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REPORT

on relations between the European Parliament and the national parliaments in
European integration
(2001/2023(INI))

Committee on Constitutional Affairs

Rapporteur: Giorgio Napolitano

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PROCEDURAL PAGE

At the sitting of 15 March 2001 the President of Parliament announced that the Committee on Constitutional Affairs had been authorised to draw up an own-initiative report, pursuant to Rule 163 of the Rules of Procedure, on relations between the European Parliament and the national parliaments in European integration.

At the sitting of 3 May 2001 the President of Parliament announced that she had also referred the matter to the Committee on Legal Affairs and the Internal Market for its opinion.

At the sitting of 31 May 2001 the President announced that she had also referred the matter to the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy for its opinion.

The Committee on Constitutional Affairs had appointed Giorgio Napolitano rapporteur at its meeting of 24 January 2001.

The committee considered the draft report at its meetings of 21 June, 19 November and 18 December 2001 and 22 January 2002.

At the last meeting it adopted the motion for a resolution by 25 votes to 2.

The following were present for the vote: Jo Leinen, acting chairman; Ursula Schleicher, vice-chairman; Giorgio Napolitano, rapporteur; Teresa Almeida Garrett, Pervenche Berès (for Enrique Barón Crespo), Georges Berthu, Guido Bodrato (for Luigi Ciriaco De Mita), Jens-Peter Bonde, Jean-Louis Bourlanges (for François Bayrou), Carlos Carnero González, Richard Corbett, Giorgos Dimitrakopoulos, Olivier Duhamel, Lone Dybkjær, José María Gil-Robles Gil-Delgado, The Lord Inglewood, Sylvia-Yvonne Kaufmann, Alain Lamassoure (for Daniel J. Hannan), Hanja Maij-Weggen, Cecilia Malmström (for Andrew Nicholas Duff), Luís Marinho, Iñigo Méndez de Vigo, Camilo Nogueira Román (for Johannes Voggenhuber), Gérard Onesta, Jacques F. Poos (for Dimitris Tsatsos), Antonio Tajani and Margrietus J. van den Berg (for Hans-Peter Martin).

When the vote was taken on the report as a whole Mr Berthu stated his intention to annex a minority opinion to the explanatory statement pursuant to Rule 161(3) of the Rules of Procedure.

The opinions of the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy and the Committee on Legal Affairs and the Internal Market are attached.

The report was tabled on 23 January 2002.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

MOTION FOR A RESOLUTION

European Parliament resolution on relations between the European Parliament and the national parliaments in European integration (2001/2023(INI))

The European Parliament,

- having regard to the meetings arranged by the Committee on Constitutional Affairs with the European affairs committees of the national parliaments of the Member States and the candidate countries on 20 and 21 March 2001 and 10 and 11 July 2001,
 - having regard to the speech by the Prime Minister of the United Kingdom, Tony Blair, on 9 October 2000 in Warsaw,
 - having regard to the contribution by the XXIVth COSAC in Stockholm on 22 May 2001,
 - having regard to the speech by the Prime Minister of France, Lionel Jospin, on 28 May 2001 in Paris on the future of an enlarged Europe,
 - having regard to the French Senate's report of 13 June 2001 on a second European chamber,
 - having regard to the statement by Federal German Chancellor Gerhard Schröder on 16 June 2001,
 - having regard to the resolution adopted by the Committee of the Regions on 14 November 2001 on the preparations for the Laeken European Council and the further development of the European Union within the framework of the next Intergovernmental Conference,
 - having regard to the contribution by the XXVth COSAC in Brussels on 5 October 2001,
 - having regard to the text adopted by the Follow-up conference on the parliamentary dimension of the European security and defence policy on 7 November 2001 in Brussels,
 - having regard to the Conference of the Presidents of the parliaments of the European Union and the candidate countries on 16 and 17 November 2002 in Stockholm,
 - having regard to the Laeken Declaration on the Future of the European Union,
 - having regard to Rule 163 of its Rules of Procedure,
 - having regard to the report of the Committee on Constitutional Affairs and the opinions of the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy and the Committee on Legal Affairs and the Internal Market (A5-0023/2001),
- A. whereas the Declaration on future of the Union annexed to the Treaty of Nice cites the role of the national parliaments as one of four issues to be addressed and stresses its importance and topicality,
- B. whereas the democratic deficit is likely to become more acute in the Union because of lack of progress on democratic scrutiny of the integration process and recent

developments in a number of areas,

- C. concerned at the serious imbalance that has arisen between the powers conferred on executive institutions and technical bodies and the scope afforded to the parliaments as a whole to participate in and scrutinise the legislative decisions and political choices of the Union,
 - D. whereas it is necessary to strengthen the parliamentary component of the European institutional system in order to remedy the democratic deficit and ensure greater democracy in the Union,
 - E. whereas the Member States' power of ratification (either by their national parliaments or by referendum) is not affected by the Convention established by the Laeken European Council,
1. Is convinced that the concerns of the national parliaments with regard to the European Union make it necessary to define better and more clearly their power vis-à-vis their respective governments and the European Union, in particular regarding:
 - making use of their power vis-à-vis their respective governments,
 - guidance of national ministers and governments in their work in the Council,
 - monitoring by the national parliaments of the positions of national ministers and governments in the Council,
 - guidance by national parliaments of the implementation of European policy in the Member States, particularly with regard to European programmes and European funds,
 - monitoring by national parliaments of the implementation of European policy in the Member States, particularly regarding the effects of such policy and the financial management of funds allocated by the EU,
 - national parliaments' guidance and monitoring of the correct implementation of European directives and regulations,
 - national parliaments' own tasks in terms of intergovernmental policy and constitutional matters,
 - cooperation between the national parliaments and the European Parliament;
 2. Points out that the European Parliament does not see itself as the exclusive representative of the citizens and guarantor of democracy in relations with the other Union institutions; it does not concern itself exclusively with acquiring greater powers, ignoring recognition of the role of the national parliaments;
 3. Points out that the peoples of the Union are represented to the full by the European Parliament and the national parliaments, each in its own realm; consequently the necessary parliamentarisation of the Union must be founded on the broadening of the European Parliament's powers vis-à-vis all the Union's decisions and the strengthening of the powers of the national parliaments vis-à-vis their respective governments;
 4. Points out that the Treaty of Maastricht and the Treaty of Amsterdam have paved the way for this parliamentarisation;
 5. Stresses once more that in order for the necessary democratisation and parliamentarisation to take place, codecision by the European Parliament is essential in all legislative areas;

