Naples report which is presently in negotiation.

There is consequently a wide range of developments to report. Many of the initiatives proposed by the Commission, the European Parliament and the Council in response to the Laeken and Seville European Councils are coming on line and these contributions will have important implications for scrutiny by national parliaments.

1 OVERVIEW OF THE RECENT DEVELOPMENTS IN EU PROCEDURES AND PRACTICES

1.1 INTRODUCTION

Chapter 1 identifies a number of significant events which will shape the European Union in the coming years. Each event is important in itself but the cumulative influence could imply radical changes in the relationship between national parliaments and the Institutions of the Union. The political architecture of Europe will be different in the coming years. These evolutions coincide with the largest expansion of the Union to date. Chapters 2 and 3 look to two particularly important dimensions of procedures and practices, that of Impact Assessment and the application of the Principles of Subsidiarity and Proportionality which have important implications for national parliaments. In chapters 4 and 5 we look to developments in both the Policy and Legislative cycles of the European Union. Chapter 6 describes the recent evolutions in scrutiny procedures and practices by national parliaments on EU legislation. Chapter 7 takes a look to the future by recalling the current debate in the Intergovernmental Conference on the future Constitutional Treaty. The report concludes with a series of supporting annexes.

1.2 OVERVIEW OF THE RECENT DEVELOPMENTS

1.2.1 The Laeken Declaration

The Laeken Declaration in 2001 established the broad framework for the current developments in institutional reforms. It identified the challenges that confront the European Union, focusing in particular on the disconnect between the European institutions and citizens. The Declaration called for greater democracy, transparency and efficiency in the Union. These motifs would serve as the guiding principles in the ensuing political dialogue and are reflected in the reform policies developed. It looked to national parliaments to contribute towards the legitimacy of the European project. It went on to pose a number of questions which involve the role of national parliaments relating to democratic legitimacy.

1.2.2 Seville European Council

In response to the Laeken mandate the Seville European Council introduced several internal measures to improve the transparency and efficiency of the Council's decision-making process.

The following amendments to the Council's Rule of Procedures were adopted:

Opening Council meetings to the public when the Council is acting in accordance to the co-decision procedure with the European Parliament. The public would be able to

access both the initial¹ and final stages of the proceedings, the Council voting results and explanations of the votes;

Defining the general political guidelines of the Union through the Multi-annual Strategic Programme, annual Operating Programme of Council activities, and a list of indicative agendas submitted by each presidency holding office;

Greater co-operation between presidencies to ensure better continuity.

1.2.3 European Governance and better lawmaking

In view of the prevailing public sentiment in the Union, the Commission in 2001 published its white paper on "European Governance" which outlined four broad proposals for reform.

The white paper called for:

- Better involvement and more openness – Improving the bottom-up involvement in EU policy shaping and adoption by developing a more open decision-making process;
- Better policies, regulations and delivery – Improving and simplifying Community legislation and widening the choice of legislative instruments to allow for greater flexibility in addressing the Union's changing needs;
- Refocused institutions – Clearer delineation of competencies between the Council, Commission and Parliament and improving inter institutional dialogue and co-operation;
- Global governance – Strengthening the unity and coherence of the Union's representation globally and supporting measures that aim to increase the effectiveness of international institutions, such as the United Nations.

The white paper has also contributed to the wider debate on better governance. The draft Constitutional Treaty reflected the concerns expressed in the white paper, particularly in reference to good governance both at the European level (Article 1-49) and globally (Article III-193(2)). Other articles reflecting the good governance concerns include:

- Article 1-5 "inclusive of regional and local self-government"
- Article 1-45; "the principles of representative democracy"
- Article 1-46; "the principle of participatory democracy"

Additionally, the white paper formed the foundation for the Commission's internal reform policies and influenced some of the initiatives incorporated into the Inter-institutional Agreement on Better Lawmaking.²

Building upon the principles and objectives presented in the white paper, the Commission set out its action plan for better lawmaking in three Communications:

¹ "Opening to the public of the presentation by the Commission of its main co-decision legislative proposals..."

² official journal 2003/c 321/01

- Simplifying and improving the regulatory environment - The Commission summarised the steps it plans to take to clearly explain the reasoning behind particular initiatives and how to ensure that proposals adhere to the principles of subsidiarity and proportionality;
- Promoting a culture of dialogue and participation - The Commission outlined its plan to consolidate a wide range of consultation practices by setting five minimum consultation standards that are to be applied for major proposals;
- Systematising impact assessment - The Commission will perform extended impact assessments to evaluate the economic, social and environmental consequences of all major legislative proposals.

1.2.4 Inter-institutional agreement on better lawmaking

The Council, Commission and Parliament adopted the Inter-institutional Agreement on Better Lawmaking in December 2003 in a joint effort to improve the overall quality of Community legislation. The initiatives include: better co-ordination of the legislative process; greater transparency and accessibility; the use of alternative legislative instruments; clearer explanation of the legal basis applied to legislative proposals to ensure compliance with the principles of subsidiarity and proportionality; improving the quality of legislation through pre-legislative consultation and impact analyses; better transposition and application of Community law; and simplifying and reducing the volume of Community legislation. Please refer to Chapter 5 for a more detailed analysis.

1.2.5 Developments in scrutiny procedures and practises of national parliaments

The XXIII COSAC in Versailles in October 2000 published the results of an extensive survey of scrutiny procedures and practises in national parliaments. In order to gather information on recent developments and in particular of the measures adopted by the new Member States a letter was addressed to each parliament and the replies are presented in Annex 1 and summarised in chapter 6.

1.2.6 The draft Constitutional Treaty and IGC developments

Understanding the complex workings of the institutions and the dynamics of their interrelations would allow national parliaments to tap into the available channels and resources to effectively ensure their input. This is particularly relevant now as the draft Constitutional Treaty has provided, for the first time, a place for national parliaments in the European architecture. These proposals combine to provide a unique opportunity in considering the role of national parliaments in reviewing future developments in European Union procedures and practices relevant to parliamentary scrutiny. Please refer to Chapter 7 for a more comprehensive analysis on the draft Constitutional Treaty and the IGC.

1.2.7 Comitology Reform

Each year most EU legal acts are not adopted by the legislative authorities (Council of Ministers and European Parliament), but are enacted by the Commission, mainly in accordance to the so-called "Comitology procedures".

Presently there is a debate on reforming the “Comitology system”. An important feature of this debate concerns the issue of parliamentary overview in the supervision of implementing procedures.

An overview of the debate about the reform of Comitology is contained in paragraph 5.5. Of Chapter 5.

2 IMPLEMENTATION OF REFORMS: BETTER LAWMAKING

2.1 INTRODUCTION

The European Commission, when presenting the "Strategic Objectives 2000 – 2005: Shaping the New Europe," announced its intention to launch a series of important reforms in the domain of public governance. The European Council, following the experience in negotiating the Treaty of Nice, announced at Laeken in December 2001 a major review of the purpose and workings of the European Union and established a Convention on the Future of Europe to prepare the way for a new treaty.

2.2 THE EUROPEAN COMMISSION

2.2.1 European Governance

Following the public debate on the Commission's white paper on "European Governance" the Commission tabled a series of draft directives implementing the program outlined earlier. In June of 2002 it proposed an "Action Plan on Better Regulation" to improve and simplify the EU's regulatory environment by making legislation more targeted. Secondly minimum standards have been introduced for consultation during the policy development phase with the objective of improving public participation. There is the ambition ensuring equity and transparency in the dialogue between Commission services and the public. A particularly important proposal was the proposed new mechanism of impact assessments of new legislation. This seeks to improve the quality of EU legislation by analysing the impact of proposals in terms of economic, social and environmental considerations.

Later in the year the Commission proposed a second package of reform initiatives. These included proposals on improving the quality of control as regards the application of legislation, guidelines on the use of experts in the preparation of their proposals, a framework for new regulatory agencies, new methods of reaching out to regional and local actors with target-based tripartite contracts and agreements between Member States, local authorities and the Commission for implementing Community policies. Finally there was a proposal for a more balanced committee (Comitology) system which strengthens the possibility for the two branches of the Community legislators to control the Commission's implementing powers. Given the proposal in the draft Constitutional Treaty to double the policy domains (to some 80 fields) these initiatives subject to co-decision will have added importance. This issue is addressed later in Chapter 5.

2.2.2 Reviewing Progress

In October 2003 the Commission drew up its first report on the action aimed at updating and simplifying European Law³. The Commission's first assessment is that the key actions of reducing the volume of legislation, making it simpler and more accessible are well underway. A horizontal policy for legislative simplification is

³ Com (2003) 623 final

emerging. Twenty policy sectors are being screened and around 170 directives and regulations have been identified for simplification. The demanding program for consolidation is progressing. During Phase I the Commission adopted seven codified Commission acts and 15 proposals for codified acts to be adopted by the European Parliament and Council. During Phase II (October 2003 – March 2004) it plans to adopt or propose 150 codifications.

The Commission reported progress in the organisation of systematic dialogue between the Commission and associations of regional and local government including giving support to the first three tripartite target-based agreement pilot projects. The Commission adopted a Communication on governance and development.

While each of these actions have implications for national parliaments, for example the Commission focus on developing relations with regional and local authorities, its development of impact assessments have immediate and direct relevance on legislative scrutiny. Chapter 3 will review the application of the principles of subsidiarity and proportionality.

2.2.3 Impact Assessment

The Commission as part of its Good Governance initiative has been developing its practice of providing impact assessment for important policy initiatives. This has important practical consequences for national parliaments in both its routine scrutiny and in anticipation of their responsibilities when the draft Constitutional Treaty is adopted and in particular in respect of the Protocol on Subsidiarity and Proportionality. The assessments will expand considerably the information available when scrutinising Union initiatives.

2.2.4 Recent development

The current integrated impact assessment system was introduced in 2002 as part of the Commission's initiative to improve the overall quality and coherence of its policy proposals. This initiative was taken in accordance with the objectives agreed at the Göteborg and Laeken European Councils (in 2001) that called for the improvement and simplification of the regulatory environment. The new integrated system would consolidate and streamline what were previously separate assessments into a single template that would evaluate the impacts of policy proposals in their economic, social and environmental contexts. Impact assessment would enable better informed political judgements in the decision-making process while increasing transparency, communication and information on the Commission's proposals.

Impact assessment provides systematic analysis of:

- The problems and issues addressed by the proposal;
- The objectives pursued by the proposal;
- The alternative options available to achieve the objectives;
- Their likely impacts;
- Their respective advantages and disadvantages.

Additionally, impact assessment would also help ensure that legislative proposals adhere to the principles of subsidiarity and proportionality.

