

House of Commons
European Scrutiny Committee

**DEMOCRACY AND
ACCOUNTABILITY IN
THE EU AND THE ROLE
OF NATIONAL
PARLIAMENTS**

Thirty-third Report of Session 2001–02

Volume I

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*Volume I:
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Abbreviations used in the footnotes

ESC	Report of the European Scrutiny Committee (followed by Session and volume number).
Ev	Written evidence published in vol. II of this Report.
Q.	Oral evidence published in vol. II of this Report.

SUMMARY OF THE REPORT

It is generally accepted that the EU has problems in respect of democracy and accountability, and that there is 'disconnection' between citizens and EU institutions. Disconnection or disengagement is the central problem which our Report seeks to address. National parliaments and parliamentarians can play a key role in bridging the gap between remote EU institutions and citizens, because they generally have a much closer relationship with citizens than any EU institution. Giving citizens the opportunity to influence decision-making is the critical requirement if disconnection from the EU is to be reduced. (Paragraphs 1-4)

National parliaments can help to remedy that disconnection only if they deal with EU matters in a way which 'connects' with citizens. (Paragraph 7)

There are problems with both the EU's main sources of democratic legitimacy. In the EU, unlike at home, elected national governments act as a legislative chamber on their own, and in secret. Individual Council members acting collectively and doing so largely in secret cannot effectively be held to account by another organisation. As for the European Parliament (EP), turnout at elections is low, there is little knowledge of its activities and voting in EP elections tends to be on national issues. (Paragraphs 14-15)

The primary role of national parliaments is to scrutinise their government's EU activities and hold it to account. Their effectiveness in doing so is partly determined by the way in which the EU conducts business. The fundamental requirements for scrutiny by national parliaments are information and time — the same as for regional and other authorities and citizens. National parliaments can strengthen EU legitimacy only if they are acquiring real influence in EU decision-making and are seen to exercise such influence. (Paragraphs 16-17)

Openness

The Council of Ministers meets in private when legislating, which is not simply objectionable in principle but also has specific and harmful effects, such as difficulty for national parliaments in holding Ministers to account. We welcome the fact that the UK Government is in favour of the Council meeting in public when legislating. (Paragraphs 18-21)

We share the Government's view that all the Council's legislative proceedings should be in public. What is essential is that sufficient takes place in public for it to be clear what line has been taken by each Member State in the proceedings and where responsibility lies for the decisions made. Confining public meetings to areas subject to co-decision would be totally unacceptable. (Paragraphs 22-4)

Consequential changes will need to include the European Council meeting in public when making decisions on legislation, Council documents being made available in unexpurgated form (without the policy stances of Member States being blanked out) and reconsideration of the system whereby the Council agrees without discussion 'A points' already negotiated by officials in COREPER. Annual reports and other important documents should also be discussed in public, especially Court of Auditors reports. The onus should be on the Council to justify meeting in private. (Paragraphs 25-6)

Support for the Council meeting in public for most or all of its legislative sessions will be a litmus test of governments' real attitude towards increasing democracy and accountability. (Paragraph 27)

The system whereby legislation agreed in COREPER is approved without discussion in the Council needs to be changed if public sessions of the Council are to be meaningful. We would support the Commission's call for new ways of monitoring and controlling the exercise of its executive role if this resulted in more open supervision than the present system of committees. (Paragraphs 28-31)

The EU's legislative process and scrutiny by national parliaments

Legislative and other proposals are often put forward for agreement before national parliaments have had time to consider them, sometimes on the basis of last-minute negotiation. Time for scrutiny by national parliaments should be seen not as an optional add-on but as a fundamental aspect of accountability. Therefore, we do not regard building some time into the system for scrutiny by national parliaments as unreasonably slowing down the legislative process. (Paragraphs 34-5)

We seek to prevent last-minute drafting which makes major changes, leaves no time for scrutiny and potentially gives rise to ill-drafted and ill-considered legislation. We advocate either incorporation of national scrutiny reserves into EU procedures or a minimum length of time between consideration of a text by COREPER or publication of a new text and its agreement by the Council, in either case with tightly-drawn provisions allowing for cases of urgency (which might require unanimity), but we are open to suggestions which would reliably achieve the same effects by less formal means. Better organisation of Council business is also important in this respect. (Paragraphs 41, 46-7)

Any deadlines for agreement on legislation set by the European Council and the timing of the negotiations to meet such deadlines must provide enough time for national parliamentary scrutiny in advance of Council decisions on new texts. (Paragraph 50)

The EU institutions

The system of six-monthly Presidencies should be replaced. Any new system will need to respect the principle of equality of Member States. It would be essential to establish parliamentary accountability for an elected President of the European Council, and joint meetings of national parliamentarians and MEPs would be a means of doing so. Subject to that, we support the proposal that the European Council should have an elected President with a term of office of two years or more. (Paragraphs 59-61)

We see merit in replacing the six-monthly list of Presidency priorities with an annual European Council agenda that relates more clearly to the Commission's annual work programme. Any European Council agenda should be subject to scrutiny before it is finalised, and national parliamentarians should participate in that scrutiny. (Paragraph 65)

We would welcome a simplified Council of Ministers structure which gave rise to more coherent policy-making and which would potentially make national parliaments' task of holding Ministers to account less difficult. (Paragraph 66)

It is extraordinary that the EU's main legislative body (the Council) operates in such a slapdash way. Citizens and parliaments are entitled to expect greater professionalism in the organisation of the Council of Ministers. (Paragraph 67)

We are not in favour of the Commission President being elected, because it would weaken the Commission's effectiveness in being able to rise above sectional interests and because it would give the Commission President far greater authority and significantly change the

EU's institutional balance, while making him less accountable and not necessarily doing much to reconnect citizens and EU decision-making. (Paragraph 80)

The Commission should operate strictly within well-defined parameters laid down by the Council and the EP, and any political and legislative powers should be confined to those for which there is a clear justification, as in respect of state aids and competition. (Paragraph 82)

Given the concerns of the smaller Member States, we see no prospect of the Commission's right of initiative being removed. However, greater openness about how the Commission decides what legislative measures to put forward and greater scrutiny of that process are essential. This should involve national parliamentarians, who could put proposals to the Commission. (Paragraph 84)

The EP and national parliaments are complementary. There are areas where they can benefit from co-operation. (Paragraph 87)

The way the legislative process known as co-decision operates means that much of the discussion which matters takes place in private. It is inappropriate for an executive and a democratically-elected parliament to be involved so extensively in secret negotiations over legislation. Any extension of co-decision to new areas should be conditional on a change in the present procedure so that it can operate in a way which is both effective and transparent. (Paragraphs 90-1)

Strengthening the relationship between the EP and citizens by increasing knowledge of what the EP does will increase its authority and its contribution to democratic legitimacy in the EU. (Paragraph 92)

EP elections in the UK involve not only very large constituencies but also party lists. There should be a critical re-examination of that system in order to re-establish a relationship between MEPs and electorates and end the party list system in favour of a "first past the post" and constituency-based system. (Paragraph 93)

What does what

The EU should legislate wherever possible with a light touch, leaving as much flexibility as possible to Member States and authorities within them. (Paragraph 97)

A clearer allocation of powers is desirable, especially where powers have been inferred from objectives set in the Treaties, but on its own will have limited impact because of the prevalence of shared powers. (Paragraph 102)

There need to be arrangements to review the allocation of powers periodically, with the possibility both of adding new powers and of returning existing ones to the Member States. Whether the EU institutions will in practice ever be willing to return any powers to the Member States remains to be seen. (Paragraph 102)

The principle that *all* powers not transferred by the Treaties to the EU remain with the Member States must be maintained, and it must be made clear that the powers of Member States are not derived from the Treaties; but, subject to that, we see merit in a list of powers from which the EU is specifically excluded. (Paragraph 102)

'A simpler statement of principles, which sets out in plain language what the EU is for and how it can add value', would be worthwhile. (Paragraph 102)

We still encounter legislation clearly offending against the principle of subsidiarity. Support for the principle in the abstract does not necessarily lead to application of it, and there are widely differing views as to what constitutes subsidiarity. We do not share the view that the EU institutions are capable of ensuring adherence to the principle of subsidiarity. We agree with those who have advocated new procedures to enforce the principle. (Paragraphs 105-8).

Enforcement of the principle of subsidiarity should be a political rather than a judicial matter. (Paragraph 112)

National parliamentarians should have a role in determining questions of subsidiarity, because the EU institutions are not in practice keen on applying the principle, national parliaments do not have an inherent, institutional interest in transferring powers to the EU level, and national parliaments are relatively close to their citizens. Various methods are possible: if cases are referred by national parliaments for decision by another body, that body should be a political or quasi-judicial arbiter or watchdog. (Paragraphs 113-14)

The reference to 'ever closer union' should be removed from the Treaties. (Paragraph 116)

The role of national parliaments in the EU

We do not support the proposal that each national parliament should have a veto over EU legislation. (Paragraph 121).

We do not believe the proposed second Chamber would achieve the objectives set for it. (Paragraph 126)

The two main practical problems of the second Chamber proposal are those of time and representativeness. We conclude (i) that any involvement of national parliamentarians in the EU should make the least possible demands on their time, and should draw on different Members for different purposes in order to spread the burden; forms of involvement not entailing meetings and travel should also be considered; and (ii) that meetings of national parliamentarians should be so managed that the representatives can consult widely in advance, and should normally have a scrutiny and consultation rather than accountability role. Involvement of national parliamentarians will be worthwhile only if there is a genuine possibility of exerting influence, and will be most beneficial when it strengthens their ability to scrutinise the activities of their own Ministers in the Council. (Paragraphs 127-8)

The Convention format is useful for open debate and for developing ideas and making proposals, but (because of the problem of representativeness) not for making decisions, and we do not regard it as giving parliaments a 'joint constituent power.' (Paragraph 130)

National parliamentarians need more than the right of consultation as regards subsidiarity problems. We favour a system in which national parliamentarians could refer items of legislation to a 'subsidiarity watchdog' or other body for examination of compliance with the principles of subsidiarity and proportionality. Meetings of national parliamentarians to scrutinise the Commission's annual work programme from a subsidiarity point of view could also be of value. We envisage a subsidiarity watchdog consisting of senior politicians. (Paragraphs 131-4)

More thorough scrutiny of the Commission's policy strategy and work programme at EU level, including questioning of Commissioners, would be worthwhile, and would make the opaque process by which the Commission decides what legislation to introduce much more transparent. Similar issues arise in respect of any European Council 'annual agenda', and indeed the current six-monthly Presidency priorities; there is a risk of a heavily top-down

approach. Consultation with the EP would be too indirect: national parliamentarians should be involved in discussions directly with the Commission. We welcome the Commission's proposal for 'a reinforced culture of consultation and dialogue', and call for joint meetings of national parliamentarians and MEPs to scrutinise the Commission's annual policy strategy and work programme, question Commissioners on it, and debate it, and would support a similar procedure for the European Council's annual agenda. (Paragraphs 138-40)

Joint meetings of national parliamentarians and MEPs should be placed on a more formal basis with a small secretariat and joint organisation by national parliaments and the EP. National parliamentarians could then ensure that subjects of concern to them were covered, that the number of meetings did not result in excessive burdens on them and that subjects were selected with a view to bridging the gap between citizens and EU decision-making. (Paragraphs 141-3)

We support the proposal for regular meetings of members of the defence, foreign affairs and European affairs committees of national parliaments to scrutinise ESDP. (Paragraph 147)

We do not support the proposal for national parliamentarians to accompany Ministers to Council meetings. (Paragraph 148)

The opportunities COSAC could provide are largely squandered. We would re-define COSAC's main role as assisting national parliaments to improve their scrutiny of government activities in the EU, by sharing best practice and information and acting as a strategic body on behalf of national parliaments. COSAC needs to have a small secretariat to facilitate the exchange of information (e.g. on scrutiny problems, in respect of particular documents or more generally), to monitor activities relevant to national scrutiny (e.g. compliance by the Council with the protocol on the role of national parliaments), and to take up procedural matters of concern with the Council secretariat or the Commission. Changes in COSAC's rules must cease to require unanimity. The role of the EP in COSAC would need to be reconsidered. (Paragraphs 149-51)

One of the problems facing national parliaments which actively scrutinise EU legislation is that many national parliaments do not. Consequently the overall climate of accountability is lacking in the Council. COSAC should draw up minimum standards of parliamentary scrutiny setting out both rights and duties of national parliaments. (Paragraphs 152-3)

We shall press for our ideas to be included in the detailed proposal for a more effective COSAC which is to be presented to COSAC in October. (Paragraph 154)

We encourage the Convention working group to set out how national parliaments should be scrutinising government activities in the EU and reconnecting citizens and EU decision-making. It would be helpful if the Convention asked COSAC to take action to seek to raise the overall standard of scrutiny by national parliaments. (Paragraph 155)

Sub-Member State authorities

There are still unanswered questions about how the proposal for partner regions of the Union status might work in practice. (Paragraph 165)

We regard it as common sense for the Commission to consult authorities with legislative powers and to take particular notice of their views. The Convention should fully explore

whether any such consultation or access to the Commission should be 'privileged'. (Paragraph 167)

Referendums

Where referendum results impose a veto on what other Member States may do, neither of the alternative responses are attractive. However, where turnout is low, we do not dissent from the practice of holding a referendum again. (Paragraph 169)

We regard the idea of Europe-wide referendums as impracticable for the foreseeable future. (Paragraph 170)

Conclusion

Bridging the gap between EU citizens and EU decision-making will remain inherently difficult, not only because of the EU's size but because of its unique combination of supranational and Member State authority. However, our proposals would have a substantial impact in two ways: by increasing openness in the legislative process and by enlarging the role of national parliaments. This would potentially strengthen national parliaments, democracy and accountability in the EU, and the EU itself. (Paragraphs 171-3)

GLOSSARY

CFSP	Common Foreign and Security Policy, one of the EU's two inter-governmental 'pillars' (see below for 'pillars').
Co-decision	A procedure (under Article 251 of the EC Treaty) by which EC draft legislation passes through the Council of Ministers and the EP at the same time, placing them on an equal footing. See paragraphs 88-91.
Convention	The Convention on the Future of Europe, consisting of representatives of Member State governments, national parliaments, the EP and the European Commission, together with government and parliamentary representatives from candidate countries for EU membership. Its purpose is to propose reforms of the EU for consideration by the next IGC. See paragraphs 9 and 129-30.
COREPER	The Committee of Permanent Representatives, in which diplomats from the Member States negotiate on draft legislation, much of which is then agreed by the Council of Ministers without debate. See paragraphs 28-9.
COSAC	The Conference of Community and European Affairs Committees (known by the French acronym for the <i>Conférence des Organes Spécialisés dans les Affaires Communautaires</i>), containing representatives from national parliaments and the EP. It meets twice a year in the countries which hold the EU Presidency. It is recognised by the Treaties but has virtually no formal role in the EU. See paragraphs 149-54.
Council	The Council of Ministers, consisting of Ministers from the Member States — the EU's most important legislative and decision-making body. Not to be confused with the European Council. See paragraphs 18-27 and 66-7.
Court of Auditors	The EU institution which examines the European Communities' accounts and reports on them.
EC	The European Communities or European Community, the EU's first pillar (see below for 'pillars').
ECJ	European Court of Justice.
Enlargement	Up to ten 'candidate countries' are expected to join the EU in 2004. Apart from Cyprus and Malta they are in central and eastern Europe. Romania and Bulgaria are expected to join later (perhaps in 2007), and Turkey's candidature has also been recognised.
EP	European Parliament. See paragraphs 85-93.
ESDP	The European Security and Defence Policy, part of the inter-governmental second 'pillar'. See paragraphs 145-7.
EU	The European Union.

European Council	The European Council, consisting of the EU's heads of state or government and the Commission President, and meeting at least twice a year. It is intended to have a strategic role in the EU (under Article 4 of the EU Treaty). See paragraphs 62-5.
IGC	Inter-Governmental Conference. The last was at Nice in December 2000; the next will be in 2004.
Laeken Declaration	Declaration made by the European Council in December 2001, setting up the Convention on the Future of Europe and putting forward questions for it to answer.
MEP	Member of the European Parliament.
Pillars	The EU consists of three pillars. Most EU activity falls within the first pillar, the European Communities, in which the Commission and the European Parliament play the fullest part. The other two pillars (which derive from the Maastricht Treaty of 1992) are inter-governmental: the second pillar is the Common Foreign and Security Policy under Title V of the EU Treaty; the third is police and judicial co-operation in criminal matters under Title VI of the EU Treaty.
Presidency	EU Member States take turns to hold the EU's Presidency for six months. The Presidency State chairs the European Council and the Council of Ministers. See paragraphs 58-61.
Protocol	The Protocol on the Role of National Parliaments is part of the Treaty of Amsterdam of 1997. Among other provisions, it was intended to ensure that national parliaments had time to consider draft EU legislation before decisions were made. See paragraphs 36-8.
Subsidiarity	The principle (incorporated in the EC Treaty) that the EC should take action only in so far as objectives cannot be sufficiently achieved by Member States and can be better achieved by the EC. See paragraphs 103-15 and 131-5.
Treaties	These consist of the Treaty on European Union (EU) and the Treaty establishing the European Community (EC). (A specific Treaty relates to nuclear matters — the Treaty establishing the European Atomic Energy Community. The Treaty establishing the European Coal and Steel Community expires this year.)
UKREP	The Permanent Representation of the UK to the European Union, with the task of representing the UK in day-to-day negotiations. It is headed by the UK's Permanent Representative to the EU.

THIRTY-THIRD REPORT

The European Scrutiny Committee has agreed to the following Report:

DEMOCRACY AND ACCOUNTABILITY IN THE EU AND THE ROLE OF NATIONAL PARLIAMENTS

1. INTRODUCTION

1. It has become generally accepted that the EU has problems in respect of democracy and accountability, and that there is 'disconnection' between citizens and EU institutions. Symptoms include the result of the Irish referendum on the Nice Treaty, protests during recent European Council meetings and the low turnout at the last European Parliament elections. We welcome the recognition in the European Council's Laeken Declaration that EU citizens 'feel that deals are all too often cut out of their sight and they want better democratic scrutiny.'¹ The Inter-Governmental Conference (IGC) in Nice in December 2000 acknowledged 'the need to improve and to monitor the democratic legitimacy and transparency of the Union and its institutions, in order to bring them closer to the citizens of the Member States.'² A report of January 2002 by the Constitutional Affairs Committee of the European Parliament (EP) traces the causes of disaffection from the EU not just to shortcomings in what the EU does but also 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.'³

2. The problem of 'disengagement' is the central problem which our Report seeks to address and not just the backdrop against which we aim to set out various improvements to EU decision-making. We stress that the problems we have identified in relation to the EU are symptomatic of a wider disengagement from politics or at least traditional forms of politics (e.g. voting in elections) both at the national and local level. This problem of 'disengagement' is particularly acute in relation to the EU. Part of the explanation is to be found in terms of the remoteness of EU institutions from the citizen, as Jean-Luc Dehaene, a Vice-President of the Convention on the Future of Europe, stressed in his evidence to us.⁴ Public awareness of democratic scrutiny of EU decision-making is very low. Therefore increasing democratic scrutiny, while important and worthwhile in itself, will have little direct or immediate impact on citizens' views about the EU. The key task should be to make both EU decision-making and the scrutiny of EU decision-making more relevant to the citizen. Reform must result in greater opportunities to exercise democratic control of EU decision-making and a greater awareness of those opportunities.

3. The Prime Minister, among others, has indicated that one of the remedies is a greater role for the national parliaments of EU Member States,⁵ and 'the role of national parliaments in the European architecture' was listed in a Declaration attached to the Nice Treaty as one of four subjects to be considered at the next IGC.⁶ National parliaments and national parliamentarians can play a key role in bridging the gap between remote EU institutions and the citizens of EU Member States and in making EU decision-making more relevant and EU decision-makers more accountable. This is because national parliaments generally have a much closer relationship with citizens than any EU institution, including the EP, since they reflect the culture and history of their country, they have fewer electors

¹ Laeken Declaration on the Future of the European Union, December 2001.

² Treaty of Nice, Declaration 23.

³ *Report on relations between the European Parliament and the national parliaments in European integration* ('Napolitano report'), January 2002, AS-0023/2002, explanatory statement, para. 3.

⁴ Q. 267.

⁵ Speech in Warsaw, 6 October 2000; para. 122 below.

⁶ Treaty of Nice, Declaration 23.

per Member, Members can spend more of their time in their constituencies, and they deal with the majority of the subjects which interest people. The report by the EP's Constitutional Affairs Committee on relations with national parliaments, while insisting that the EP and national parliaments 'are equally representative of the peoples in the European Union', states that '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'.⁷

4. Therefore we considered it important for us to conduct an inquiry, concentrating on the role of national parliaments in the EU but also examining the allocation of powers between the EU and its Member States (another of the four subjects listed at Nice) and the role of regional and other sub-Member State authorities in the EU. Part of the subject matter relates directly to our role as a scrutiny committee, and some has previously been examined in Reports by our predecessor Committees.⁸ The terms of reference we adopted were to examine ways in which the EU could be made more democratic and accountable and citizens could feel more in touch with and able to influence political developments in the EU. We regard giving citizens the opportunity to influence decision-making as the critical requirement if disconnection from the EU is to be reduced.

5. We took oral evidence in Westminster, Brussels and Edinburgh, and also received written evidence.⁹ We are grateful to all those who provided evidence. We would like to thank UKREP¹⁰ for its assistance in Brussels and the Scottish Parliament for its assistance in Edinburgh. We were able to make use of the Report by the House of Lords Select Committee on the European Union on *A second parliamentary chamber for Europe: an unreal solution to some real problems*,¹¹ and that of the Scottish Parliament's European Committee on *The governance of the European Union and the future of Europe: what role for Scotland?*¹²

6. Where we refer in this Report to the Government, the Prime Minister and individual Ministers, we mean the UK's Government, Prime Minister and Ministers.

7. We have made a separate Report on *European scrutiny in the Commons*, to cover matters which relate solely to the way in which the Commons deals with EU business.¹³ As we observe there, the potential for national parliaments to assist in remedying the disconnection between citizens and EU institutions can be realised only if national parliaments, including our own, deal with EU matters in a way which 'connects' with citizens. How the 15 national parliaments use existing opportunities and any new ones to reconnect citizens and EU decision-making is crucial to the impact of our proposals below for giving new roles to national parliaments.

8. We have necessarily concentrated on institutional and organisational aspects of the EU. Some argue that what citizens want from the EU are policies and actions which benefit them in their daily lives; for example, Jean-Luc Dehaene argued that the concerns of many citizens were more about 'a deficit of delivery of Europe' than a democratic deficit, 'and so we have to organise things so that they deliver ... the results that people

⁷ EP, A5-0023/2002, Napolitano report, explanatory statement, para. 8.

⁸ Twenty-fourth Report from the Select Committee on European Legislation, 1994-95, *The 1996 Inter-governmental Conference*, HC 239; Twenty-eighth Report from the same, 1995-96, *The role of national parliaments in the European Union*, HC 51-xxviii; Thirteenth Report from the same, 1996-97, *The draft Protocol on the role of national parliaments*, HC 36-xiii.

⁹ Published as volume II of this Report.

¹⁰ The Permanent Representation of the UK to the EU — see glossary.

¹¹ 7th Report, 2001-02, HL Paper 48.

¹² 9th Report, 2001, SP Paper 466.