6. Calls on national parliaments to use fully their power of scrutiny in all cases where there is no codecision;
7. Notes with concern that the parliaments elected by the people at national and European elections must jointly ensure that the governments do not create new intergovernmental rights and instruments from which the parliaments are excluded, e.g. 'open coordination' or 'co-regulation';
8. Calls for membership of the European Parliament to be incompatible with the holding of a seat simultaneously in a national or regional parliament;

Strengthening the powers of the national parliaments vis-à-vis their governments

9. Hopes that the protocol on the role of the national parliaments annexed to the Treaty of Amsterdam will be amended, as requested by the COSAC meeting in Versailles, as far as advance information for the national parliaments and the possibility of their intervening during the preparation of European legislation via their national governments in the Council are concerned;
10. Proposes that information on best practices used in the national parliaments should be adequately disseminated and optimal conditions established for information-exchanging, for mutual understanding of each others competences and activities and recourse to new technologies;
11. Affirms its willingness to contribute to an in-depth consultation of the national parliaments in the context of the discussion and adoption of the European Commission's programme with a view to ensuring that the principle of subsidiarity is adhered to in the Community legislative process;
12. Points out that COSAC is an important vehicle for exchanges and convergence between the national parliaments and the European Parliament, the full potential of which has not yet been exploited; is convinced, however, of the need to guarantee representation on the EP's delegation to COSAC, which takes greater account of political pluralism;
13. Proposes that cooperation between the parliamentary committees of the national parliaments and the European Parliament in all European integration-related sectors should be developed and placed on systematic footing, not least in the areas of the common foreign and security policy, economic and monetary Union, the area of freedom, security and justice and constitutional affairs;
14. Emphasises that it would be desirable to step up and improve the exchange of information between the European Parliament and the national parliaments in relation to questions concerning the CFSP or the European Security and Defence Policy, in order to make more extensive dialogue between the parliaments possible;
15. Proposes that an interparliamentary agreement be drawn up between the national parliaments and the European Parliament as a means of organising this cooperation in a systematic way and which might include:
 - outline reciprocal commitments with regard to programmes of multilateral or bilateral meetings on European issues of common interest or of a general or sectoral nature,

- the exchange of information and documents;
16. Notes that within the framework of meetings of European political groups and political parties more frequent and more regular contacts are being established within European groupings of all political persuasions and welcomes the fact that these meetings are being placed on a more systematic footing and can thus strengthen and enrich democratic life at both national and European level; stresses the importance of a statute for European political parties, since these have a central role to play in the EU's movement towards greater democracy;

The decision-making process must not become more cumbersome

17. Considers that the creation of a chamber composed of representatives of the national parliaments would not solve the problems experienced by some parliaments in scrutinising the European policy of their governments in particular, but would only serve to prolong the Community legislative procedure, to the detriment of democracy and transparency;
18. Points out, furthermore, that dual legitimacy – a Union of States and peoples - already finds expression at European level in the legislative sphere through the participation of the Council and the European Parliament; that is not advisable to make the decision-making process more cumbersome or more complicated and that is necessary to avoid a confusing superposition in the respective roles of European and national institutions;
19. Highlights the importance of the agreed participation of representatives of the European Parliament and national parliaments in the future Convention on a constitution for the European Union; hopes that vigorous debate will lead to their agreeing on a common approach at the Convention, so as to speak as far as possible with one voice in conveying the views of the peoples of Europe with regard to our political future

Preparation of the future of the European Union by the Convention

20. Welcomes the institutionalised participation of the national parliaments, the European Parliament, the Commission and representatives of the heads of state and government in the Convention, a development which makes it possible to be optimistic about effective preparations for reform of the treaties;
21. Is in favour of the emergence - even at this stage through the Convention established by the Laeken European Council - of a constituent power exercised jointly by the national parliaments, the Commission, the European Parliament and the governments of the Member States, which would not only allow effective preparation of reform of the treaties but would also give European integration efforts greater legitimacy and would thus mark a new chapter in the role of parliaments in European integration by introducing a major institutional innovation;
22. Instructs its President to forward this resolution and to the Council and Commission and the Heads of State or Government and the parliaments of the Member States and the candidate countries.

EXPLANATORY STATEMENT

I. INTRODUCTION

1. The role of the national parliaments – and hence also relations between the European Parliament and national parliaments – have once again become a topical issue for a number of reasons. The Nice European Council, in the Declaration on the future of the Union annexed to the Treaty, stated that it was one of the four topics to be placed at the centre of a vast debate, destined to result in a new Intergovernmental Conference being held. The statement can be interpreted in a number of ways; it may reflect views which were not clearly defined by the Heads of State and Government among themselves and which diverge as regards the institutional architecture and overall development of the larger Union which is about to come into being. A serious effort to clarify this situation is therefore needed.
2. In essence, the key issue is the more general question as to how democratic the integration process is. Is the ‘democratic deficit’ in the Union being reduced or might it become worse? There is growing unease in the national parliaments regarding the inadequate progress made so far with regard to the exercise of democratic control over the integration process and recent developments in various fields in this respect. And they rightly fear that the imminent major enlargement may make the problem even more complex and acute. Similar dissatisfaction and concern are being expressed by the European Parliament.