2.2.5 Coverage and scope

Impact assessments are applicable to the following categories:

- Legislative proposals, such as decisions, directives and regulations;
- Non-legislative proposals that have an economic, social or environmental impact
- (Which includes white papers, expenditure programmes, and communications on?
- policy orientations, and negotiation guidelines for international agreements);
- All key initiatives and proposals that are included in the Annual Policy Strategy or
- The Legislative and Work Programme.

2.2.6 Implementation

The impact assessment system is expected to be fully operational in 2004–2005 and will replace previous assessments, except for ex-ante evaluations of programmes and actions resulting in expenditure from the general budget of the European Communities. The Commission has conducted 43 extended impact assessments on proposals from its 2003 Work Programme. The Commission has also identified 41 proposals from its 2004 Work Programme that will undergo extended impact assessments.

2.2.7 Process

Impact assessment consists of two stages:

1. Preliminary assessment provides an overview of the issue and problems, possible options and sectors affected by the proposal. This assessment is to be completed by the responsible directorate general, and its submission is required as a condition for inclusion in the Annual Policy Strategy (in February) or the Legislative and Work Programme (in November). The preliminary assessment serves as a filter for the Commission to select which proposals will be subject to an extended impact assessment. The selection will be based on (a) whether the proposal will result in substantial economic, environmental and/or social impacts in one or several sectors; (b) whether the proposal represents a major policy reform in one or several sectors.

2. Extended impact assessment provides a more in-depth analysis, which includes consultations with interested parties and experts. Extended impact assessment is usually conducted after the Annual Policy Strategy decision in spring and should be finalised when the proposal enters inter-service consultation. The responsible Directorate General is required to report on the progress of the extended impact assessment as a condition for the proposal's inclusion in the Legislative and Work Programme in autumn.

In both stages, the Commission's Secretariat-General is responsible for co-ordinating basic support structure and monitoring the final quality of the impact assessments.

Where the co decision procedure applies the European Parliament and Council may, on the basis of jointly defined criteria and procedures, have impact assessments carried out prior to the adoption of any substantive amendment, either at first reading or at the conciliation stage. As soon as possible after this Agreement is adopted, the

three Institutions will carry out an assessment of their respective experiences and will consider the possibility of establishing a common methodology.

2.3 THE COUNCIL OF MINISTERS

The Seville European Council concluded in June 2002 a series of initiatives in order to improve the functioning of the Council. These initiatives have been incorporated into the Council's working methods over the previous two years.

2.3.1 Seville and post Seville

The initiatives launched a comprehensive reform programme aiming at re-establishing the Council "as a result oriented decision making body" acting in a more effective and transparent manner. Specific steps within four main areas were addressed: 1) the functioning of the European Council, 2) the increasing ineffectiveness of the General Affairs Council, 3) the rotating Presidency system and 4) specific measures to enhance the *efficiency* and *transparency* in relation to the legislative activities of the Council⁴. The following will focus on reform elements relevant to improve the "lawmaking" of the Council.

Efficiency

The first step was to improve the long term planning of Council activities by improving the co-operation between successive Presidencies. A completely new system for programming of Council activities was established. Every year in December, the European Council will adopt a three year "multi annual strategic programme" drawn up by the presidencies concerned accompanied by an "*annual operating programme of Council activities*" containing indicative agendas for council meetings six month ahead. Indicative agendas for the second half of the year will be drawn up in June⁵.

Greater efficiency in the Council's various formations and better co-operations between them was another of the objectives. It was decided to reinforce the role of the General Affairs Council in relation to the Council's overall policy coordination. Unfinished business from the sectoral councils should no more be dumped on the European Council's table. To facilitate this it was agreed to create a new "*Council of General Affairs and External Relations*", that should hold separate meetings on two main areas of activity:

- Preparation for and follow-up of the European Council and policy coordination
- The whole of the Union's external action.

These separate meetings should if possible be held on different dates and with separate agendas⁶.

⁴ Presidency conclusions from the Seville European Council, 21 and 22 June 2002.

⁵ Read chapter 4.2 for more information on the Programming of the Council.

⁶ The Spanish presidency originally suggested splitting the activities of the General Affairs Council into two different formations; one dealing with horizontal issues such as overall coordination of policies and horizontal dossiers, which affect several EU policies and the preparations of the meetings of the European

It was furthermore agreed to cut down on the overall number of Council configurations – going down from fifteen to nine.

No agreement was reached in Seville on a reform of the rotating Council Presidency. Instead the incoming Danish Presidency was asked to “take appropriate steps to continue discussions regarding the Council Presidency”. A report outlining different reform proposals was presented in December 2002 in Copenhagen, but it was not possible to find sufficient support behind such a reform while the work of the “Convention on the Future of Europe” was still pending.

The General Affairs Council implemented the reform mandate of the Seville European Council on 19 July 2002 by revising its rules of procedure⁷.

Council formations, July 2002

- General Affairs and External Relations
- Economic and Financial Affairs
- Justice and Home Affairs
- Employment, Social Policy, Health and Consumer Affairs
- Competitiveness (Internal Market, Industry and Research)
- Transport, Telecommunications and Energy
- Agriculture and Fisheries
- Environment
- Education, Youth and Culture

A final round of changes to the Council working methods were made in March 2004, when the Council reached agreement on a “Code of conduct” that aims at improving the efficiency of the preparations and conduct of the meetings of the Council and its preparatory bodies (COREPER and Working Groups). One of the items the code of conduct touches upon is agenda management. The Council here decided that “no items will be placed on the Council agenda simply for presentation by the Commission or Council members, except where a debate is foreseen on new major initiatives”.

Transparency

Further proposals were made to improve the transparency of the proceedings of the Council. It was thus agreed to open Council meetings to the public when the Council was acting within the co-decision procedure together with the European Parliament. The meetings were agreed to be open during the initial and final stage of the co-decision procedure. Against this background the General Affairs Council fleshed out the Seville conclusions in a set of revised Council’s *rules of procedure in July 2002*.

The new rules allowed the deliberations of the Council to be open to the public when the Commission presents its most important legislative proposals plus the ensuing debate in the Council⁸. The vote on legislative acts should also be open as well as the final Council deliberations leading to that vote and the explanations of vote accompanying it.

Number of open deliberations on legislative acts in the Council

Year	Number of open deliberations in the Council when presenting most important legislative acts
2002 - autumn	13
2003 – spring	5
2003 – autumn	11
2004 - spring	4 ⁹

Source: Press Service of the Council General

Council, and one exclusively dealing with the Union’s external actions. But this idea had to be dropped in the proposed form, because of lack of support.

⁷ Council decision 10962/02, 19 July 2002.

⁸ Article 8 in the Council’s Rules of Procedure.

⁹ The numbers of open deliberations on legislative acts under the present Irish Presidency covers the number of *planned open debates* on legislative acts – and not the number of debates actually held, Council document 5294/04.

However, it was decided that each presidency at the beginning of its six-month period should announce which legislative proposals would be debated in public in the Council¹⁰. It worthy note that Council deliberations open to the public are restricted to proposals under the co-decision procedure. The Council is not obliged to discuss in open meetings when it acts under the consultation procedure.

The Council has also reinforced its rules for public access to Council documents. The new improved system is based on a regulation agreed on 31 May 2001 between the European Parliament and the Council, setting out the general rules for the public's access to documents from all EU institutions¹¹. This new system, that for the Council came into force on 3 December 2001, has among other things shortened the time limit for replying to request from the public for access to documents - from 30 to 15 days.

Requests for access to documents

The Council's new rules for public Access to documents came into force 3 December 2001.

In 2002 the first year after this date the Council received 2.391 requests from the public to access 9.349 documents. Access was granted by the Council totally or partially in 88, 6% of the cases. In 2003 the number of requests had gone up to 2.831 requests for 12.595 documents. 87, 4% of the documents were released (Council document 6452/04 of 4 March 2004).

To identify and access the Council's documents, citizens may consult the public register of Council documents, which can be found on: <http://register.consilium.eu.int>

2.4 THE EUROPEAN PARLIAMENT

2.4.1 Efficiency

Better Governance and Interinstitutional Agreements (IAA)

The European Parliament (EP) has supported the Commission and the Council in their efforts, on the one hand, to improve lawmaking and, on the other, to simplify and improve the quality of the regulatory environment.

In response to the Commission's White Paper on "European Governance" the EP adopted in November 2001 a resolution¹² welcoming the initiatives. In this resolution it stresses the need for greater political accountability in the legislative process with a view to "maintaining the institutional balance as the most appropriate way of moving forward in terms of integration". The EP also emphasised that improving European Governance - according to the principles of openness, participation, accountability, effectiveness and coherence - could not be achieved without "major simplification of budgetary procedures" and "democratically adopted own resources".

On the other hand, it noted that the drawing-up of an action plan for better regulation both by a Council working party and by a corresponding Commission working party, without Parliament being involved or even informed, represented a serious breach of

¹⁰ This list is adopted by the "General Affairs and External Relations Council".

¹¹ Regulation (EC) 1049/2001.

¹² European Parliament report A5-0399/2001 (Rapporteur Mrs KAUFMANN)

the Community method. The EP also emphasised that the alternative methods of regulation recommended by the Commission in its white paper required in-depth consideration in Parliament and should be codified in the form of an interinstitutional agreement that would guarantee that Parliament could effectively exercise its political role and responsibilities. The Interinstitutional Agreement on Better Lawmaking of 16 December 2003 is the fruit of this demand and of the joint work of the three institutions.

The EP considers that in order for there to be more transparent and efficient legislative planning on the part of the European Union, the Council must be more closely involved in the interinstitutional legislative programming exercise, and that this could provide a basis for enhancing interinstitutional coordination. It also considers that the decision adopted by the Brussels European Council of December 2003 opens the way for multiannual legislative programming by adopting a first Council triannual strategic programme in accordance with the conclusions of the 2002 Seville European Council. Nevertheless, in the EP's view, much remains to be done to improve coordination of the legislative process. Among other things, the links between the Commission's programme and the Council's multiannual strategic programme are as yet far from clear. There is also a need to ensure better synchronisation for the handling of dossiers by the preparatory bodies of each arm of the legislative authority (Parliamentary Committees on the one hand and Council working parties and COREPER on the other).

With a view to preventing any backtracking on the previous status quo as regards democratic legitimacy, the IIA stipulates that the use of 'alternative regulation mechanisms' (paragraphs 16 to 19) should not be applicable where 'fundamental rights or important political options are at stake or in situations where the rules must be applied in a uniform fashion in all Member States. They must ensure swift and flexible regulation which does not affect the principles of competition or the unity of the internal market'. Even though the 'call back' right is not binding or automatic, the Council and Parliament may suggest amendments to voluntary agreements or oppose their entry into force and, where appropriate, ask the Commission to submit a proposal for a legislative act (paragraph 18). In this connection, in its resolution of 9 March 2004¹ Parliament stressed that the Commission should always consult the legislative authority when it deems self-regulation to be useful and that Parliament considers it essential that the Commission should not be able to override opposition expressed by Parliament or the Council to any voluntary practice in the context of self-regulation or co-regulation.

