

**The Permanent Representative of the Danish Parliament to the EU
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The role of national parliaments in the EU of the future?

Report to COSAC in Copenhagen 17th-18th October 2002

I. Introduction

One of the key issues facing the European Convention, an issue to be resolved by the heads of state or government of the EU Member States at the 2004 Intergovernmental Conference, is how the role of national parliaments can be strengthened in the future European architecture. This was made clear by the European heads of state or government both at the European Council in Nice in 2000 and at the 2001 Laeken European Council.

In the wake of Joschka Fischer's by now famous speech at the Humboldt University in Berlin in May of 2000 which suggests the establishment of a second chamber of national parliamentarians, we have seen a string of proposals from European heads of state or government for enhancing the involvement of national parliaments in EU decisions. The idea of the British prime minister Tony Blair in particular, put forward in his Warsaw speech (2001) in which he proposed giving national parliaments a new role in connection with monitoring subsidiarity, has been the subject of intense discussion.

However, the idea of Valéry Giscard d'Estaing, chairman of the European Convention, for a "Congress of the Peoples of Europe", expressly without legislative power, has also attracted a certain amount of interest of late. The former French president proposed that this Congress should play a part e.g. in connection with "the future development of the Union", accession of new member countries and appointment to certain high political offices in the Union¹

Since February 2002 the questions about the role of national parliaments in the EU have moved on to become the subject of substantial discussions in the European Convention with several working groups debating very tangible ideas about how to enhance the involvement of national parliaments in the EU.

¹ Giscard d'Estaing put forward his idea in an interview in Le Monde on 21 July but has since elaborated on it e.g. in his 2 October speech at the European University in Bruges.

II. Background

The debate about greater involvement of national parliaments is not new. The past 10-15 years have not seen an intergovernmental conference without such debates.

The Maastricht Treaty

The 1992 adoption of the Maastricht Treaty in particular made the issue of the democratic legitimacy of the EU relevant as the Treaty probably constituted the most extensive revision ever of the European treaties as a whole. Important new issues such as Economic and Monetary Union, the Common Foreign and Security Policy, legal and internal affairs and a whole series of other new matters such as education, public health, industrial policy, culture, transeuropean networks etc. now became part of European cooperation.

Once again, the powers of the European Parliament were strengthened markedly, e.g. by the introduction of co-decision, but this time some countries also demanded a strengthened role for national parliaments. The wish to retain

DECLARATION (No. 13) regarding the role of national parliaments in the European Union (The Maastricht Treaty):

The Conference considers that it is important to encourage greater involvement of national parliaments in the activities of the European Union. To this end, the exchange of information between national parliaments and the European Parliament should be stepped up. In this context, the governments of the Member States will ensure, *inter alia*, that national parliaments receive Commission proposals for legislation in good time for information or possible examination. Similarly, the Conference considers that it is important for contacts between the national parliaments and the European Parliament to be stepped up, in particular through the granting of appropriate reciprocal facilities and regular meetings between members of parliament interested in the same issues.

national parliaments as important legislative institutions in some of the new areas of cooperation such as culture, education, public health and industry was ensured, *inter alia*, by enshrining the principle of subsidiarity in the new EU Treaty and by explicitly determining that the Member States and national parliaments are the principal legislators in these new areas of cooperation.

Finally, at the conference the heads of state or government agreed two declarations regarding national parliaments. One declaration (No. 13) "regarding the role of national parliaments in the European Union" encouraged "greater involvement of national parliaments in the activities of the European Union". This should be implemented, inter alia, by stepping up the exchange of information and contacts between national parliaments and the European Parliament. In this context, the governments of the Member States were asked to ensure that new proposals for EU legislation from the European Commission be sent to national parliaments.

The other declaration (No. 14) invited representatives from national parliaments and the European Parliament to meet as necessary as a "Conference of the Parliaments" to debate the main features of the European Union. The inspiration was drawn from a "conference of the parliaments" held prior to the Maastricht negotiations in Rome in November 1990 where the European Parliament and national parliaments debated "the future EU".