It should be added that it would also be a serious mistake to imagine that the citizens of the Union are not aware of the problem.
3. In fact, the loss of consensus in public opinion and the growing disaffection, disappointment and distrust regarding the development of the Union cannot be explained solely by the shortcomings or unconvincing actions of the Union in its tangible policies and its responses to major demands and expectations as regards the life and future of citizens, families and the population. The spread of such feelings is also due to a sense of alienation, the serious difficulties encountered in understanding and participating, a fear of helplessness in the face of imposed decisions which cannot be influenced or controlled.
4. We are well aware that in order to regain consensus and support in the Member States, it is essential, at this stage, to stress ‘what we want to achieve together’, the issues to be tackled and the solutions to be found at European level, projects to be realised gradually by means of a larger Union and its different possible structures. But this debate on ‘content’ is inseparable from that on ‘the shape’ of European integration, on ‘how’ to govern the developments, the institutions and their functioning. The questions regarding what kind of Union we want – in an ultimately unified Europe – are an indivisible whole and require an overall design with which the citizens can feel at home, not least because it guarantees more democracy.

II. 'THE DEMOCRATIC DEFICIT' AND THE ROLE OF PARLIAMENTS

5. The shortcomings in the democratic legitimacy of the integration process have long been referred to as the 'democratic deficit'. Whether or not we wish to continue using this term, we should bear in mind that it is not an abstract or purely polemic definition. In the Neyts-Uyttebroeck report, adopted by the European Parliament in June 1997, the tangible elements of this deficit were analysed. This analysis is to a great extent still valid, and we shall therefore not repeat it in this new report, which will confine itself to updating the situation and restating the role of parliaments in European integration and in the life of the Union, taking into account recent developments – from the Amsterdam Treaty to the Nice Treaty, and new prospects.
6. It should of course be stressed that the issue of the growth of democracy in the Union is broader than that of the recognition and enhancement of the role of parliaments. Other fundamental aspects are the growth of stronger political and social players at European level – parties, trade unions, associations (NGOs) and movements representing public opinion – and the increase in the number of channels for citizen participation in the debate on the state of the Union and the creation of a public area for communication at European level.
7. As was rightly pointed out in a study drawn up for the XXIVth COSAC, "we conceive the European Parliament and the 'parliamentarisation' of the Union's decision-making system through both the European and the national parliaments as one but an essential and necessary tool for building a legitimate European order". The institutions of representative democracy are still an essential pillar of democracy in our countries at both national and European level: they are going through a phase of serious difficulty for reasons which we cannot go into here and which are linked not only to the peculiarities of the process of European integration but also to profound changes in our society, in communication technologies, in political competition and in the sensibilities and behaviour of individuals and groups. But every effort must be made to adapt the identity and operation of the institutions of representative democracy to these changes, above all the parliaments, by revitalising their functions and powers.
8. The Union is based on a two-fold democratic mandate, as a Union of States and a Union of peoples. The European Parliament and the national parliaments, since they are both directly elected by the citizens, are equally representative of the peoples in the European Union. The systems of parliamentary democracy in each of the Member States of the Union have deep historical roots and are based on a complex fabric of political and social relations; the solidity of national democratic frameworks and their closeness to the citizens are an essential asset which can in no way be ignored in pursuing the 'parliamentarisation' of the Union. It must take an original path, resting on two pillars, the European Parliament and the national parliaments. The European Parliament must be fully aware of this, taking care not to cultivate a simplistic attitude, increasingly seeing itself as the exclusive representative of the citizens and guarantor of democracy in relations with the other Union institutions. It must not concern itself exclusively with acquiring greater powers, ignoring recognition of the role of the national parliaments.

9. On the other hand, it would be totally wrong to consider that democracy can be guaranteed and exist only on national bases; that a development in democracy, in the institutional and political sense, is not feasible also at European level; that it is impossible to remedy the Union's democratic deficit also by strengthening the European Parliament and hence this strengthening should not only be discouraged but a process of restoring powers to national parliaments should be embarked upon.
10. We should be very conscious of one basic fact: it is the parliaments as a whole, and not some but not others or only the national parliaments but not the European Parliament, which are suffering from a still serious imbalance between the powers assigned to the Council and to the Commission and their possibility of participating in and monitoring the process of adopting legislative decisions and political guidelines for the Union. There must therefore be collaboration, a common vision, a joint commitment, without prejudice to the respective separate functions. We repeat, with even greater conviction, what the Neyts-Uyttebroeck report stated: The quality of relations between the European Parliament and the national parliaments is of fundamental importance for the overall democratic nature of the Union. If they became rivals democracy would definitely suffer. If, on the other hand, they recognise that they have a joint mission, democracy will win.

III. RECENT DEVELOPMENTS AND ULTIMATE RESTRICTIONS AS REGARDS 'PARLIAMENTARISATION'

11. The most significant developments in the process of parliamentarisation in the period following the above-mentioned report of 1997, starting with the Amsterdam Treaty, are as follows:
- the extension of the European Parliament's power of legislative codecision and its greater participation in the investiture of the Commission President,
 - the formal introduction, in Protocol No 9, of the right of national parliaments to be informed in good time about the Commission's legislative proposals, as defined by the Council, and about consultation documents drawn up by the Commission,
 - the recognition, in the same Protocol, of the role of COSAC.

Without underestimating these results, we should nevertheless note:

- as far as the European Parliament is concerned, matters in which qualified majority voting is allowed remain excluded from its power of codecision; the Nice Treaty has not put an end to this asymmetry but has reinforced it. Even the problem of the definition of legislative acts, or the ranking of Community legislation, has still not been resolved.
- as far as the national parliaments are concerned, the Amsterdam European Council's acceptance of calls for the setting of minimum time limits for the examination, above all, of legislative texts, was partial and hence did not correspond, in various aspects, to the requests made by COSAC and the European

Parliament.