¹³ ESC, 2001-02, HC 152-xxx, *European scrutiny in the Commons*.

expect.¹⁴ In fact the EU is already active, and sometimes achieving results, in areas of great concern to citizens, such as measures to reduce global warming and other environmental damage, international trade, and immigration and asylum policies. However, citizens are becoming ever less willing to accept solutions imposed on them by means they do not feel able to influence. As Commissioner Barnier put it, 'the key point here is that we have to work with citizens and not just for citizens and on their behalf.'¹⁵ Thus both *what* the EU does and *how* it does it (and greater clarity in both of these) are relevant to reducing disconnection. Institutional and organisational aspects of the EU in the abstract may be of no interest to most EU citizens, but how the EU works nevertheless affects citizens' perceptions of it.

9. Much has changed since we began our inquiry. In particular, at the Laeken European Council in December 2001 a Convention on the Future of Europe was established, with members from national governments, the European Commission, the European Parliament and national parliaments, together with government and parliamentary representatives from the candidate countries. It includes two House of Commons representatives. Its purpose is to consider the matters set out in the Laeken Declaration, including 'more democracy, transparency and efficiency in the European Union', the allocation of competences in the EU and the possibility of a constitution for the EU, and to put forward proposals; final decisions will be made by the IGC in 2004. The UK Permanent Representative to the EU (Sir Nigel Sheinwald) commented that 'the Convention is a real innovation. I do not think that life will be quite the same again.'¹⁶

10. Another important part of the background to our inquiry is the prospect of enlargement of the EU from 15 Member States currently to perhaps 25 in 2004 and more subsequently. This will inevitably change the ways in which the EU operates, which were originally designed for six countries.

11. Another underlying issue is what one witness referred to as the 'trade-off between transparency (providing democratic accountability) and private deliberation (maximising negotiating effectiveness).'¹⁷ The Commission touches on the same issue in observing (somewhat prematurely) that 'It is time to recognise that the Union has moved from a diplomatic to a democratic process.'¹⁸ The EU does indeed need to make that transition.

Reasons for disconnection

12. Many reasons have been suggested for the disconnection between citizens and EU institutions, some of which have been touched on already. The Commission's list includes a perceived inability of the EU to act effectively where a clear case exists, the EU not obtaining the credit when it does act effectively, Member States blaming 'Brussels' for decisions they have agreed to themselves, and lack of understanding about the EU institutions; the EU 'is often seen as remote and at the same time too intrusive'.¹⁹ The Minister for Europe (Peter Hain) listed a general trend towards non-participation, euro-jargon, lack of involvement of national parliaments, over-emphasis on institutional changes at the expense of delivering practical benefits, confusion over who does what, lack of consultation, and worries about excessive EU interference.²⁰ Other reasons offered have included the opaqueness and complexity of EU law-making, a perception that the EU is undermining democracy and national sovereignty, lack of emotional commitment to the EU

¹⁴ Q. 267. See also Ev 111, para. 1(iv).

¹⁵ Q. 95.

¹⁶ Q. 123.

¹⁷ Ev 16 (Lord Norton).

¹⁸ *European governance: a White Paper*, July 2001, p. 30.

¹⁹ *Ibid.*, pp. 3,7.

²⁰ Ev 111.

and (at least in the UK) lack of media coverage and the nature of such coverage as there is.²¹

13. Two witnesses pointed out that not all the reasons for disconnection were peculiar to the EU, and in particular that many countries have experienced a decline in election turnout similar to that of the EP in terms of percentage points.²² However, the EP's percentage started at a lower level and has remained well below that of most national parliaments in the EU.²³ Moreover, as Lord Norton indicated, reasons why disconnection is likely to remain more serious in the EU's case than in the case of Member States include geographical size, the fact that votes at EP elections do not determine the composition of the EU's executive, and the lack of visible symbols of the EU (such as the Palace of Westminster and 10 Downing Street in the UK's case).²⁴ To these might be added the number of languages, the lack of clearly identifiable leaders, differing political cultures and the complexity of EU decision-making. Unless tackled, the problems are likely to worsen as the EU enlarges (reducing the influence each country can exert), as EU laws affect new areas and as citizens become even less willing to accept policies handed down from above.

Democracy and national parliaments in the EU

14. The two main sources of democratic legitimacy in the EU (the 'double democratic mandate')²⁵ are elected national governments, represented in the Council of Ministers, and the directly-elected European Parliament. However, in both cases there are problems with that democratic legitimacy. National governments, through national parliaments, are indeed the EU's most important element of democratic legitimacy, but **whereas at home their legislative proposals require the assent of their national parliaments, in the EU they act as a legislative chamber on their own**, without most of the procedural safeguards of a parliamentary chamber and, though needing EP agreement in some areas, making laws on their own in other areas. This is compounded by the secrecy of Council proceedings.²⁶ While the Council collectively is not accountable to any other body, Council members are individually accountable to their national parliaments. **However, individual Council members acting collectively and doing so largely in secret cannot effectively be held to account by another organisation.**

15. The EP in some respects has more power than most national parliaments, but turnout at EP elections is low (just under 50% at the 1999 election), and there is little knowledge of its activities among the electorate, which tends to be motivated in EP elections by national issues rather than EU ones.²⁷ This means that parties and individual MEPs are not held to account for their actions at EU level. It also reduces the EP's ability to connect citizens and EU decision-making.

16. National parliaments have no formal role in EU law-making at all (though they do of course have to implement much EU legislation). There is general agreement that the primary role of national parliaments is to scrutinise the activities of their national governments in the EU and hold them to account. It would obviously be inappropriate for any EU institution to try to determine how they do so, but the way in which the EU reaches decisions is nevertheless a major factor reducing the ability of national parliaments to hold governments to account, as we show in the two following sections of this Report. Later in

²¹ Ev 35, 167, 170, 183.

²² Ev 93, 98.

²³ Ev 1; figures in *The Statesman's Yearbook*, 2001.

²⁴ Ev 15.

²⁵ European Commission, *European governance: a White Paper*, p. 7.

²⁶ See para. 20 below.

²⁷ Ev 1, 3, 15, 192.

the Report we discuss ways in which national parliaments might be given some formal role in EU decision-making.²⁸

17. We make here three observations about national parliaments which underlie the following parts of our Report:

- The relationship between national parliaments and their governments as regards EU matters is not a purely domestic arrangement for each Member State to sort out in its own way, but is partly determined by the way in which the EU conducts business²⁹ — a crucial aspect of the role of national parliaments which is ignored in the Laeken Declaration;
- The fundamental requirements for scrutiny by national parliaments of EU legislation are adequate information and sufficient time before decisions are made, and these requirements are the same as those of any regional or other authority or any citizen seeking to influence EU legislation;
- Since the central problem which our Report seeks to address is the problem of disengagement by the citizen from the EU, national parliaments have a key role to play in strengthening EU legitimacy. This can be done effectively only if they acquire real influence in EU decision-making and are seen to exercise such influence.

2. OPENNESS

The Council of Ministers

18. The Council of Ministers is by far the most important law-making body in the EU, in some areas making law entirely on its own. And yet it meets in private when doing so. It has become common for it to be compared with the North Korean legislature, the only other body in the world which passes legislation in private.³⁰ In our view, it is only public unawareness that the Council legislates in private which prevents it being universally regarded as the affront to democratic principles that it is. The Minister for Europe observed that 'there is a growing recognition that for the Council of Ministers and the European Council itself, when legislating, to continue to do so in secret is simply indefensible.'³¹ Our witnesses almost all shared that view, although not all regarded remedying it as a priority.³² The secrecy about the positions taken by individual Member States in the Council is maintained in published Council documents, where country names are blanked out.

19. There have been some reductions in secrecy, including occasional open debates since 1992 on matters such as violence against women, a public register of Council documents and (since 1999) inclusion in the published Council minutes of Member States' voting records³³ (though in practice votes are rare).³⁴ These are welcome changes, but they do not address the fundamental problem.

²⁸ Paras. 117-48 below.

²⁹ Paras. 20, 34, 41, 49 below.

³⁰ e.g. Q. 284.

³¹ Q. 284.

³² e.g. Q. 212; Ev 167, 187.

³³ QQ. 132, 293; Ev 94.

³⁴ QQ. 298-9.

20. That the Council legislates in private is not simply objectionable in principle but also has specific and harmful effects:

- As already indicated, it is impossible for national parliaments (and electorates) to hold Ministers to account if it is not clear how they acted in the Council. For example, a Home Office Minister was recently unable to tell us why an amendment he had promised would be made to the European Arrest Warrant proposal had not in fact been made.³⁵ This is not primarily a matter of voting records, since votes are rare, but of how firmly governments argued particular points or pressed for particular concessions. The Minister for Europe told us that 'very often what you find is that nobody will own up to having opposed a decision or having supported a decision. There is a lot of hiding behind other people',³⁶
- Secrecy makes it easy for governments to blame 'Brussels' for decisions they may themselves have agreed to;
- Private discussions in the Council result in deals which no government fully accountable to its own parliament would have agreed to; rather than balancing the interests of Member States, such deals may simply reflect the interests of governments;
- Private meetings make the Council, and thus a great part of the EU's activity, largely invisible to citizens.

The Minister for Europe indicated that the great advantage of the Council legislating in public 'would be that European citizens would be able to see their Ministers making decisions on their behalf and therefore hold them accountable', as well as giving the EU at inter-governmental level a 'clear identity'.³⁷

21. We therefore welcome the fact that the UK Government is in favour of the Council meeting in public when legislating.³⁸ We note that there is widespread support in the EU for that position, and that the matter is to be considered at the European Council in Seville on 21-2 June. Indeed, the head of the Cabinet Office European Secretariat and EU adviser to the Prime Minister, Sir Stephen Wall, told us that, whereas two years ago the idea of the Council legislating in public was controversial, there is now not a single Member State which does not support it.³⁹

22. Differing views were expressed over exactly what should take place in public, and the paper by the Council Secretary-General (Javier Solana) asks whether the decision to meet in public should 'apply throughout the procedure or to certain stages only (policy debate, final deliberation with vote and explanations of vote)?'⁴⁰ The Government believes the Council should meet in public 'when adopting legislation', and Sir Stephen Wall said that the public meeting should be 'when it actually comes to the point of legislation, and I agree that what the point of legislation is is a slightly flexible concept'.⁴¹ More recently, the Government has stated that 'We support *complete openness* when the Council is legislating. Contriving artificial stages (opening debate, explanations of vote) will encourage criticism that the real discussion is still behind closed doors (although in an EU

³⁵ ESC, 2001-02, HC 152-xvii, Q. 24.

³⁶ Q. 288.

³⁷ Q. 285.

³⁸ Ev 112; letter from the Prime Minister and the German Chancellor to the Spanish Prime Minister, 25 February 2002; Q. 131.

³⁹ Q. 402.

⁴⁰ *Preparing the Council for enlargement*, S0044/02, 11 March 2002.

⁴¹ Ev 112; Q. 402.

of 25 plus, serious negotiation is likely in any case to take place more in informal meetings).⁴² The Swedish Prime Minister (Göran Persson) advocates 'public debates... at the beginning and end of all legislative procedures'.⁴³ Another issue could be how the line between legislative and other activity is drawn. The UK Permanent Representative assured us that Council agendas already distinguish between legislative and non-legislative items.⁴⁴

23. We recognise that any legislative system involves a combination of private negotiation and public discussion. In a national parliament, the public discussion takes place in a forum containing many more people than those involved in the private negotiations, and the legislation has to be explained to them and their assent obtained, whereas in the Council all those participating in the public discussion (or their officials) will have been involved in the private negotiations. The question is whether nearly all the discussion would continue to take place in private, either by design or otherwise, and therefore whether public sessions would be an uninformative formality. Sir Stephen Wall believed that this would not be the case:

'The picture I have always had in my own mind is rather like the UN Security Council. Quite a lot of the negotiation on a difficult resolution goes on in the corridors, but there is nonetheless a substantive public debate. It is not just for form's sake, and people see the voting.'⁴⁵

We share the Government's view that all the Council's legislative proceedings should be in public. What we regard as essential is that sufficient takes place in public for it to be clear what line has been taken by each Member State in the proceedings and where responsibility lies for the decisions made.

24. The Council Secretary-General's paper, strangely, appears to confine the possibility of public meetings to legislation subject to co-decision,⁴⁶ whereas public meetings are even more essential for legislation not subject to co-decision (such as the Common Agricultural Policy) than for that which is. **We emphasise that confining the public meetings of the Council when legislating to areas subject to co-decision would be totally unacceptable.**

25. Several changes will need to follow if the Council meets in public when legislating:

- Although the European Council is not formally part of the legislative process, it sometimes gives directions to the Council of Ministers, or decides on matters referred to it which the Council has been unable to agree. Consequently, as the Minister for Europe accepted,⁴⁷ **the European Council will also need to meet in public when making decisions on legislation.**
- **Council documents will need to be made available in unexpurgated form, and especially without the policy stances of Member States being blanked out.** The Minister for Europe told us he would look at this, and that 'it would be hard to continue to argue that we should not do it'.⁴⁸
- **The system whereby the Council agrees without discussion 'A points' already negotiated by officials in COREPER⁴⁹ will need to be reconsidered.** As Sir Stephen Wall explained, 'if you are going to have votes on legislation then clearly

⁴² FCO paper (undated) setting out the Government's views on *Preparing the Council for enlargement*.

⁴³ Letter to the Spanish Prime Minister, 6 March 2002.

⁴⁴ Q. 131.

⁴⁵ Q. 402. See also Q. 285.

⁴⁶ *Preparing the Council for enlargement*. See paras. 88-91 below for co-decision.

⁴⁷ Q. 286.

⁴⁸ QQ. 288-9.

⁴⁹ The Committee of Permanent Representatives.

you have to have a system where things are not just nodded through without the public knowing what it is that is being voted on'.⁵⁰

26. We accept that the Council should normally meet in private when discussing non-legislative matters. However, Simon Murphy MEP and Richard Corbett MEP suggested that the Council could meet in public when discussing the annual reports of other EU institutions and agencies, and the Swedish Prime Minister's view is that 'important policy documents such as the Work Programme' should be debated in public.⁵¹ **We agree. In particular, we see no reason why the Council should discuss Court of Auditors reports in private. While it will often be appropriate for the Council to meet in private, the onus should be on the Council to justify doing so.**

27. While the impact of the Council meeting in public when legislating should not be exaggerated, it would have several clear benefits, including a reduced ability of Member States governments to conceal their responsibility for EU decisions and an increased ability of national parliaments to hold them to account for those decisions. **Support for the Council meeting in public for most or all of its legislative sessions will be a litmus test of governments' real attitude towards increasing democracy and accountability. If they do agree to it this will show that they are serious about increasing accountability and reconnecting citizens and EU institutions; if they do not so agree, it will be evident that they are not serious about it.**

Other aspects of legislation

28. Other aspects of the EU's legislative process taking place in private are:

- Working groups, which help to shape the legislation subsequently put forward by the Commission. (We have not considered working groups in detail in this inquiry.)
- COREPER, the Committee of Permanent Representatives, which negotiates much of the EU's legislation; this is then agreed in the Council without debate (as 'A points').
- The system of committees known as 'comitology', consisting of representatives of Member States and chaired by the Commission, whereby Member States exercise some control over implementing powers delegated to the Commission by the Council.
- Much of the legislative process known as co-decision, whereby legislation has to be agreed both by the Council and the EP. (We consider co-decision later in this Report.)⁵²

29. We heard some criticism of the extent to which officials rather than Ministers make decisions in these areas. Jens-Peter Bonde MEP stated that 70% of EU law is made by junior civil servants, and a further 15% by diplomats and others in COREPER.⁵³ Even if much of the work is delegated to officials, the important point is that Ministers should take responsibility for it; we certainly regard UK Ministers as accountable for the actions of officials in COREPER. However, **we emphasise the need to change the system whereby legislation agreed in COREPER is approved without discussion in the Council if public sessions of the Council are to be meaningful.**

⁵⁰ Q. 402.

⁵¹ Ev 94; letter from the Swedish Prime Minister to the Spanish Prime Minister, 6 March 2002.

⁵² Paras. 88-91 below.

⁵³ Q. 471.

30. Significant changes have already been made as regards the 'comitology' committees. When our Lords counterparts considered these in 1999 they found the system not only complex but opaque: there was no definitive list of comitology committees and their functions, activities and membership, and no systematic parliamentary scrutiny at either a national or Community level, and there was confusion as to rights of access to comitology documents. They called for enhanced involvement of the EP, simplified procedures and greater transparency, with the aim of safeguarding three main interests: the interests of people likely to be affected by implementing measures, major interests of Member States and the general interest in democratic legitimacy and accountability.⁵⁴

31. Some changes have since been made. The Commission now produces an annual report on the committees, though the first — for 2000 — came out only in January 2002. The Commission has published a list of the 244 committees and adopted standard rules of procedure for them, and the new provisions on access to documents will make committee documents more available.⁵⁵ We congratulate the Government and the Lords Committee on their role in what has been achieved so far, but more needs to be done. The Commission has called for new ways of monitoring and controlling the exercise of its executive role, in which the need for the 'comitology' committees would be put into question and the Council and the EP would have an equal role.⁵⁶ **We would support this if it resulted in more open supervision of the Commission's exercise of its powers.**

Documents

32. A new EU regulation providing a right of access to documents came into operation in December 2001.⁵⁷ The availability of documents is clearly improving, with Commission minutes available for the first time and plans to make new drafts of legislative proposals available sooner to MEPs.⁵⁸ However, Statewatch criticised several aspects of the new regulation: the ability of Member State governments to veto the provision of documents supplied by them to EU institutions, its application only to the Council, Commission and EP rather than to all agencies and other bodies operating under EU auspices, and the effect of restrictive amendments made to the Commission's rules on classification of documents. It called for a Freedom of Information Act instead, imposing an EU-wide obligation to make information available, particularly through the Internet.⁵⁹ We sympathise with Statewatch's view (while recognising the effective use the EU institutions already make of the Internet), but, given how recently the regulation has come into force, we consider it necessary to see how it operates in practice before pressing for further changes.

⁵⁴ House of Lords, Select Committee on the European Communities, 3rd Report, 1998-99, *Delegation of powers to the Commission: reforming comitology*, HL Paper 23, paras. 15-16.

⁵⁵ COM (2001) 783 final, January 2002.

⁵⁶ *European governance: a White Paper*, p. 31.

⁵⁷ Q. 293.

⁵⁸ Q. 471 (Jens-Peter Bonde MEP).

⁵⁹ Q. 67.

3. THE EU's LEGISLATIVE PROCESS AND SCRUTINY BY NATIONAL PARLIAMENTS

33. In this part of our Report we try to ensure that national parliaments and others have sufficient time to scrutinise proposed EU legislation and seek to influence it before decisions are made; otherwise national parliaments have no possibility of seeking to reconnect citizens and EU decision-making. We recognise that the matters discussed here are somewhat technical, but they have a major impact on national scrutiny of EU legislation and on the potential for involving citizens in EU decision-making.

34. In practice, legislative and other proposals are often put forward for agreement before national parliaments have had time to consider them, sometimes on the basis of last-minute negotiation. Examples of difficulties we have experienced include the following:

- In April 2000, Council Conclusions on a Community position were not agreed until the first day of the CITES Conference;
- A draft Council Decision on transmissible spongiform encephalopathies making major changes in policy originated on 16 June 2000 and was discussed in the Council on 19 June;
- The official text of a draft Recommendation on mobility within the Community for students and others was issued immediately before the meeting of the Education Council where it was to be discussed (we observed that this not only prevented scrutiny but made it 'doubtful that Ministers themselves can adequately consider such proposals, giving rise to a risk that poorly-drafted legislation will be agreed');
- The text of the European Social Policy Agenda was presented to Ministers on 28 November 2000 only hours before agreement was to be reached (the Minister observed that last-minute scrutiny of texts had become increasingly prevalent, and left no time for consultation of any kind);
- No scrutiny was possible in November 2000 of texts produced at the last minute of the Council Directive on equal treatment in employment, in which major changes such as derogations relating to the armed forces and special provisions on Northern Ireland appeared for the first time;
- Time constraints imposed by the Presidency in March 2001 prevented the final text of the draft Directive on sectors excluded from the Working Time Directive being submitted for scrutiny;
- A new text of the draft Directive on informing and consulting employees was issued on 8 June 2001 for discussion in Council on 11 June;
- Numerous significant changes were made to the proposal for a European Arrest Warrant at around the time of the Justice and Home Affairs Council in December 2001 with a view to their immediate adoption;⁶⁰

⁶⁰ ESC, 1999-2000, HC 23-xxiii, para. 7; HC 23-xxiv, para. 10; HC 23-xxix, para. 22; 2000-01, HC 28-iii, para. 13; HC 28-v, para. 10; HC28-xi, para. 11; 2001-02, HC 152-i, para. 25; HC 152-xvii. See also ESC, 1999-2000, HC 23-v, para. 10; HC 23-xv, para. 6; HC 23-xviii, para. 16; HC 23-xix, para. 2; HC 23-xxi, para. 6; 2000-01, HC 28-i, para. 16; HC 28-vi, para. 13; HC 28-vii, para. 2; HC 28-ix, para. 13; 2001-02, HC 152-ii, para. 36; HC 152-iv, para. 5.

- The Presidency was seeking political agreement on proposals concerning public procurement on 21 May although only parts of a text in French were then available.⁶¹

Particular problems are experienced towards the end of the EU's six-monthly Presidencies and in Justice and Home Affairs matters. We recognise that proposals relating to the Common and Foreign Security Policy sometimes have to be agreed urgently.

35. It could be argued that allowing more time for national parliaments and others to scrutinise proposals would slow down an already cumbersome legislative process. Indeed much of the emphasis in the Commission's White Paper on European governance is on speeding up the process, for example by agreeing proposals subject to co-decision⁶² in one reading rather than two,⁶³ and the Laeken Declaration also asks how the co-decision procedure could be 'simplified and speeded up'.⁶⁴ However, by far the longest part of the process is often securing the agreement of Member State governments to a common position on proposals such as the Community patent, the Single European Sky and electricity and gas liberalisation. Under the co-decision process the remaining stages are already time-limited.⁶⁵ In fact existing procedures sometimes combine the worst of both worlds: extremely long periods needed for governments to reach agreement and frequently a lack of the small amounts of time needed for scrutiny when it most matters; in other words the process is organised primarily for the benefit of governments, sometimes with little regard for the needs of national parliaments, regional and other authorities and citizens. Furthermore, the inappropriate speed with which last-minute texts are agreed means that Ministers themselves are unlikely to be able to consider them adequately and creates a risk of badly-drafted legislation being agreed. **Time for scrutiny by national parliaments should be seen not as an optional add-on but as a fundamental aspect of accountability. Therefore, we do not regard building some time into the system for scrutiny by national parliaments as unreasonably slowing down the legislative process.**

36. There are two ways in which adequate time for scrutiny ought to be ensured at present: the Protocol on the role of national parliaments in the EU (part of the Amsterdam Treaty) and the scrutiny reserve resolution passed by the House of Commons (which has counterparts in some other national parliaments). The Protocol was originally proposed by our predecessor Committee in 1995, and was pressed for by the Government.⁶⁶ It provides that

‘A six-week period shall elapse between a legislative proposal or a proposal for a measure to be adopted under Title VI of the Treaty on European Union being made available in all languages to the European Parliament and the Council by the Commission and the date when it is placed on a Council agenda for decision ... subject to exceptions on grounds of urgency, the reasons for which shall be stated in the act or common position’.⁶⁷

37. Our predecessors pointed out a number of defects in the draft Protocol, all of which remained in the Protocol as agreed, including:

- it leaves the Council to decide which of its acts are legislative;

⁶¹ Letter from the Parliamentary Under-Secretary of State for Competition, Consumers and Markets, DTI (Melanie Johnson MP) to the Chairman of the Committee, 14 May 2002.

⁶² See paras. 88-91 below.

⁶³ *European governance: a White Paper*, pp. 20, 22-3.