The IIA stipulates that the EP and the Council may carry out impact assessments in relations to amendments which they propose to legislation. The EP is currently considering how to undertake this task.

As regards the consultation of experts and the involvement of civil society organisations, Parliament acknowledges the added value brought by experts as sources of information during the legislative process. It expresses, however, 'a decided preference for parliamentary democracy over a democracy of experts' and urges the Commission to publish lists clearly showing which committees and working parties it consulted, as announced in its White Paper on the reform of the Commission. An Interinstitutional Agreement laying down uniform minimum rules for consultation for all institutions would be even more effective.

¹ Medina Ortega report (A5-0118/2004) on the Commission communication on simplifying and improving the Community's regulatory activity.

EP administrative reform

The EP considers there to be a close and indissoluble link between reform of the European institutions and reform of European Governance. This is why, alongside the interinstitutional activities seeking to enhance the transparency and effectiveness of the legislative process within the European Union, it embarked on reform of its own administration. The reform, entitled "Raising the Game", is based on three main ideas, namely: consolidating and making the most effective use of in-house knowledge (the overall budgetary impact of the operation should be negligible); where appropriate, basing legislative work on external studies; and ensuring that texts produced by Parliament in its capacity as co-legislator, are of a high quality. This administrative reform within Parliament should also help to ensure proper implementation of the various provisions of the IIA on better lawmaking.

Co-operation with National Parliaments

Against the background that accountable legislative decisions require the involvement of both the EP and National Parliaments in the decision making process, the relations between the European Parliament and the National Parliaments have been stepped up to a considerable degree over recent years. The number of meetings between counterpart committees of the EP and the national parliaments has quadrupled, rising from 10 in 1998 to 40 in 2002. This increase is the result of a general trend within the European Union which was apparent in the discussions on this matter within the Convention on the Future of Europe. The Convention's 'parliamentary component' played a crucial role in several areas, particularly in the legislative sphere. As part of the final Convention compromise, the representatives of the national parliaments and the EP endorsed the new 'legislative procedure' (Article 33 of the draft Constitutional Treaty) which is set to become the general rule, seeing it as a vital step forward in the process of enhancing the democratic legitimacy of European Union activities.

2.4.2 Transparency

From the very outset of the current parliamentary term, the European Parliament viewed the introduction of greater transparency into the working methods of the European institutions as a priority. In the Cashman Report (A5-0318/2000) it emphasised that trust and confidence in the European Union and its institutions depended on there being an open and democratic political debate and decision-making process at all levels. In this respect, it considered that the Commission proposal for a regulation on the implementation of Article 255 of the EC Treaty regarding public access to documents of the European Parliament, Council and Commission adopted a very restrictive approach to the right of access to documents. In this connection, the EP applied itself, in close co-operation with the Swedish Council Presidency, to substantially modifying the Commission proposal, considering the right of access to documents to be a means of ensuring transparency and democratic accountability within the meaning of Articles 1, 6, 41 and 42 of the Charter on Fundamental Rights of the European Union.

Following the adoption of Regulation (EC) No 1049/2001 by the legislative authority, the European Parliament amended its Rules of Procedure and, in December 2001, laid down rules establishing a register of references to documents and the arrangements for access and determining the authorities in charge of handling such documents.

The European Parliament also applied itself to ensuring swift implementation of the provisions of Article 9(7) of Regulation EC No 1049/2001 under which the Council is required to inform the European Parliament regarding sensitive documents concerning

the Common Foreign and Security Policy. In this connection, an Interinstitutional Agreement was signed between Parliament and the Council on 20 November 2002 concerning access by the European Parliament to sensitive information of the Council in the field of security and defence policy¹³. This interinstitutional agreement should guarantee Parliament treatment inspired by best practices in Member States.

With regard to the transparency of legislative procedures, in its second resolution on European Governance, adopted on 4 December 2003², Parliament noted that although the EUR-Lex portal had become more user-friendly and contained more documents, there was 'still not a single uniform on-line contact point for all institutions where members of the public can monitor the formulation of policy proposals throughout the whole decision-making process' and 'calls on all the institutions, therefore, to combine the various internet sites to create a single portal'¹⁴.

¹³ OJ C 298, 30.11.2002, p.1, and EP Decision of 23 October 2002 on the implementation of the Inter institutional Agreement - OJ C 298, 30.11.2002, p.4

² Based on the Van den Berg report (A5-0402/2003).

¹⁴ The Parliament offers a service in following the legislative process which may be consulted at: www.europarl.eu.int/bulletins/postsession.htm

3 The Principles of Subsidiarity and Proportionality

3.1 INTRODUCTION

As mentioned in the preceding chapter, monitoring subsidiarity is one of the major responsibilities of National Parliaments. The following analysis is offered as an introduction to some of the main features of the principles of subsidiarity and proportionality¹⁵.

3.2 APPLICATION OF THE PRINCIPLES OF SUBSIDIARITY AND PROPORTIONALITY

3.2.1 Definition given by the treaties

Subsidiarity and proportionality are among the main organising principles of the Union¹⁶. The Treaty on the European Union stipulates indeed that any action taken by the Union to achieve its objective must be in accordance with the principle of subsidiarity. Article 5 of the Treaty establishing the European Community (TEC) gives a general definition of subsidiarity and proportionality, indicating respectively when and how the Community should act. A protocol annexed to the Treaty of Amsterdam sets precise criteria for applying these principles.

Subsidiarity is a guiding principle for defining the boundary between Member State and EU responsibilities (Who should intervene?) If the area concerned is under the exclusive competence of the Community, there is of course no doubt as to who should intervene. If competence is shared between the Community and the Member States, the principle clearly establishes a presumption in favour of decentralisation. The Treaty indeed states that Community action is justified only when:

- there are trans-national aspects which cannot be satisfactorily regulated by national measures (necessity test I);
- national measures alone or lack of Community action would conflict with the requirement of the EC Treaty or would otherwise significantly damage Member States' interests (necessity test II); and
- Action at Community level would provide clear benefits compared to national measures (added value test)

¹⁵ Readers may find the writings of two scholars of particular interest: Anna Bausili: "Rethinking the Methods of Dividing and Exercising Power in the European Union" and Grainne de Burca: "Reappraising Subsidiarity's significance after Amsterdam".

¹⁶ The following information is drawn from the Commission's 11th. report on the application of the principles of subsidiarity and proportionality ("Better lawmaking 2003"; COM(2003) 770 final)

Subsidiarity, by essence, is a dynamic concept. For instance, the capacity of national authorities to control trans-national issues varies over time. Their control capacity has decreased over the last decades and has become insufficient on a number of issues. Vice versa, some Community measures introduced in the context of the 1960s do not necessarily have the same added value in 2003. As the Protocol stresses, subsidiarity allows Community action "to be expanded where circumstances so require, and conversely, to be restricted or discontinued where it is no longer justified." Major changes in the Union and beyond may therefore require a reappraisal of the rules derived from this principle.

Proportionality is a guiding principle for defining how the Union should exercise its competence, once it has been established that it should take action (what should be the form, nature and extent of EU action?). In order to establish whether a measure complies with the principle of proportionality, it must be ascertained whether:

- the means employed are suitable for the purpose of achieving the objectives (effectiveness test);
- These means do not go beyond what is necessary to achieve the objectives (efficiency test).

A priori, proportionality leaves considerable discretion to the Union's legislature. Assessing effectiveness and efficiency is often quite complex. In most cases, there will be a range of options that comply with the proportionality principle.

The clarifications offered by the Protocol regarding proportionality set specific limits. Firstly, "the form of Community action shall be as simple as possible" and, whenever legislating appears necessary, "directives should be preferred to regulations" (minimal ☐ legal ☐ constraint test). Secondly, the need to minimise the financial or administrative burden for all levels of government, economic operators and citizens should be taken into account (minimal cost test). The third clarification ☐ Community action should "leave as much scope for national decision as possible" (minimal scope test) ☐ is basically redundant with the conditions already set by the subsidiarity principle. It does however specify that "while respecting Community law, care should be taken to respect well established national arrangements."

3.2.2 Obligations of the Institutions

Application of the principles of subsidiarity and proportionality is a responsibility shared by all institutions of the Union. The Protocol on the application of these principles also sets specific institutional obligations for the Commission, the Council and the European Parliament.

Among other things, the Commission is required ☐ without prejudice to its right of initiative ☐ to consult widely before proposing legislation; to justify explicitly the relevance of its proposals in the accompanying explanatory memorandum; and to take into account the burden falling upon the Community, national governments, local authorities, economic operators and citizens.

The European Parliament and the Council have to verify that the Commission proposals and the amendments they envisage making are consistent with the principles of subsidiarity and proportionality. In other words, the current system puts the burden of proof on the institutions involved in the Union's legislative process (Who does the defining?)

3.2.3 Application of subsidiarity and proportionality in 2003

The Commission has concluded that on the whole, the application of the principles of subsidiarity and proportionality has been satisfactory in 2003. The small number of legal actions before the Court of Justice invoking the violation of these principles and absence of judgements condemning the Union on that ground tend to confirm this assessment. The fact that, even though the Union's obligations have considerably increased, there were less than 400 legislative proposals launched in 2003 (half the 1990 figure) is another indirect indication of strict application of the principles. The review of the contents of these proposals also supports this appraisal: regulations and detailed measures were by far the exception; strong arguments in favour of such options were systematically advanced.

According to the Commission the quality of the inter-institutional dialogue in 2003 was good. This dialogue helped find a balanced solution in most cases. The Commission has often recognised the merits of the arguments put forward by the European Parliament and the Council, and amended its proposals accordingly. However, on several occasions, the Commission felt that the amendments suggested by the Legislator were increasing the complexity and did not therefore take the principles of subsidiarity and proportionality sufficiently into account. The Commission intends to remain vigilant throughout the legislative process, including when the European Parliament and the Council reach an agreement during the conciliation stage.

3.3 THE CONSTITUTIONAL DEBATE ON SUBSIDIARITY AND PROPORTIONALITY

In July 2003, the European Convention proposed a revised framework for subsidiarity and proportionality. Chapter 7 reports more fully on the new Protocol on Subsidiarity and Proportionality proposed in the draft Constitutional Treaty. This part of the draft constitutional treaty appears to enjoy wide consensus. Provided that the IGC confirms this approach and the result are ratified by all Member States, the system designed by the European Convention could be in place by 2006 according to the Commission.