12. A continuing source of dissatisfaction and deep concern is the fact that certain fields evade any guidance or control - by either the European Parliament or the national parliaments. They are the fields already mentioned in the report and resolution of June 1997: in addition to agricultural policy, a traditional sphere of intervention, others which have developed more recently, i.e. foreign policy and common security, home affairs and justice, economic and monetary policy in the context of the EMU. In this area the Treaty of Nice has not made any progress, whilst it has sanctioned particularly innovative decisions, at strictly intergovernmental level, such as those concerning the introduction of a political and military structure for common defence.
13. In the more general sphere of institutional balance, the tendency to undermine the Community method has become obvious and worrying, and the intergovernmental dimension in steering the Union has been strengthened, as expressed most clearly in the emphasis given to the role of the European Council.

The serious limits, as regards both transparency and monitorability, of the Council's activities, not least as a legislator, were merely touched upon in a few provisions of the Amsterdam Treaty. The Council continues to adopt legislative acts in camera.

14. Positive developments, in the sense of greater democratic openness, are the wording and hence the provisions of Article 255 of the EC Treaty on access to documents, and guarantees for the European Parliament are reinforced by the new wording - in the Treaty of Nice - of provisions on enhanced cooperation.

IV. THE ESSENTIAL AREA OF RELATIONS BETWEEN NATIONAL PARLIAMENTS AND NATIONAL GOVERNMENTS

15. It is in the interests of both the European Parliament and the national parliaments that the latter should be allowed to carry out more effectively their task of guiding and monitoring their respective governments as members of the Council of the Union. This is the fundamental way of ensuring the participation of national parliaments in the legislative work of the Union, as well as in the development of common policies.
16. The national parliaments must be able to intervene when European legislative texts are being drawn up, by expressing opinions and making contributions of which the respective governments undertake to take account, even though they cannot serve as binding negotiating briefs. From this point of view, the Amsterdam Protocol facilitated progress, but inadequate progress, as emerged from the replies to the questionnaire drawn up in preparation for the XXIIIrd COSAC.

The COSAC meeting in Versailles therefore formulated requests to modify the Protocol, with particular reference to the electronic transmission of documents and legislative proposals to every national parliament, as well as proposals for measures to be adopted under Titles V and VI of the TEU (foreign policy and common security and police and judicial cooperation). The deadlines already laid down should also be valid for proposals in the sphere of the CFSP. These requests were not taken into consideration at the IGC which concluded in Nice: the European Parliament can

undertake to back them with a view to the next IGC and to request that from now on these procedures should actually be put into practice.

17. The discussion paper 'The national parliaments and the European Union' drawn up by the Swedish Presidency for the relevant COSAC working party (May 2001) set out an updated framework of procedures and initiatives to allow the European affairs committees of the national parliaments, and the national parliaments themselves, to influence Community legislation and the Union's policy, with their respective governments acting as interlocutors. The examination of texts, the formulation of opinions and proposals, comparative studies of the positions of the governments and the monitoring of their behaviour are carried out with widely varying degrees of efficiency from country to country. There is still very wide scope for the development of these functions – not least by means of the dissemination of best practices – and the European Parliament intends to contribute to the creation of even more favourable conditions so that these functions can be carried out fully. Studying, and thus disseminating, best practices may turn out to be very useful, although each national parliament's own way of doing things must of course be taken into account.
18. There are wide variations in the procedures for debate and deliberation in the individual national parliaments, as regards the transposition of Community directives. The dissemination of best experiences is also important in this field.
19. Finally, the problem of transmitting adequate information to the national parliaments on the activities of the conciliation committees and the 'commitology' procedures must be examined closely.

V. NEW DEVELOPMENTS IN RELATIONS BETWEEN THE EUROPEAN PARLIAMENT AND NATIONAL PARLIAMENTS

20. In recent years relations between the European Parliament and national parliaments have improved and developed considerably: exchanges of visits and delegations, bilateral meetings between the corresponding committees of the European Parliament and the individual national parliaments, multilateral meetings between these committees in the European Parliament and all the national parliaments together, periodic meetings between the Committee on Constitutional Affairs of the European Parliament and delegations from the national parliaments during the 2000 IGC and subsequently (with representatives of the national parliaments being invited to all the meetings of that committee), etc. We must continue along this path, not forgetting matters such as exchange of documents and information and cooperation for the purpose of acquiring in-depth knowledge of topics of common interest. The number of meetings between the committees of the European Parliament and of the national parliaments responsible for home affairs and justice and the committees responsible for foreign affairs, security and defence and for Economic and Monetary Union policies should in particular be increased.
21. We should consider the possibility of a proper interparliamentary agreement to make various forms of consultation and cooperation between the European Parliament and national parliaments systematic and programmatic. This would not be a formally binding agreement like the framework agreements between the Union's institutions. It

might however also define the obligations and rules of conduct shared by the parties to that agreement and be conducive to a climate of mutual trust and to more systematic and increased development of the cooperation between the European Parliament and the national parliaments. This cooperation would be based on a principle of complementarity which would bear in mind the diversity of the various negotiating briefs and points of view and respect the autonomy of each institution.

The place in which to conclude an agreement of this kind might be the Conference of Presidents of the Parliaments of the European Union.

22. COSAC is an important forum for consultation and discussion, not only between the national parliaments but also between them and the European Parliament. The Amsterdam Protocol enabled it to make its personal contributions to the Union's institutions, with particular reference to the area of freedom, security and justice and the application of the principle of subsidiarity. The political authority and stability throughout each electoral period of the national representative bodies might enhance the importance and functionality of this institution.
23. Adequate consensus has still not been reached on the possibility of calling a conference of parliaments (national and European), mentioned in Declaration No 14 annexed to the Maastricht Treaty.
24. Important tasks are being carried out and even more could be carried out by the Conference of Presidents of the National Parliaments of the European Union. It was with this in mind that we proposed, in paragraph 21, that the Conference be given an important role to play in the case of an 'interparliamentary agreement'.
25. A new field of initiatives is that of meetings between those responsible for the various political families in the European Parliament and the national parliaments. This may be a way of achieving what has hitherto largely been lacking: efforts towards reciprocal information and understanding between the representatives of similar political forces in the European Parliament and the national parliaments, in order to bring their perceptions and points of view closer together. The undertaking to strengthen the role of the European political parties, which emerged from the Nice European Council, is also promoting moves in this direction.