The Treaty of Amsterdam

When, in 1997, the governments of the 15 EU Member States were negotiating the Treaty of Amsterdam, the issue of the role of national parliaments once again played a central part. Here, the heads of state or government agreed to adopt a legally binding protocol regarding "the role of the national parliaments in the European Union". The preface to the protocol encouraged greater involvement of national parliaments in the activities of the European Union and the enhancement of their ability to express their views on matters which may be of particular interest to them. The protocol also enshrined, inter alia, existing cooperation between national parliaments in COSAC. Finally, it was decided that key documents such as Commission green and white papers and, not least, communications should be forwarded to national parliaments. The government of each Member State should make proposals for European legislation available to its national parliament in good time to allow for a proper reading while white papers, green papers and communications should be forwarded promptly. It was

therefore decided to allow at least six weeks from the Commission proposal for legislation being made available to the Council and the European Parliament to the date when it is placed on a Council agenda for adoption.

² In 2000 the European Commission published 2 white papers, 4 green papers, 99 communications and 115 other reports. See Com(2001)728.

³ Today, the rules of procedure of the Council also mention this period.

III. The present involvement of national parliaments in European policy

National parliaments are presently involved in European decision-making in several different ways. First of all they participate to varying degrees in the national EU decision-making processes where they are responsible for parliamentary scrutiny of government policy at a European level.

They do however have several additional key functions at European level. On the one hand, the European treaties invest a number of specific functions in them as regards, inter alia, the adoption of treaty changes or determining the level of the EU's "own resources"; on the other, parliaments participate in various forums of cooperation such as COSAC where the European Affairs Committees of the national parliaments and the European Parliament meet.

a. At a national level

Today, the parliaments of all 15 EU countries have set up specialised European Affairs Committees to exercise parliamentary scrutiny of government policy regarding the European Union. The way in which the parliaments of individual countries have organised these powers of scrutiny varies considerably, however. As an example, Denmark, Finland and Sweden have given the European Affairs Committees of their parliaments extensive formal powers to grant their governments a mandate for the negotiations at each Council meeting in Brussels after scrutiny whereas on the other hand The United Kingdom and France have chosen a more document-based method of scrutiny. Here, the measures are based more on scrutiny of concrete proposals for European legislation or other EU documents from the government⁴.

⁴ While an EU proposal is under scrutiny in The European Scrutiny Committee of the House of Commons the UK government cannot normally endorse proposals for community legislation in the Council of Ministers. The European Scrutiny Committee can also ask ministers to appear in the Committee to elaborate on the negotiating position of the government prior to negotiations in the Council of Ministers.

Standing committees

In the parliaments of a few countries the standing committees are also increasingly becoming involved in European issues. Finland deserves special mention in this respect. The standing committees in Finland are obliged to draft opinions on Commission proposals which they forward to the Finnish European Affairs Committee ("the Grand Committee"). Against this background the Grand Committee will formulate its position to the Finnish government in a letter from the chairman of the Committee. This takes place in the early phase of the European legislative process, thus allowing the opinions of the standing committees to guide the Finnish negotiators at the working group stage in the Council and in COREPER. The parliaments of Sweden and Denmark also put considerable emphasis on greater involvement of their standing committees. In Denmark, ministers thus appear in the standing committees prior to negotiations in the Council of Ministers to discuss the Council agenda with members⁵. Furthermore, since 1999 the Danish Folketing has systematically held public hearings on Commission white and green papers organised by the standing committees in collaboration with the European Affairs Committee. Hearings are usually concluded with the adoption of a hearing response which is forwarded to the European Commission.

Information for national parliaments

It is clearly a prerequisite for the ability of national parliaments to influence and scrutinize the European policy of national governments that they receive the necessary information about important EU decisions and initiatives such as new legislative proposals from the Commission and related proceedings in the Council of Ministers and the European Parliament. Protocol (No. 9) of the Amsterdam Treaty calls on Member State governments to send all new Commission proposals

⁵ In total, around 50 meetings are held annually between government and the standing committees of the Folketing.

in good time, while national parliaments are entitled to receive promptly all important consultative documents such as green papers, white papers and communications.

In addition, through agreement with their governments several parliaments have gained extended access to information about European issues in the form of explanatory memoranda from governments. These memoranda may contain information about the socioeconomic consequences of adopting a proposal or about the views of ngos and other interest groups. The memoranda therefore constitute important supplementary information for parliamentarians.

Finally, the parliaments of Finland (Eduskunta), United Kingdom (House of Commons), France (le Sénat), Italy (Camera dei Deputati), Lithuania (Saeima) and Denmark (Folketinget) sent their own representatives to Brussels to follow the work of the European institutions. These representatives report directly to their parliaments on important initiatives or legislative proposals from the European Union.