The main innovation of this framework is the obligation for the Commission to review a proposal whenever a sufficient number of national parliaments consider that the proposal does not comply with subsidiarity. Under Article 9 of the draft treaty, while "the Union institutions shall apply the principle of subsidiarity," "National Parliaments shall ensure compliance with that principle" through a new monitoring system. For that purpose the following obligations and procedures would be introduced in a revised protocol on the application of subsidiarity and proportionality: national parliaments would be systematically informed of all legislative proposals, amended proposals and legislative resolutions upon adoption; they could then decide to activate an early warning system. In addition they would continue to have the possibility, via the Government, to refer suspected violations of the principle of subsidiarity to the European Court of Justice.

4 Policy cycle of the European Union

4.1 INTRODUCTION

Over the past few years a new cycle in European Union policy making has emerged. This has coincided with the reforms introduced by the Nice Treaty and the European Council's decision at its meeting in Laeken in December 2001 to review the workings of the Union. This gave an impetus to both the European Commission and the Council of Ministers to more clearly set out their respective policy and legislative ambitions. While both institutions have begun publishing their policy programmes these have not over the period 2000 to 2004 been synchronized.

The Commission published its overall objectives upon taking office in 1999. The European Council adopted its Multi annual Strategic Objectives in December 2003 in respect of the period 2004 to 2006. The new Commission, on taking office next autumn, will announce its programme for the coming five years. It remains to be seen how these long-term policy statements of both institutions will interact.

Each of the institutions has developed annual statements of policy intent. The Commission publishes in February its Annual Policy Strategy for the following year and follows this up with bilateral dialogues with both the European parliament and the Council of Ministers. Later in autumn the Commission publishes its Legislative and Work Programme for the next year. The Council has just begun publishing an annual programme which combines the intentions of the two rotating presidencies for the current year.

These exercises provide national parliaments with important information pertinent to their scrutiny obligations. In this chapter presents an introduction to the Commission's Annual Policy Strategy and its Legislative Programme. This is followed by a presentation of the Council's Multi-annual Objectives and the Work Programme of the Irish and Dutch presidencies. Further detail on the content of the different actions is available in annex 6.

4.2 THE EUROPEAN COMMISSION

4.2.1 Strategic objectives

The European commission on taking office in September 1999 introduced its programme "Shaping the New Europe 2000-2005". It addressed the paradox that European integration had yielded "half a century of peace and prosperity" while "Europe's citizens are disenchanted and anxious." It posed two questions: what does Europe need and what does the European Union need in order to serve Europe.

The response was to identify four strategic objectives for the period 2000-2005:

- promoting new forms of European governance,
- stabilising our continent and boosting Europe's voice in the world,
- towards a new economic and social agenda, and
- A better quality of life.

The policy focus was on:

- enlargement,
- a competitive economy,
- sustainable development, and
- To create a European area of justice and security.

Each year the Commission drew upon these objectives when it introduced its spring "Annual Policy Strategy" and later in autumn its "Legislative and Work Programme" for the following year.

The new Commission will upon taking office in November next present to the European Parliament and Council its strategic objectives. This will provide national parliaments with an indication of the policy focus of the Commission for the period 2006 -2011. A dialogue with the incoming Commission on these objectives could be an important opening for an ongoing biannual dialogue when the Commission publishes its Annual Policy Strategy in spring and Legislative Programme in autumn. The outcome of the debate on the Financial Perspectives will influence the substance of the actual policy outcome.

4.2.2 Annual Policy Cycle

The Annual Policy Strategy constitutes the first stage of the Commission's annual policy cycle¹⁷. It defines the framework and guidelines for the budgetary and legislative cycle. Following adoption of the strategy, the cycle moves on to the preparation of the preliminary draft budget and the inter-institutional dialogue.

Given the specific circumstances of the year 2004, with both the legislative period and this Commission's term of office coming to an end, appropriate provisions have been approved for the structured dialogue.

The structured dialogue will entail a meeting between the Commission and the Conference of Chairmen of parliamentary committees in April. It will be conducted with the Council in accordance with the usual arrangements, under the authority of the Committee of Permanent Representatives.

The review of the structured dialogue will take place at a second meeting in September. As far as the Council is concerned, the assessment will be made at a General Affairs Council meeting in accordance with the current provisions.

On this basis, the work programme will be drawn up for adoption by the new Commission shortly after it takes office. At the same time, it will consider the priorities and approaches set out in the present decision. The work programme will then be presented to Parliament and the Council in December.

¹⁷ Communication on "Annual Policy Strategy for 2005". COM (2004) 133 final of 25 February 2004.

The whole cycle will thus form the basis for the operational programming carried out by the Directorates-General and departments, which will incorporate the policy priorities into their annual management plans for 2005. The annual activity reports will take stock of the implementation of these management plans, and will be summarised in notifications to the European Parliament, the Council and the European Court of Auditors.

Commission Priorities for 2004

The following are some of the political, economic, and external contexts from which the Union will operate in:

- "Agenda 2000" expires at the end of 2006, so, the European Union must start preparing for the next political and financial perspectives.
- Negotiations with Bulgaria and Romania will continue into 2004.
- The Commission must declare a formal opinion on Croatia's application to join the European Union
- Prepare the EU's financial perspective for the timeframe post 2006, and
- Follow up on the outcome of the Intergovernmental Conference on a Constitutional Treaty for the European Union.
- In December of 2004, The Commission must make a decision on whether or not Turkey complies with the political criteria that was determined in Copenhagen.priorities and approaches set out in the present decision.

The work programme will then be presented to Parliament and the Council in December.

The policy priorities for 2005

In summary there is one fundamental operational priority for the Commission, which is to ensure the success of enlargement and shape the future of Europe. This includes ensuring the proper functioning of the enlarged Union and the full application of the policies and rules within all Member States. Other policy priorities for 2005 include the following:

- A central objective is to regain a cycle of economic growth on enhanced competitiveness and cohesion;
- An objective of stability and security preserved, to improve security and European citizenship; and
- A new external responsibility, with emphasis on the neighbourhood dimension.

4.2.3 Legislative and Work Programme for 2004

This particular Legislative and Work Programme is the final one of the Prodi Commission. In general, its goal is to give legislative effect to the Annual Policy Strategy following consultation with the European Parliament and the Council. New proposals are announced for 2004, while reintroducing a limited number of major proposals left over from 2003. Emphasis should be given in order to finalise a selection of proposals requiring an extended Impact Assessment. A preliminary assessment of the initial progress towards achieving strategic objectives of the European Commission was compiled. Its purpose is to indicate the need for the Council and European Parliament to follow-up on legislative proposals presented by the Commission.

4.3 THE EUROPEAN PARLIAMENT

Rules of Procedures of the European Parliament¹⁸ set the annual framework of co-operation between the European Parliament and the European Commission in preparing the Commission's legislative and work programme. At the November part-session the Commission President shall present formally in plenary, with the College of Commissioners taking part, the Commission's legislative and work programme for the following year, together with an assessment of the implementation of the current programme. The legislative and work programme shall be accompanied by a list of legislative and non-legislative proposals for the following year. The European Parliament shall state its position at the November or December part-session.

Both institutions, the European Parliament and the European Commission shall at the February or March at the European Parliament part session take part in a debate on the main lines of the political priorities ("The State of the Union"), further to the Annual Policy Strategy decision for the following year, which the Commission adopts in February. The debate should provide material for preparation of the preliminary budget by the Commission and the discussion in Parliament on the budget guidelines for the following year.

The Inter institutional Agreement on better law-making¹⁹ aims to improve the quality of law making by means of a series of initiatives and procedures. According to this document, the three Institutions, the European Parliament, the Council of the European Union and the Commission of the European Communities agreed to observe general principles such as democratic legitimacy, subsidiarity and proportionality, and legal certainty.

In the part of the agreement, which refers to the better co-ordination of the legislative process, the European Parliament has a particular role as it shall receive information from the Council of the draft Multi annual Strategic Programme which the Council recommends for adoption by the European Council. Both Institutions, the Council and the European Parliament shall closely co-operate in order to establish, for each legislative proposal, an indicative timetable for the various stages leading to the final adoption of that proposal.

4.4 THE COUNCIL OF MINISTERS

In accordance to the procedural changes adopted in Seville, the Council's policy agendas are set out in four principal documents: the Multi-annual Strategic Programme, the annual Operational Programme, and two programmes independently prepared by the presidencies in office that year.

The Multi-annual Strategic Programme was introduced in December 2003 to provide a broad overview in the Council's policy priorities for 2004 to 2006. It outlines specific objectives to be achieved during that period, along with "structured timetables" for implementing those commonly agreed goals. The programme, developed in consultation with the Commission, was prepared by the six presidencies that would assume office during the three-year period.

To supplement the Multi-annual Strategic Programme, each year the two incoming presidencies would publish a Joint Operational Programme to highlight their objectives and proposed actions to achieve those aims.

¹⁸ Rules of Procedures of the European Parliament, Annex XIV Timetable for the Commission's legislative and work programme, 15th edition October 2003

¹⁹ Interinstitutional agreement on better law making (2003/C 321/01)

In addition, each presidency would submit an individual programme that further elaborates their positions on the priorities and actions, building upon the groundwork laid down by the two preceding documents.

4.4.1 Multi-annual Strategic Programme 2004-2006

The programme is divided into three sections:

- Shaping the future of the Union addresses the development of the Union's constitutional framework, the accession of 10 new Member States on 1 May 2004 and the Financial Perspectives from 2007 onwards;
- Prioritising the political agenda deals with the development and modernisation of policies in the Union's internal activity;
- The Union as a global player explains the Union's goals and involvement in the international arena.

Shaping the future of the Union

Constitutional framework

The Council will continue to facilitate the progress of the new constitutional framework. The Council aims to have the constitutional treaty signed by all 25 Member States as soon as possible after the May 1st enlargement and commence the ratification processes shortly thereafter. The goal is to have the treaty enter into force no later than the beginning of 2006.

Enlargement

The Union will facilitate the effective integration of new Member States by:

Monitoring the implementation of the *acquis* by the acceding states;

Contributing to the development of the requisite administrative capacity in the new members, focusing on the integration of the Lisbon Strategy, the Schengen *acquis*, economic policy co-ordination and the Stability and Growth Pact, and on an individual basis, the Euro-zone.

The Council will also address issues dealing with Cyprus, Turkey, Croatia, and Bulgaria and Romania.

Financial Perspective

Decision on the principles and guidelines of the new Financial Perspective will likely be reached by the European Council in December 2004, following the Commission's submission of the package no later than July 2004.

Political agreement on the Financial Perspective is to be decided in the June 2005 European Council. The framework and detailed legislation that will implement the financial package should be adopted by the end of 2005.

4.4.2 Operational Programme of the Council of Ministers for 2004

Dominating the agenda for 2004 is the enlargement. The Irish and Dutch presidencies place as top priorities the successful integration of the accession states and the effective functioning of the Union in the meantime. The programme focuses on four areas:

- Intergovernmental Conference and institutional reform;
- Enlargement;
- Financial Perspective;
- Delivering and strengthening existing policies.