⁶⁴ See also Q. 96.

⁶⁵ See Article 251 EC.

⁶⁶ HC 239, 1994-95, paras. 65-8; HC 51-xxviii, 1995-96, paras. 77-92; HC 36-xiii, 1996-97.

⁶⁷ *Treaty of Amsterdam*, 1997, Cm 3780, pp. 89-90.

- an additional (possibly shorter) notice period is needed for significantly revised proposals;
- lack of specific provisions in the Protocol for determining whether the notice period can be overridden on grounds of urgency.⁶⁸

The UK Permanent Representative told us that the Protocol was 'generally applied', albeit with rare exceptions,⁶⁹ but it is not clear that any detailed monitoring is taking place.

38. The defect which most concerns us is that the Protocol does not apply to revised proposals, which may contain significant new provisions, as in some of the examples cited above. Indeed, Sir Stephen Wall commented that the six-week rule was 'helpful but is in a way largely irrelevant because when a proposal comes forward it is very rarely adopted within six weeks. The first six weeks are in one sense the least important part of the legislative timetable'.⁷⁰ COSAC (the conference of European affairs committees of national parliaments and the EP) proposed in October 2000 that there should be a minimum of 15 days (or one week in urgent cases) between the final reading of a text in COREPER and the Council decision on it.⁷¹ Even this would not deal with a situation where a revised text is produced just before a Council meeting. The Minister for Europe agreed with us that 'wherever possible this should not happen'.⁷²

39. National scrutiny reserves should also in principle ensure time for scrutiny. The resolution passed by the House of Commons provides that Ministers should not agree to a proposal in Council until it has been cleared from scrutiny by this Committee, or (if we have recommended a debate) until the House has come to a resolution on it, subject to certain exceptions.⁷³ In our case, documents are cleared from scrutiny regardless of our view of their merits once we have obtained sufficient information about their likely impact and the Government's stance on them, any questions we have put to Ministers have been answered and any debate we have recommended has taken place.

40. However, scrutiny reserves have no formal standing in the Council (though they are registered with the Council Secretariat). They cannot prevent proposals being agreed, except when there is a requirement for unanimity and a Minister insists on postponement; otherwise they can only discourage a particular Minister from participating in an agreement. Part of the problem is that relatively few countries make much use of scrutiny reserves, reflecting the fact that the rigour of scrutiny varies from one parliament to another (a matter we discuss later);⁷⁴ the UK Permanent Representative mentioned the UK, Denmark, Sweden and the Netherlands as frequent users, though 'a large number of other countries do actually enter scrutiny reserves from time to time'.⁷⁵ Not being willing to participate in an agreement when other Member States wish to proceed can have unhappy consequences:

- it can make the country concerned potentially part of a blocking minority, even though the proposal or revised proposal may be one it has been striving for;

⁶⁸ HC 36-xiii, 1996-97, paras. 27, 35, 51-7.

⁶⁹ QQ. 124, 136.

⁷⁰ Q. 412.

⁷¹ *XXIIIrd Conference of Community and European Affairs Committees (COSAC)*, 2000, p. 65.

⁷² Q. 314.

⁷³ Printed in the House's standing orders and at the back of each of our Reports.

⁷⁴ Paras. 152-3 below.

⁷⁵ Q. 134.

- it can mean that the country concerned is not party to a compromise agreement, and therefore that its interests are not defended against EP amendments harmful to those interests.⁷⁶

In such circumstances we are sometimes reluctantly driven to accept that a UK Minister acted reasonably in breaching the scrutiny reserve resolution.⁷⁷

41. We see potential remedies for the problem in three areas: better organisation of EU business, new rules on intervals between stages of legislation, and greater standing being given by the Council to national scrutiny reserves. (It would also help if more national parliaments were actively engaged in scrutiny, as we discuss later.)⁷⁸ Better organisation of EU business, especially in the Council, is certainly important. A number of specific changes could contribute to it:

- More consistent notice of agenda items. Agendas are required to be transmitted 14 days before Council meetings, but in practice are frequently amended up to the last minute (especially in the case of the Justice and Home Affairs Council).⁷⁹ The Swedish Prime Minister has proposed stronger rules in respect of European Council agendas 'in order to avoid "bouncing" of unprepared items and anomalies'.⁸⁰
- Better planning of the legislative process — in fact the 'project management approach' which the Home Office is seeking to bring about in Justice and Home Affairs matters, with 'the Presidencies saying what proposals will come forward at what times so that we can try to anticipate and give information to our scrutiny committees about the processes in advance'.⁸¹
- An end to the system of six-monthly Presidencies, which, according to the Foreign Secretary (Jack Straw) induce 'artificial peaks of activity'.⁸² This is because towards the end of their six months Presidencies put on pressure for agreements which can be claimed as their achievements.⁸³
- Tighter rules about scope, so that significant new provisions are not added to proposals at a late stage.
- Prompt publication of texts by the Commission, which sometimes produces them late, as in the case of budget documents,⁸⁴ occasionally even when subject to a legislative deadline.⁸⁵
- Prompt transmission of documents to Member States. In 1997 our predecessors were told that a pilot project for an electronic system was expected to be completed by the end of 1998,⁸⁶ but no progress appears to have been made.

42. As regards scrutiny reserves, the most radical option would be for the Council's rules to require that Ministers had parliamentary clearance before agreeing to proposals. If

⁷⁶ For the special circumstances in some Justice and Home Affairs matters, see HC 325, 2001-02, Q. 28.

⁷⁷ e.g. ESC, 1999-2000, HC 23-xxix, para. 22; 2001-02, HC 152-ii, para. 9.

⁷⁸ Paras. 152-3 below.

⁷⁹ *Official Report*, 15 January 2002, c. 134W.

⁸⁰ Letter to the Spanish Prime Minister, 6 March 2002.

⁸¹ HC 325, 2001-02, Q. 10.

⁸² Speech in The Hague, 21 February 2002.

⁸³ See para. 59 below.

⁸⁴ ESC, 2001-02, HC 152-i, para. 50.

⁸⁵ For failure to submit an evaluation report on OLAF by 1 June 2002, though legally required by that date, see *Rapporteur*, 20 May 2002.

⁸⁶ HC 791, 1997-98, p. lx. See Q. 423.

parliamentary democracy is a fundamental EU principle, a clear implication is that national parliaments should be able to scrutinise the activities of their Ministers in the Council. On the other hand, making this an EU requirement could also be regarded as a breach of the principle of subsidiarity. Since we see little likelihood of such a requirement being agreed, we do not pursue it here.

43. A less drastic option would be to amend the Council's rules of procedure so that decisions could not be made when there was one or more national scrutiny reserve outstanding. It would be for Member States to decide whether a particular measure (such as a text only slightly revised) merited a scrutiny reserve. Several safeguards would be required:

- There would need to be provision for genuine cases of urgency;
- The rules must not be open to abuse by a national parliament withholding clearance in order to delay a measure it disliked. The remedy here could be for scrutiny reserves to expire after a certain length of time;
- On the other hand, it would be important that provisions relating to urgency or abuse did not allow scrutiny reserves to be overridden solely for political or administrative convenience; thus reasons for urgency would have to be strictly defined and unanimity or other special procedures might apply when urgency was claimed. Ministers would be answerable to their national parliaments for proceeding in such circumstances.

44. As regards an amendment to the Protocol setting minimum times between stages of legislation, we asked the UK Permanent Representative about the feasibility of COSAC's proposal for a 15 day interval between agreement in COREPER and in the Council. He pointed out that at present the gap is often much less — in fact sometimes only a day:

'The pressure of business and the volume of business which is being funnelled through COREPER now does make it quite difficult for me to say that a two week time lag would in all cases be practicable. ... it would be unwise to impose such a delay in the knowledge that it would be extremely difficult to implement because that would mean in practice that there would be unwanted transgressions, it would be a rule more honoured in the breach than the observance. Unless you fundamentally change the decision-making process a two week gap of that kind is unrealistic.'⁸⁷

45. Asked about the potential impact of provisions to prevent texts being redrafted at the last minute and immediately agreed in Council, the Permanent Representative told us that this would dramatically affect the process of negotiation:

'The Presidency will come with a text to a meeting and that text may have been around for weeks, it may have been around for days or hours. You debate it and then it is quite normal, in difficult and controversial cases, for the President of the day to go away to have some consultation, bilateral talks with the Commission or with individual member states, and to put another text on the table representing their reaction to what they have heard round the table. Council negotiations are a dynamic and fluid process. This can happen. It does not happen in every Council; sometimes the outcome is much more predictable.'⁸⁸

⁸⁷ QQ. 124, 130. See also QQ. 308-11.

⁸⁸ Q. 125.

46. However, we do in fact wish to 'fundamentally change the decision-making process'⁸⁹ in so far as we seek to prevent last-minute redrafting which makes major changes, leaves no time for scrutiny and potentially gives rise to ill-drafted and ill-considered legislation. There would obviously need to be provision for urgent measures, such as those deemed necessary following 11 September 2001. The effect of prescribing an interval of time would be to move forward the deadline for reaching agreement.

47. Our aim of securing adequate time for scrutiny could be achieved by either of the methods discussed here. We recognise that this is a difficult area: either method would introduce new inflexibility into a complex system, but on the other hand the present flexibility is sometimes exploited to the disadvantage of national parliaments and others. If the EU's legislative process was better organised, or there were rules to prevent significant new provisions being introduced without warning at a late stage, there would be much less need for change. Our main concern is substantially revised texts, but we see no prospect of defining 'substantially revised'. **We advocate either incorporation of national scrutiny reserves into EU procedures or a minimum length of time between consideration of a text by COREPER or publication of a new text and its agreement by the Council, in either case with tightly-drawn provisions allowing for cases of urgency (which might require unanimity), but we are open to suggestions which would reliably achieve the same effects by less formal means.** We do not believe this would add significantly to the length of the EU's legislative process, and it might improve the quality of EU legislation.

European Council deadlines

48. The letter of February 2002 from the Prime Minister and the German Chancellor (Gerhard Schröder) on reform of the Council and the European Council suggested that the European Council should set deadlines for the Council to reach agreement instead of itself seeking to secure agreement when the Council has been unable to do so.⁹⁰ This could potentially worsen the problem of last-minute negotiation and re-drafting. Sir Stephen Wall believed this would not be the case because 'generally speaking where the European Council is setting deadlines it is because the system has got bogged down rather than the reverse and what the European Council is doing effectively is trying to use its bully pulpit role to get action where action has not been taken'.⁹¹

49. However, a European Council deadline was imposed recently in respect of the proposal for a European Arrest Warrant, and although we were able to put questions to the Minister several times and have a debate on one of the versions of the proposal, we did not have adequate time for scrutiny of the final, heavily-amended version, which unexpectedly did not contain an important amendment which the Minister had earlier indicated would be incorporated. We noted that 'the presentation of radically changed texts in the last days of a Presidency, with calls for their immediate adoption, does not appear to us to be an appropriate way of determining changes at EU level to the criminal law'.⁹² An FCO official cited that deadline as a reason why it would be difficult always to have a 15 day gap between discussion in COREPER and the Council.⁹³ Any argument about urgency was flawed in this case because the measure is not to come into effect until 2004.⁹⁴ Another European Council deadline, relating to public procurement, resulted in the Spanish

⁸⁹ Q. 130.

⁹⁰ Letter to the Spanish Prime Minister, 25 February 2002.

⁹¹ Q. 422.

⁹² ESC, 2001-02, HC 152-xvii.

⁹³ Q. 308.

⁹⁴ Council document 14867/1/01 REV 1.

Presidency seeking political agreement to proposals on 21 May 'on the basis of individual pieces of text in French'.⁹⁵

50. The Minister for Europe said that the setting of deadlines by the European Council would not be common,⁹⁶ but we remain concerned, given the problems already experienced. **We emphasise that any deadlines set by the European Council and the timing of the negotiations intended to meet such deadlines must provide enough time for national parliamentary scrutiny in advance of Council decisions on new texts.**

'Provisional agreements'

51. A scrutiny reserve can only be effective if it is clear what constitutes agreement in the Council. Our scrutiny reserve applies to 'political agreement' in the Council, and therefore both we and our Lords counterparts were concerned when we found the Council beginning to reach 'provisional agreements' on proposals we had not cleared, apparently bypassing our scrutiny reserves. For example, in May 2001 provisional agreement was reached on measures relating to mutual assistance in criminal matters and to human trafficking.⁹⁷ The UK Permanent Representative told us that all the examples of provisional agreements dated from about May 2001 onwards and all were Justice and Home Affairs matters.⁹⁸ However there was also a case of a document said by the Home Office to have been 'agreed in substance' in December 1999,⁹⁹ and there have been innovative terms in other policy areas, such as 'common orientation' instead of common position (on maritime safety and on radio spectrum policy) and 'general orientation' instead of general approach (on telecommunications).¹⁰⁰

52. The crucial question for us is whether aspects of a provisional agreement could be reconsidered if we subsequently identified matters of concern. The Minister for Europe, Community and Race Equality at the Home Office (Angela Eagle) told us that 'provisional agreement does not stop you from reopening the issues that you have agreed if something important comes up. It is an attempt to work through the texts and see the lie of the land and get as much consensus around 15 States as possible so that you know where you are instead of leaving all of that work ... to the end'.¹⁰¹ She told our Lords counterparts in respect of two of the documents subject to provisional agreement that 'If the Committee were to identify a new point of major importance on either instrument, the Government would be prepared to pursue it if we considered there were a realistic prospect of securing an amendment to the text and provided of course that we agreed with the Committee'.¹⁰² However, the question at issue is precisely whether matters subject to provisional agreement can be re-examined with 'a realistic prospect' of success. In the cases of provisional agreement so far, the EP's opinion had not yet been considered or there was a requirement to reconsult the EP; 'Ministers therefore considered that they could take a general position in support of a text, while retaining the possibility of pursuing issues raised by our Parliament at the point when the Council returned to the European Parliament's opinion'.¹⁰³ There have not been any examples of issues being reopened following

⁹⁵ Letter from the Parliamentary Under-Secretary of State for Competition, Consumers and Markets, DTI (Melanie Johnson MP) to the Chairman of the Committee, 14 May 2002.

⁹⁶ Q. 311.

⁹⁷ ESC, 2001-02, HC 152-i, para. 47; HC 152-iii, para. 8.

⁹⁸ Q. 142.

⁹⁹ ESC, 1999-2000, HC 23-x, para. 5 (Penal sanctions against counterfeiting the euro).

¹⁰⁰ ESC, 2001-02, HC 152-i, para. 19; HC 152-iii, para. 3; *Official Report*, 25 April 2002, c. 390W.

¹⁰¹ HC 325, 2001-02, Q. 20. See also *ibid.*, Q. 17.

¹⁰² Letter to the Chairman of the House of Lords Select Committee on the European Union (Lord Brabazon), 6 September 2001.

¹⁰³ Letter from the Leader of the House of Lords (Lord Williams of Mostyn) to the Chairman of the House of Lords Select Committee on the European Union, 20 March 2002.

provisional agreement, but this may just reflect the small number of such agreements.¹⁰⁴

53. According to the Government, the Council's legal service identifies three categories of decision or outcome:

'terms referring to a decision adopting a text finalised by the Legal/Linguistic experts: "adoption", "common position" (for co-decision procedures);

'terms referring to a decision adopting a definitive position on a text, subject to finalisation of that text by the Legal/Linguistic experts: "political agreement"; and

'terms referring to a decision stating a position on a text before fulfilment of the legislative-procedure preconditions for voting, in particular delivery of the European Parliament's opinion: "general approach".'¹⁰⁵

The Government says that it will seek to ensure that only these terms are used, and considers that it can approve a general approach without breaching the scrutiny reserve resolution.¹⁰⁶ We intend to keep a close watch on examples of 'general approaches', and will not be fully reassured until we have seen examples of issues subsequently identified by ourselves or our Lords counterparts raised successfully in the Council.

Consultation by the Commission

54. Over the years there has been improvement in the consultation undertaken by the Commission on proposed legislation, with increased publication of Green and White Papers. We welcome the fact that the Commission is now proposing 'a reinforced culture of consultation and dialogue', to be underpinned by 'a code of conduct that sets minimum standards'.¹⁰⁷ This could provide national parliaments and others with increased opportunities to examine proposals for legislation at an early stage and to seek to influence them.

¹⁰⁴ Q. 142.

¹⁰⁵ Letter from the Leader of the House of Lords to the Chairman of the House of Lords Select Committee on the European Union, 20 March 2002.

¹⁰⁶ *Ibid.* See also *Official Report*, 25 April 2002, c. 390W; letter from the Parliamentary Under-Secretary of State, Home Office (Angela Eagle MP), to the Chairman of the House of Lords Select Committee on the European Union, 13 May 2002.

¹⁰⁷ *European governance: a White Paper*, pp. 16-17.

4. THE EU INSTITUTIONS

55. The EU institutions still reflect the EU's origins as an organisation intended to be run by experts (the Commission) with little democratic input.¹⁰⁸ However, there have also been major institutional changes, including the European Council of heads of state and government in 1975, a directly-elected Parliament in 1979, and, in recent years, the increasing power of governments in relation to the Commission.

56. Many ideas are currently being floated for changes to the EU institutions and organisation. The aim is only sometimes to increase democracy and accountability and to bridge the gap between citizens and EU institutions, but many of the ideas would have implications for democracy and accountability. Some proposals involve radical changes in the institutional structure. There are two main motivations (apart from institutional self-interest) for these, both of them made stronger by the prospect of enlargement. The first is the belief that reform is needed for the EU to operate effectively. For this reason some seek to extend use of the 'Community method' (involving the Commission and the EP) as opposed to inter-governmental methods, notably by transferring the inter-governmental 'pillars' (the Common Foreign and Security Policy — CFSP — and police and judicial co-operation in criminal matters) to the Community. Others seek to increase the power of governments in the EU for the same reason. Given the major changes in the EU in recent years, such as the development of the internal market, and the introduction of the euro, we do not agree that radical reform is needed to enable the EU to operate effectively, although some changes are clearly needed as regards the CFSP. The other motivation, more relevant to our inquiry, is the desire to increase democracy and accountability in the EU. The different ideas here reflect different views of how the sovereignty of the people or peoples of the EU should be expressed in the EU: through national governments elected in national elections, through national parliaments, through the directly elected EP, through a directly elected Commission President, through referendums, or through several of these. Many of these ideas would drastically change the character of the EU, making it either a much more supranational organisation or a much looser grouping of Member States.

57. The Minister for Europe indicated that the Government's aim was largely to keep the present balance among the EU institutions, possibly with 'changes on the margin', whereas a minority of Member States wanted to increase the powers of the Commission and the EP. However, he added that 'the Council of Ministers has got to assume a much more powerful role than it has now'; 'the essential principle is that governments should remain in the driving seat of policy direction'.¹⁰⁹

The Presidency

58. The country which holds the Presidency chairs the European Council and all the different Council formations and represents the EU elsewhere in the world. Member States take it in turns to hold the Presidency for a period of six months. The six-monthly system has some advantages, such as raising the EU's profile in the Presidency country. As the Foreign Secretary has stated, 'it gives every Member State — large or small — an equal stake in running the Union'.¹¹⁰

59. However, the system also has major disadvantages, due to the shortness of each Presidency. According to the Council's Secretary-General, it 'creates a pressure to produce results which adversely affects the quality of proceedings', and 'has become a source of

¹⁰⁸ Ev 2.

¹⁰⁹ QQ. 332-3. See also QQ. 394, 407.

¹¹⁰ Speech in The Hague, 21 February 2002. See also Convention document CONV 27/02, p. 41.

permanent imbalance and infighting within the Union, and will be even more so after enlargement'.¹¹¹ According to Commissioner Barnier, 'this highly unstable and constantly changing system is certainly a source of weakness', both as regards internal workings and external representation.¹¹² The Foreign Secretary's view is that 'If a much larger EU is to be effective and cohesive, then we need a much longer planning period than the six months of a Presidency, to avoid the artificial peaks of activity which a Presidency induces and to have a better way both of establishing and delivering strategic objectives.'¹¹³ Moreover, with 25 Member States, each would hold the Presidency only every 12½ years. Given the effect of the 'artificial peaks of activity' on our scrutiny work, as well as our wish to see a better-organised EU, **we share the view that the system of six-monthly Presidencies should be replaced.**

60. There are various proposals for replacing it. For the chairmanships of individual Council formations, proposals generally involve longer terms, of 1½ or 2½ years, with team Presidencies of several Member States sharing the duties between them, though the Council Secretary-General has raised the possibility of the election of Chairmen.¹¹⁴ It is clear that any new system will need to respect the principle of equality of Member States.

61. The chairmanship or Presidency of the European Council is a more difficult matter. Either the six-monthly rotation could be retained, or the European Council could elect its President for a longer term of office.¹¹⁵ Any such elected President would be an influential figure. **It will be essential to establish parliamentary accountability for an elected President of the European Council, and the joint meetings of national parliamentarians and MEPs proposed below would be a means of doing so.**¹¹⁶ Subject to that, we support the proposal that the European Council should have an elected President with a term of office of two years or more.

The European Council

62. The European Council is the meeting of heads of state and government four times a year. It does not have a formal role in the legislative process, but it is 'the Union's supreme political authority', its task being to 'provide the Union with the necessary impetus for its development and ... define the general political guidelines thereof'.¹¹⁷ According to the Prime Minister and the German Chancellor, it 'plays a key role in providing the EU with strategic direction and a clear sense of purpose, such as driving forward the Lisbon and Tampere agendas' (on economic reform and justice and home affairs respectively).¹¹⁸ It is also a democratically accountable part of the EU, in the sense that, through electing their own national governments, voters can change its party political character.

63. Several proposals to reform the European Council have recently been put forward, reflecting the perception that the European Council is too bogged down in detail to provide effective leadership and the probable difficulties following enlargement. Enlargement from 15 to 25 or more will be a change of kind rather than of degree; as Sir Stephen Wall put it, 'Six, 9, 12, even 15 people sitting round the table can negotiate. With 27 it is very difficult

¹¹¹ *Preparing the Council for enlargement*, 11 March 2002.

¹¹² Q. 100.

¹¹³ Speech at The Hague, 21 February 2002.

¹¹⁴ *Preparing the Council for enlargement*; Foreign Secretary's speech at The Hague, 21 February 2002; Convention document CONV 27/02, p. 41 (John Bruton).

¹¹⁵ Convention document CONV 27/02, p. 41; *Preparing the Council for enlargement*; *Financial Times*, 16 May 2002.

¹¹⁶ Paras. 141-3 below.

¹¹⁷ *Preparing the Council for enlargement*; Article 4 EU.