VI. OTHER HYPOTHESES UNDER DISCUSSION

26. The possibility of a second chamber consisting of national parliaments is still being proposed by a number of national parliaments, but without the consensus of many others. The proposal is based on the conviction that this could strengthen the democratic legitimacy of the Union and respond to the concern among national parliaments that their influence over the decision-making process at European level and developments in European integration is being further reduced. As this document shows, we believe that these concerns can be resolved without the creation of a second chamber.

A second chamber would be a new institution not directly elected by citizens and its effect would be further to weigh down the already complex institutional structure of

the Union. The organisational problems of a chamber the members of which are also members of the national parliaments have already been experienced and appear to be such as to lead some of the advocates of a second chamber to provide for the number of part-session days during the year and, in short, its tasks, to be reduced to a minimum. But even on the basis of apparently moderate proposals for the tasks and powers of a second chamber – preliminary scrutiny of every text from the point of view of the application of the principle of subsidiarity, supervisory or consultative powers with regard to matters coming within the current second and third pillars – there would be a confused overlapping of the role of the hypothetical second chamber and the roles of other institutions, such as the European Parliament and the national parliaments themselves.

It is necessary, on the contrary, to strengthen the powers of the national parliaments vis-à-vis their governments, to consolidate and increase the role of the European Parliament with regard both to legislative codecision and to its functions of political guidance and supervision, and to create closer and more effective cooperation between the European Parliament and the national parliaments, which includes giving them a new common power, as will be explained in part VII: this is the best route to follow.

27. The suggestion, put forward by the French Prime Minister Mr Jospin, for a 'permanent conference of parliaments or a congress' raises a number of questions, including the fact that it seems to ignore the current and potential role of an already existing institution such as COSAC. With regard to the future procedures for the ratification of the Treaties, it is still too early to put forward partial solutions to the problem.
28. The possibility of one or more representatives of each national parliament taking part, alongside the relevant minister, in legislative meetings of Councils of Ministers, would entail the risk indicated in the above-mentioned report of the Swedish Presidency for the XXIVth COSAC and one which is difficult to overcome, i.e. that the different roles of the national government and of the national parliament would become confused, leading to serious distortions in relations between governments and parliaments in the countries of the Union.

VII. TOWARDS AN EXTREMELY IMPORTANT INNOVATION IN THE ROLE OF PARLIAMENTS

29. The participation of national parliaments, with 30 representatives, and of the European Parliament, with 16 representatives, in the body responsible for drawing up the Charter of Fundamental Rights of the Union was an original and extremely valuable experience, which opens the way for an extremely important innovation as regards the role of parliaments in the creation of a larger Union. The Convention was marked by the recognition, on an equal footing, of the contribution of four institutions – alongside the parliaments, national governments and the Commission were also involved – in drawing up a highly significant text designed to be incorporated in the Treaties. It symbolised the recognition of shared responsibility in the exercise of 'constituent power', which had hitherto been reserved for governments alone.
30. In the Declaration on the future of the Union annexed to the Treaty of Nice, the Heads of State and Government outlined a process which should lead to a new

intergovernmental conference being held by 2004, without a repetition of the method for preparing the 2000 IGC, which has outlived its usefulness. The European Parliament is convinced – as it stated in its resolution of 31 May – that a process of this kind must be focused on a body such as the tried and tested Convention, whilst of course taking into account the fact that the task is different from that of drawing up the Charter of Fundamental Rights and the obligation, under Article 48 of the Treaty, for a definitive version of texts entailing revisions of the Treaties, to be drawn up by a conference of representatives of the governments of the Member States.

31. The new Convention – the composition of which must also include the four institutions involved in drawing up the Charter of Fundamental Rights – will be called upon to carry out tasks including the drafting of the text of an actual European constitution. Although this too must be submitted for assessment and final decision by the IGC, there is the prospect of going beyond the traditional pattern of the international treaties signed by governments and ratified by parliaments.
32. This would mean moving towards assigning to the national parliaments – who hitherto have merely been called upon to say yes or no during ratification – and the European Parliament – which hitherto has not even been entitled to give its assent to revisions of the Treaties – joint constituent power, i.e. a constituent power shared with the national governments. This would mark a new chapter in the role of parliaments in European integration.

MINORITY OPINION

by Mr Georges BERTU (NI)
member of the Committee on Institutional Affairs

The report on relations between the European Parliament and the national parliaments cannot help to solve the crisis of democratic legitimacy facing the European Union because it is based on the same thinking as helped create this crisis.

It in fact confines the national parliaments to a role of scrutinising their respective governments, a role which has been curtailed ever since the extension of qualified majority voting in the Council broke the link between European decisions and each people taken separately. It also wants to widen the powers of the European Parliament, without seeing that legitimacy is primarily granted by citizens at national parliamentary level.

In order to revitalise democracy in Europe, it is essential to give each people a visible power of decision at European level. Consequently, in future we must see the place of the national parliaments as being at the centre of the decision-making process, rather than on the periphery. The Nice European Council in fact appears to have had an intuition of this when it placed 'the role of the national parliament in the European architecture' (and not on the fringes of that architecture) on the agenda for the next IGC.

With a view to exploring this idea in greater depth, the report we have submitted to the Intergroup SOS Democracy proposes among other things 'parliamentarising' the Luxembourg compromise, giving the national parliaments responsibility for monitoring subsidiarity, setting-up sectoral assemblies of the national parliaments and devising new methods of working in networks.

Today, the European Union finds itself at crossroads. It must show that is capable of using its imagination and of achieving democratic renewal. Unless it does so, it will become submerged in a technocratic process cut off from the people.