National parliaments participate in the implementation of directives

Finally, national parliaments also play an important part in implementing EU directives requiring implementation at a national level. This is a task shared between national governments and parliaments according to national rules as they apply in each member country.

a. At a European level

National parliaments also fulfil a number of key functions at a European level. On the one hand parliaments have important competence in various policy areas under the EU treaties, whereby they participate in the European decision-making process as regards a number of "constitutional or semi-constitutional" issues while, on the other hand, they participate in various types of cooperation with the national parliaments of other EU countries and the European Parliament.

Provisions in the Treaties

Under the EU treaties national parliaments are presently directly involved in European affairs in a number of contexts.

This applies, inter alia, in connection with amendments to the EU treaties which require approval by the national parliament of each Member State before entering into force.

Furthermore, accession to the EU of new member countries, the conclusion of association agreements with third countries, determining the level of the Community's "own resources" and the drawing up of a common EU defence policy require approval by national parliaments in accordance with the constitutional rules applying in individual Member States.

Areas of national parliament involvement in EU legislation under the EU Treaty

Primary Community law

- **Treaty amendments** (Article 48 TEU).
- Agreement on the **accession of new member states** (Article 49 TEU)

Secondary Community law

- Decisions by the European Council regarding the progressive framing of a **common European policy on defence** (Article 17, paragraph 1 TEU)
- Decisions by the European Council regarding **integration of the Western European Union** into the Union (Article 17, paragraph 1 TEU) Lapses with the Treaty of Nice.
- Conventions regarding provisions on the mutual approximation of laws, regulations and administrative provisions in the Member States relating to **police and judicial cooperation in criminal matters** (Article 34, paragraph 2 TEU)
- Council decision on the **transfer** of actions under the **third pillar** to the **first pillar** (Article 42 TEU)
- Council decision on additional rights of **citizenship of the Union** (Article 22 TEC)
- Adoption of the act concerning the **election** of the representatives of the European Parliament **by direct universal suffrage** (Article 190, paragraph 4 TEC)
- Council decision adopting provisions concerning the **own resources** of the Community (Article 269 TEC)
- Agreements between Member States in various areas essentially in the field of private international law with a view to realising Community objectives by means of uniform provisions (Article 293 TEC)
- Conclusion of **international agreements** with third countries concerning issues of shared competence between the EC and Member States - Services, intellectual property rights etc. (Article 300 TEC)

COSAC

At a European level, COSAC constitutes the most important forum of cooperation for national parliaments. Cooperation in COSAC has been enshrined in the EU treaties⁶.

COSAC was however established outside of the treaties as early as May 1989 when, at a meeting in Madrid, *the Conference of Speakers of Parliament* agreed to strengthen cooperation between the European Affairs Committees of the national parliaments. COSAC first met in Paris in November 1989.

COSAC is composed of six representatives from each of the 15 Member States and six representatives from the European Parliament⁷. In recent years, observers from applicant countries have also participated in meetings.

COSAC meets twice a year. Meetings take place in the Member State holding the presidency of the Council and are usually held immediately prior to the six-monthly ordinary summit of heads of state or government in the European Council.

Whereas, in 1989, COSAC was meant solely as a forum to further the exchange of information, heads of state or government attempted to enhance the role of national parliaments in the Treaty of Amsterdam by entitling COSAC to debate EU legislative proposals or initiatives regarding the establishment of *an area of freedom, security and justice* with a direct bearing on the rights and freedoms of individuals. At the same time, COSAC acquired the right to adopt resolutions or make contributions on this subject and the application of *the principle of subsidiarity* as well as on other issues it deems appropriate.

Other meetings and conferences

⁶ COSAC was enshrined in a special protocol to the Treaty of Amsterdam on national parliaments which entered into force on 1 May 1999.

⁷ National parliaments are normally represented by their speakers and other prominent members of the European Affairs Committees. As a rule of thumb, the European Parliament will send two vice-presidents responsible for relations with national parliaments and the chairman of the Committee on Constitutional Affairs. The remaining three are appointed on an ad-hoc basis, depending on the agenda of the COSAC meeting.

Outside of the framework of treaties, a number of forums of cooperation for national parliaments and the European Parliament have been established at a European level.

This applies to the by now numerous joint meetings in the European Parliament arranged on an ad hoc basis for members of the European Parliament and national parliaments. The meetings usually focus on new legislative initiatives from the Commission. These joint meetings are initiated by the standing committees of the European Parliament with an interest in hearing the views of national parliaments prior to the European Parliament concluding its first reading of EU proposals for legislation. In the process, national parliamentarians may acquire useful knowledge about the European Parliament's views on EU legislation which may be used in domestic parliamentary scrutiny of governments.