¹¹⁸ Letter to the Spanish Prime Minister, 25 February 2002.

to do that'.¹¹⁹ According to the Council's Secretary-General, the European Council 'is increasingly asked to spend time on laborious low-level drafting work ... The drift in the workings of the Presidency has reduced its meetings to report-approval sessions or inappropriate exercises in self-congratulation by the institutions.'¹²⁰

64. Apart from measures to make the European Council's agenda more 'focussed and manageable', the Prime Minister and the German Chancellor have proposed that discussions 'focus on strategic and overarching issues, such as considering the Commission's annual programme and maintaining momentum behind the EU's economic reform agenda'; that 'consideration of individual legislative dossiers should in principle be precluded'; and that 'unanimity should only be applied in areas where this is provided for in the Treaties'.¹²¹ The Swedish Prime Minister has concentrated on 'a more efficient system for preparing the European Council meetings' (as well as greater openness).¹²² The Council's Secretary-General sums up the matters for discussion as:

- 'Refocussing the European Council on its original purpose, concentrating on its role of co-ordinator and driving force';
- 'Better organisation of European Council meetings', including new provisions relating to agendas;
- 'More structured preparation', to be achieved by greater efficiency in a smaller number of Council formations and 'a methodical approach to preparation which is lacking at present'.¹²³

65. Much of this seems to us like common sense. Indeed the descriptions of how the European Council currently operates paint an astonishing picture of chaotic organisation, with inadequate preparation of meetings and "bouncing" of items onto the agenda.¹²⁴ Remedying this does not require Treaty changes and so need not await the IGC. We have already discussed proposals for greater openness and for the European Council to set deadlines for legislation.¹²⁵ Here we are mainly concerned with the proposal for the European Council to have a more strategic role. In his speech in Warsaw in October 2000, the Prime Minister proposed 'an annual agenda for Europe, set by the European Council', which 'would be a clear legislative, as well as political, programme setting the workload of individual Councils'.¹²⁶ He indicated that the President of the Commission would play a part in drawing up that agenda. An annual agenda set by the European Council is potentially a welcome development, giving a clearer idea of what the EU is seeking to achieve and better advance warning of new legislative and other proposals and their likely timing. Presumably it would replace the six-monthly list of Presidency priorities. **We see merit in replacing the six-monthly list of Presidency priorities with an annual European Council agenda that relates more clearly to the Commission's annual work programme. We also consider it essential that any European Council agenda is subject to scrutiny before it is finalised, and that national parliamentarians participate in that scrutiny, and we return to this point later.**¹²⁷

¹¹⁹ Q. 394. See also Q. 332.

¹²⁰ *Preparing the Council for enlargement.*

¹²¹ Letter to the Spanish Prime Minister, 25 February 2002. See also European Commission, *European governance: a White Paper*, pp. 29-30.

¹²² Letter to the Spanish Prime Minister, 6 March 2002.

¹²³ *Preparing the Council for enlargement.*

¹²⁴ Paras. 41, 64 above.

¹²⁵ Paras. 18-27, 48-50 above.

¹²⁶ Speech of 6 October 2000.

¹²⁷ Paras. 136-40 below.

The Council of Ministers

66. The Council of Ministers is in principle a single body, which can deal with any subject within EU competence, but in practice it meets in different 'formations' in subject areas such as agriculture or justice and home affairs, attended by the national Ministers with those portfolios. Most proposals, other than that for the Council to meet in public when legislating, have concentrated on changing the Council 'formations', calling for: a formation capable of exercising a co-ordinating role, to be created either by splitting the General Affairs Council (so that there was a separate Council formation for foreign affairs) or through a new formation composed of Deputy Prime Minister or Ministers for Europe;¹²⁸ reducing the number of Council formations so that there is greater coherence of policy in related subject areas and less chance of sectional interests dominating;¹²⁹ and a separate Council formation dealing with legislation in all policy areas and meeting in public.¹³⁰ The Minister for Europe envisaged a co-ordinating Council composed of 'Prime Ministers' representatives who clearly were acting with the authority of the Prime Minister', meeting two or three times a month (whereas the General Affairs Council currently meets monthly).¹³¹ **We would welcome a simplified Council structure which gave rise to more coherent policy-making and which would potentially make national parliaments' task of holding Ministers to account less difficult.**

67. According to Sir Stephen Wall, individual Presidencies vary in the use they make of the Council Secretariat:

'Some countries use the Secretariat more than others, but most people would agree that whatever the Council formation, there is greater scope for the provision of information to Ministers, so that when ... the General Affairs Council is, say, dealing with Macedonia in one month and Macedonia in the next month, it is quite useful for them to have shortly before the meeting a note from the Council Secretariat to say that "Last month you took X and Y decision. This is what has been done in the meantime to implement it. This is what we think you now need to focus on when you meet next week". To an extent that happens but it is a bit hit and miss at the moment and there is scope for what I would call introducing greater consistency and professionalism in the way we as Member States in the Council work with the Secretariat which services us to organise our business.'¹³²

It is extraordinary that the EU's main legislative body operates in such a slapdash way, and it helps to explain some of the difficulties we encounter over scrutiny of legislation. It is also further evidence for the harmful effects of the six-monthly Presidency system. **Citizens and parliaments are entitled to expect greater professionalism in the organisation of the Council of Ministers.**

The European Commission

68. The European Commission is often the target of criticism as being unelected, powerful, bureaucratic and interfering. The Federal Trust regarded the legitimacy of the Commission as a more serious problem than the Council legislating in private.¹³³ We do not share that view. The major decisions are mostly taken by the Council rather than the Commission, and the Commission is only one part of the EU bureaucracy, and not a

¹²⁸ *Preparing the Council for enlargement.*

¹²⁹ Mark Leonard, *Network Europe: the new case for Europe*, Foreign Policy Centre, 1999, p. 50.

¹³⁰ Q. 105.

¹³¹ Q. 334.

¹³² Q. 401.

¹³³ Ev 187.

particularly large one by the standards of local government in the UK and elsewhere. Nevertheless, since the Commission is not elected, its role demands close scrutiny. Moreover, there have been problems of maladministration and corruption in the Commission, reflected in the resignation of the Santer Commission in 1999 and intended to be dealt with by the reforms proposed by Commissioner Kinnock.

69. The fundamental questions about the Commission are why it should continue to exist, and what its role is or ought to be; only when these are answered is it possible to address other questions such as whether it (or its President) should be elected, how it should be held accountable and whether it should retain its right of initiative.

70. The Prime Minister has summed up the reasons for the Commission's existence as follows:

‘We need a strong Commission able to act independently, with its power of initiative: first because that protects smaller states; and also because it allows Europe to overcome purely sectional interests. All governments from time to time, Britain included, find the Commission's power inconvenient but, for example, the single market could never be completed without it.’¹³⁴

John Bruton states that the ‘strong influence that the Commission has in Pillar One matters¹³⁵ is designed to ensure that proposals are only made if they represent a genuine European common interest, because the Commission, by its nature, is somewhat detached from the politics of individual Member States’.¹³⁶

71. As for its role, the Commission both initiates and executes policy. It is at the same time more than the European Communities' executive (since it also has legislative and quasi-judicial powers)¹³⁷ and less than that (since the Council also has executive powers). It is responsible for monitoring compliance with the Treaties (including taking legal action to ensure compliance), suggesting policy changes, proposing legislation and (in certain areas) adopting it on its own initiative, and exercising legislative and administrative powers delegated to it by the Council. It also represents the EU in trade negotiations and in making agreements with international organisations and non-Member States. Thus, like other EU institutions, it does not correspond exactly to any national organisations.

72. The Commission believes it needs to ‘refocus on its core mission’, and particularly to ‘focus on its Treaty tasks of policy initiation; execution; guardian of the Treaty; and international representation of the Community’.¹³⁸ According to the Minister for Europe, the Commission's role ‘should primarily be as an executive body, not as a politically constituted body, ensuring that the rules of the European Union and its policies develop in the interests of the whole of the European Union’.¹³⁹ The EP Constitutional Affairs Committee's report on the division of competences argues for a return to the principle that the political authority establishes the legal principles with the practical arrangements being a matter for the executive (the Commission).¹⁴⁰ The Commission's role may eventually be clarified or ‘refocussed’, but it is likely to remain more than just an executive or civil service. We return to the matter of the Commission's role below.¹⁴¹

¹³⁴ Speech in Warsaw, 6 October 2000.

¹³⁵ i. e. European Community matters as opposed to the two inter-governmental pillars of the EU.

¹³⁶ Convention document CONV 27/02, p. 18.

¹³⁷ Q. 105.

¹³⁸ European Commission, *European governance: a White Paper*, pp. 8, 30.

¹³⁹ Q. 335.

¹⁴⁰ *Report on the division of competences between the European Union and the Member States* (‘Lamassoure report’), April 2002, A5-0133/2002, p. 18.

¹⁴¹ Para. 82 below.

The Commission: election and accountability

73. Many of our witnesses argued that the President of the Commission should be elected, though they differed about *who* should elect the President. At present the Council appoints the Commission President by unanimity (to be changed to qualified majority voting if the Nice Treaty enters into force) and individual Commissioners are in practice appointed by Member State governments and confirmed in office by the EP.¹⁴² Arguments in favour of election are that it would open up the selection of the President beyond the small number who currently decide it (in a process described by one witness as 'sordid'),¹⁴³ that it would make the Commission more accountable, and that it would 'personalise' one of the EU's institutions and thereby make it more interesting.¹⁴⁴

74. Arguments against election are that it would disrupt existing institutional relationships by considerably increasing the Commission's authority, that it would politicise the Commission, that it is inappropriate for an executive, and that it might not reduce the disconnection between institutions and citizens.¹⁴⁵ Sir Stephen Wall stated that election would not only make the Commission President 'an independent political figure on the European stage', but by affecting the Commission's neutrality could reduce its ability to do its job: 'if the Commission ... take such and such a view on a competition matter, it is pretty important that by and large the Member States accept that the Commission is behaving as a neutral competition authority. If the President of the Commission were seen in any way to be a partisan figure ... you undermine that'.¹⁴⁶

75. In fact, both those opposing and supporting election believed it would increase the Commission's power and politicise the Commission;¹⁴⁷ indeed Andrew Duff MEP argued that the Commission was already a political body and that it should gradually become more party political.¹⁴⁸ Commissioner Barnier thought election would 'inevitably politicise' the President, but on balance favoured election because it would be 'putting a face on one of the key players in the European Union'.¹⁴⁹

76. Some of the arguments depend on *who* elects the Commission President. There are three options. The first is election directly by the people of Europe. John Bruton has proposed that the Commission President be elected on the same day as the EP but in a separate ballot, while Commissioner Barnier suggested that 60 or so MEPs should be elected on a transnational basis and the first-placed of these should become Commission President.¹⁵⁰ John Bruton argues that the merits of candidates 'would be debated in cafes in Palermo, in wine-bars in London and in pubs in Killarney', with 'the same conversation ... taking place all over Europe', and 'would be a uniquely useful way of building a sense of common European identity'.¹⁵¹ In other words, it could begin to create a European 'demos', in the sense of a people who feel themselves to have substantial common interests. To ensure that the Commission President did not neglect the general or long-term interest of the EU John Bruton would provide for him or her to have only a single term.¹⁵² We encountered particular hostility to direct election from MEPs, several arguing that no country in Europe elects an executive President (with the possible exception of France).¹⁵³

¹⁴² For the formal position regarding appointment of Commissioners, see Article 214(2) EC.

¹⁴³ Q. 187 (Andrew Duff MEP).

¹⁴⁴ e.g. QQ. 117, 161.

¹⁴⁵ e.g. QQ. 335, 431.

¹⁴⁶ Q. 431.

¹⁴⁷ e.g. QQ. 9, 11, 117, 187, 280, 335, 431.

¹⁴⁸ Q. 187.

¹⁴⁹ QQ. 117, 119.

¹⁵⁰ Convention document CONV 27/02, p. 37; Q. 117.

¹⁵¹ CONV 27/02, p. 36.

¹⁵² *Ibid.*, p. 38.

¹⁵³ e.g. QQ. 204, 228.

The Minister for Europe thought direct election inappropriate for the head of an executive body and that citizens would not turn out to vote, though we do not accept that the President of the Commission, with the Commission's present powers, can be equated with the head of the Home Civil Service in the UK.¹⁵⁴ Several witnesses pointed to the problem which the number of EU languages would pose to effective campaigning.¹⁵⁵

77. The second option is election by MEPs. The great advantage is said to be that the EP would acquire one of the main attributes of a Parliament — determining the political colour of an executive or government — and that this would make EP elections more interesting (even 'giving them glamour and excitement') and increase turnout.¹⁵⁶ Parties would indicate before the election who their candidate would be. A major objection, as John Bruton has pointed out, is that 'there would be a tendency for the Commission and the parliamentary majority to cease to be independent of one another and to merge their interests in opposition to those of the minority in the Parliament and of member governments who disagreed with their policies. Parliament and Commission might become more partisan and less inclined to look dispassionately at the interest of the Union as a whole'.¹⁵⁷ Also, if election of the Commission President by MEPs did not result in turnout at EP elections rising and voting ceasing to be on national rather than EU issues, it could provide the worst of both worlds, making the Commission President more partisan and less accountable and not helping to reconnect citizens and institutions.

78. The third option is election by an electoral college composed of national parliamentarians or a mixture of national parliamentarians and MEPs. Among the advantages suggested by Simon Hix of the Foreign Policy Centre are that there would be a genuine debate about the policy direction of the EU, which would be covered in the national media because of their focus on national parliamentary politics, the power of national parliaments would be strengthened, and the EU's existing institutional balance would not be fundamentally altered.¹⁵⁸ Another advantage is that it would give Opposition politicians in each Member State a direct role in the EU as electors.

79. Of the different options, we are least attracted by that of the EP electing the Commission President. We are not convinced that this would significantly increase turnout in EP elections, and it would considerably strengthen the supranational aspect of the EU, with an elected Commission President backed by a majority in the EP. We are most attracted by the option of direct election, because it could potentially do much more than indirect election to reconnect citizens and the EU, and could begin to create a European 'demos', though we acknowledge the risk that it might fail to interest voters sufficiently to do so.

80. However, on balance, we are not in favour of the Commission President being elected, for two main reasons:

- If the *raison d'être* of the Commission is to rise above sectional interests, its effectiveness in doing so can only be weakened by election, and especially by election on a party political basis;
- Election would give the Commission President far greater authority and significantly change the balance between the EU institutions, while making him

¹⁵⁴ Q. 335.

¹⁵⁵ QQ. 157 (Klaus Hänsch MEP), 280 (Jean-Luc Dehaene).

¹⁵⁶ Q. 6 (Professor Bogdanor); Ev 4.

¹⁵⁷ Convention document CONV 27/02, p. 37.

¹⁵⁸ Simon Hix, *Linking national politics to Europe*, Foreign Policy Centre and British Council, February 2002. See also Ev 4.

less accountable and not necessarily doing much to reconnect citizens and EU decision-making.

81. There remains then the question of the Commission's accountability. As Sir Stephen Wall explained, there is a difficult balance to be struck: 'It is ... important that the Commission should be under scrutiny but not feel itself intimidated either by the Council on the one hand or by the Parliament on the other'.¹⁵⁹ In other words, in the matters delegated to it, it must be able to make decisions independently, rising above sectional interests, but still be held to account for any misuse of its powers or misconduct. There have been recent changes in the balance. In particular, the resignation of the Santer Commission in 1999 in advance of a likely vote of no confidence from the EP has had what one of our witnesses described as 'a transforming effect on the relations between the Commission and the Parliament'.¹⁶⁰ The EP cannot dismiss an individual Commissioner (only the Commission as a whole), but it could adopt a resolution calling on an individual Commissioner to resign, and the Commission President is now able to require the resignation of individual Commissioners.¹⁶¹ As one of our witnesses suggested, this is 'a reasonable compromise'.¹⁶²

82. Individual Commissioners also have to be approved in confirmation hearings in the EP. Other aspects of accountability, listed by Commissioner Patten, are scrutiny of the Commission's actions by the EP, the Court of Auditors and the ombudsman, and new rules on 'transparency'. However, he acknowledged a need to win greater public acceptance 'by explaining more clearly what we are (and what we are not); by focusing more single-mindedly on efficiency and results; by becoming more responsive to outside opinion; and by exercising greater self-discipline'.¹⁶³ Some of these themes are taken up in the Commission's White Paper on *European governance*, in which we find much to welcome. The Commission has proposed that legislation should define 'the conditions and limits within which the Commission carries out its executive role', that 'a simple legal mechanism' should allow the Council and EP 'to monitor and control the actions of the Commission against the principles and political guidelines adopted in the legislation', and that the Council and the EP 'should have an equal role in supervising the way in which the Commission exercises its executive role'.¹⁶⁴ **We emphasise the need for the Commission to operate strictly within well-defined parameters laid down by the Council and the EP, and for any political and legislative powers to be confined to those for which there is a clear justification, as in respect of state aids and competition.**

The Commission's right of initiative

83. In European Community matters (the first pillar, as opposed to the EU's two inter-governmental pillars) the Commission has the right of initiative as regards legislation: no-one else may put forward draft legislation. The Prime Minister has defended this as allowing Europe to overcome sectional interests and as protecting the interests of the smaller Member States.¹⁶⁵ Sir Stephen Wall pointed out that a majority of Member States, especially the smaller ones, strongly supported the Commission's sole right to initiate legislation, seeing the Commission as 'a vital safeguard of their interests, because otherwise they would see a European Union *de facto* dominated by the large Member

¹⁵⁹ Q. 408.

¹⁶⁰ Q. 204 (Sir Neil MacCormick MEP).

¹⁶¹ If the Nice Treaty comes into force, the Commission President will have a *formal* power to dismiss a Commissioner under Article 217(4) EC.

¹⁶² Q. 228 (Richard Corbett MEP).

¹⁶³ Chris Patten, 'Legitimacy gap', *Prospect*, July 2001, p. 36.

¹⁶⁴ *European governance: a White Paper*, p. 31.

¹⁶⁵ Para. 70 above.

States.¹⁶⁶ Not everyone agrees: Lord Norton wanted the Council to have an initiating role, Statewatch wanted the EP or a substantial group of citizens to be able to initiate legislation, and Jens-Peter Bonde MEP argued that 'The core issue is to take back the monopoly of initiative from the Commission and bring that to the national parliaments', who would ask the Commission to propose new legislation.¹⁶⁷

84. Confining the right of initiating legislation to an unelected body is in principle unsatisfactory, but, given the concerns of the smaller Member States, we see no prospect of the IGC deciding that the Commission's right of initiative should be removed. Also we note that the quality of drafting is more variable in the inter-governmental third pillar where proposals are brought forward by Member States.¹⁶⁸ **However, we regard it as essential that there be much greater openness about how the Commission decides what legislative measures to put forward and greater scrutiny of that process, with the involvement of national parliamentarians (who could put proposals to the Commission), and we return to this subject later.**¹⁶⁹

The European Parliament (EP)

85. The EP differs in several fundamental respects from national parliaments: no part of it sustains a government, it does not impose taxes and it does not initiate legislation; indeed it is only relatively recently that its agreement to legislation has been required (under the co-decision procedure).¹⁷⁰ Not sustaining a government removes one of the reasons motivating people to vote, but also, as Sir Neil MacCormick MEP argued, gives it an unusual freedom of action and aptitude for scrutiny.¹⁷¹ Its powers vary from one policy area to another. Richard Corbett MEP pointed out that it had a more consensual style, with a wider range of views, than the UK Parliament: 'you work by processes of explanation, persuasion and negotiation to achieve a result in the European Parliament, rather than just adversarial debating'.¹⁷²

86. However, as the EP has gained power, turnout at EP elections has declined, falling below 50% in the 1999 elections (from 63% at the first direct elections in 1979), despite voting being compulsory in several countries.¹⁷³ Turnout has, of course, fallen in national parliamentary elections too in most countries, but from a higher level. Lower turnout at EP than national elections is probably inevitable, given the fact that EP elections do not determine the political colour of a government and the EP is geographically further away. One of the underlying problems is that there is not a European 'demos', in the sense of a people with sufficient sense of common interest to vote on similar issues for similar parties. EP elections are 'second order' elections, in which electors predominantly vote not on European issues but on national ones, such as whether the governing party is popular.¹⁷⁴ Consequently there is no mandate for a particular set of policies to form the basis for the EP's amendments to legislation. Relations between MEPs and citizens are relatively weak, and Martin Howe QC argued that this made the EP unduly susceptible to lobbyists.¹⁷⁵

87. Nevertheless, the EP has an important role. As Simon Murphy MEP and Richard Corbett MEP pointed out, the EP 'is part of what makes the EU different from a traditional

¹⁶⁶ Q. 406.

¹⁶⁷ QQ. 48, 68-72, 471.

¹⁶⁸ See e.g. ESC, HC 152-xx, para. 7.14 (Mutual recognition of financial penalties, 10710/01, Article 7).

¹⁶⁹ Paras. 136-40 below.

¹⁷⁰ See paras. 88-91 below.

¹⁷¹ Q. 204.

¹⁷² Q. 235.

¹⁷³ Ev 1.

¹⁷⁴ Ev 3, 15, 192.

¹⁷⁵ Ev 149; QQ. 449-50.

intergovernmental organisation. Indeed, it is only necessary to imagine what the EU would be like without the Parliament: it would be a system totally dominated by bureaucrats and diplomats, loosely supervised by Ministers flying periodically into Brussels.¹⁷⁶ There are certain tasks which 15 or more national parliaments could not do effectively on an individual basis, notably debating EU legislation in detail and amending it and scrutinising the work of the Commission. The EP and national parliaments are therefore complementary, and the activities of the EP in such areas are important to accountability in the EU. Andrew Duff MEP stated that the EP's scrutiny of the Commission's work was 'patchy in some areas ... but it is improving all round'.¹⁷⁷ On the other hand, where it is possible for national parliaments to act effectively on their own, there is no need for the EP to do so. As we discuss below, there are areas where the EP and national parliaments can benefit from co-operation, and where the role of national parliaments needs to be increased.¹⁷⁸

The EP and co-decision

88. Several MEPs suggested that the most important reform as far as the EP is concerned is to extend the co-decision procedure to all legislation.¹⁷⁹ Under the co-decision procedure (created by the Maastricht Treaty of 1992), legislation passes through both the Council of Ministers and the EP at the same time, with a conciliation procedure after second reading if they have been unable to agree. It is the most important of the EU's legislative procedures, being the normal one for all European Communities legislation other than that relating to agriculture, fisheries, taxation, trade policies and European Monetary Union.¹⁸⁰ It does not apply to the EU's two inter-governmental 'pillars'.

89. The relevant Treaty article¹⁸¹ sets out a clear if complex procedure, in which draft legislation passes between EP and Council until agreement is reached. The procedure includes a first reading (where the procedure may end if the Council approves all the EP amendments or the EP does not propose any), a second reading (where again the procedure may end), a Conciliation Committee if necessary to resolve remaining differences between the Council and the EP, and (if there has been conciliation) third reading (in which the Council and EP can only accept or reject the text produced by the Conciliation Committee). In practice, there is considerable use of 'trialogues', consisting of the Council, EP and Commission meeting in private to ensure that any EP amendments are acceptable to the Council or to agree the text. Trialogues may meet at first reading or second reading, and matters subject to conciliation may also be resolved at a trialogue rather than going to formal conciliation.¹⁸² The conciliation stage is always in private.

90. The co-decision process created a requirement for the EP's agreement in the areas it applies to, and might have been expected to result in a process of open debate on draft legislation. To an extent it does, but the way the procedure actually operates means that much of the discussion which matters takes place in private, cutting out most MEPs and also causing difficulties for Ministers and officials. It also makes it extremely difficult for anyone outside the EU institutions, whether national parliaments, interested parties or citizens, to track what is happening and seek to influence those involved, especially as the timescale is highly unpredictable. Co-decision has given the EP considerable power,¹⁸³ but the distinctive contribution of a parliament should be to debate issues in public, not to

¹⁷⁶ Ev 97.

¹⁷⁷ Q. 188.

¹⁷⁸ Paras. 136-44 below.

¹⁷⁹ QQ. 161, 223; Ev 78.

¹⁸⁰ EP, *Conciliations handbook*, July 2000, p. 3.

¹⁸¹ Article 251 EC.

¹⁸² Information about the co-decision procedure has been obtained in discussions with UKREP staff.