6 December 2001

OPINION OF THE COMMITTEE ON FOREIGN AFFAIRS, HUMAN RIGHTS, COMMON SECURITY AND DEFENCE POLICY

for the Committee on Constitutional Affairs

on relations between the European Parliament and the national parliaments in the construction of Europe
(2001/2023 (INI))

Draftsman: Luís Queiró

PROCEDURE

The Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy appointed Luís Queiró draftsman at its meeting of 20 March 2001.

It considered the draft opinion at its meetings of 9 October and 3 to 4 December 2001.

At the latter meeting it adopted the following conclusions with 2 abstentions.

The following were present for the vote: Baroness Nicholson of Winterbourne, acting chairman; William Francis Newton Dunn, vice-chairman; Luís Queiró, draftsman; Alexandros Alavanos (for Pedro Marset Campos), André Brie, Carlos Carnero González (for Alexandros Baltas), Véronique De Keyser, Pere Esteve, Monica Frassoni (for Daniel Marc Cohn-Bendit), Ingo Friedrich, Per Gahrton, Gerardo Galeote Quecedo, Cristina García-Orcoyen Tormo (for The Lord Bethell), Jas Gawronski, Vitalino Gemelli (for Gunilla Carlsson), Vasco Graça Moura (for John Walls Cushnahan), Efstratios Korakas, Jan Joost Lagendijk, Armin Laschet (for Michael Gahler), Rolf Linkohr (for Magdalene Hoff pursuant to Rule 153(2)), Hanja Maij-Weggen (for Alfred Gomolka), Erika Mann (for Mário Soares pursuant to Rule 153(2)), Hugues Martin, Miguel Angel Martínez Martínez (for Jan Marinus Wiersma pursuant to Rule 153(2)), Linda McAvan, Emilio Menéndez del Valle, Sami Naïr, Raimon Obiols i Germa, José Pacheco Pereira, Jacques F. Poos, Mechtild Rothe (for Klaus Hänsch), Jannis Sakellariou, José Ignacio Salafranca Sánchez-Neyra, Jacques Santer, Giacomo Santini (for Amalia Sartori pursuant to Rule 153(2)), Konrad K. Schwaiger (for Alain Lamassoure pursuant to Rule 153(2)), María Sornosa Martínez (for Hannes Swoboda pursuant to Rule 153(2)), Ioannis Souladakis, Gary Titley, Paavo Väyrynen, Matti Wuori and Christos Zacharakis.

SHORT JUSTIFICATION

A. INTRODUCTION

The key aim of this opinion is to review the relations between the European Parliament and the national parliaments in the field of the CFSP/CESDP and the best way of rectifying the current shortcomings of the EU Treaty with regard to the parliamentary dimension of these two policies in the wake of the Treaty of Nice.

Chapter 19 of the Treaty of Amsterdam focused on the role of the national parliaments and introduced a protocol on the role of the national parliaments in the EU, which is annexed to the EU Treaty and the Treaties establishing the EEC, the ECSC and Euratom. However, none of these provisions concern Title V of the Treaty on European Union, which means that provisions relating to the CFSP are currently excluded from this information. As far as CFSP/CESDP are concerned, the national parliaments continue to have and to exercise powers, particularly with regard to military expenditure and operational issues concerning their national armies. In our view, it is therefore clear that in order to perform their duties properly, *their right to receive information on all issues concerning the EU common foreign and security policy and in particular all CFSP instruments provided for under Article 12 of the EU Treaty* (the principles and general guidelines for the CFSP, common strategies, joint actions and systematic cooperation between Member States) *needs to be strengthened*.

At present, although the level of respective satisfaction is far from ideal, parliamentary control of the CESDP is on two levels: European (for crisis prevention and civilian crisis management, controlled by the EP) and national (for military crisis management, controlled in particular by the national parliaments). In practice, this involves the interaction of several instruments and resources at the various stages of planning, decision-making and decision implementation; this interaction is sometimes supranational and European and other times intergovernmental and national. There is therefore no single collective responsibility for controlling EU crisis management, but rather two different levels of control which are the responsibility either of the EP or of the national parliaments. Accordingly, we believe that if the European and national levels were carefully coordinated, appropriate control and parliamentary monitoring could be guaranteed, both horizontally (covering all issues and stages of the CESDP) and across the board (with regard to inter-pillar actions and the European and national resources and measures required to implement this policy).

Ultimately, it could be concluded that at present the European Parliament is informed of and debates the CESDP, whose administrative budget it adopts, while the national parliaments vote for its resources without having any real role in its development. This situation clearly needs to be remedied.

B. HOLDING OF A PARLIAMENTARY CONFERENCE ON THE CESDP INVOLVING THE EP AND THE NATIONAL PARLIAMENTS OF THE MEMBER STATES AND APPLICANT COUNTRIES

According to the rapporteur, and in the current institutional context, the best way to implement the proposals set out by the EP in its resolutions of 15 June and 30 November 2000 - namely, to hold a regular exchange of views between the various parliaments - and to ensure that the CESDP is monitored in an appropriate manner by the EP and the above-mentioned national parliaments, would be to extend the meetings which have so far been held between the chairmen of the foreign affairs and defence committees of national parliaments and the EP, *and to hold at regular intervals a Parliamentary Conference on the CESDP*. The chairmen of the committees on foreign affairs and defence of the national parliaments and the EP would, as a matter of course, participate in the Conference, as would other members of the committees concerned, up to a maximum of six members per country, together with an equal number of EP representatives. Parliamentary representatives of the applicant countries and non-EU NATO members could also participate in the conference, under specific conditions. This formula, the democratic and parliamentary legitimacy of which is indisputable, has the advantage of providing a flexible framework for the meetings of all parliamentary bodies affected by the establishment of the CESDP. The regular holding of Parliamentary Conference meetings on the CFSP would be an effective way to allow all these parliamentary bodies to carry out their work in accordance with their responsibilities. It should, however, be stressed that this formula does not cover what are known as the residual functions of the WEU (especially arms cooperation and the mutual assistance provisions of Article V of the amended Brussels Treaty), which have not been transferred to the European Union. Moreover, we must continue to ensure that the associated member countries, observers and associated partners in the context of the WEU remain closely linked to the development of the CFSP.