The following sets out the timetable for leading policy initiatives for the period 2004 to 2006.

KEY DATES²⁰

2004

- Review of the Sustainable Development Policy
- Completion of the Tampere programme
- Assessment of the Tampere programme and the launch of a further programme of JHA actions
- Action Plans for countries concerned by Wider Europe initiative
- Stabilisation and Association Agreements and European Partnerships concluded with Balkan countries
- Mid-term review of Country Strategies
- Establishment of the agency in the field of defence capabilities development, research, acquisition and armaments
- European Council issues opinion on Croatia's accession application (in June)
- Possible conclusion of accession negotiations with Bulgaria and Romania
- Decision on whether to open accession negotiations with Turkey based on its fulfilment of the Copenhagen criteria

2005

- Mid-term assessment of the Lisbon Strategy
- Adoption of a new Social Policy Agenda
- Start of new Action Plan
- Reappraisal of the Barcelona process
- Possible review of Joint Statement on EC Development Policy
- Revision of the strategy against organised crime
- Political agreement on the new Financial Perspective (in June)

²⁰ Information derived verbatim from the Multi-annual Strategic Programme of the Council 2004-2006.

- Adoption of the framework and detailed legislation of the new Financial Perspective

2006

- the new Constitutional Treaty enters into force
- Adoption of the 7th Community Framework Programme for Research and Development
- Mid-term review of the 6th Community Environment Action Programme
- Adoption of new 3-year Broad Economic Policy Guidelines
- Mid-term review of the Employment Strategy and adoption of new three-year Employment Guidelines
- Finalisation of the 3rd Northern Dimension Action Plan
- Deadline for 0.39% ODA/GNI target

4.4.3 Concluding Remarks

Some national parliaments have invited Commission representatives to their European affairs committees to exchange views on the Annual Policy Strategy and in case to follow up with a meeting on the Legislative Programme.

Some Parliaments, such as the Italian Parliament, invites Members of the European parliament to discuss both the Annual Policy Strategy and the Legislative Programme.

COSAC may wish to consider whether when fixing the dates of its meetings it would be appropriate to do so at times allowing a timely dialogue with the Commission on both the Strategy and Legislative Programme.

5 LEGISLATIVE PROCEDURES OF THE EUROPEAN UNION

5.1 INTRODUCTION

Since the coming into force of the Amsterdam Treaty on the first of May 1999 most significant legislation from the European Union has required the joint approval of the European Unions' two legislative branches; the Council of Ministers and the European Parliament.

The Amsterdam treaty both altered the nature and the scope of the co-decision procedure significantly. The treaty simplified the procedure by introducing the possibility of bringing the legislative procedure to an end already at first reading. The scope of the procedure was more than doubled when it introduced 23 new areas. With the Nice Treaty also widening the scope somewhat, the co-decision procedure today applies to 43 policy areas covering important legislation within the internal market, consumer protection, transport, environment policy and the free movement of workers.

However there are still a large number of areas of community action, such as agriculture, harmonisation of indirect taxation, economic and monetary union or certain social policy matters, where legislation is primarily in the hands of the Council. Here legislation is either adopted under the *consultation procedure*, where the European Parliament only has a consultative function or is simply adopted by the council without any formal consultation of the Parliament²¹.

However, if the Intergovernmental Conference in the near future should decide to adopt the provisions of the draft Constitutional Treaty, there will be significant changes in the legislative procedures

The scope of co-decision would be extended significantly changing the procedure into the *normal* procedure for adoption of European legislation. Consequently the scope for the consultation procedure would be reduced to become an exception used only in a few sensitive areas. A total of 46 new policy areas were proposed by the Convention to be covered by co-decision. The consultation procedure will be restricted to 16 areas. In the light of this displacement between the two procedures, it was at the same time suggested to change their names to the "*ordinary*" and the "*special*" legislative procedure respectively.

When it comes to the way the two legislative procedures work, no changes were proposed by the Convention.

5.2 THE CO-DECISION PROCEDURE

Where direct contacts between Council and Parliament were practically non-existent before the third reading of legislation in 1999, co-decision has after Amsterdam become a consensus oriented process, where the two legislative branches commence bargaining and conciliation from day one.

²¹ There are also four areas within the Economic and Monetary Union where the so-called "co-operation procedure" applies. However the procedure has lost significance and hasn't been used since April 1999.

The development of a practice of organising preliminary informal tripartite meetings throughout the legislative process has encouraged the search for consensus and thereby facilitated agreements between the two branches in the early stages of the process²². These meetings have become known as *trilaogues* since they bring together delegations from the Council (Presidency), the Parliament and the Commission. They were initially created in order to prepare the meetings of the "conciliation committee", but have since 1999 been used increasingly as an early "conciliation-mechanism" to facilitate agreements at the first or second readings. The impact of the increase in informal contacts between the institutions has been notable.

The most striking development has been the fall in the number of dossiers that go all the way to a third reading in conciliation. In 1999-2000 26% of all dossiers went to conciliation. In 2002-2003 this figure had fallen to 17%. In 2003-2004 it was 15%. At the same time there seems to be a tendency towards concluding more proposals during first readings. Where only 20% of the proposals were concluded at the first reading in 1999-2000 this number had increased to 27% in 2002-2003. New figures for the last year of this legislature (2003-2004) indicate that as many as 39% of all dossiers were closed during first readings. This significant rise is probably to a certain extent explained by particular circumstances, such as the two facts; we are coming towards the end of this legislature and also in preparation for the recent enlargement. This does undoubtedly underline an overall trend. When it comes to the share of dossiers agreed at the second reading the figures have fluctuated from 1999 to 2003. In 1999-2000 54% were agreed, while the share was 56% in 2002-2003. However the share of second readings dropped notably in 2003-2004 to 46%.

The Parliament has used its veto against a proposal in very few cases²³. Since the coming into force of the Amsterdam Treaty this has only happened twice; in July 2001 when the Parliament rejected a proposal on "takeover bids" and more recently in November 2003 when a proposal on "Market access to port services" was rejected.

	Total co-decisions	Dossiers concluded at 1 st reading	Dossiers concluded at 2 nd reading	Dossiers concluded at 3 rd reading
1994-99 (annual average)	30	-	18 (60%)	12 (40%)
1999-2000	65	13 (20%)	35 (54%)	17 (26%)
2000-2001	66	19 (29%)	27 (41%)	20 (30%)
2001-2002	73	19 (26%)	37 (51%)	17 (23%)
2002-2003	87	23 (27%)	49 (56%)	15 (17%)
2003-2004	105	41 (39%)	48 (46%)	16 (15%)

Source: European Parliament's "Activity report 1 May 1999 to 30 April 2004" on the co-decision procedure

5.3 THE CONSULTATION PROCEDURE

The *consultation procedure* was already in the original EEC Treaty which came into force in 1958 and allows the Council to enact EU legislation after having consulted the European Parliament²⁴.

²² In a joint declaration from 4 May 1999 on the new co-decisions procedure that was introduced with the Amsterdam-treaty, the three institutions agreed to "extend the present practice of (direct) contacts between the institutions to cover all stages of the co-decision procedureand try to reconcile their positions so where ever possible acts can be adopted at first reading" OJ C 148/1 1999.

²³ The European Parliament has rejected proposals under the co-decision procedure five times since May 1993. After the coming into force of the existing co-decision procedure in May 1999 it only happened twice, in July 2001 when the EP rejected a proposal on takeover bids and recently in 2003 .

²⁴ The Parliaments powers are under the consultation procedure limited to adopting *non-binding opinions*, which are submitted to Council and the Commission. The procedure is simple and implies only one reading by each legislative branch.

The mechanics of the procedure have been unchanged since 1958, but its scope has diminished over recent years. Both the Amsterdam and the Nice Treaties abolished a number of consultation procedures while promoting co-decision. However, the Amsterdam treaty did at the same time incorporate eight treaty articles providing for consultation in new EU policy fields.

Consultation was introduced in important new areas including asylum, refugees, immigration and other policies related to the free movement of persons (articles 62-65 TEC). In the areas of Immigration and other policies related to the free movement of persons there was a built in a clause allowing the Council, unanimously, to introduce co-decision in these areas after a five year transitional period, ending on 1 May 2004. In the domain of asylum this change over could however happen even earlier provided that the Council had previously adopted certain specific measures on asylum and minimum standards for giving temporary protection to displaced persons from 3rd countries.

5.4 INTER-INSTITUTIONAL AGREEMENTS

Over the last five years Inter-institutional agreements have been used as important tools to facilitate the co-operation between the EU institutions in the operation of the legislative procedures. Two inter-institutional agreements should be mentioned.

Firstly, the “Joint declaration” between the three institutions in 1999 covered the practical arrangements for the operation of the co-decision procedure. This was important in generating a smoother co-operation between the two legislative branches. The agreement has undoubtedly paved the way for earlier conclusions of the legislative procedure.

Secondly, a new inter-institutional agreement on “Better Lawmaking” was agreed in December 2003 setting out guidelines on how to improve the co-ordination of the three institution’s preparatory work in the context of the co-decision procedure²⁵. Here the institutions committed themselves to, among other things:

- reaching agreement on joint annual programming of the Unions legislative activities
- establishing indicative timetables for the various stages leading to the final adoption of legislative proposals
- ensuring a better “synchronisation” of the treatment of common dossiers

²⁵ Inter-institutional agreement on better law-making – 2003/C 321/01 of 31.12.2003.

5.5 IMPLEMENTING ACTS

While approximately 300-400 annual pieces of legislation are adopted by the European Parliament and the Council, under the co decision procedure, or by the Council alone, most EU legal acts are every year enacted by the European Commission on the basis of a delegation of implementing powers by the Council under article 202, third indent, of the EC Treaty.

Legal acts enacted in the EU in 1999-2003²⁶

	1999	2000	2001	2002	2003
<i>Parliament and Council</i>					
Regulations	11	15	15	24	35
Decisions	18	4	3	6	9
Directives	14	34	23	36	41
Total	43	53	41	66	85
<i>Council</i>					
Regulations	133	167	137	140	154
Decisions	121	26	27	51	30
Directives	30	9	22	113	19
Total	284	202	186	304	203
<i>Commission</i>					
Regulations	842	606	600	602	648
Decisions	516	557	651	610	560
Directives	55	38	18	44	61
Total	1413	1201	1269	1256	1269

The Commission has to exercise the implementing powers conferred on it in accordance to one of the four Comitology procedures (Advisory, Management, Regulatory and Safeguard) laid down in the "Comitology decision".²⁷

Under these procedures the Commission has to submit the draft implementing measures to committees composed of the representatives of the governments of the Member States generally at the level of civil servants. The procedure to be followed is chosen by the basic legislative act.