¹⁸³ Michael Shackleton, 'The politics of codecision', *Journal of Common Market Studies*, Q. 60.

impose its will through back-room deals. Secrecy may be necessary in negotiations attempting to balance the interests of Member States, but **we regard it as inappropriate for an executive and a democratically-elected parliament to be involved so extensively in secret negotiations over legislation.**

91. Any changes to the co-decision procedure would be objected to if they lengthened the time it takes. Indeed the trialogues are in part an attempt to speed up the process. However co-decision is not excessively lengthy: from common position to third reading (if all the stages are needed) should not take longer than nine months even if each stage takes the full time.¹⁸⁴ What is needed, in our view, is reform in such a way that collusion between the Council, Commission and EP is less necessary. For example, at first reading the EP might put forward principles on which a text should be amended rather than detailed textual amendments, and it would then be for the Commission to respond with an amended text. This would accord with the desire of the EP's President (Pat Cox) for the EP's debates to be more political and less textual.¹⁸⁵ There might be more stages but less time between them. We note that the Government has an open mind on whether co-decision should be extended to new areas.¹⁸⁶ **We believe any extension of co-decision to new areas should be conditional on a change in the present procedure so that it can operate in a way which is both effective and transparent.**

Relationship between EP and citizens

92. Lord Norton pointed out that the EP's own proposals for change tended to concentrate on the relationships between parliament and executive, whereas relatively little attention is given to strengthening the relationship between the EP and citizens: 'even if the EP does a good job in scrutinising and influencing the executive, citizens will not necessarily feel connected with the EU if they themselves feel detached from the process'. He conceded that identifying the need was easier than finding a solution, but mentioned development of links between MEPs and constituents and campaigns to let citizens know what MEPs can do for them.¹⁸⁷ **We endorse the view that strengthening the relationship between the EP and citizens by increasing knowledge of what the EP does will increase its authority and its contribution to democratic legitimacy in the EU.**

93. This is not helped in the UK by use of an electoral system involving not only very large constituencies but also party lists, which, as Timothy Kirkhope MEP pointed out, make it unnecessary for MEPs to connect with ordinary citizens: 'the only people you need to connect with ... are members of your party'.¹⁸⁸ Draft EU legislation currently being considered requires proportional representation in EP elections, but not any particular form of PR.¹⁸⁹ **We recommend that there be a critical re-examination of the system currently used in the UK for elections to the EP, in an attempt to reconnect MEPs to constituencies small enough to re-establish a representative relationship with communities and their electorates, and that the party list system is abandoned in favour of 'first past the post' and a constituency-based system in which the electors know for whom they are voting to represent them in a given area.**

¹⁸⁴ Article 251 EC provides for about eight months maximum, though the EP or the Council can extend the times allowed to a limited extent (by up to about 3½ months). Treaty of Amsterdam, Declaration 34 (Cm 3780, p. 104) provides that 'In no case should the actual period between the second reading by the European Parliament and the outcome of the Conciliation Committee exceed nine months'.

¹⁸⁵ Information obtained during the Committee's meeting with Pat Cox in Brussels, 26 February 2002.

¹⁸⁶ Q. 408.

¹⁸⁷ Ev 24-5; Q. 34. See also Q. 204.

¹⁸⁸ Q. 217.

¹⁸⁹ ESC, 2001-02, HC 152-xxii, para. 17.9 (on Council document 6151/02).

5. WHO DOES WHAT

94. There is a longstanding concern, at least in some Member States, that the EU intervenes extensively in matters which should be left to the Member States or authorities within them, and that the powers of Member States and other authorities are gradually being eroded by the EU. The Laeken Declaration stated that many citizens 'feel that the Union should involve itself more with their particular concerns, instead of intervening, in every detail, in matters by their nature better left to Member States' and regions' elected representatives', and that 'What they expect is more results, better responses to practical issues and not a European superstate or European institutions inveigling their way into every nook and cranny of life.'

95. At the Nice IGC it was agreed that the next IGC should consider 'how to establish and monitor a more precise delimitation of powers between the European Union and the Member States, reflecting the principle of subsidiarity',¹⁹⁰ and the Laeken Declaration takes up that theme in a section headed 'A better division and definition of competence in the European Union.' Our general view is that a clearer definition of competences is needed and that, since democracy and accountability cannot work as effectively at supranational levels as at the national level, the EU's tasks should be confined to areas where action at EU level is clearly more effective.

96. There are three related issues here:

- (i) Allocation of powers between the EU and Member States (also described as 'delimitation of competences'). The Laeken Declaration asks how the division of competences could be made clearer, how the principle of subsidiarity should be applied in this respect, and how the 'missions' of the EU should change as a result.
- (ii) The principle of subsidiarity (i.e. of powers being at the levels where they can be exercised most effectively), particularly in areas where power is shared between the EU and Member States (though it is also relevant to the allocation of powers). The Laeken Declaration asks how it can be ensured that 'a redefined division of competence does not lead to a creeping expansion of the competence of the Union or to encroachment upon the exclusive areas of competence of the Member States and, where there is provision for this, regions,' while at the same time ensuring 'that the European dynamic does not come to a halt.'
- (iii) In areas where the EU does act, leaving more flexibility to Member States. The Laeken Declaration asks whether the day-to-day administration and implementation of the EU's policy should be left 'more emphatically' to the Member States or (where appropriate) regions, and whether there should be 'more frequent recourse to framework legislation, which affords the Member States more room for manoeuvre in achieving policy objectives'.¹⁹¹

97. The last of these is the least controversial (at least in the abstract), but not necessarily easy to achieve, since it needs to be ensured that the 'policy objectives' really will be achieved. Commissioner Barnier accepted that 'we do need to ask ourselves why directives, which initially were supposed to be framework directives setting out the general game plan, now enter into such minute detail', but pointed out that it was often people outside the Commission who had demanded greater detail — for example business interests in the case of environmental standards, in order to prevent distortion of competition.¹⁹² The

¹⁹⁰ Treaty of Nice, Declaration 23.

¹⁹¹ See also European Commission, *European governance: a White Paper*, p. 20.

¹⁹² Q. 111.

Scottish Executive's Deputy First Minister (Jim Wallace) argued strongly for greater flexibility, for example in environmental matters, so that the legislation could be moulded to suit particular Scottish circumstances, thereby making it more effective.¹⁹³ While recognising that there will sometimes be a difficult balance to strike and that each case must be considered on its merits, **we endorse the principle that the EU should legislate wherever possible with a light touch, leaving as much flexibility as possible to Member States and authorities within them.**

Allocation of powers

98. The EU is entitled only to those powers conferred on it by the Treaties. Its legislative competences are of three types:

- Exclusive competences. These are common commercial policy, fisheries¹⁹⁴ and (for States in the euro area) monetary policy, together with areas where exclusive competences arise 'because the Community legislates extensively in the area concerned'. Internal market legislation is also, in principle, an area of exclusive competence, but Member States may legislate where the Community has not fully exercised that competence.
- Shared competences. In these areas Member States may legislate where the EU has not done so, but not otherwise. EU action is subject to the principles of subsidiarity and proportionality (discussed below). Most EU activity falls within this category of shared competences, including activities under the two inter-governmental pillars and citizenship, agriculture and fisheries, the 'four freedoms' (free movement of goods, persons, services and capital), visas, asylum and immigration, transport, competition, taxation, social policy, environment, consumer protection, trans-European networks (interoperability and standards), economic and social cohesion, energy, civil protection and tourism.
- Complementary competences. In these areas the EU simply supplements or supports the action of Member States, or adopts 'measures of encouragement' or co-ordination. These areas include economic policy, employment, customs co-operation, education, vocational training, culture, public health, trans-European networks (except interoperability and standards), industry, research and development, development co-operation and defence.

Member States retain competence in areas where the Treaties exclude EU competence, recognise the competence of Member States or are silent. However, the European Court of Justice has sometimes taken the view that EU competences necessary to implement aims set by the Treaties flow implicitly from the Treaties. The EU has non-legislative or executive competence only where necessary to achieve the aims of the planned action or ensure uniform application or where the legislation specifically provides for it (as in competition policy).¹⁹⁵

99. The report drawn up for the EP's Constitutional Affairs Committee on the division of powers noted that a large part of the Council's work does not have direct legal force, consisting instead of political guidelines, and that 'one of the novel successes of the Union is to have encouraged national governments to work together, within common institutions, to exchange information and co-ordinate their action, even in areas which remain within

¹⁹³ Q. 348.

¹⁹⁴ i.e. 'living marine resources in the zones covered by the Treaty'.

¹⁹⁵ This paragraph is based on Convention document SN 1990/3/02 REV3, 25 April 2002, *Preliminary reflections on the delimitation of competence between the European Union and the Member States*.

national jurisdiction'. There is also one area of compulsory co-ordination, on national fiscal policies.¹⁹⁶

100. The main problems with the present allocation of powers are lack of clarity and, arguably, that it does not always accord with the principle of subsidiarity. According to the EP's Constitutional Affairs Committee, part of the problem lies in the fact that the Treaties sometimes allocate competences on the basis of policy areas and sometimes on the basis of objectives, and that they are excessively inflexible (resulting in extensive use of Article 308 EC).¹⁹⁷ The EU also tends to act through legislation because that is where its competences lie. According to the Foreign Secretary, 'The current lack of clarity... creates the impression that power is draining away from national governments to the centre.'¹⁹⁸

101. A major obstacle to greater clarity is that a large proportion of the competences are shared ones, and necessarily so. According to the Scottish Executive, 'Much of this debate ignores the fact that the problems the EU is trying to tackle (such as social exclusion, unemployment and environmental issues) cannot be solved by one tier of government alone.'¹⁹⁹ The Local Government International Bureau states that good governance requires equal partnership and co-operation between all "spheres" (rather than "levels") of government, that most EU competences will be shared ones, and that 'competences such as "the environment" cannot sensibly be allocated exclusively either to the EU or to Member States.'²⁰⁰ Several of our witnesses cited the example of education, an area firmly under Member State control and where the EU has only a 'complementary competence', but where the EU can play a useful role in certain areas, such as mutual recognition of professional qualifications.²⁰¹

102. We draw the following conclusions:

- **A clearer allocation of powers is desirable, especially where powers have been inferred from objectives set in the Treaties, but on its own will have limited impact because of the prevalence of shared powers;**
- **There need to be arrangements to review the allocation of powers periodically, with the possibility both of adding new powers and of returning existing ones to the Member States;** we note that the Laeken Declaration mentioned the possibility of 'restoring tasks to the Member States', and that the EP Constitutional Affairs Committee's report suggested some return of powers in respect of agriculture and regional policy to the Member States,²⁰² although whether the EU institutions will in practice ever be willing to return any powers to the Member States remains to be seen;
- **The principle that *all* powers not transferred by the Treaties to the EU remain with the Member States must be maintained, and it must be made clear that the powers of Member States are not derived from the Treaties; but, subject to that, we see merit in a list of powers from which the EU is specifically excluded;**

¹⁹⁶ Draft report on the division of powers between the European Union and the Member States ('Lamassoure report'), February 2002, 2001/2024 (INI), pp. 16-17.

¹⁹⁷ Article 308 EC provides that measures may be taken 'if action by the Community should prove necessary to attain, in the course of the operation of the common market, one of the objectives of the Community and this Treaty has not provided the necessary powers'.

¹⁹⁸ Speech at The Hague, 21 February 2002.

¹⁹⁹ Response of Scottish Executive to Scottish Parliament's European Committee's 9th Report, February 2002, p.2.

²⁰⁰ Ev 182, 184.

²⁰¹ QQ. 186, 472; Ev 96.

²⁰² EP, A5-0133/2002, Lamassoure report, p. 20. See also Q. 186.

- ‘A simpler statement of principles, which sets out in plain language what the EU is for and how it can add value’,²⁰³ as proposed by the Foreign Secretary, would be worthwhile.

Subsidiarity

103. The principles of subsidiarity and proportionality were incorporated into Community law through the Maastricht Treaty of 1992, which gave effect to the following in respect of shared competences:

‘In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community.

‘Any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty.’²⁰⁴

104. A Protocol to the Treaty of Amsterdam of 1997 provided further guidance:

‘For Community action to be justified, both aspects of the subsidiarity principle shall be met: the objectives of the proposed action cannot be sufficiently achieved by Member States’ action in the framework of their national constitutional system and can therefore be better achieved by action on the part of the Community.

‘The following guidelines should be used in examining whether the above-mentioned condition is fulfilled:

- the issue under consideration has transnational aspects which cannot be satisfactorily regulated by action by Member States;
- actions by Member States alone or lack of Community action would conflict with the requirements of the Treaty (such as the need to correct distortion of competition or avoid disguised restrictions on trade or strengthen economic and social cohesion) or would otherwise significantly damage Member States’ interests;
- action at Community level would produce clear benefits by reason of its scale or effects compared with action at the level of the Member States.’²⁰⁵

The Protocol also provided that the reasons for proposed Community legislation should be stated, demonstrating compliance with the subsidiarity principle by means of ‘qualitative or, wherever possible, quantitative indicators’, that the Commission should produce an annual report on the application of the principles of subsidiarity and proportionality, and that the Council and the EP should also take account of those principles in any amendments to Commission proposals.²⁰⁶

105. The UK Permanent Representative told us that there had been ‘a distinct improvement since the principle of subsidiarity was implanted in the Maastricht Treaty, strengthened by the Protocol in [the Treaty of] Amsterdam and supported by a change of

²⁰³ Speech at The Hague, 21 February 2002.

²⁰⁴ Now part of Article 5 EC.

²⁰⁵ *Treaty of Amsterdam*, 1997, Cm 3780, p. 85, paragraph (5).

²⁰⁶ *Ibid.*, pp. 85-6, paragraphs (4), (9), (11).

policy, if not yet a complete change of culture, within the Commission and the other Union institutions'. He particularly commended the Commission in this respect,²⁰⁷ and we note the statements relating to subsidiarity in the Commission's White Paper on European governance.²⁰⁸ However, the Permanent Representative also indicated that 'there are still cases where the United Kingdom has expressed concerns on subsidiarity grounds'.²⁰⁹ We too encounter legislation clearly offending against the principle of subsidiarity — most recently the proposed legislation on racism and xenophobia.²¹⁰

106. Debates in the Convention have indicated strong support for the principle of subsidiarity.²¹¹ However, support for the principle in the abstract does not necessarily lead to application of it in specific matters, and there are widely differing views as to what constitutes subsidiarity, illustrated by the combination in the speech of 22 May 2002 by the Commission President (Romano Prodi) of references to subsidiarity and a call for, among other things, 'an integrated European police force'.²¹² Sir Neil MacCormick MEP described as 'one of the oddities' the fact that national governments support the principle in theory but breach it in the Council in practice, referring to the 'curious excess of zeal of the States acting together to bind the States acting separately'.²¹³ Alain Lamassoure MEP described the problem to the Scottish Parliament's European Committee as follows:

'No European institution is in reality willing to comply with the principle of subsidiarity... I have personal experience of that as a member of the European Parliament and as a former member of the Council of Ministers... The Commission is not keen to comply with the principle of subsidiarity — it is a matter of authority and retaining its power. For the same reasons, the European Parliament is not keen on subsidiarity. It is more surprising that the European Court of Justice does not consider itself to be in charge of scrutinising compliance with the subsidiarity principle. The main responsibility of the European Court of Justice is to secure equality of competition throughout Europe. Equality of competition usually means the same, single regulation for the whole of Europe's great single market.

'It is even more surprising that even the Member States are not in favour of abiding by the subsidiarity principle — at least the members of the Council of Ministers are not. Why is that so? It does not matter to a Minister for agriculture, environment or the budget whether the last word is in Brussels rather than in his or her capital city — that Minister does not feel that he or she is losing authority or competence. The only difference is that decisions are made in Brussels instead of in the Minister's capital city — the Minister is always at the table. It is even more convenient for a Minister who is a member of the Council of ... Ministers to negotiate and decide in Brussels than in his or her capital city, because in Brussels the Minister is among fellow Ministers who are in charge of the same competence. Such Ministers are also more remote from the scrutiny of Prime Ministers, national media and national Parliaments — they have a wider margin for manoeuvre'.²¹⁴

107. Jens-Peter Bonde MEP emphasised the role the European Court of Justice had played in extending EU competences.²¹⁵ The EP Constitutional Affairs Committee report

²⁰⁷ Q. 147.

²⁰⁸ *European governance: a White Paper*, pp. 10-11, 22.

²⁰⁹ Q. 147.

²¹⁰ ESC, 2001-02, HC 152-xxi, para. 3. See also ESC, 2001-02, HC 152-xxxiii, para. 13 (seat belts).

²¹¹ Note on the Convention plenary meeting, 15-16 April 2002 (CONV 40/02), p. 7; note on the Convention plenary meeting, 23-4 May 2002 (CONV 60/02), pp. 4-5.

²¹² Speech of 22 May 2002.

²¹³ Q. 198. See also Q. 239.

²¹⁴ Quoted in 9th Report from the European Committee of the Scottish Parliament, *The governance of the European Union and the future of Europe: what role for Scotland?*, SP Paper 466, para. 81. See also QQ. 81, 441, 473.

²¹⁵ Q. 482.

observes that 'the wording of the Treaties and the history of the single market have often led the Court to defend the most Community interpretation.'²¹⁶

108. Several of our witnesses argued that the EU institutions, especially the Council, were capable of ensuring adherence to the principle of subsidiarity,²¹⁷ but we do not share that view, for the reasons given by Alain Lamassoure.²¹⁸ **We agree with those who have advocated new procedures to enforce the principle of subsidiarity.** We therefore seek to answer the following questions:

- Is a new definition of subsidiarity needed, and, if so, what should it be?
- Should its enforcement be a political or a judicial matter?
- In either case, how should it be enforced, and by who, and should national parliaments have a role here?
- At what stage in the legislative process should proposals be checked for compliance with subsidiarity?

109. Sir Neil MacCormick MEP defined subsidiarity as 'the principle that decisions should be taken as close to the persons affected by them as is consistent with equity and with efficiency'. He pointed out that there is general agreement about what the principle is but not about how it applies — for example what is equitable and efficient in a particular policy area.²¹⁹ The Government does not have a new definition of its own.²²⁰ We encountered some criticism of the Treaty definition,²²¹ but we do not believe redefining the principle of subsidiarity will contribute much to better application of it.

110. The Minister for Europe told us he had an open mind on whether enforcement of subsidiarity should be by judicial means (through the ECJ) or political means (through some form of second Chamber).²²² The EP's Constitutional Affairs Committee has proposed that the ECJ become a Constitutional Court with the role of enforcing subsidiarity.²²³ Sir Neil MacCormick MEP wanted 'a detached and judicial or quasi-judicial arbiter to decide whether subsidiarity as a legal principle is violated or not by some piece of legislation', as with devolved and reserved powers in the UK, and told us that the courts gradually build up precedents which define very broad and general terms, and could do so in respect of 'equitable' and 'efficient' in relation to subsidiarity.²²⁴

111. On the other hand, Klaus Hänsch MEP regarded subsidiarity as a political rather than a judicial matter because 'in the end you cannot tell people or tell the governments who decided on a European level that this was not possible because of the principle of subsidiarity.'²²⁵ The Scottish Executive's Deputy First Minister supported 'early political intervention' to halt decisions on laws offending against subsidiarity on the practical grounds that this would be faster than involving the ECJ and therefore a better safeguard.²²⁶

²¹⁶ EP, A5-0133/2002, Lamassoure report, p. 25. See also Ev 198.

²¹⁷ QQ. 239, 243; Ev 75, 172.

²¹⁸ Para. 106 above.

²¹⁹ Q. 198. See also Ev 183.

²²⁰ Q. 290.

²²¹ QQ. 186, 441.

²²² Q. 291. See also speech by the Foreign Secretary at The Hague, 21 February 2002.

²²³ EP, A5-0133/2002, Lamassoure report, p. 25. See also the EP resolution, 16 May 2002, P5-TA (2002) 0247, paras.

41-3.

²²⁴ QQ. 198-9.

²²⁵ Q. 160.

²²⁶ Q. 377.

112. Since the principle of subsidiarity is incorporated in the Treaties, it must be capable of being interpreted by the ECJ. However, **we believe enforcement of the principle of subsidiarity should be a political matter**, for two reasons. The first is the practical one that political enforcement is likely to be faster. The second is that decisions on whether the objectives of a policy would be better achieved at a particular level of government are fundamentally political ones.

113. If there is to be political enforcement of the principle of subsidiarity, or at least political involvement in the process, there are three reasons, in our view, why national parliaments should play a part:

- As Alain Lamassoure MEP and others have argued, the EU institutions are not in practice keen on applying the principle;
- While many national parliaments strongly favour greater EU integration, they do not have an inherent, institutional interest in transferring powers to the EU level, and could therefore counterbalance the EU institutions;
- National parliaments, being generally closer to the people they represent than any EU institution, are more likely to reflect the views of citizens on such matters.

We note that the proposal to involve national parliaments has wide support, most speakers in the recent Convention debate favouring some sort of mechanism composed of national parliamentarians.²²⁷ **We believe national parliamentarians should have a role in determining questions of subsidiarity.**

114. We consider in the next section of this Report *how* national parliaments and their members might do this.²²⁸ Here we note that various methods are possible: they (or particular members or committees) might make the decision, might refer cases for decision by another body, or might just advise. **If cases are referred for decision by another body, we would favour that body being a political or quasi-judicial arbiter or watchdog**, as discussed later.²²⁹

115. A further question is at what stage in the legislative process any questions of subsidiarity should be raised. The EP's Constitutional Affairs Committee observed that clearing a proposal at an early stage would mean that subsequent amendments by Council or EP offending against subsidiarity could not be remedied, whereas examining a proposal at a late stage might result in months of work being undone. It concluded that examination at a late stage was a better option because it would encourage the Council and EP to adopt a cautious approach.²³⁰ We are not persuaded that an 'either/or' decision is necessary: stopping proposals which offend against subsidiarity at an early stage would prevent much wasted effort, but it could also be possible to scrutinise for subsidiarity problems at the end of the legislative process any *changes* made to a proposal. We note that the Commission says it is committed to withdrawing proposals 'where inter-institutional bargaining undermines the Treaty principles of subsidiarity and proportionality or the proposal's objectives'.²³¹

²²⁷ Note on the Convention plenary meeting, 15-16 April 2002 (CONV 40/02), p. 7. See also QQ 108, 110, 428; EP, A5-0133/2002, Lamassoure report, p. 25.

²²⁸ Paras. 131-5 below.

²²⁹ Paras. 134-5 below.

²³⁰ EP, A5-0133/2002, Lamassoure report, p. 25.

²³¹ *European governance: a White Paper*, p. 22.

'Ever closer union'

116. Article 1 of the Treaty on European Union refers to 'the process of creating an ever closer union among the peoples of Europe.' 'Ever closer union' is a legitimate aspiration, and may come about if the people of Europe desire it. However, we do not regard it as appropriate for a treaty to commit the peoples it covers to such a vague and open-ended process. The closeness of the union should depend on decisions made openly and democratically at each stage. Removing the phrase from the Treaties would help to reduce the perception that the EU is engaged in a one-way process towards greater centralisation regardless of what citizens want.²³² **The reference to 'ever closer union' should be removed from the Treaties.**

6. THE ROLE OF NATIONAL PARLIAMENTS IN THE EU

117. As we have already indicated, the primary role of any national parliament should be to scrutinise the activities of its own government in the Council and elsewhere. National parliaments also — again separately — ratify treaties and amendments to them, ratify Accession Agreements and provide for the implementation of EU legislation. The European committees of national parliaments attend COSAC twice a year, but this body has no role in EU decision-making apart from offering occasional 'contributions' to the EU institutions.²³³ In this part of our Report we examine the possibility of involving national parliaments more directly in EU decision-making. As already discussed,²³⁴ such proposals are based on the premise that national parliaments are generally closer to the people they represent than any EU institution, and that the EU would be strengthened by drawing on this source of democratic legitimacy. However, the extent to which greater involvement of national parliaments would help to bridge the gap between citizens and EU decision-making would depend very much on action by national parliaments themselves to achieve this. We are taking steps in our own case to ensure this,²³⁵ and we encourage other national parliaments to do so too. Our aim in this part of our Report is to determine what greater role would be appropriate and especially what would work.