CONCLUSIONS

The Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy calls on the Committee on Constitutional Affairs, as the committee responsible, to incorporate the following points in its motion for a resolution:

1. Draws attention to the fact that responsibility for parliamentary monitoring of European security and defence policy is shared between the European Parliament and the national parliaments on the basis of their respective rights and duties under the relevant treaties and constitutions;
2. Notes that the national parliaments of the 15 Member States exercise parliamentary control over their governments' security and defence policies, so long as the ESDP continues to function solely as a form of intergovernmental cooperation, and that military expenditure and the deployment of national armed forces continue to fall within the exclusive competence of the national parliaments. Emphasises that the national parliaments should make the best possible use of these two essential means of exercising control over their governments;

3. Emphasises that the European Parliament, as the only EU body directly elected by the citizens of Europe, shares with the national parliaments control over the CFSP and hence, also, over the ESDP; recalls that the European Parliament currently performs its supervisory role by means of the right to be informed and the right to be consulted conferred on it by Article 21 of the Treaty on European Union and by means of its budgetary powers in relation to the CFSP budget which it exercises as part of the budgetary authority by virtue of Article 28 of the Treaty on European Union and the interinstitutional agreement of 6 May 1999;
4. Emphasises that it would be desirable to step up and improve the exchange of information between the European Parliament and the national parliaments in relation to questions concerning the CFSP or the European Security and Defence Policy, in order to make more extensive dialogue between the parliaments possible;
5. Emphasises that the European Parliament, through its Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy, should continue to be regularly informed by the member of the Commission responsible for foreign affairs and by the Secretary-General of the Council/High Representative for CFSP concerning recent developments in the field of CFSP/ESDP and the meetings of the Council;
6. Proposes that, on a regular basis, a Parliamentary Conference on the ESDP be held, to be convened jointly by the parliament of the Member State holding the presidency and by the European Parliament, through its Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy; considers that the chairmen of the committees responsible respectively for foreign affairs, for defence and for European Union affairs of the national parliaments of the Member States and of the applicant states, and of the European Parliament, should take part in this conference; considers, furthermore, that the Conference should be extended to include additional members of the various committees to ensure it is broadly representative of the political spectrum, on the basis of equal representation for the European Parliament; the aim of the Conference would be to review, in conjunction with the Council Presidency, the High Representative for the CFSP and the Commissioner responsible for external relations, the development of the EU common security and defence policy with a view to ensuring appropriate parliamentary monitoring of the policy;
7. Believes that it would also be desirable, under certain conditions, to involve the parliaments of the non-EU NATO members as observers, together with the parliamentary assembly of NATO, in the work of the parliamentary conference on the ESDP.

8 January 2002

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS AND THE INTERNAL MARKET

for the Committee on Constitutional Affairs

on the relations between the European Parliament and the national parliaments in the construction of Europe
(200172023(INI))

Draftsman: Neil MacCormick

PROCEDURE

The Committee on Legal Affairs and the Internal Market appointed Neil MacCormick draftsman at its meeting of 21 March 2001.

It considered the draft opinion at its meetings of 10 July, 27 November 2001 and 7 January 2002.

At the last meeting it adopted the following conclusions unanimously.

The following were present for the vote: Ward Beysen, acting chairman; Rainer Wieland, vice-chairman; Neil MacCormick, draftsman; Paolo Bartolozzi, Janelly Fourtou, Evelyne Gebhardt, Gerhard Hager, Malcolm Harbour, Heidi Anneli Hautala, The Lord Inglewood; Kurt Lechner, Neil MacCormick, Toine Manders, Manuel Medina Ortega, Felekna Uca, Diana Wallis and Stefano Zappalà.

SHORT JUSTIFICATION

1. Concern about respect for subsidiarity and about a deficit in democratic controls is one driving force behind calls for improved interparliamentary relations within the European Union. On the one hand, electoral turn-out for European parliamentary elections tends to be low in all member states relatively to national and regional parliamentary elections, and turn-out has been declining election-by-election since the introduction of direct elections to the Parliament. On the other hand, the increasing volume of law and regulation that has its origin at Union level has reduced the real scope for law making in what remain at least in theory sovereign legislative bodies of the member states.
2. Member State Parliaments may find themselves obliged to transpose large bodies of law that their members were unaware of during the European legislative process, and of which they may not approve, while their legislative discretion in other domains is limited by the obligation to respect the community *acquis*.
3. This relative diminution in power of Member State Parliaments is at its most alarming in those areas which are subject to qualified majority voting in Council, but not to co-decision with the European Parliament. Democratic self-government requires legislative decision-making to take place in public after public deliberation by elected legislators. The Executive branch of government has properly the role of preparing legislative programmes and bringing these before the legislature for its consideration, and for rejection or adoption by it, with or without amendment.
4. In the domains which are now subject to decision by the intergovernmental method in the second and third pillars (and even on crucial matters including agriculture and fisheries in the first pillar), legislative democracy is severely compromised. Members of the Executive Branch of the several states deliberating in secret become the effective legislature for the Union, without adequate answerability either to the Parliaments of the member states or to the European Parliament.
5. Even where co-decision prevails, deliberation in the Council proceeds in secret, so that the Executive government of each Member State makes its own input to the community legislative process in a way that precludes real answerability to the domestic legislature. The power (often in practice no more than a theoretical power) to dismiss a government after the event is no substitute for the power to control or at least influence the process of law making in its detail during the law-making process.
6. In several member states federal and quasi-federal forms of government exist that allocate to regions or nations internal to the state legislative and executive power in relation to important domains, such as home affairs and justice, education and research, cultural affairs, industrial development, and internal transport. It is extremely important to ensure that there are clear lines of communication in both directions connecting legislatures at this level to the Union legislative process in a way that makes possible prior scrutiny of and comment upon legislative proposals at sufficiently early stage in the process. It is no less true of these legislatures that they are bound by the *acquis*, and that in many domains their legislative activities are affected by the obligation to transpose relevant Directives in a locally appropriate way.