While under the Advisory procedure the Commission has just to take the "utmost account" of the opinion delivered by the committee under the management and regulatory procedure if the committee by qualified majority gives a negative opinion (or in the case of the regulatory procedure it gives no opinion) the measures proposed by the Commission have to be referred back to the Council, which can then take a different decision.

Until 1999 the European Parliament was not formally granted the power to control the committee's procedures even in the case of the implementation of acts adopted by co-decision;

The "Comitology decision" has provided for a limited involvement of the European Parliament in Comitology and has introduced specific provisions for improving the transparency of the committees works.

In particular, the European Parliament has the right to receive full information (all agendas, minutes, composition of committees, and all draft measures tabled) and can claim that an implementing measure exceeded the scope of powers delegated; in this case the measures had to be re-examined.

²⁶ Data are retrieved from the Annual General reports on the Activities of the European Union which are based on information from CELEX, the inter-institutional computerised documentation system on Community law.

²⁷ COUNCIL DECISION 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission

The purpose of the legislative acts from the Commission is normally either to adjust or enable EU legislation to changing circumstances or conditions in economy, science and society. In general these acts are administrative rather than political acts, but an increasing number of acts are adopted which have a more political character and a strong economic and social impact.

Recently the debate on Comitology has developed further with among other things the aim of improving European Parliament's role in scrutiny:

- The adoption by the European Council in Stockholm (March 2001) of the Lamfalussy Report. This report envisages that - in regulating the securities sector - legislative acts adopted by co decision should only lay down the basic principles. The adoption of substantial implementing measures should be delegated to the Commission, in accordance to the Comitology procedures with specific regulatory and advisory committees. The Lamfalussy method is will be extended to banking and insurance sectors;
- The presentation in December 2002 of a Commission proposal to amend the 1999 Decision. The proposal is intended to revise the procedure for implementing measures of legislative acts adopted under co-decision in order to put Council and Parliament on equal foot in overseeing the way in which the Commission exercises its implementing powers.
- The Draft Constitution, which envisages a distinction between the delegation to the Commission of the power to enact delegated regulations to supplement or amend the European laws or framework laws (article I-35) and the implementing measures which in principle have to be adopted by the member States (article I-36). With reference to the legislative delegation the Draft Constitution introduces specific mechanisms of control of the Legislator: a) the so-called "call back clause" allowing the European Parliament and the Council to call back a delegated power if they oppose the text from the Commission, b) in alternative, the so-called "tacit approval," in accordance to which the provisions drafted by the Commission would enter into force if, after a certain period, the legislator had not expressed any objections.

6 Recent developments in scrutiny procedures and practices by national parliaments on EU legislation

6.1 INTRODUCTION

Since the coming into force of the Amsterdam-Treaty and its protocol on the role of national parliaments in 1999, many national parliaments have made important changes to their scrutiny procedures. These changes have generally strengthened their examination of EU issues. Today practically all 25 Member States have established specialised European Affairs Committees to reinforce the democratic control of governments' activities at the European level²⁸. However, the procedures and practices vary from parliament to parliament reflecting the different constitutional arrangements and practices in the individual Member State.

It must be noted that this chapter is not giving a full account of developments in all 25 National Parliament's scrutiny systems²⁹.

The focus of the chapter will be on most recent developments with regard to the scrutiny systems in national parliaments of the new Member States. They have also chosen different paths, each compatible with their constitutional systems, but there is probably more commonality between their systems than the established 15 Member States. This chapter summarises the latest information provided by national parliaments. This is in response to an invitation send inviting each to provide information on developments since the extensive survey presented in the XXIII COSAC in Versailles in October 2000.

The focus is on three important subjects related to scrutiny:

- Possibilities to influence government positions
- Access to timely information on EU legislative proposals and other documents
- Role in implementation of EU legislation

Copenhagen Parliamentary Guidelines

Despite the differences in the national parliament's scrutiny arrangements COSAC at its XXIXth meeting in Brussels in January 2003 agreed to some benchmarks or non-binding guidelines: the Copenhagen Parliamentary Guidelines. The guidelines aimed at facilitating a quicker transmission from governments of all EU draft legislation and other important documents to national parliaments, plus providing supplementary easy accessible material on EU-legislation. These guidelines also encouraged government ministers to appear before national parliaments explaining government positions in relation to EU-proposals.

²⁸ Parliaments of Luxembourg and Portugal have not set up specialized committees exclusively dealing with European Affairs, but have instead established more broadly based Committees. Portugal merged in May 2002 the Committee on European Affairs with the Foreign Affairs Committee into a "Committee of European Affairs and Foreign Policy", while Luxembourg has one joint committee for "Foreign and European Affairs and for Defence".

²⁹ Annex 1 of this report contains further information in the form of copies of responses by national parliaments to a request for them to supply information on recent developments in their scrutiny procedures and practices.

6.2 INFLUENCE ON GOVERNMENT POSITIONS

A key factor in many scrutiny systems is a parliament's ability to influence and control its government's positions on EU issues and thereby hold it accountable. However, the national parliaments have chosen very different arrangements in order to ensure this objective. Some have chosen a system that directly empowers them, or their European Affairs Committees, to mandate their governments before ministers can endorse legislation in the meetings of Council (so-called mandating arrangements). Others have chosen either a more document based approach or simply more informal channels of influence.

6.2.1 Mandating arrangements

Different types of "mandating arrangements" have already been in place in the parliaments of Finland, Denmark, Sweden and Austria. Common to these systems are that they empower their Parliaments, or specialised Committees on behalf of the Parliament, to mandate their governments before these endorse EU legislation in the Council.³⁰

A large number of the new Member States have recently introduced scrutiny systems based on such "mandating-arrangements". Their systems are different in terms of scope and their "binding character", but they all give specialised European affairs committees a significant say in relation to their governments positions in the Council. In Poland it is obligatory for the government to seek an opinion from the European Affairs Committee of the Sejm in advance of meetings of the Council, while at the same time presenting its negotiation position before the Committee³¹.

The Latvian Parliament's European Affairs Committee has to approve all official positions of the Republic prior to their submission to European Union institutions. The Estonian Parliament's European Union Affairs Committee is empowered to give a mandate to the government before it can act in the Council. However, the Estonian system gives also the relevant sectoral committees a strong say by obliging them to prepare opinions to guide the European Affairs Committee.

The European Affairs Committee of the "National Assembly" of Slovenia³² is also empowered to take decisions on the positions of the Slovenian government before meetings in the Council³³.

³⁰ In the Nordic countries this is done on a weekly basis before all meetings of the Council, while the Austrian Parliament does not use its formal powers to formulate binding opinions vis-à-vis its government very often, but relies on the more regular exchange of opinions with members of government, which is generally sufficient to encourage the government to take into account the position of parliament. In Austria the National Council's "*EU Main Committee*" and the Federal Council's "*EU Committee*" may deliver opinions which bind the Austrian government in negotiations and votes in the Council. But such opinions are only adopted very seldom on an ad hoc basis whenever felt necessary. The government may only deviate from the opinion for compelling reasons of foreign policy and integration policy.

³¹ Article 9 in the "Act on Co-operation of the Council of Ministers with the Sejm and the Senate in Matters related to the Republic of Poland's Membership in the European Union", 11 March 2004. Article 9, generally obliges the Polish Government to seek an opinion from the European Affairs Committee of the Sejm, but Art. 9, p. 3 allows the government to take a position in the Council without seeking an opinion in the Committee, with the exception of matters in which the Council acts with unanimity and matters which entail excessive burdens on the Polish state budget.

³² Article 6, 1 of Act on Co-operation between the National Assembly of Slovenia and the government in EU Affairs, 25 March 2004.

Lithuania has not finally adopted the constitutional changes to set up its scrutiny system, but according to the draft constitutional act that has passed the first voting in Parliament, the Committee on European Affairs and the Committee on Foreign Affairs will be empowered to give the government a mandate, which it will have to take into account³⁴. However, the Committees will not give mandates to all EU-proposals. The different EU-proposals will be divided into three categories: “red”, “yellow” and “green” issues. On “red” issues the government will have to obtain a politically binding mandate, while the Parliament will only be consulted on “yellow” issues³⁵. “Green” issues will be those of minor or no interest for the Parliament.

Similarly to Lithuania, Slovakia hasn’t finally adopted its scrutiny mechanism. In the Draft Constitutional Law, the deputies proposed the binding character of mandating arrangements between the Parliament (represented by the Parliamentary Committee for European Affairs) and the Government to act in the Council. However, the Government rejected the proposed constitutional amendment. The Government’s main objection was that the mandate to act in the Council should not be binding, but of recommendation nature.

Scrutiny systems in the new Member States

Member State	Legal base of scrutiny system	Date of adoption of the legal base
Cyprus		Pending
Czech Republic	Amendment to the “Law on the Rules of Procedures of the Chamber of Deputies”.	26-03-2004
Estonia	Riigikogu Rules of Procedure Act Amendment Act	11-02-2004
Hungary	Proposal for ‘Law on the Cooperation between the Parliament and the Government concerning European Union affairs’ submitted by government on 26 March 2004	Possible adoption mid-May 2004
Latvia	Amended “Rules of Procedures of the Parliament of Latvia”.	16-02-2001
Lithuania	Draft amendment to “Lithuanian Constitution” passed first reading in Parliament on 30 March 2004. Also the “Statute of the Seima” will be amended in order to set up the new scrutiny system.	Possible adoption in June 2004
Malta		Pending
Poland	“Act on Co-operation of the Council of Ministers with the Sejm and the Senate in Matters related to the Republic of Poland’s Membership in the European Union”	11-03- 2004
Slovakia	The draft Constitutional Act on the Cooperation between the National Council of the Slovak Republic and the Government of the Slovak Republic in the matters of the European Union”	Debate expected in Parliament in May 2004
Slovenia	“Act on Co-operation between the National Assembly of Slovenia and the government in EU Affairs” and article 3.a paragraph 4 in the Slovenian “Constitution”.	25-03-2004 March 2003

In the Czech Republic and Hungary the European Affairs Committees will be empowered to formulate opinions to their governments, which must be taken into account. According to a draft law from 26 March the Hungarian Parliament may adopt a politically binding opinion concerning the negotiating position of the Government, which is exclusively formulated by the Committee on European Integration Affairs. In this opinion the Parliament indicates the prime goals that it considers necessary to achieve in related EU decision-making. In the Czech Republic the Chamber of Deputies or its European Affairs Committee may also adopt opinions, which the government has to take into account³⁶. In neither Hungary nor the Czech Republic

³³ The government must take the position of the Slovenian European Affairs Committee or the National Assembly into account, but may under special circumstances decide otherwise if enforcement of the parliament’s position is not possible or not in the national interest of Slovenia.

³⁴ On 30 March 2004 an amendment to the Lithuanian Constitution that obliges the government to consult the Seimas, passed the first vote in the Plenary. The second vote will take place in June 2004.