118. The EP's Constitutional Affairs Committee has recently agreed a report on *Relations between the European Parliament and the national parliaments in European integration*. We agree with much in the report (and the EP's resolution on the subject), including the following points:

- The EU's democratic deficit can be remedied by strengthening *both* the EP and national parliaments, and the EP must not see itself as the exclusive representative of citizens and guarantor of democracy in the EU;
- 'The quality of relations between the European Parliament and the national parliaments is of fundamental importance for the overall democratic nature of the Union';

²³² For the argument that it should be replaced by a statement of the EU's objectives, see Convention document CONV 22/02, p. 3 (Andrew Duff MEP).

²³³ See paras. 149-54 below.

²³⁴ Para. 3 above.

²³⁵ See our recent Report on *European scrutiny in the Commons*, ESC, 2001-02, HC 152-xxx.

- The fundamental way of ensuring the participation of national parliaments in the EU's legislative work is through monitoring their respective governments as members of the Council;
- Co-operation between the EP and national parliaments should be based on the principle of complementarity.²³⁶

119. Not surprisingly, the EP opposes a second Chamber. Specific proposals in the EP's resolution include:

- 'Willingness to contribute to an in-depth dialogue with the national parliaments at the time of the adoption of the Commission's [annual work] programme with a view to ensuring that the principle of subsidiarity is adhered to';
- Placing co-operation between committees of the national parliaments and the EP in all 'European integration-related sectors' on a systematic footing, not least in respect of the Common Foreign and Security Policy, economic and monetary union, third pillar matters and constitutional affairs, together with improved exchange of information;
- 'an interparliamentary agreement ... between the national parliaments and the European Parliament as a means of introducing formal cooperation arrangements';
- 'the emergence ... of a constituent power exercised jointly by the national parliaments, the Commission, the European Parliament and the governments of the Member States.'²³⁷

120. Involvement of national parliamentarians is best discussed in terms of the roles they might take on, but it may be helpful to summarise here the different forms that involvement might take:

- Each national parliament to have a veto over proposed EU legislation;
- Meetings of national parliamentarians only, as in most versions of the second Chamber proposal;
- Meetings involving both national parliamentarians and MEPs, such as the EP committee meetings to which members of specialist committees in national parliaments are invited;
- Meetings involving national parliamentarians, MEPs and representatives of other organisations, as in the Convention on the Future of Europe;
- A specified proportion of national parliamentarians or national parliaments or a specified number of specialist committees being able to block a proposal or refer it back for further consideration (for example to the ECJ in respect of subsidiarity);
- National parliamentarians accompanying Ministers to Council meetings.

We do not deal here with bilateral relations between national parliamentarians and parliamentary committees because, though important, the extent of such contacts is entirely a matter for national parliamentarians.

²³⁶ EP, A5-0023/2002, Napolitano report, explanatory statement, paras. 8-10, 15, 21.

²³⁷ EP resolution, 7 February 2002, P5-TA (2002) 0058, paras. 11, 13-15, 21.

National parliament vetoes

121. Jens-Peter Bonde MEP and Martin Howe QC argued that all EU legislation should require approval by each national parliament before coming into effect, thereby giving each parliament a veto.²³⁸ The former also proposed that the right of initiative in legislation should pass from the Commission to national parliaments, making the Commission the secretariat of national parliaments.²³⁹ Martin Howe suggested that ratification by national parliaments might be on a basis similar to qualified majority voting, but that a measure should not come into force in a country where it had not been ratified.²⁴⁰ It could be argued that a national parliament veto is equivalent to a government veto, in that a government with a parliamentary majority usually gets its way, but both in the UK and elsewhere governments do not always win parliamentary votes, and at the very least they have to persuade Members to support them. However, the arguments against national parliament vetoes are similar to those in respect of vetoes and requirements for unanimity in general: that in a Union of 15, and even more in a Union of 25 or more, they would make it almost impossible to make any decisions. Although votes in the Council are rare, the possibility of qualified majority voting is undoubtedly important in securing agreement. With national parliament vetoes the EU would probably intervene in fewer inappropriate areas than at present, but it would also be far less effective in areas such as the internal market. **We do not support the proposal for national parliament vetoes.**

A second Chamber

122. In his speech in Warsaw in October 2000 the Prime Minister proposed a statement of principles in respect of competences and added that:

‘I also believe that the time has now come to involve representatives of national parliaments more on such matters, by creating a second Chamber of the European Parliament.

‘A second Chamber’s most important function would be to review the EU’s work, in the light of this agreed statement of principles. It would not get involved in the day-to-day negotiation of legislation — that is properly the role of the existing European Parliament. Rather, its task would be to help implement the agreed statement of principles; so that we do what we need to do at a European level but also so that we devolve power downwards. Whereas a formal constitution would logically require judicial review by a European constitutional court, this would be political review by a body of democratically elected politicians. It would be dynamic rather than static, allowing for change in the application of these principles without elaborate legal revisions every time.

‘Such a second Chamber could also, I believe, help provide democratic oversight at a European level of the common foreign and security policy.’²⁴¹

We note that this proposed Chamber is often described as a third rather than a second Chamber, since there are already two legislative bodies - the Council of Ministers and the EP.

123. The Minister for Europe sums up the purpose of the second Chamber as follows:

²³⁸ Q. 471; Ev 150; QQ. 451-2.

²³⁹ Q. 471; Jens-Peter Bonde, *The futures of Europe*, February 2002, para. 119.

²⁴⁰ Ev 150.

²⁴¹ Speech of 6 October 2000.

'First, it could serve to re-connect national parliaments, and national parliamentarians, with decision making in Brussels. Secondly it could help provide a solution to defining where the EU should act and where action should be left to the individual member states. And third, the Chamber could provide oversight of areas of EU activity which go beyond the traditional work of the Community, such as European defence, and justice and home affairs.'²⁴²

The Government has not indicated what *powers* it believes the second Chamber should have.

124. The second Chamber proposal has also been put forward by others in somewhat different forms, sometimes including a regional element.²⁴³ The most detailed proposal is that from the French Senate, as follows:

- The purpose would be 'to anchor Europe better in each country' by recreating the link between national parliaments and EU institutions; to 'involve in a more harmonious way both small and large states in European construction' through equal representation of each in the second Chamber; and a better balance between the EU institutions (through a counter-balance to the EP) and also between the EU and Member States (through a second Chamber which would tend to favour decentralisation);
- The second Chamber should consist only of representatives of national parliaments, and all Member States should be equally represented in it;
- It should take over the tasks currently carried out by the Assembly of the Western European Union, and would also supersede COSAC;
- It would not vote on legislation, but would debate subsidiarity, and could refer a proposed to the ECJ for a ruling on whether it conformed to the principles of subsidiarity and proportionality;
- It would have a consultative role in respect of defence, the Common Foreign and Security Policy and justice and home affairs — all areas where the EP cannot play a full scrutiny role — and would have general debates on the future of the EU;
- So that members could continue to play a full part in their national parliaments, it would meet for only about six sessions a year, each lasting a day and a half.²⁴⁴

125. The House of Lords Select Committee on the European Union has conducted a detailed inquiry into proposals for a second Chamber. It concluded that:

- A dual mandate involving national parliamentarians in a second Chamber that was busy enough to justify its existence would place too onerous a burden on an individual for both jobs to be done effectively;
- Subsidiarity is an important issue but not likely to offer sufficient interest to senior parliamentarians;

²⁴² Ev 112.

²⁴³ House of Lords Select Committee on the European Union, 7th Report, 2001-02, *A second parliamentary Chamber for Europe: an unreal solution to some real problems*, HL Paper 48, paragraphs 12-21.

²⁴⁴ *Une deuxième Chambre Européenne*, Senate report No. 381, 2000-2001; English translation in HL Paper 48, pp. 29-35.

- There is a real problem in identifying a suitable stage in the legislative process for the second Chamber to check proposals for subsidiarity;
- An elected second Chamber would be bound to be drawn into conflict with the EP, it would be hard to avoid it getting involved in the detail of legislation, delegations might be packed with loyal government supporters, and there would be less clarity about accountability for policy outcomes.

It summed up the proposal as 'an unreal solution to a series of real problems'.²⁴⁵

126. We agree with our Lords counterparts that the proposed second Chamber would not achieve the objectives set for it. Apart from the practical difficulties, we do not believe it would do much reconnect citizens and EU institutions. We note that the proposal has not attracted wide support, and therefore seems unlikely to be taken forward in the Convention and the IGC. However, the Prime Minister's proposal and the subsequent debate have performed two useful functions: they have focussed attention on a series of 'real issues' connected with democracy and accountability (as our Lords counterparts have indicated), and they have highlighted both problems and possibilities with regard to the involvement of national parliamentarians in the EU.

127. The two main problems concerning a second Chamber (as opposed to problems concerning the tasks it might carry out) are those of time and of representativeness:

- (i) Busy members of national parliaments cannot be expected to carry out a major additional task (such as membership of a second Chamber) involving frequent journeys overseas, and they would soon lose touch with their national parliaments and their constituents if they did. **We conclude that any involvement of national parliamentarians in the EU should make the least possible demands on their time, and should draw on different Members for different purposes in order to spread the burden; forms of involvement not entailing meetings and travel should also be considered.**
- (ii) Given that there may soon be 25 or more national parliaments in the EU, most with two Chambers, meetings can only be of manageable size if attendance by each Chamber is restricted to a few Members, and this creates the problem of representativeness (and of selection). **We conclude that meetings of national parliamentarians should be so managed that the representatives can consult widely in advance, and should normally have a scrutiny and consultation rather than accountability role.**

128. We make two other general points:

- National parliamentarians will regard the time involved as worthwhile only if there is a genuine possibility of exerting influence;
- Involvement of national parliamentarians in the EU will be most beneficial when it also strengthens their ability to scrutinise the activities of their own Ministers in the Council.

²⁴⁵ HL Paper 48, 2001-02, paras. 30-8, 83.

The Convention

129. The Convention on the Future of Europe includes 30 national parliamentarians, together with 16 MEPs, 15 representatives of Member State governments, two Commissioners, representatives of candidate countries and several observers (making it similar to the Convention which drew up the Charter of Fundamental Rights). It has no powers, since it will be for the heads of state and government at the subsequent IGC to make the decisions, but it could have significant influence (depending above all on whether it is able to reach a consensus on the major issues).²⁴⁶ According to the report of the EP's Constitutional Affairs Committee on relations with national parliaments, the Convention has 'symbolised the recognition of shared responsibility in the exercise of "constituent power", which had hitherto been reserved for governments alone', and means 'assigning to the national parliaments ... and the European Parliament ... *joint constituent power*, i.e. a constituent power shared with the national governments', marking 'a new chapter in the role of parliaments in European integration'.²⁴⁷

130. The Convention is indeed an important innovation, above all because it means that matters to be decided at the next IGC are being discussed publicly in advance. It is a useful way of gathering a wide range of views and drawing up proposals to be decided upon elsewhere. From a democratic point of view it has one major defect: gathering one or two members from a large number of bodies (even elected ones) does not ensure that the resulting assembly is a representative one. This has been recognised in the fact that the Convention will not make decisions by voting, though working by consensus creates its own problems. **We conclude that the Convention format is useful for open debate and for developing ideas and making proposals, but (because of the problem of representativeness) not for making decisions, and we do not regard it as giving parliaments a 'joint constituent power'.**

National parliamentarians and subsidiarity

131. We have already concluded that national parliamentarians should have some role in respect of subsidiarity.²⁴⁸ Here we consider what that role should be and how it should be carried out. The ideas fall into three categories. The first, proposed by MEPs, is for 'in-depth dialogue' with national parliaments on the Commission's work programme.²⁴⁹ **We believe national parliamentarians should have stronger rights than the right of consultation as regards subsidiarity problems.**

132. The second involves meetings of national parliamentarians to decide or advise on matters of subsidiarity — in the Prime Minister's words, 'political review by a body of democratically elected politicians'.²⁵⁰ We think this would work only if focused on the start of the legislative process, for example by examining the items proposed in the Commission's annual work programme or the European Council's annual agenda, rather than any more ambitious scheme with meetings throughout the year. It would be inappropriate for MEPs to be involved in such meetings. Given that those attending could not be fully representative of their national parliaments, it would be essential that they had the opportunity to consult widely on the Commission's proposals in advance of any meeting. For the same reason, it would be inappropriate to allow them to make binding decisions, though the voting threshold could be raised for proposals they deemed

²⁴⁶ QQ. 260, 265.

²⁴⁷ EP, A5-0023/2002, Napolitano report, explanatory statement, paras. 29, 32.

²⁴⁸ Para. 113 above.

²⁴⁹ EP resolution, 7 February 2002, P5-TA (2002) 0058, para. 11; EP Constitutional Affairs Committee, *Report on the European Commission's legislative and work programme* ('Malmström report'), February 2002, A5-0046/2002, p. 11. See also Q.183; Ev 77.

²⁵⁰ Speech in Warsaw, 6 October 2000.

inconsistent with subsidiarity. Other procedures would be needed to monitor legislation not envisaged in the Commission's work programme or the European Council's annual agenda and legislation which is significantly altered during its passage.

133. The third category of ideas involves national parliamentarians referring proposals to the ECJ, or the European Council²⁵¹ or (as we prefer) a 'subsidiarity watchdog' for consideration. Such referral could take a variety of forms:

- referral by national parliamentarians meeting together for that purpose;
- referral by a specified proportion of national parliamentarians, such as the 40% of the members in at least a quarter of the Member States proposed by John Bruton, which would have the advantage of involving Opposition members of national parliaments directly in EU decisions;²⁵²
- referral by a specified proportion of European affairs or European scrutiny committees (to be designated for this purpose by the Member States).

134. We favour the sort of arrangements set out in the last paragraph. Since it would not necessarily require meetings, it could be more systematic, and, since the parliamentarians involved would be referring matters for decision rather than making decisions themselves the problem of representativeness would not arise. We are attracted by the idea of scrutiny committees making referrals, not simply because we are a scrutiny committee but because the referrals would arise directly from our scrutiny work, in which we seek to identify and comment on any subsidiarity problems. However, we would not mind having to obtain wider support for any referrals, and so we would also support a system in which a specified proportion of national parliamentarians were able to make referrals. **Whatever the method, we favour a system in which national parliamentarians could refer items of legislation to a 'subsidiarity watchdog' or other body for examination of compliance with the principles of subsidiarity and proportionality. Meetings of national parliamentarians to scrutinise the Commission's annual work programme from a subsidiarity point of view could also be of value.**

135. The 'subsidiarity watchdog' or panel we envisage would consist of senior politicians, about half a dozen in number, of whom any three could review a matter referred to them. They would be required to report promptly, with a thorough explanation of their decision. The selection process would need to be designed to ensure an impartial panel. Our suggestion would be for names to be put forward by the Council for endorsement by a specified proportion of national parliaments.

Examining annual programmes and agendas

136. If national parliamentarians were to examine the Commission's annual work programme and the European Council's annual agenda, the question would arise of whether their examination should be restricted to matters of subsidiarity or should be a more general examination. For the latter to be worthwhile, certain conditions would need to be met by the programme and agenda:

- they would need to be reasonably reliable guides to forthcoming legislation and other activity (with more of what Sir Stephen Wall called 'a Queen's Speech approach');²⁵³

²⁵¹ Convention document CONV 27/02, p. 26 (John Bruton).

²⁵² In the Commons the signatures could be gathered by means of an Early Day Motion.

²⁵³ Q. 405.

- they would have to be prepared in good time (as in the timetable being considered by the EP's Constitutional Affairs Committee for the annual work programme),²⁵⁴ and
- they would need both to set out priorities and to list and justify the legislative proposals.

137. We used to find the Commission's annual legislative and work programmes of little value from a scrutiny point of view; an immense list of legislative proposals was provided with no indication of which were significant, the reasons for them or who had proposed them. Even now, it does not, of course, cover the two inter-governmental pillars, and is not necessarily a reliable guide to the first pillar (i.e. European Community) legislation which does appear.²⁵⁵ However, the work programme, now preceded in February by the Commission's annual policy strategy, is gradually becoming a more useful document, thanks in large part to the EP's efforts.

138. We believe more thorough scrutiny of the policy strategy and work programme at EU level, including questioning of Commissioners as to the reasons for particular proposals (or for the absence of others) would be worthwhile, and would make the hitherto opaque process by which the Commission decides what legislation to introduce much more transparent. It should also be possible for national parliaments or substantial groups of citizens to be able to propose measures (which might be amending legislation or repeals) for the Commission to consider. The Commission itself calls for 'better consultation and involvement' as regards use of its right of initiative, and also for a 'reinforced culture of consultation and dialogue', in which 'the involvement of national parliaments and their specialised European affairs committees ... could ... be encouraged'.²⁵⁶

139. Similar issues arise in respect of any European Council 'annual agenda',²⁵⁷ and indeed the current system of six-monthly Presidency priorities. Sir Stephen Wall argued that the Commission should bring forward its proposals 'within a policy framework set by the European Council', so that governments are not 'taken by surprise by initiatives for legislation outside the framework',²⁵⁸ and the Foreign Secretary (citing the Tampere and Lisbon agendas)²⁵⁹ has stated that 'Europe works best when the European Council and the Commission work together to establish a strategic agenda, which is then passed to individual Councils to implement'.²⁶⁰ Greater coherence in drawing up programmes and fewer surprises are desirable, but the risk is of a heavily top-down approach controlled by the heads of state and government in the European Council, whereas the Commission in its White Paper proposes a less top-down approach.²⁶¹ Citizens' feelings of 'helplessness in the face of imposed decisions which cannot be influenced or controlled'²⁶² relate at least as much to the setting of the overall agenda for the EU as to the detail of EU measures.

140. As already indicated, MEPs have called for consultation with national parliamentarians about the Commission's annual work programme.²⁶³ However, we believe consultation by the EP would be too indirect a process if the aim is to reconnect citizens and EU decision-making: national parliamentarians should be

²⁵⁴ EP, A5-0046/2002, Malmström report, pp. 13-14.

²⁵⁵ *Ibid.*, p. 11.

²⁵⁶ *European governance: a White Paper*, pp. 16-17, 33-4.

²⁵⁷ See para. 65 above.

²⁵⁸ Q. 406.

²⁵⁹ Relating to justice and home affairs and to economic reform respectively.

²⁶⁰ Speech at The Hague, 21 February 2002.

²⁶¹ *European governance: a White Paper*, pp. 4, 11.

²⁶² Para. 1 above.

²⁶³ Para. 131 above.

involved in discussions directly with the Commission. We would expect national parliaments themselves to consult widely and seek to inform citizens in advance of such discussions, and would certainly plan to do this ourselves.²⁶⁴ We note that there is a general move to increase coherence in EU decision-making, particularly in devising forward programmes, through greater co-operation between the EU institutions, reflected in proposals by the Commission, the EP's President and others.²⁶⁵ National parliaments could never be an EU institution, but coherence in drawing up legislative and other programmes cannot be achieved without them, and nor can the aim of reconnecting citizens and EU decision-making. While we believe national parliamentarians alone should consider matters of subsidiarity, more general discussion of Commission and other proposals could usefully be discussed by national parliamentarians and MEPs together. Therefore we welcome the Commission's proposal for 'a reinforced culture of consultation and dialogue',²⁶⁶ and call for joint meetings of national parliamentarians and MEPs to scrutinise the Commission's annual policy strategy and work programme, question Commissioners on it, and debate it, and would support a similar procedure for the European Council's annual agenda. Some of the examination might be carried out by members from specialist committees, especially if the examination extended to the work programmes of individual Directorate-Generals.²⁶⁷

Joint meetings of national parliamentarians and MEPs

141. Joint meetings of national parliamentarians and MEPs could be used more generally, drawing in Members of specialist committees of national parliaments and the EP (somewhat like the Council of Ministers in its different formations) to scrutinise their subject area by questioning Commissioners, officials and expert witnesses and debating issues.²⁶⁸ To a limited extent this already occurs through meetings of EP committees to which representatives of national parliaments are invited. Putting this on a somewhat more formal and less ad hoc basis would have the major advantage that the selection of subjects for discussion could be more carefully considered and would be agreed between national parliamentarians and MEPs. National parliamentarians could ensure that subjects of concern to them were covered, that the number of meetings did not place excessive burdens on national parliamentarians, and that subjects were selected with a view to bridging the gap between citizens and EU decision-making. Given that national parliamentarians would have partial 'ownership' of the process, they would be more likely to organise events in their own country to give citizens the opportunity to contribute views. The proposal is consistent with the Commission's call for 'public debates, jointly organised by the European and national parliaments, on the Union's policies' and the EP's proposal for more systematic co-operation between committees of the EP and national parliaments.²⁶⁹

142. Possible subject areas might include the CFSP, Justice and Home Affairs (meeting some of the concerns expressed by Statewatch and Fair Trials Abroad),²⁷⁰ the Commission's annual policy strategy and work programme (as already discussed),²⁷¹ and decisions made or about to be made at European Councils. Also, the Commission has recently proposed a joint committee of national parliamentarians and MEPs concerned with police matters to meet twice a year for 'information exchange and co-ordination', and to nominate a smaller body to maintain close contact with Europol, and this could fit into the

²⁶⁴ See our Report on *European scrutiny in the Commons*, ESC, 2001-02, HC 152-xxx.

²⁶⁵ *European governance: a White Paper*, pp. 10, 16, 28-9; information obtained during the Committee's meeting with the EP President in Brussels, 26 February 2002; paras. 65, 139 above.

²⁶⁶ Para. 138 above.

²⁶⁷ Q. 107.

²⁶⁸ cf. Q. 112.

²⁶⁹ *European governance: a White Paper*, p. 30; para. 119 above.

²⁷⁰ Q. 65; Ev 174-5.

²⁷¹ Paras. 136-40 above.

same pattern.²⁷² Policy areas subject to the 'open method of co-ordination',²⁷³ which largely escape parliamentary scrutiny at present, could be covered, and major reports, such as the annual report on the CFSP, could be presented to such joint meetings.

143. An essential part of this proposal is that meetings would be jointly organised by national parliaments and the EP, and therefore there should either be a very small independent secretariat for this purpose or co-operation between the EP secretariat and the small COSAC secretariat we propose below.²⁷⁴ The relative proportions of national parliamentarians and MEPs would need to be determined: we would favour two-thirds national parliamentarians and one-third MEPs (similar to the Convention), though for the two inter-governmental pillars a smaller proportion of MEPs might be appropriate. **We call for joint meetings of national parliamentarians and MEPs to be placed on a more formal basis with a small secretariat and joint organisation by national parliaments and the EP.**

144. The House of Commons already receives a number of invitations to send representatives to meetings of EP committees. These opportunities are welcome, though it is not always possible to send a representative, especially when the meeting coincides with that of the relevant Commons committee. We take this opportunity to emphasise that the meetings are most useful when full information is circulated in advance and there are not too many set speeches from the platform.

Scrutiny of the ESDP

145. The European Security and Defence Policy (ESDP) falls within the EU's inter-governmental 'second pillar', in which the role of the EP is limited. There is particular concern about scrutiny of the ESDP following the transfer of the responsibilities and institutions of the Western European Union to the EU. Each government is of course directly accountable, individually, to its own national parliament, but there is no collective accountability and nor is there a body to whom the governments could or should be collectively accountable. What there has been traditionally, for organisations such as NATO and the Western European Union (WEU), is collective parliamentary *scrutiny*, which can contribute to the process of accountability in national parliaments, and that collective scrutiny is missing in the case of ESDP.