Some standing committees of the national parliaments have also begun to meet at regular intervals. This includes the chairmen of the parliaments' *foreign affairs committees* which meet twice a year to debate issues concerning the Common Foreign and Security Policy and *the committees on development aid* and *the committees on defence*.

The Conference of Presidents of Parliament

Finally, there is a special conference where the presidents of the national parliaments and the president of the European Parliament meet once a year. These meetings have been held since 1975.

The conference is primarily a useful tool for the exchange of information between the presidents of the national parliaments and the European Parliament.

IV. The debate in the European Convention on strengthening the role of national parliaments

How can the role of national parliaments be strengthened in the future architecture of Europe, thereby contributing to bringing European issues closer to its citizens? As is well known, this is a key concern in the current work of the European Convention which is expected to be concluded in June 2003 as well as for the next Intergovernmental Conference in 2004.

A. The mandate

The mandate for debating this issue has its origins in the Nice declaration from the European Council in December 2000 and the Laeken declaration from December 2001. The Nice declaration mentions only in general terms that the role of national parliaments in the future European architecture should be looked into. Unlike Nice, the Laeken declaration states more specifically the need to look into whether national parliaments should be represented in a new institution at European level and whether they should have a special role in areas of European action where the European Parliament has no competence. Finally, the Convention will consider the possibility of giving national parliaments a role in monitoring the distribution of competence between the EU and Member States, e.g. by being in charge of preliminary monitoring of the principle of subsidiarity. However, right from the start the European Convention gave the question of the role of national parliaments a wider perspective than the heads of state or government in Laeken.⁸ The Presidium of the Convention also asked the Convention to examine what can be done to strengthen national parliaments' scrutiny of government EU policy at national level. In this particular context, the Convention should examine whether aspects of the EU legislative procedures and working methods create difficulties for national parliaments as regards exercising such scrutiny effectively.

⁸ See notes Conv 68/02 and Conv 67/02 from the Presidium of the Convention from May 2002.

Finally, the Presidium asked the Convention also to consider how to extend existing interparliamentary cooperation between the national parliaments and the European Parliament.

B. Debates at working group level

The question of the future role of national parliaments first appeared on the agenda of the European Convention at the session in Brussels on 6th-7th June. Here, the Convention launched the first wave of six working groups, several of which were allocated as part of their mandate the question of greater involvement of national parliaments. This applied to working group IV on the "Role of National Parliaments, working group I on the "Principle of Subsidiarity" and to some extent working group V on "Complementary Competence".

However, debates have principally taken place in working group IV on *national parliaments* chaired by Gisela Stuart from the House of Commons. This working group was mandated to examine the entire series of issues above regarding the possibilities of enhancing the involvement of national parliaments in EU policy. The question of reforming cooperation within the framework of COSAC and Giscard d'Estaing's proposal for a "Congress of the Peoples of Europe" have also been debated.

Working group I on *the principle of subsidiarity* chaired by the Spanish MEP Inigo Mendez de Vigo has also had the question of the role of national parliaments as a major aspect of its work in connection with debates on how to enhance the principle of subsidiarity.

Questions regarding the role of national parliaments which have been debated in the working groups of the Convention

- The role of national parliaments in monitoring subsidiarity
- The role of national parliaments in scrutinising the EU policy of their respective governments
- Interparliamentary cooperation at European level between national parliaments and the European Parliament
- Delimitation of EU and Member State competence

Finally, working group V chaired by Henning Christophersen has examined how to effect a clearer delimitation of Union competence vis-à-vis the areas of competence which are primarily the province of national parliaments and governments and where the EU can only complement or supplement the legislative activities of the Member States. Instances of so-called "complementary" competence cover areas where the principle of subsidiarity is an inherent part.

Monitoring the principle of subsidiarity

So far, working groups IV and I have both spent a lot of time on the "Laeken issue" regarding the desirability of giving national parliaments a role at European level in connection with monitoring the application of the principle of subsidiarity.

There is broad agreement in both working groups that national parliaments should fulfil such a role.

According to the final report from the working group of Mendez de Vigos an "early warning system" should be set up for national parliaments to activate if, in their opinion, the European institutions do not comply with the principle of subsidiarity⁹. The report proposes the option of issuing reasoned opinions to the Commission, Council and the European Parliament at two different points in time during the decision-making process:

- within six weeks of the date of the European Commission transmitting a proposal for European legislation or
- within the deadline for the conduct of the conciliation procedure between representatives of the European Parliament and the Council to resolve disagreements on legislative proposals between the two institutions.