³⁵ If deemed necessary by the Parliament, a mandate will also have to be issued for yellow issues

³⁶ The law setting out the scrutiny system and competences of the European affairs committee of the Czech Republic was following the approval of the Czech Chamber of Deputies adopted by the Senate on 26 March 2004.

Ministers will appear before the European Affairs Committees to present government negotiation positions on a systematic basis. The appropriate ministers or political state secretaries will only appear in the EU Committee before meetings in the Council, if the Committees ask them to do so. In Hungary the Committee will be informed about the state of the negotiations from the beginning of the legislative process in the Council working groups by appropriate ministerial officials.

6.2.2 “Documents based scrutiny”

Another type of parliamentary scrutiny system, adopted by some new Member States, is a comprehensive document-based system, which involves examination of legislative proposals and other documents emanating from the EU institutions. This is that which is employed in the UK, France and Ireland.

In Ireland scrutiny takes place primarily within the Joint Committee on European Affairs. Legislative proposals are first scrutinized by the Joint Committees Subcommittee on European legislation and where required by sectoral Committees which undertake more detailed scrutiny of the proposals.

In the UK model this examination is almost entirely carried out within the two European Committees themselves. In the House of Commons, the European Scrutiny Committee reports to the House as a whole on the legal and political importance of all EU documents, and recommends debates on some of them. The system does not focus on proceedings at individual Council meetings, nor does it seek to mandate Ministers formally or informally. The principal purpose of the system is to "ensure that Members of Parliament are informed of EU proposals likely to affect the UK³⁷. The system is backed up by a scrutiny reserve, under which, with certain exceptions, Ministers may not give the UK's agreement to legislation in the Council of Ministers if it is still under scrutiny in Parliament. In the House of Lords, which operates on the same documents as the House of Commons and has a similar scrutiny reserve, a key difference is that scrutiny of the merits of policy and legislative proposals is carried out by expert Sub-Committees who both conduct in depth inquiries on a selection of documents and policy proposals and conduct more rapid scrutiny (e.g. by correspondence with ministers) of a number of further documents and policy initiatives.

In France it is the European Affairs Committee's of the two parliamentary chambers which examine European texts. On the most important topics, they can lead to that the standing Committees, or even the parliamentary plenary, take a position. On secondary issues, the European Affairs Committees correspond directly with the Government. The Parliamentary reserve in France is comparable with the one that exists in the UK scrutiny system.

A similar document based model has been introduced in the scrutiny arrangements of the Czech Senate, which may exert a right of parliamentary reserve for a maximum period of 35 days to examine legislative acts of the EU. During this period the government cannot endorse legislative acts in the Council. The Senate may adopt a resolution on an EU-matter addressed to the government. But as in the UK system the European Affairs Committee of the Senate cannot substitute for the House, and may therefore only recommend that the plenary adopts a resolution on a matter.

³⁷ The purpose of the House of Commons scrutiny system is defined by the European Scrutiny Committee in its 30th Report of Session 2001-02, *European Scrutiny in the Commons*,

6.3 TIMELY INFORMATION ABOUT EU-LEGISLATION

Availability of timely and good quality information on EU draft legislation is also a key factor when it comes to establishing effective scrutiny of EU-issues. Since the Council may put draft legislation on the agenda for adoption six weeks after it has been received from the Commission, timely information - in the form of the proposals themselves and/or explanatory memoranda - becomes an indispensable precondition for the National Parliament's scrutiny process³⁸.

At the European level governments were strongly encouraged by the Amsterdam Treaty to ensure that national parliaments receive the legislative proposals from the European Commission in good time to allow them to scrutinize the documents. Many parliaments find that they receive EU draft legislation and other important EU-documents in reasonably good time, while others are less content. The Italian Parliament has for instance found it necessary to pass a law obliging the government to transmit the proposals. The Danish Parliament has chosen a different approach by asking the government to stop the transmission of EU documents and instead started downloading the documents independently³⁹. As a consequence, the Danish Parliament now receives all documents from the Commission on the day of publication.

Many parliaments also receive supplementary information from their governments in the form of explanatory memoranda. This is, for instance, the case in the Parliaments of Germany, UK, Ireland, the Netherlands and the Nordic countries. Some governments are obliged to include in the explanatory memoranda impact assessments of the proposals in relation to for instance budgetary, social or environmental consequences on national legislation. Many of the new Member States have also obliged their governments to submit explanatory memoranda to supplement the transmitted Commission proposals.

In Poland the government is obliged to transmit its *draft position* in relation to a proposal no later than two weeks after it has been received plus a reasoned statement including an appraisal of anticipated legal, economic, social and financial consequences for Poland. In Slovenia the government is also obliged to send the European Affairs Committee a draft position including assessments of the implications for the Slovenian Republic as soon as they are adopted but no later than five weeks after receiving the EU-proposal. The same is true for Estonia, where the Government has also decided that before any positions are sent to the Parliament, they would have to be formally approved at the Government session.

Some Parliaments have developed a supplementary own capacity when it comes to acquiring information about the activities of the European institutions – either via the establishment of EU-Information Centres such as in the Nordic countries and Latvia or by sending permanent representatives to Brussels to monitor the institutions and report back home to the parliaments. The Parliaments of Denmark, Finland, France, Ireland, Italy, Latvia, Lithuania, Poland, Sweden, Slovenia and the UK are currently represented in Brussels by specially appointed officials who are hosted by the European Parliament⁴⁰.

³⁸ The protocol on national parliament's role in the Amsterdam Treaty sets out that a six week period shall elapse between a legislative proposal being made available to the Council and the Parliament and the date when it is placed on the Council's agenda for adoption.

³⁹ In order to download EU proposals independently, a system has been devised in the Danish Parliament that automatically transfers documents from the European Commission's database to the database of the Danish European Affairs Committee.

⁴⁰ More Parliaments are planning to send permanent representatives to Brussels. The Dutch Parliament will have a representative in place by June 2004 and the Czech Senate and the Hungarian Parliament most likely during the autumn 2004.

The draft Constitutional Treaty provides that the Commission shall be responsible for the transmission of Green Papers, White Papers, Communications and EU draft legislation as an additional requirement to the Treaty of Amsterdam.

6.4 ROLE IN IMPLEMENTATION OF EU-LEGISLATION

Most EU directives are implemented into the national law of the 25 Member States by acts adopted by the governments. As far as national Parliaments deal with the transposition of EU directives into national law, it is normally the responsibility of the relevant sectoral standing Committees to prepare the necessary national legislation, before it is finally adopted by the plenary.

However, a number of European Affairs Committees in the National Parliaments also play a role in the transposition process. This is for instance the case in the Italian Parliament, where the Chamber of Deputies' European Affairs Committee and the Senate's (14th) "EU-Policies Committee" are empowered to scrutinize the consistency of national legislation with EU legislative acts to ensure proper implementation of Community law in Italy. The Committees may issue opinions on national bills which they find raise questions of compliance with EU directives or other community measures to the relevant sectoral standing committee. If the sectoral standing committees do not comply with the opinion issued by the "European Affairs Committees" when dealing with the draft Bill, the legislative remit is withdrawn from the committee and the bill is passed on to a vote in the Parliament.

The French National Assembly's "Delegation for the European Union" also plays a role in monitoring the implementation of EU directives. It has thus recently taken the initiative of publishing an annual report taking stock of the effective transposition of directives into national law in the EU Member States. The report contains among other things a list of directives whose transposition period has expired and analyses the reasons for the delays.

It does not appear that any of the new Member States intend to involve their specialised European Affairs Committees in the control of the implementation of EU-law into national legislation. But in some of the Member States the Parliament as such will have a monitoring role. That applies for instance to the Polish scrutiny system, which obliges the Polish government to submit Bills implementing EU law to the Sejm no later than three months before the expiration of the time limit for the transposition of the EU legislative act, in order to give Parliament the possibility to amend the Bills⁴¹.

⁴¹ If the time limit for the implementation of the EU-law exceeds six months, the Polish government shall submit the Bill to the Sejm no later than five months in advance of the expiry date. However, in strictly justified cases, the government may, after having consulted the competent organ in Parliament, submit the Bill irrespective of the time limits.

7 PROPOSALS ON THE DRAFT TREATY ESTABLISHING A CONSTITUTION FOR EUROPE

7.1 INTRODUCTION

This text must be reviewed according to the IGC agenda. Presently it is based on the draft Constitutional Treaty prepared by the Convention and on the "Naples" text as prepared by the Italian Presidency in so far as these related to National Parliaments.

This chapter reports the proposals by the Convention in strengthening the participation of National Parliaments and presents these under three headings:

- the Protocol on National Parliaments;
- the Protocol on the application of Subsidiarity and Proportionality;
- And specific constitutional articles of direct application to National Parliaments.

In addition, National Parliaments have a role in a number of key policy areas including:

- Article 24 where Parliaments must be informed prior to a decision by the European Council to modify the unanimity rules in respect of certain policies in part III of the Constitution;
- Articles III 160 – 162 in the area of Freedom, Security and Justice; and
- Article IV – 7 concerning revision of the Constitutional Treaty as a component of future conventions.

Furthermore the Convention proposal for a passerelle (i.e. the bridge to go one regime to another) from unanimity to QMV or from a special to the ordinary legislative procedure was modified by the Italian Presidency in the "Post Naples" package it presented to the Brussels European Council in December 2003. Any proposed use of the passerelle would a) have to be approved unanimously by the European Council and b) be notified to national parliaments. Any parliament may within a six month period declare its opposition, thereby terminating the proposal. There is also in the "Post Naples" package a proposal for a simplified revision procedure for Treaty Articles on the Union's internal policies. It requires both unanimous agreement in the European Council and subsequent ratification by all Member States.

7.2 THE LAEKEN DECLARATION

Heads of Government set out the reform agenda in the Laeken Declaration of the 15th of December 2001 for the debate on the future of the European Union when it established a Convention drawn from amongst others, representatives of Member and applicant States' Governments, National Parliaments, the European Parliament and the European Commission. Others with observer status included the Committee of the

Regions, the Economic and Social Committee, European Social Partners and the European Ombudsman.

The Declaration identified a deep concern of citizens in “calling for a clear, open, effective, democratically controlled Community approach, developing a Europe which points the way ahead for the world”. There was a perceived need for more democracy, transparency and efficiency in the European Union. National Parliaments contribute to the legitimacy of the European project. The declaration on the Future of the Union, annexed to the Treaty of Nice, stressed the need to examine their role in European Integration.

Questions posed in the Laeken Declaration concerning National Parliaments included:

- Should National Parliaments be represented in a new institution, alongside the Council and the European Parliament?
- Should they have a role in areas of European action in which the European Parliament has no competence?; and
- Should they focus on the divisions of competencies between the Union and Member States, for example, through preliminary checking of compliance with the principle of subsidiarity?

Those questions were addressed in the work of the Convention.