146. Various proposals have been made for bodies to perform that role:

- The WEU Assembly (which now calls itself the Interim European Security and Defence Assembly);
- The EP, taking over from the WEU Assembly;
- A second Chamber composed of national parliamentarians (as proposed by the Prime Minister);
- A new body consisting of 100 to 150 members, including MEPs (as proposed by the Belgian Parliament).²⁷⁵

147. We regard collective scrutiny of ESDP as essential. We agree with the Government that, since any decision within ESDP to deploy military force rests with national

²⁷² ESC, HC 152-xxiv, paragraph 8.

²⁷³ Defined in European Commission, *European governance: a White Paper*, pp. 21-2.

²⁷⁴ Para. 150 below.

²⁷⁵ See NATO Parliamentary Assembly Report AU 213 PC (01) 5, August 2001, section G; para. 122 above.

governments, 'the primary scrutiny role should also rest with national parliaments', who could carry out that scrutiny both individually and collectively.²⁷⁶ The Government rules out the WEU Assembly as not appropriate to scrutinise ESDP.²⁷⁷ A second Chamber with a variety of roles would not necessarily contain defence and foreign affairs specialists. In this subject area we see no reason for EP participation. **We support the proposal for regular meetings of members of the defence, foreign affairs and European affairs committees of national parliaments to scrutinise ESDP.**

Attendance of national parliamentarians in the Council

148. Commissioner Barnier has proposed that national parliamentarians should accompany their Ministers to Council meetings, apparently in order to warn about subsidiarity problems but possibly also to give advice more generally.²⁷⁸ We are at a loss to see what benefits there would be, at least for the national parliamentarians. They would not be permitted to vote, it is highly unlikely that speeches from them would be welcome in an enlarged Council, they would presumably be bound by rules on confidentiality, and they would risk being associated with decisions over which they had no influence. Ministers should not need such assistance to spot potential subsidiarity problems. **We do not support the proposal for national parliamentarians to accompany Ministers to Council meetings.**

COSAC and the scrutiny role of national parliaments

149. COSAC,²⁷⁹ consisting of members of the European committees of the EU's parliaments, together with those of the candidate countries, meets twice a year for a day and a half in the country which holds the EU Presidency. Each parliament, including the EP, can send six Members. In 1997 a Protocol to the Amsterdam Treaty recognised COSAC in the Treaties for the first time, allowing it to address 'any contribution which it deems appropriate on the legislative activities of the Union' to the EU institutions.²⁸⁰ Its meetings are useful for networking and to some extent for exchanging information, but the opportunities it could provide are largely squandered. Its agendas consist largely of speeches by Ministers of the Presidency country followed by questions and by debates on general subjects. Little attention is paid to the role of national parliaments or the practical problems of parliamentary scrutiny, on which the committees could usefully share information. The initial agenda for the Madrid COSAC in May 2002 was a perfect example, with four speeches by the Prime Minister and other Ministers and only an hour on the role of national parliaments, despite the fact that the Convention was shortly to consider the role of national parliaments. Our predecessors criticised the way COSAC's time is spent as long ago as 1995, and our Lords counterparts did so last year.²⁸¹

150. We would not wish to see COSAC given a legislative role or become the basis of a second Chamber.²⁸² **Instead, we would re-define COSAC's main role as assisting national parliaments to improve their scrutiny of government activities in the EU, by sharing best practice and information and acting as a strategic body on behalf of**

²⁷⁶ House of Lords, 11th Report from the Select Committee on the European Union, 2001-02, HL Paper 71 (II), *The European policy on security and defence*, Q. 186.

²⁷⁷ Letter from Baroness Scotland to Lord Jopling, Chairman of Sub-Committee C, Select Committee on the European Union, House of Lords, 10 May 2001.

²⁷⁸ QQ. 105, 108. See also Q. 281.

²⁷⁹ COSAC is the French acronym for the Conference of Community and European Affairs Committees.

²⁸⁰ Cm 3780, 1997, p. 90.

²⁸¹ Twenty-fourth Report from the Select Committee on European Legislation, HC 239, 1994-95, *The 1996 Inter-Governmental Conference*, paragraph 116; HL Paper 48, 2001-02, paragraph 75.

²⁸² Paras. 122-6 above.

national parliaments. COSAC's agenda should then concentrate on the roles of national parliaments rather than general issues. In addition, **COSAC needs to have a small secretariat to facilitate the exchange of information** (e.g. on scrutiny problems, in respect of particular documents or more generally),²⁸³ to monitor activities relevant to national scrutiny (e.g. compliance by the Council with the protocol on the role of national parliaments), and to take up procedural matters of concern with the Council Secretariat or the Commission. The Secretariat could also, in co-operation with the EP, organise the joint meetings of national parliamentarians and MEPs discussed above. A precondition for any such reforms is that changes in COSAC's rules must cease to require unanimity.

151. The role of the EP in COSAC would then need to be reconsidered. It is important to maintain the contacts which result from EP attendance at COSAC, but it seems to us inappropriate to have EP members on the 'troika' which determines COSAC's agenda. We believe a reformed COSAC which assisted national parliaments in their scrutiny role and thereby contributed to the EP's aim of the 'parliamentarisation' of the EU²⁸⁴ would be of greater value to the EP than retaining its place in the 'troika'.

152. COSAC could also help to resolve one of the problems facing national parliaments which actively scrutinise EU legislation, which is that many national parliaments do not. Research carried out by Andreas Maurer and presented to a COSAC working group in April 2001 categorised eight of the EU's national parliaments as 'policy influencing' or 'policy making' in EU matters (with the UK Parliament in the 'policy influencing' category) and seven as 'weak'.²⁸⁵ Many carry out little scrutiny of documents. Sir Stephen Wall believed this made a difference in the Council:

'If there were a kind of equal perception of the importance of parliamentary scrutiny across the European Union that would help. If you are in a situation where the UK, Denmark, one or two others, are the ones who most often have scrutiny reserves, it is frankly easier for a presidency, whose interest is clearly getting the business done, to put the pressure on you, than if 14 Member States were saying, sorry, they cannot agree because they have not completed the parliamentary scrutiny'.²⁸⁶

It is not surprising that some Presidencies organise business in a way leaving little time for scrutiny if they are not used to scrutiny from their own parliament; the overall climate of accountability is lacking.

153. The activities of national parliaments are clearly an area where the principle of subsidiarity should operate, and it would certainly be inappropriate for any EU institution to seek to tell them what to do. However, the same objection would not apply to national parliaments themselves, through COSAC, seeking to raise the overall standard of parliamentary scrutiny in the EU. This could be done through something similar to the 'open method of co-ordination', involving exchange of best practice and benchmarking, as practised by Member States in areas where the EU has little or no legislative competence. **COSAC should also draw up minimum standards of parliamentary scrutiny**, setting out both rights and duties of national parliaments, such as provision of information by the Government on each EU proposal within a certain time, ability to call Ministers to explain their activities in the Council, and provision of information to the

²⁸³ See Ev 19 for an example of the value of this.

²⁸⁴ EP resolution, 7 February 2002, P5-TA (2002) 0058, para. 3.

²⁸⁵ Andreas Maurer, 'National parliaments after Amsterdam: adaptation, re-calibration and Europeanisation by process', April 2001, p. 24. See also Ev 20.

²⁸⁶ Q. 413.

public. This would help European affairs committees when pressing for resources or government information.

154. In May 2002 COSAC called upon the 'troika' of parliaments which will plan the October 2002 COSAC 'to organise the preparatory work to draw up a detailed proposal for a more effective COSAC, focussing its activity more on the role of national parliaments'.²⁸⁷ **We shall press for our ideas to be included in that detailed proposal.**

155. The role of national parliaments will also be considered shortly by a working group of the Convention. The working group will not consist entirely of national parliamentarians, and therefore may feel some awkwardness about directing recommendations to national parliaments. However, neither the working group nor the Convention itself can do anything more than offer proposals — decisions will be for the subsequent IGC — and therefore **we encourage the working group to set out its view of what national parliaments should be doing as regards scrutinising government activity in the EU and reconnecting citizens and EU decision-making. It would also be helpful if the Convention asked COSAC to take action to seek to raise the overall standard of scrutiny by national parliaments.**

7. SUB-MEMBER STATE AUTHORITIES

156. Sub-Member State authorities, including the UK's devolved institutions, have no formal status in the EU, which is a partnership of Member States. They are recognised only through the Committee of the Regions, which has a purely advisory role. To a substantial extent their problems in respect of the EU are similar to those of national parliaments, especially the lack of openness and transparency in the legislative process, and they would benefit from the same remedies, such as more time to consider proposed legislation. However, they are also a step further removed from EU decision-making, and their interests usually have to be defended by their Member State.

157. There is of course a great variety of sub-Member State authorities. Pressure for change is greatest among those with legislative powers. The recent report of the Scottish Parliament's European Committee criticised the fact that Member States negotiate on proposals without direct input from sub-Member State authorities, even when new legislation relates to devolved matters, that sub-Member State authorities consequently have to pursue policies which accord with priorities set elsewhere, and that the EU 'remains in the main wedded to a conception of the Member States as unitary States'.²⁸⁸ Up to 18 March 2001, only about 10% of Council meetings had been attended by Scottish Executive Ministers.²⁸⁹ However, the Scottish Executive's Deputy First Minister considered that 'it would be wrong to over-estimate the difficulties', and cited examples of Scottish interests being taken into account, and the Scottish Executive states that it enjoys 'good relationships with the UK Government in contributing to UK policy making on EU matters'.²⁹⁰ Nevertheless, the Deputy First Minister wanted greater flexibility in EU legislation and an opportunity for sub-Member State authorities to make their views known

²⁸⁷ Contribution from the May 2002 COSAC, para. 8.

²⁸⁸ Scottish Parliament, Paper 466, paras. 31-6, 54.

²⁸⁹ Q. 365.

²⁹⁰ QQ. 347, 355; *The European governance White Paper: joint comments: Scottish Executive and COSLA*, March 2002, para. 18.

at an earlier stage of legislation, together with 'a more formal recognition by the institutions of the Union that we exist'.²⁹¹

158. The Laeken Declaration is virtually silent about regions, other than asking how it can be ensured that a redefined division of competences does not lead to encroachment on the competences of Member States 'and, where there is provision for this, regions'. Subsidiarity can of course apply within Member States, but it would be a contradiction of the principle for the EU itself to seek to apply it within Member States. However, proposals for change in the EU's relationship with sub-Member State authorities have been made recently by the Commission and have been considered by the EP's Constitutional Affairs Committee.

159. In its White Paper on European governance, the Commission notes criticisms that the role of regional and local government 'as an elected and representative channel interacting with the public on EU policy is not exploited', that 'legislation adopted by the Council and the European Parliament is either too detailed, or insufficiently adapted to local conditions and experience', and that 'national governments are often perceived as not adequately involving regional and local actors in preparing their positions on EU policies'. It proposes that:

- 'The Commission should ensure that regional and local knowledge and conditions are taken into account when developing policy proposals', and it should therefore 'organise a systematic dialogue with European and national associations of regional and local government';
- 'There should be more flexibility in the means provided for implementing legislation and programmes with a strong territorial impact, provided the level playing field at the heart of the internal market can be maintained';
- The Commission should test whether certain EU policies could be better implemented through target-based tripartite contracts between Commission, Member States and regions or localities;
- 'The territorial impact of EU policies in areas such as transport, energy or environment should be addressed'.²⁹²

160. The Local Government Information Bureau believes the Commission's proposals, including its recommendation relating to consultation by Member States, will 'go some considerable way to engage a wider range of actors in European policy-making, without affecting the formal decision-making process and accountabilities'.²⁹³ The Scottish Executive and the Convention of Scottish Local Authorities also regard the White Paper as 'a major step forward', which they warmly welcome, though they also call for direct consultation of sub-Member State authorities by the Commission and make other proposals.²⁹⁴

161. The proposals put to the EP's Constitutional Affairs Committee for 'partner regions of the Union' status are a matter of ongoing debate, though they would apply only to regional authorities designated by Member States. The status would confer certain rights, 'linked to their involvement in Community policies': 'representation in the Committee of the Regions (where not all regions with legislative powers sit at the moment); [the] right to be consulted by the Commission when it is preparing legislation falling within their

²⁹¹ QQ. 347, 351, 377.

²⁹² *European governance: a White Paper*, pp. 12-13.

²⁹³ Ev. 182.

²⁹⁴ *The European governance White Paper: joint comments: Scottish Executive and COSLA*, paras. 3, 7.

jurisdiction; [and the] possibility of bringing actions directly in the Court of Justice on competence disputes concerning them'.²⁹⁵

162. The Committee argues that almost half the States of the Union now have regions with legislative powers, and, as the Commission is not officially aware of their existence, 'the number of problems involving the conception, application or transposition of Community law has recently increased'. Moreover,

'the forthcoming enlargement of the Union to include many small countries may raise political difficulties for large regions in the existing Member States. This is because it will create a situation in which entities with a few thousand inhabitants are entitled to be represented as such in the Union, each one having a minister and a right to vote in every formation of the Council, one Commissioner, a quota of Commission staff, and members of the European Parliament, as well as having its language recognised as an official language of Europe, whereas historic regions with several million inhabitants, which make a major contribution to the economic dynamism of the Union and to the funding of its budget would still be unrecognised by the European treaties'.²⁹⁶

The Constitutional Affairs Committee's draft report also put forward the 'common sense' argument that the Commission should consult those responsible for an area of policy in accordance with the way Member States have chosen to devolve such responsibilities.²⁹⁷

163. We note the conclusions of the Scottish Parliament's European Committee report in 2001 on the subject of partners of the Union:

'We recommend that the Commission refines its ideas for "partnership agreements" with the constitutional regions/nations. We recommend that a vital component of such agreements must be for these countries or regions to have privileged access to the Commission for pre-legislative consultation'.²⁹⁸

164. The Constitutional Affairs Committee's draft report acknowledged that there is opposition to the partner regions of the Union proposal, partly based on the view that the Treaties should not mention sub-Member State authorities at all and partly because some States have no regions which would benefit.²⁹⁹ Commissioner Barnier drew attention to the inequalities which would arise between authorities with and without legislative powers³⁰⁰ (for example Scotland and Wales), and indicated that the problem was 'how can we recognise the role of regions without undermining the position of the Member States'.³⁰¹

165. We would not support new rights which undermined the position of Member States by making sub-Member State authorities their competitors in the EU. Also, we emphasise that the EU should not intervene in the internal organisation of Member States. There are still unanswered questions about how the proposal for partner regions of the Union status might work in practice. However, despite the silence of the Laeken Declaration on the subject, we do believe the Convention should discuss the involvement of sub-Member State authorities in the EU.

166. As regards the specific rights proposed to be linked to 'partner regions of the Union' status, we have not examined in detail the composition of the Committee of the Regions.

²⁹⁵ EP, 2001/2024 (INI), Lamassoure report (draft), p. 20.

²⁹⁶ EP, A5-0133/2002, Lamassoure report, p. 24.

²⁹⁷ EP, 2001/2024 (INI), Lamassoure report (draft), p. 20.

²⁹⁸ SP Paper 466, para. 213.

²⁹⁹ EP, 2001/2024 (INI), Lamassoure report (draft), p. 20.

³⁰⁰ Q. 114.

³⁰¹ *Ibid.*

The Scottish Executive's Deputy First Minister was not enthusiastic about direct access to the ECJ, on the practical grounds that a political process for remedying subsidiarity problems would be quicker.³⁰²

167. As for consultation, we note that the Government welcomes improved consultation between EU institutions and the devolved, regional and local authorities.³⁰³ We regard it as common sense for the Commission to consult authorities with legislative powers which will have to transpose and implement new EU legislation and to take particular notice of their views. We believe that the Convention on the Future of Europe should fully explore whether any such consultation or access to the Commission should be 'privileged'.³⁰⁴

8. REFERENDUMS

168. The role of referendums in the EU attracted relatively little interest during our inquiry. The point was strongly put to us that the principle of subsidiarity applies here: it is up to individual countries to decide whether to have referendums or not. Indeed in some countries they are unconstitutional.³⁰⁵ We consider here just two questions: how the EU should respond to negative referendum results, and the possibility of Europe-wide referendums.

169. Some referendums on EU matters affect directly only the Member State holding the referendum—for example, referendums in Member States with an opt-out from the euro on whether to adopt it. Others, such as the Irish referendum on the Nice Treaty, potentially impose a veto on what others may do. In such a case there are only two possible responses:

- The result, even if in a relatively small country on a low turnout, can be allowed to act as a veto over what the EU as a whole may do;
- The country concerned can hold the referendum again, possibly after concessions have been made.

From a democratic point of view, neither option is at all attractive. However, where turnout is low, we do not dissent from the practice of holding a referendum again.

170. The possibility of national referendums taking place throughout the EU on the same day on major Treaty changes (and perhaps on other issues) is of some interest. Professor Bogdanor argued that Europe-wide referendums 'might ... do a great deal to overcome the sense of alienation and remoteness felt by many Europeans', and 'would be an explicit recognition of the principle of the sovereignty of the people'.³⁰⁶ A simple majority overall would certainly not be appropriate. Other than for major Treaty changes, provision could be made similar to qualified majority voting in the Council, so that not every Member State would have to vote 'yes', but a certain proportion of Member States or the total population or both would have to do so. However, as Lord Norton indicated, such referendums would be seen by some as a method of overcoming the opposition of majorities in individual Member States, turnouts might be low, and citizens might feel less 'connected' to the EU

³⁰² Q. 377.

³⁰³ Ev 113.

³⁰⁴ SP Paper 466, para. 213.

³⁰⁵ Ev 94; Q. 276; Ev 16.

³⁰⁶ Ev 7.

than if they voted in purely national referendums.³⁰⁷ Since unanimity would be needed for such a Europe-wide referendum to take place, many Member States have no tradition of holding referendums, and the result might not be accepted in countries which voted differently from the majority, we regard the idea as impracticable for the foreseeable future. The same applies to the proposal by the Foreign Policy Centre for the holding of referendums as a result of citizens' initiatives.³⁰⁸

9. CONCLUSION

171. Bridging the gap between citizens and EU decision-making will remain inherently difficult, not only because of the EU's size but above all because of its unique combination of supranational and Member State authority, which means that decision-making will always be more complex than in a State. The more radical of the ideas discussed above would generally tilt the balance of power heavily in a supranational or a Member State direction.

172. However, our rejection of the more radical ideas does not mean that our proposals would not have a substantial impact on the relationship of citizens and EU decision-making. They would do so in two main ways: by increasing openness in the legislative process and by enlarging the role of national parliaments. The role and effectiveness of national parliaments would be increased in the following ways:

- Greater ability to hold Ministers to account for their activities in the Council;
- More time to scrutinise EU proposals;
- Power to refer EU legislation for examination of whether it complies with the principle of subsidiarity;
- Joint meetings with MEPs to scrutinise the Commission's annual work programme and other matters and question Commissioners and others;
- A reformed COSAC to act as a strategic body on behalf of national parliaments.

173. The direct involvement of national parliaments in the EU would be increased without cutting across formal lines of accountability, and in ways which would improve the scrutiny of governments at national level and provide opportunities to bridge the gap between citizens and EU decision-making. The extent to which this happened in practice would depend on the actions of each national parliament. However, the potential would exist for a simultaneous strengthening of national parliaments, of democracy and accountability more widely in the EU, and of the EU itself through the reconnecting of citizens and EU decision-making.

³⁰⁷ Ev 16-17.

³⁰⁸ Q. 91.

SUMMARY OF THE REPORT IN FRENCH

SYNTHÈSE

Il est communément admis que l'UE connaît des difficultés en termes de démocratie et de responsabilité et qu'il existe une « déconnexion » entre les citoyens et les institutions de l'UE. Déconnexion ou désengagement, tel est le problème central que notre Rapport a pour objet de traiter. Les parlements nationaux et leurs membres peuvent jouer un rôle clé pour combler le fossé entre des institutions européennes distantes et les citoyens, de par leur relation généralement plus étroite avec les citoyens que toute institution de l'UE. Offrir aux citoyens l'occasion d'influencer la prise de décision est un impératif essentiel si cette déconnexion de l'UE doit être réduite. (Paragraphe 1-4)

Les parlements nationaux peuvent contribuer à remédier à cette déconnexion uniquement s'ils abordent les thèmes de l'UE d'une façon qui permette d'établir une « connexion » avec les citoyens. (Paragraphe 7)

Des problèmes sont patents avec les deux sources principales de légitimité démocratique de l'UE. Dans l'UE, contrairement au cadre national, les gouvernements nationaux élus agissent en tant que chambre législative, seuls et dans le secret. Les membres individuels du Conseil, agissant collectivement et en majeure partie en secret, ne peuvent voir leur responsabilité engagée devant un autre organe de manière efficace. Quant au Parlement européen (PE), le taux de participation aux élections est bas, ses activités sont peu connues et les votes pour les élections au PE portent essentiellement sur des thèmes nationaux. (Paragraphe 14-15)

Le rôle premier des parlements nationaux est de surveiller les activités de leur gouvernement dans le cadre de l'UE et de leur demander des comptes. Leur efficacité dans cette optique repose en partie sur la façon dont l'UE conduit sa politique. Les informations et le temps sont les impératifs fondamentaux de la surveillance par les parlements nationaux — de même que pour les autorités régionales, et autres, et pour les citoyens. Les parlements nationaux peuvent renforcer la légitimité de l'UE uniquement s'ils acquièrent une influence réelle sur la prise de décision dans l'UE et que celle-ci est patente. (Paragraphe 16-17)

Ouverture

Le Conseil des ministres se réunit en privé lorsqu'il légifère, ce qui n'est pas seulement contestable en principe mais comporte également des effets spécifiques et néfastes, comme la difficulté pour les parlements nationaux de questionner la responsabilité des ministres. Nous accueillons avec bienveillance le fait que le gouvernement du Royaume Uni soit en faveur de la publicité des réunions du Conseil lorsqu'il légifère. (Paragraphe 18-21)

Nous partageons les vues du Gouvernement relatives à la nécessité pour le Conseil de légiférer en public. L'essentiel est que la procédure publique soit suffisante pour qu'apparaisse clairement quelle ligne a été adoptée par chaque État membre dans la procédure et comment se répartit la responsabilité des décisions prises. Le fait de confiner les réunions publiques aux domaines de codécision serait totalement inacceptable. (Paragraphe 22-4)

Des modifications conséquentes devront inclure la publicité des réunions du Conseil européen lors des prises de décisions législatives, l'accès aux documents du Conseil sous forme non-expurgée (sans que les positions politiques des États membres ne soient occultées) et une remise en cause du système selon lequel le Conseil accepte sans débats les « Points A » déjà négociés par les représentants au COREPER. Les rapports annuels et

autres documents d'importance doivent également faire l'objet de discussions publiques, spécialement les rapports de la Cour des comptes. Le Conseil devrait avoir pour obligation de justifier le caractère privé des débats. (Paragraphe 25-6)

L'appui de la demande de publicité des réunions du Conseil pour la plupart de ses sessions législatives devrait être un révélateur de la position réelle des gouvernements envers un regain de démocratie et de responsabilité. (Paragraphe 27)

Le système selon lequel la législation adoptée en COREPER est approuvée sans débats par le Conseil requiert un changement si la publicité des sessions du Conseil ne doit pas être vidée de sens. Nous pourrions soutenir la demande de la Commission pour de nouvelles voies de surveillance et de contrôle de l'exercice du pouvoir exécutif s'il en résultait une supervision plus ouverte que l'actuel système des comités. (Paragraphe 28-31)

Le processus législatif de l'UE et la surveillance des parlements nationaux.