⁹ See Conv 286/02, Conclusions of Working Group I on the Principle of Subsidiarity, 23 September 2002.

Finally, the group proposes that national parliaments should be granted a limited right to refer the matter to the Court of Justice after the proposal has been adopted. This means that only national parliaments which have issued reasoned opinions in the early phase would be able to refer the matter to the Court of Justice.

Exactly what should be the consequence of issuing a reasoned opinion declaring that the principle of subsidiarity had not been complied with depends on how many national parliaments do issue an opinion. If a *significant* number of national parliaments (at least 1/3) issue reasoned opinions, the report suggests that the Commission be asked to "reconsider" its proposal. However, if only a limited number of parliaments do, the Commission must give the issuing parliaments further specific reasons why the proposal complies with the principle of subsidiarity.

Gisela Stuart's working group broadly welcomes this model. The first draft report from Gisela Stuart's working group does however refine the proposals as follows¹⁰

- 1) issuing reasoned opinions should have "more teeth", requiring the Commission not only to "reconsider" its proposal, but perhaps also to withdraw it for a short period while "reconsidering" it.
- 2) the right of appeal to the Court of Justice should not be restricted to those national parliaments which had activated the "early warning mechanism".
- 3) Each national parliament should have only one "voice" in the early warning process to avoid giving advantages to countries with a bicameral system.

National parliaments' scrutiny of their government's European policy

Another key issue regarding the role of national parliaments in the EU which has been the subject of debate in the Convention concerns ways of enhancing national

¹⁰ Working document 32, Draft final report of working group IV on National Parliaments, 7 October. The final report is expected to be adopted at a working group meeting on 22 October.

parliaments' scrutiny of their government's European policy. This debate has taken place exclusively in the working group of Gisela Stuart (IV).

The draft report of Gisela Stuart's working group contains no concrete recommendations on how national parliaments could exercise this scrutiny. This is fundamentally a national prerogative. Instead, it suggests leaving it to a reformed COSAC to draft a non-binding *code of conduct* setting out *minimum standards* for effective parliamentary scrutiny of governments.

The draft report does however identify a number of factors that are believed to be important for effective parliamentary scrutiny.

- the timeliness and quality of information
- regular contacts and hearings with Ministers before and after Council meetings
- active involvement of the standing committees of the parliaments in the scrutiny process
- regular contacts between national parliamentarians and MEPs
- availability of supporting staff, including the possibility of a representative office in Brussels

Incidentally, these indicators seem to fit in well with the ideas contained in the proposal for the reform of COSAC from the Danish Presidency.

More rapid information and more openness

Rather than propose concrete improvements in national scrutiny systems the working group has chosen to focus its efforts on examining whether certain aspects of the *legislative procedures of the EU* and its working methods create difficulties for national parliaments' scrutiny of their governments.

Rapid access to information and more openness and transparency are key words in the recommendations of the draft report from working group IV.

It is suggested, inter alia, that in future the European Commission (if requested by national parliaments) shall forward to the national parliaments new proposals for legislation and consultative documents at the same time as they are transmitted to

the Council. To this end the report proposes various amendments to the Amsterdam Treaty Protocol.

It further recommends that the Council working groups do not acknowledge "preliminary agreements" on legislative proposals within the first 2/3/4 weeks of the Commission making its proposal, thereby giving national parliaments a proper opportunity to debate and formulate their opinion on the proposals and, ultimately, influence governments prior to meetings in the Council.

Finally, it is proposed that openness in the work of the Council be increased to allow parliaments proper scrutiny of their government's actions. It recommends that the Council should meet in public in all cases where it exercises its legislative functions and that records of proceedings should be sent to national parliaments in parallel with their transmission to governments.

COSAC, Congress, Convention

Another issue which has been the subject of much debate as regards the role of national parliaments concerns the question of whether the parliaments should be represented in a new institution at European level.

This idea has also been debated in working group IV, with opposition generally voiced to the idea if the intention is a chamber with legislative powers.

On the other hand the draft report of the working group suggests reforming the present cooperation in COSAC and the establishment of a Congress as proposed by Giscard d'Estaing, the French chairman of the Convention.