7.3 THE ROLE OF NATIONAL PARLIAMENTS

7.3.1 References in previous treaties

References to the role of National Parliaments are in the Treaties of Maastricht, Amsterdam and Nice. The Declaration on National Parliaments in the Maastricht treaty considered it important to encourage their greater involvement in the activities of the European Union. To achieve this, exchange of information between the European Parliament and National Parliaments should be stepped up, through granting appropriate reciprocal facilities. Member State Governments would ensure that Parliaments received Commission proposals for legislation in good time.

Six years later, the Protocol on the role of National Parliaments in the European Union accompanying the Treaty of Amsterdam extended the range of Commission documents to be communicated to National Parliaments to include green and white papers and communications. A six week waiting period was introduced between receipt of legislative proposals and their inclusion on Council agendas for decision either for the adoption of an act or for adoption of a common position.

Finally, the Protocol provided that the Conference of European Affairs Committees could make any contributions it deems appropriate to the Institutions of the European Union. Particular mention was made in relation to the application of the principle of subsidiarity, the areas of freedom, security and justice as well as questions regarding fundamental rights. Contributions made by COSAC would in no way bind National Parliaments or prejudge their position.

The Treaty of Nice invited National Parliaments to participate in the debate on the future of Europe and included the role of National Parliaments as one of the four main issues to be addressed in the Future of Europe debate. This led to the specific

reference to National Parliaments in the Laeken Declaration referred to earlier. It was against this background that the Convention began its work.

7.3.2 The draft Protocol on the role of National Parliaments in the European Union

The full text of the protocol is in Annex 7. The differences in the new proposed Protocol with that of the Amsterdam Protocol include the provisions that:

- The Commission shall send the Annual Legislative Programme as well as any other instrument of legislative planning or policy strategy that it submits to the European Parliament and to the Council of Ministers, at the same time as to those Institutions.
- All legislative proposals sent to the European Parliament and to the Council of Ministers shall simultaneously be sent to Member States' National Parliaments.
- Member States' National Parliaments may send to the Presidents of the European Parliament, the Council of Ministers and the Commission a reasoned opinion on whether a legislative proposal complies with the principle of subsidiarity, according to the procedure laid down in the Protocol on the application of the principles of subsidiarity and proportionality.
- A ten-day period shall elapse between the placing of a proposal on the agenda for the Council of Ministers and the adoption of a position of the Council of Ministers.
- The agendas for and the outcome of meetings of the Council of Ministers, including the minutes of meetings where the Council of Ministers is deliberating on legislative proposals, shall be transmitted directly to Member States' National Parliaments, at the same time as to Member States' governments.
- When the European Council intends to make use of the provision of Article I-24(4), first subparagraph of the Constitution, National Parliaments shall be informed in advance. When the European Council intends to make use of the provision of Article I-24(4), second subparagraph of the Constitution, National Parliaments shall be informed at least four months before any decision is taken.
- The Court of Auditors shall send its annual report to Member States' National Parliaments, for information, at the same time as to the European Parliament and to the Council of Ministers.
- In the case of bicameral National Parliaments, these provisions shall apply to both chambers.

For ease of reference the delay period is recalled below:

- A six-week period shall elapse between a legislative proposal being made available by the Commission to the European Parliament, the Council of Ministers and the Member States' National Parliaments in the official languages of the European Union and the date when it is placed on an agenda for the Council of Ministers for its adoption or for adoption of a position under a legislative procedure subject to exceptions on grounds of urgency, the reasons for which shall be stated in the act or position of the Council of Ministers. Save in urgent cases for which due reasons have been given; no agreement may be established on a legislative proposal during those six weeks. A ten-day period shall elapse between the placing of a proposal on the agenda for the Council of Ministers and the adoption of a position of the Council of Ministers.

7.4 BEYOND TRADITIONAL SCRUTINY OF EUROPEAN LEGISLATION

The proposed protocol provides that National Parliaments will be informed of proposals to change the rules on Qualified Majority Voting. The Protocol was expanded to take these provisions into account and it now provides for National Parliaments to be informed of the following eventualities:

- Where the Constitution provides in Part III (Policies) for European laws and framework laws to be adopted by the Council according to a special legislative procedure the European Council can adopt, on its own initiative and by unanimity and after a period of consideration of at least six months, a decision allowing for the adoption of such European laws or framework laws according to the ordinary legislative procedure, it shall inform National Parliaments.

Similarly where Part III provides for the Council to act unanimously in a given area, the European Council can adopt, on its own initiative and by unanimity, a European decision allowing the Council to act by qualified majority. It shall inform the National Parliaments no less than four months before any decision is taken on it.

7.5 INTER-PARLIAMENTARY CO-OPERATION

The European Parliament and National Parliaments will together determine how inter-parliamentary co-operation may be promoted.

The role foreseen for COSAC provides that it may submit any contribution it deems appropriate for the attention of the European Parliament, the Council of Ministers and the Commission. That Conference shall in addition promote the exchange of information and best practice between Member States' Parliaments and the European Parliament, including their special committees. The Conference may also organise inter-parliamentary conferences on specific topics, in particular to debate matters of common foreign and security policy and of common security and defence policy. Contributions from the Conference shall in no way bind National Parliaments or prejudice their positions.

7.6 THE PROTOCOL ON THE APPLICATION OF THE PRINCIPLE OF SUBSIDIARITY AND PROPORTIONALITY

7.6.1 Analysis of the application of the principle of subsidiarity

While subsidiarity is a theme in its own right, the process of improving its application has been closely associated with the expanding role of National Parliaments in the work of the Convention. The draft Constitutional Treaty contains a new protocol named "Application of the Principles of Subsidiarity and Proportionality".

The principle is intended to ensure that decisions are taken as closely as possible to the citizen and that constant checks are made as to whether action at Community level is justified given the possibilities available at national, regional or local level. Therefore,

Union action should only occur if it is more effective than action at national, regional and local levels.

The Maastricht Treaty made subsidiarity a general rule for all union activity. The Edinburgh European Council of December 1992 defined the basic principles underlying subsidiarity and laid down guidelines for interpreting article 5 of the Treaty establishing the European Community.

The Treaty of Amsterdam developed the application of subsidiarity further when it introduced the systematic analysis of the impact of legislative proposals on the principle of subsidiarity. The Amsterdam protocol in Annex 2 is the foundation stone upon which the work of the Convention is further developed and which now forms the basis of the proposed new protocol in the draft Constitutional Treaty on the Application of the Principle of Subsidiarity and Proportionality.

7.6.2 PROTOCOL ON THE APPLICATION OF THE PRINCIPLES OF SUBSIDIARITY AND PROPORTIONALITY

The full text is in Annex 8. For ease of reference, the main provisions are recalled below:

- The European Institutions shall send directly to National Parliaments the relevant acts. The Commission shall send its legislative proposals and its' amended proposals to National Parliaments at the same time as it sends them to the European Parliament and Council of Ministers. The two latter institutions would send their texts directly to National Parliaments.
- Any National Parliament or any chamber of a National Parliament may within six weeks send to the Presidents of the European Parliament, the Council of Ministers and the Commission a reasoned opinion stating why it considers that the proposal in question does not comply with the principle of subsidiarity.
- It will be for each parliament or each chamber to consult regional parliaments with legislative powers.
- National Parliaments with unicameral parliamentary systems shall have two votes, while each of the chambers of a bicameral system shall have one vote.
- Where reasoned opinions on a Commission proposal's non-compliance with the principle of subsidiarity represent at least one third of all the votes allocated to the Member States' National Parliaments and their chambers, the Commission shall review its proposal. This threshold shall be at least a quarter in the case of a Commission proposal or an initiative emanating from a group of Member States under the provisions of Article III-165 of the Constitution on the area of freedom, security and justice.
- The Court of Justice shall have jurisdiction to hear actions on grounds of infringement of the principle of subsidiarity by a legislative Act in accordance with Art III 270 of the Constitution by member states, or when notified by them in accordance with their legal order on behalf of their National Parliament or of a chamber.

7.7 CONSTITUTIONAL ARTICLES OF DIRECT APPLICABILITY TO NATIONAL PARLIAMENTS

Article I-9 establishes subsidiarity and proportionality as one of the fundamental principles of the Constitution. The Subsidiarity Protocol is derived from this article.

Article I-17 the Commission shall draw the national parliament's attention to proposals under this clause.

Article I-24 on Qualified Majority establishes the obligation of the European Council to inform National Parliaments of certain changes in voting procedures.

Where the Constitution provides in Part III for European laws and framework laws to be adopted by the Council of Ministers according to a special legislative procedure, the European Council can adopt, on its own initiative and by unanimity, after a period of consideration of at least six months, a decision for the adoption of such European laws or framework laws according to the ordinary legislative procedure. The European Council shall act after consulting the European Parliament and informing the National Parliaments.

Where the Constitution provides in part III for the Council of Ministers to act unanimously in a given area, the European Council can adopt, on its own initiative and by unanimity, a European decision allowing the Council of Minister to act by qualified majority in that area. Any initiative taken shall be sent to National Parliaments no less than four months before any decision is taken on it.

Article 7 in Part IV, General and Final Provisions, establishes a procedure for revising the Treaty establishing the Constitution.

This article provides that the government of any member state, the European Parliament or the Commission may submit to the Council of Ministers' proposals for the amendment of the Treaty establishing the Constitution. National Parliaments shall be notified.

Where the European Council, by a simple majority, decides in favour of examining the proposed amendments the President of the European Council shall convene a Convention composed of representatives of National Parliaments, Heads of State or Governments, the European Parliament and of the Commission.

Eventual ratification would be by all member states in accordance with their respective constitutional requirements.

7.8 THE AREA OF FREEDOM, SECURITY AND JUSTICE

The extension of policy in this area is one of the main innovations in the draft Constitutional Treaty. This brings the Union closer to the citizen in very politically sensitive areas. Recalling that National Parliaments are closer to citizens, it was decided to provide specific roles for National Parliaments in monitoring developments in this policy area.

Article III-160 provides that member states' National Parliaments shall ensure that the proposals and legislative initiatives submitted in respect of judicial co-operation in

criminal matters and police co-operation comply with the principle of subsidiarity is detailed in the Protocol it is note worthy that the threshold is fixed at one quarter of the National Parliament's votes.

Furthermore, National Parliaments may participate in the evaluation mechanisms whereby member states, in collaboration with the Commission, conduct objective and impartial evaluation of the implementation of the Union policies in this area by member states authorities. In particular in order to facilitate full application of the principle of mutual recognition (Article III – 161).

National Parliaments may also participate in the political monitoring of Europol and the evaluation of Eurojust's activities in accordance with the provisions of Articles 174 and 175 respectively.

7.9 CONCLUDING REMARK

COSAC may wish to consider the final text adopted by the IGC to identify the full implication for European procedures and practises.