7. One model for future European governance envisages transferring the highest executive power to the Council, while the Commission becomes the highest administrative college. Along side of that, the European Parliament would be transformed into a two-chamber legislature, with the present house much as it is and an upper house comprising members of national parliaments, exercising the revising and stopping power traditionally possessed by senates. This, it is argued, would secure that laws binding on national parliaments would come into existence only by the consent of representatives of those parliaments. Democracy would be better served at both community level and member state level under such an arrangement.
8. Council would, however, be an executive effectively unanswerable to any democratic authority, because its members each hold office by retaining confidence in their own member state parliament, and there can be no collective accountability of the Council as such either to the state parliaments or to the European Parliament, whether in an upper or in a lower chamber. The real transfer of executive power would effectively be to permanent civil servants in COREPER, and Ministers acting on their advice.
9. Further, at parliamentary level, those seconded from member state parliaments would bear such heavy legislative responsibilities that it would be difficult for them to remain closely in touch with the domestic parliament, thus keeping its non-seconded members genuinely alert to legislative developments at community level. Thus the problem would remain how far they should be subject to ex ante instructions from that parliament. This is in effect the same problem as exists at present concerning ex ante scrutiny by national parliaments of decisions by ministers in Council.
10. The Conference of the Community and European Affairs Committees of the Parliaments of the European Union (COSAC) is the form of collaboration which has reached higher relevance in recent years, mostly due to the Protocol on the role of the National Parliaments in the European Union, annexed to the Treaty of Amsterdam. COSAC was born in May 1989 when Presidents of parliaments of Member States agreed in Madrid to reinforce the role of national parliaments in the Community process by bringing together the committees specialised in European Affairs of Member States. Over the years there has been a number of important developments in this structure. In 1991 the Rules of Procedure were adopted.
11. One of the chief obstacles to COSAC's achieving a broader scope in its work is the fact that it can only reach decisions by unanimity; unless there were to be changes to the capacity of COSAC to adopt decisions, it would not be realistic to expect that the aims of the Amsterdam Protocol can be achieved.
12. Moreover, it may be questioned on what democratic basis a selection would be made from among members of national parliaments, whose members have primarily a mandate to represent their own constituents in the national Parliament, to hold the national government to account, and to participate in law-making there. For a 'second chamber' to take on more than an advisory role would be difficult to justify as a way of diminishing a 'democratic deficit' since any system of appointing or electing a subset of MPs would raise as many questions of democratic legitimacy as it would solve, and since each Parliament would presumably retain the right to devise its own scheme of selection or election.

13. Furthermore, the interest and the legitimate concern of regional parliaments would continue as far from any satisfactory resolution as at present if no more were done than to find some way of establishing an additional chamber comprising persons elected or appointed from Member State Parliaments as such.
14. It therefore appears that this model would generate greater problems than those (if any) that it would solve in the way of democratic deficits.
15. Another model proposed by the *Economist* magazine would establish a representative body of members of national parliaments to act not as a regular house of the legislature but as a kind of constitutional council. This body's function would be to control legislation by Council and Parliament according to the criteria of subsidiarity and proportionality. These criteria being matters as much for political as for strictly legal judgement, a politically constructed constitutional council of this kind would, it is said, be a better guardian of the overall constitutional framework than a Court such as the ECJ. There would however be a serious risk of conflict of jurisdictions between such a body and the Court, and it is not clear that a party-political body of this kind would function as anything other than a third house of a legislature comprising Council and Parliament with the Commission continuing to play the part of the executive branch of community government.
16. It is true, however, that there can be risks of conflict between a State's Constitution as interpreted by its highest constitutional court, and the requirements of the Union's 'constitutional charter' as this is construed by the European Court of Justice. Given the existing constitutional pluralism that characterises the Union (being one of its highly desirable features), there is need for some form of special constitutional court or tribunal of conflicts to deal with problems of this kind, and to secure that conflicts concerning the proper interpretation of competences at all legislative levels within the Union can be resolved satisfactorily. A special tribunal comprising judges from a panel representing both the ECJ and judges from highest constitutional courts of member states would be much more appropriate to a task of this kind than would a Council drawn from parliamentarians with the party affiliations proper to elected representatives.

CONCLUSIONS

The Committee on Legal Affairs and the Internal Market calls on the Committee on Constitutional Affairs, as the committee responsible, to incorporate the following points in its motion for a resolution:

Paragraph 1

Considers that collaboration among the Parliaments of the Union, in the setting of the present scheme of institutions, can only be brought about through establishing optimal conditions for information-exchanging and for mutual understanding of each others competences and activities. Recourse to new technologies and establishment of stronger and more systematic

working relationships between parliamentary committees and political groups could help to generate greater synergy than exists at present.

Paragraph 2

Highlights the importance of the agreed participation of representatives of the European Parliament and national parliaments in the future Convention on a constitution for the European Union; hopes that vigorous debate will lead to their agreeing on a common approach at the Convention, so as to speak as far as possible with one voice in conveying the views of the peoples of Europe with regard to our political future.

Paragraph 3

Believes that regional parliaments endowed with legislative power must be included in a future scheme of collaboration between the European Parliament and the national parliaments, since they are closer to the electorate and can thus reflect the most immediate concerns of citizens accurately and can in addition ensure that regional development concerns are taken on board when Community policies are drawn up.

Paragraph 4

Considers that, irrespective of the outcome of the intergovernmental conference with regard to the role to be played by elected representatives in the European Union's new constitutional structure, COSAC plays a valuable role in coordinating the activities of the European Parliament and the national parliaments in the European integration process.