The report envisages COSAC as an assembly of national parliaments only with the Congress as a forum gathering representatives of the national parliaments and the European Parliament.

As already mentioned, neither of them should have any legislative powers whatsoever.

According to the draft report, COSAC should have a strengthened role in the exchange of information on "best practice" between the European Affairs

Committees of the national parliaments and, as a new feature, between parliaments' sectoral standing committees.

It is considered important that a reformed COSAC becomes more focused and efficient. In this regard support is lent to the current efforts of COSAC reform initiated by the Danish Presidency which are on the agenda of the COSAC meeting in Copenhagen on 17th-18th October.

The Congress, on the other hand, should be a joint forum for debate between representatives of national parliaments and the European Parliament about the overall political direction and strategy of the EU. The draft report proposes that the Congress be consulted on the state of the Union and its evolution and receive information about the annual and multi-annual programmes of the Council and their implementation. Giscard d'Estaing has proposed that the Congress also plays a part in appointments to certain high political offices in the Union.

The report also proposes to enshrine the Convention in the treaties so that future treaty amendments would also have to be prepared by a Convention.

Finally, it recommends convening ad hoc interparliamentary conferences for representatives of national parliaments and the European Parliament allowing debate on "difficult" issues where the gap between national positions block agreement at a European level. Reform of the Common Agricultural Policy has been put forward as an example of issues for such an ad hoc conference.

Delimitation of EU and member state competence

A final key aspect of Convention debates with an indirect bearing on the issue of the role of national parliaments is the question of delimitation of competence between the EU and Member States.

Working group V has attempted to delimit on the one hand the areas of Union competence (exclusive and shared competence) and on the other the so-called "complementary competence" applicable to the EU in policy areas such as education, culture, public health and industrial policy. Complementary competence is characterized by Member States' parliaments and governments

being the principal legislators. Thus, measures taken by the EU will not, as is normally the case, lead to Member State legislators being excluded from taking action¹¹.

In its first draft report the Christophersen working group therefore proposed that complementary competence be renamed "assisting *measures*", the former not being a case of EU *competence* as such¹². According to the draft report this is rather a case of fundamental national areas of competence, where legislation remains with national parliaments and governments¹³. The EU can merely supplement or complement national legislation with non-binding measures. The draft therefore proposes that the EU may not adopt legally binding acts such as directives and regulations in these areas, but only draft non-binding acts such as recommendations, resolutions, guidelines and programmes¹⁴.

The recommendations of the working group do not as yet determine which areas of cooperation should be defined as "assisting measures"¹⁵. The group does recommend that a new Treaty specifically enumerates areas of exclusive competence, shared competence and where the Union can only adopt "assisting measures".

The Christophersen clause

On the other hand, the working group does not want a list of purely national areas of competence written into the new EU Treaty as EU cooperation should still be based on the principle that what *is not enshrined* in the treaties automatically falls under national competence.

¹¹ If the Union adopts legislation in areas of shared competence, Member States can no longer legislate in the area covered by Union legislation. In the case of exclusive Union competence Member States cannot legislate at all.

¹² The original English version uses the term "assisting measures". Other suggestions such as "supporting measures" may however take over as the new term for complementary competence.

¹³ Working document 30, First draft report, 2 October 2002. The expected date for adoption of the final report by the working group is 30 October.

¹⁴ However, it is necessary to be able to adopt legally binding acts to ensure that a possible financing of the "assisting measures" adopted does not contravene Court of Justice case law. See case C-106/96 of 12 May 1998. The working group proposes the use of "decisions" only.

¹⁵ At the 8 October meeting of the working group it was agreed to define the following as "assisting measures": Employment (TEC Art. 125-130), education and vocational training (TEC Art. 149-150), culture (TEC Art. 151), industry (TEC Art. 157), research and development (TEC Art. 163-173), Transeuropean networks (TEC Art. 154-156) and a new article on good governance in public administrations in Member States.

To ensure that the EU respects the particular identity of Member States in these areas the draft report recommends that a special clause be inserted to specify what are "key areas of responsibility" of Member States¹⁶. Here, the suggestion is to define two different groups of "key areas of responsibility" to be respected by EU institutions:

- *basic structures and functions* such as constitutional structures, national citizenship, military service, language etc.,
- *Fundamental political choices in the public sector and social values in Member States*, e.g. income distribution policy, collection of personal taxes, social benefits, public health services etc.

¹⁶ The report proposes adapting the existing provision of TEU Art. 6 paragraph 3 for this purpose.