Les propositions législatives et autres sont souvent soumises à un accord avant que les parlements nationaux n'aient eu le temps de les étudier, parfois sur la base de négociations de dernière minute. Le délai d'examen par les parlements nationaux ne devrait pas être considéré comme un ajout optionnel mais bien comme un aspect fondamental de la responsabilité. De ce fait, nous ne pensons pas que l'instauration d'un délai dans le processus pour un examen par les parlements nationaux constitue un ralentissement déraisonnable de la procédure législative. (Paragraphe 34-5)

Nous souhaitons éviter les textes de dernière minute apportant des changements majeurs, ne laissant aucun délai de consultation et générant potentiellement des textes législatifs mal rédigés et irréfléchis. Nous préconisons soit l'intégration de consultations nationales dans les procédures de l'UE ou un délai minimum entre l'examen d'un texte en COREPER, voire la publication d'un nouveau texte, et l'accord du Conseil. Pour les deux cas des dérogations strictement définies peuvent permettre le traitement de cas en urgence (pouvant requérir l'unanimité) mais nous sommes ouverts aux suggestions qui pourrait aboutir de manière fiable aux mêmes effets par des biais moins formels. Une meilleure organisation du travail du Conseil est aussi importante à cet égard. (Paragraphe 41, 46-7)

Toute date butoir pour un accord législatif fixée par le Conseil européen et le calendrier des négociations pour respecter cette date doivent assurer un délai suffisant pour un examen parlementaire national préalable aux décisions du Conseil sur les nouveaux textes. (Paragraphe 50)

Les institutions de l'UE

Le système de présidences tournantes de six mois devrait être remplacé. Tout nouveau système devrait respecter le principe d'égalité des États membres. Il serait essentiel d'établir une responsabilité parlementaire pour un Président élu du Conseil européen et des réunions conjointes de parlementaires nationaux et de MPE (Membres du Parlement européen) pourrait être une des voies possibles. Conséquemment, nous appuyons la proposition d'un Président élu pour le Conseil européen, pour un mandat de deux ans ou plus. (Paragraphe 59-61)

Nous estimons positif le remplacement des listes semestrielles de priorité de la Présidence par un programme annuel du Conseil européen lié plus clairement au programme de travail annuel de la Commission. Tout programme du Conseil européen devrait être soumis à un contrôle avant d'être finalisé et les parlementaires nationaux devraient participer à ce contrôle. (Paragraphe 65)

Nous pourrions accueillir avec bienveillance une structure simplifiée du Conseil des ministres susceptible de donner naissance à une prise de décision politique plus cohérente et qui pourrait potentiellement faciliter la tâche des parlements nationaux de contrôle des ministres. (Paragraphe 66)

Il apparaît extraordinaire que le principal organe législatif de l'UE (le Conseil) agisse de façon aussi brouillonne. Citoyens et parlements sont en droit d'attendre un plus grand professionnalisme dans l'organisation du Conseil des ministres. (Paragraphe 67)

Nous ne sommes pas en faveur de l'élection du Président de la Commission. Cela affaiblirait, d'une part, l'efficacité de la Commission à s'élever au-dessus des intérêts nationaux et le Président de la Commission disposerait, d'autre part, d'une autorité sensiblement plus grande ce qui modifierait significativement l'équilibre institutionnel. Il deviendrait moins responsable sans connecter pour autant les citoyens et le processus de prise de décision de l'UE. (Paragraphe 80)

La Commission devrait fonctionner strictement dans un cadre bien délimité défini par le Conseil et le PE, et tout pouvoir politique ou législatif devrait être restreint à ceux pour lesquels existe une justification claire, ainsi en respect d'aides d'états et de la concurrence. (Paragraphe 82)

Étant données les inquiétudes des plus petits des États membres, nous ne voyons aucune perspective à retirer à la Commission son droit d'initiative. Pour autant, une plus grande ouverture sur la façon dont la Commission détermine les mesures législatives à proposer et un plus grand contrôle de ce processus sont essentiels. Ceci devrait impliquer que les parlementaires nationaux pourraient disposer d'un pouvoir de proposition envers la Commission. (Paragraphe 84)

Le PE et les parlements nationaux sont complémentaires. Ils peuvent bénéficier d'une coopération dans certains domaines. (Paragraphe 87)

Le mode de fonctionnement du processus législatif connu comme la codécision implique que la plupart des débats importants ont lieu en privé. Il est malvenu pour un exécutif et un parlement démocratiquement élu de s'impliquer si considérablement dans des négociations secrètes sur la législation. Toute extension de la codécision à de nouveaux domaines devrait être conditionnée à une modification de la procédure actuelle, pour qu'elle puisse fonctionner de façon tant efficace que transparente. (Paragraphes 90-1)

Renforcer la relation entre le PE et les citoyens en publicisant le travail du PE devrait augmenter son autorité et sa participation à la légitimité démocratique dans l'UE. (Paragraphe 92)

Les élections au PE au Royaume Uni impliquent non seulement des circonscriptions très vastes mais aussi des listes de partis. Ce système devrait être à nouveau évalué de façon critique afin de rétablir une relation entre les MPE et leurs électeurs, mais aussi mettre fin au système de listes de partis en faveur d'un système du « premier au poteau d'arrivée » et de circonscription électorale. (Paragraphe 93)

Qui fait Quoi

L'UE devrait légiférer en tant que possible de façon légère, laissant le maximum de flexibilité possible aux États membres et à leurs autorités internes. (Paragraphe 97)

Une répartition plus claire des pouvoirs est souhaitable, spécialement lorsque dits pouvoirs découlent d'objectifs fixés par les traités. Cependant cette mesure devrait avoir un impact limité en raison de la prévalence du partage des pouvoirs. (Paragraphe 102)

Il est nécessaire de s'accorder pour réviser périodiquement la répartition des pouvoirs, en laissant la possibilité soit d'en ajouter de nouveaux ou d'en rendre aux États membres. Le fait que les institutions de l'UE, dans la pratique, puissent souhaiter rendre quelque pouvoir aux États membres reste à voir. (Paragraphe 102)

Le principe selon lequel *tout* pouvoir non transféré par les traités à l'UE demeure du ressort des États membres doit être maintenu. Il faut rendre patent le fait que les pouvoirs des États membres ne naissent pas des traités. Dans cette optique, nous voyons d'un bon œil l'établissement d'une liste de pouvoirs dont l'UE serait spécifiquement exclue. (Paragraphe 102)

'Une déclaration de principes plus simple, définissant dans un langage simple le but de l'UE et sa valeur ajoutée' pourrait être utile. (Paragraphe 102)

Nous trouvons encore des législations portant clairement atteinte au principe de subsidiarité. Le soutien abstrait du principe ne mène pas nécessairement à son application et coexistent des points de vue très différenciés quant à la nature même de la subsidiarité. Nous ne partageons pas l'opinion selon laquelle les institutions de l'UE sont à même de garantir le respect du principe de subsidiarité. Nous sommes en accord avec ceux qui ont préconisé de nouvelles procédures pour garantir ce principe. (Paragraphe 105-8)

L'application du principe de subsidiarité devrait être un thème plus politique que judiciaire. (Paragraphe 112)

Les parlementaires nationaux devraient avoir un rôle dans la définition des questions de subsidiarité. Non seulement parce que les institutions de l'UE n'ont pas, dans la pratique, une réelle propension à appliquer le principe, mais aussi du fait que les parlements nationaux n'ont pas un intérêt institutionnel inhérent à transférer des pouvoirs au niveau de l'UE et, enfin, de par la relative proximité des parlements nationaux et des citoyens. Diverses méthodes sont envisageables : si les cas sont communiqués par les parlements nationaux pour une décision par un autre organe, celui-ci devrait être un arbitre ou une commission de surveillance, politique ou quasi judiciaire. (Paragraphe 113-14)

La référence à une 'union sans cesse plus étroite' doit être retirée des traités. (Paragraphe 116)

Le rôle des parlements nationaux dans l'UE

Nous ne soutenons pas la proposition de droit de veto de chaque parlement national sur la législation de l'UE. (Paragraphe 121)

Nous ne pensons pas que la seconde chambre pourrait accomplir les objectifs qui lui seraient fixés. (Paragraphe 126)

Les deux principaux problèmes pratiques de la proposition de seconde chambre portent sur le temps et la représentativité. Nous concluons (i) que toute implication des parlementaires nationaux dans l'UE devrait leur prendre le moins de temps possible et être répartie sur différents membres pour différents objectifs afin de répartir le fardeau et (ii) que les réunions des parlementaires nationaux devraient être gérées de telle sorte que les représentants puissent réaliser des consultations très à l'avance et disposer d'un pouvoir de surveillance et de consultation plutôt que de responsabilité. L'implication de parlementaires

nationaux sera intéressante uniquement s'il existe une possibilité réelle d'exercer une influence. Elle sera essentiellement bénéfique si elle renforce leur capacité de surveillance des activités de leurs propres ministres au Conseil. (Paragraphe 127-8)

Le format de la Convention est utile pour les débats ouverts, le développement des idées et les propositions mais (en raison du problème de représentativité) par pour la prise de décision. Nous ne l'envisageons pas comme un moyen de conférer aux parlements un 'pouvoir constitutif conjoint'. (Paragraphe 130)

Les parlementaires nationaux requièrent plus que le simple droit de consultation sur les thèmes de subsidiarité. Nous privilégions un système au sein duquel les parlementaires nationaux pourraient renvoyer des éléments de législation à une 'commission de surveillance de la subsidiarité' ou à un autre organe afin d'en examiner la conformité avec les principes de subsidiarité et de proportionnalité. Les réunions de parlementaires nationaux pour surveiller le programme de travail annuel de la Commission quant à la subsidiarité pourrait s'avérer également positif. Nous pensons à une commission de surveillance de la subsidiarité constituée d'hommes politiques chevronnés. (Paragraphe 131-4)

Un examen plus approfondi de la stratégie politique et du programme de travail de la Commission au niveau de l'UE, incluant la mise en question des Commissaires, pourrait valoir la peine. Par surcroît le processus opaque de décision d'introduction de législation par la Commission pourrait être clarifié. Des sujets similaires surgissent quant à tout 'programme annuel' du Conseil européen et, en effet, l'actuelle liste des priorités de la Présidence de six mois ; il y a un risque d'approche hautement directive. Les consultations avec le PE seraient trop indirectes : les parlementaires nationaux devraient être impliqués dans des discussions directement avec la Commission. Nous accueillons positivement la proposition de la Commission pour 'un renforcement de la culture de consultation et de dialogue' et demandons des réunions conjointes de parlementaires nationaux et de MPE pour contrôler la stratégie politique et le programme de travail annuels de la Commission, mettre en question les Commissaires sur ces thèmes et en débattre. Nous pourrions appuyer une procédure similaire pour le programme annuel du Conseil européen. (Paragraphe 138-40)

Des réunions conjointes de parlementaires nationaux et de MPE devraient être plus formalisées, avec un petit secrétariat et une organisation conjointe par les parlements nationaux et le PE. Les parlementaires nationaux pourraient alors garantir que les thèmes les concernant seraient traités, que le nombre de réunions n'impliquerait pas un fardeau trop important et que les thèmes sélectionnés auraient pour objet de combler le fossé entre les citoyens et la prise de décision dans l'UE. (Paragraphe 141-3)

Nous appuyons la proposition de réunions régulières de membres des commissions de défense, des affaires étrangères et des affaires européennes des parlements nationaux pour contrôler la PESD. (Paragraphe 147)

Nous n'appuyons pas la proposition d'accompagnement des ministres par des parlementaires nationaux aux réunions du Conseil. (Paragraphe 148)

Les opportunités que la COSAC pourrait générer sont grandement gaspillées. Nous pourrions redéfinir le rôle principal de la COSAC en une assistance aux parlements nationaux pour améliorer leur surveillance des activités gouvernementales au sein de l'UE, en partageant pratiques professionnelles et informations et en agissant comme un organe stratégique au nom des parlements nationaux. La COSAC doit disposer d'un petit secrétariat pour permettre les échanges d'informations (par ex. sur les thèmes de surveillance, pour certains documents ou de façon plus générale), pour contrôler les activités de ressort national (par ex. le respect par le Conseil du protocole sur le rôle des

parlements nationaux) et pour prendre en charge les questions de procédure relatives au secrétariat du Conseil ou la Commission. Les modifications des règles de la COSAC ne doivent plus nécessiter l'unanimité. Le rôle du PE dans la COSAC doit être à nouveau examiné. (Paragraphe 149-51)

L'un des problèmes rencontrés par les parlements nationaux surveillant activement la législation de l'UE porte sur le fait que nombre de parlements nationaux n'ont pas cette préoccupation. Par conséquent, un climat général de responsabilité manque au sein du Conseil. La COSAC pourrait tirer les bases de règles minimales de surveillance parlementaire, établissant à la fois des droits et obligations pour les parlements nationaux. (Paragraphe 152-3)

Nous devons faire en sorte que nos idées soient incluses dans la proposition détaillée pour une COSAC plus efficace, devant être présentée à la COSAC en octobre. (Paragraphe 154)

Nous encourageons le groupe de travail de la Convention à déterminer comment les parlements nationaux doivent surveiller les activités gouvernementales dans l'UE et rétablir la connexion entre les citoyens et le processus de décision dans l'UE. Il serait utile que la Convention demanda à la COSAC d'agir pour chercher à relever le niveau moyen de surveillance par les parlements nationaux. (Paragraphe 155)

Autorités des états partenaires

Des questions demeurent sans réponse quant au fonctionnement pratique de la proposition de statut des états partenaires de l'Union. (Paragraphe 165)

Nous estimons qu'il est de sens commun que la Commission consulte les autorités dotées de pouvoirs législatifs et prenne bonne note de leurs points de vue. La Convention devrait explorer en profondeur si telle consultation ou un accès à la Commission devraient être 'privilegiés'. (Paragraphe 167)

Référendums

Lorsque les résultats de référendum imposent un veto quant à ce que d'autres États membres peuvent faire, aucune des réponses alternatives n'est séduisante. Pour autant, lorsque la participation est faible, nous n'écarterons pas la possibilité d'organiser à nouveau un référendum. (Paragraphe 169)

Nous pensons que la proposition de référendums à l'échelle de l'Europe est impraticable dans un avenir immédiat. (Paragraphe 170)

Conclusion

Comblar le fossé entre les citoyens de l'UE et la prise de décision au sein de l'UE devrait rester par définition difficile, non seulement de par la taille de l'UE mais aussi en raison de sa combinaison unique d'autorités supranationales et d'États membres. Cependant, nos propositions pourraient avoir un impact substantiel de deux façons : en augmentant le caractère public du processus législatif et en élargissant le rôle des parlements nationaux. Ceci pourrait potentiellement renforcer les parlements nationaux, la démocratie et la responsabilité de l'UE mais aussi l'UE elle-même. (Paragraphe 171-3)

SUMMARY OF THE REPORT IN GERMAN

ZUSAMMENFASSUNG

Es ist allgemein bekannt, dass die EU in bezug auf Demokratie und Rechenschaftsablegungspflicht Probleme hat und dass es eine 'Kluft' zwischen den Bürgern und den EU-Institutionen gibt. Diese Kluft oder Abkuppelung ist das zentrale Problem, auf das unser Bericht eingehen möchte. Die nationalen Parlamente und Parlamentarier können eine Schlüsselrolle dabei einnehmen, diese Kluft zwischen den fernen EU-Institutionen und den Bürgern zu überbrücken, weil sie ganz allgemein in einer engeren Beziehung zu den Bürgern stehen als gleichsam jede der EU-Institutionen. Was hauptsächlich benötigt wird, um diese Kluft zwischen Bürger und EU zu verkleinern, ist, den Bürgern die Möglichkeit dazu zu geben, den Entscheidungsprozess beeinflussen zu können. (Paragraphen 1-4)

Die nationalen Parlamente können jedoch nur dann dazu beitragen, diese Kluft zu mildern, wenn sie EU-Angelegenheiten auf eine Art und Weise behandeln, bei der die Bürger 'eingebunden' werden. (Paragraph 7)

Es gibt nun mit beiden EU-Hauptquellen der demokratischen Legitimität Probleme. In der EU handeln die gewählten nationalen Regierungen im Gegensatz zu ihrer Rolle im jeweiligen Heimatland sowohl als gesetzgebende Kammer wie in Geheimsitzungen. Die einzelnen Ratsmitglieder handeln gemeinsam und das zumeist unter Ausschluss der Öffentlichkeit und können effektiv nicht von einer anderen Organisation zur Rechenschaft gezogen werden. Was das Europäische Parlament (EP) betrifft, ist die Wahlbeteiligung gering, allgemein ist nicht viel über seine Tätigkeit bekannt und die Teilnahme an EP-Wahlen ist meistens von nationalen Themen geleitet. (Paragraphen 14-15)

Die hauptsächliche Aufgabe der nationalen Parlamente ist es, die EU-Aktivitäten ihrer Regierung genau zu prüfen und diese zur Rechenschaft zu ziehen. Die Effektivität mit der dies geschieht, wird zum Teil von der Art und Weise bestimmt, mit der die EU ihre Geschäfte betreibt. Die grundlegenden Kriterien zur genauen Überprüfung durch die nationalen Parlamente sind Information und Zeit — die gleichen Faktoren, die auch für regionale und andere Behörden und Bürger gelten. Die nationalen Parlamente können die Legitimität der EU nur dann stärken, wenn sie bei Entscheidungsprozessen in der EU wirklichen Einfluss erlangen und es deutlich wird, dass sie diesen Einfluss auch ausüben. (Paragraphen 16-17)

Transparenz

Der Ministerrat tagt unter Ausschluss der Öffentlichkeit, wenn Gesetze verabschiedet werden. Das ist nicht nur prinzipiell unangebracht, sondern hat auch ganz spezielle negative Auswirkungen, wie z.B. die Schwierigkeit, die die nationalen Parlamente dabei haben, die Minister zur Rechenschaft zu ziehen. Wir begrüßen die Tatsache, dass die Regierung des Vereinigten Königreiches sich dafür ausgesprochen hat, dass die Ratssitzung öffentlich zugänglich ist, wenn Gesetze verabschiedet werden. (Paragraphen 18-21)

Wir teilen die Ansicht der Regierung, dass die gesetzgebenden Sitzungen des Rates grundsätzlich öffentlich geschehen sollten. Hierbei ist wesentlich, dass eine ausreichende öffentliche Debatte stattfindet, aus der klar hervorgeht, welche Standpunkte jeder Mitgliedsstaat bei diesem Vorgehen vertritt und bei wem die Verantwortung für die getroffenen Entscheidungen liegt. Die öffentlichen Sitzungen nur auf Bereiche zu beschränken, die eine gemeinsame Entscheidung verlangen, wäre jedoch nicht akzeptabel. (Paragraphen 22-4)

Die daraus folgenden Änderungen müssen beinhalten, dass der Europarat öffentliche Sitzungen abhält, wenn es um Entscheidungen bezüglich der Gesetzgebung geht, Unterlagen des Rates in ungekürzter Form (also ohne die gängige Vorgehensweise, die Anonymität der Mitgliedsstaaten zu wahren) zugänglich gemacht werden und das gesamte System neu überdacht wird, wobei der Rat bestimmten Vorlagen, die schon von Abgeordneten in COREPER ausgehandelt worden sind, ohne vorausgegangene Debatte einfach zustimmt. Jahresabschlussberichte und andere wichtige Dokumente, insbesondere Berichte des Rechnungshofes, sollten ebenfalls öffentlich debattiert werden. Es sollte die Pflicht des Rates sein, Sitzungen, die unter Ausschluss der Öffentlichkeit stattfinden, zu rechtfertigen. (Paragraphen 25-6)

Die Unterstützung, die von den Regierungen dabei gegeben wird, die Ratssitzungen in bezug auf die meisten, wenn nicht gar alle der gesetzgebenden Sitzungen öffentlich zugänglich zu machen, wird ein entscheidender Test für die wirkliche Einstellung der Regierungen in bezug auf die wachsende Demokratisierung und Rechenschaftslegungspflicht sein. (Paragraph 27)

Das System, aufgrund dessen Gesetze, die vom COREPER verabschiedet worden sind, ohne vorausgegangene Debatte vom Rat angenommen werden, muss sich ändern, wenn die öffentlichen Ratssitzungen Sinn machen sollen. Wir würden einen Aufruf der Kommission, neue Wege zur Überwachung und Kontrolle beim Einsatz seiner ausübenden Gewalt unterstützen, falls das zu größerer Transparenz, als bisher durch das gegenwärtige System gewährleistet, führt. (Paragraphen 28-31)

Die Vorgehensweise der EU bei der Gesetzgebung und die genaue Prüfung durch die nationalen Parlamente

Gesetzgebende und andere Anträge werden oftmals zur Abstimmung gebracht, ohne dass die nationalen Parlamente Zeit gehabt hätten, diese zu überdenken, mitunter auf der Basis von in letzter Minute erreichter Verhandlungsergebnisse. Das den nationalen Parlamenten die Zeit zur genauen Prüfung gegeben wird, sollte nicht als Option angesehen werden, sondern als ein grundlegender Aspekt der Rechenschaftslegungspflicht. Daher verstehen wir die genaue Überprüfung durch die nationalen Parlamente nicht als unnötige Verlangsamung des gesetzgebenden Verfahrens. (Paragraphen 34-5)

Wir wollen kurzfristig gestellte Anträge, die breite Veränderungen zur Folge haben und keine Zeit zur gründlichen Prüfung lassen und somit möglicherweise zu schlechtformulierten und undurchdachten Gesetzen führen, unterbinden. Wir fordern daher entweder die Einbindung der nationalen Überprüfungsprozesse in das bestehende EU-Gesetzgebungsverfahren oder aber eine vorgeschriebene Mindestzeit, die zwischen der Erwägung eines Gesetzestextes von COREPER oder der Veröffentlichung eines neuen Gesetzestextes und seiner Zustimmung durch den Rat liegt. In jedem Fall aber sollten strikte Vorkehrungen für besonders dringliche Fälle getroffen werden (die möglicherweise Einstimmigkeit verlangen). Wir sind jedoch offen für Vorschläge, die zuverlässig das gleiche Ergebnis auf weniger formale Weise erreichen würden. Die verbesserte Strukturierung der Geschäftsführung des Rates ist hierbei auch von großer Bedeutung. (Paragraphen 41, 46-7)

Jegliche Fristen zur Verabschiedung von Gesetzen durch den Europarat und die Zeitspanne, die den Debatten in bezug auf solche Fristen eingeräumt wird, müssen den nationalen Parlamenten genügend Zeit geben, die neuen Gesetzestexte vor den Ratsbeschlüssen genau prüfen zu können. (Paragraph 50)

Die EU Institutionen

Das System der sechsmonatigen Präsidentschaft sollte ersetzt werden. Jegliches neue System muss die Gleichberechtigung der Mitgliedsstaaten gewährleisten. Es ist unerlässlich, parlamentarische Rechenschaftspflicht eines gewählten Präsidenten des Europarates einzuführen und hier wären gemeinsame Sitzungen der nationalen Parlamentarier und der EP-Abgeordneten ein Weg, dies zu tun. Darauf basierend unterstützen wir den Antrag, dass der Europarat einen gewählten Präsidenten für eine Amtszeit von zwei Jahren und mehr haben sollte. (Paragraphen 59-61)

Wir halten es für sinnvoll, die sechsmonatige Liste der Prioritäten des Präsidenten durch ein jährliches Programm, das deutlicher in Zusammenhang mit dem Jahresarbeitsprogramm des Komitees steht, zu ersetzen. Jedes Ratsprogramm sollte Gegenstand der genauen Prüfung sein, bevor es verabschiedet wird und die nationalen Parlamentarier sollten an dieser Prüfung teilhaben. (Paragraph 65)

Wir würden eine vereinfachte Struktur für den Ministerrat, die zu kohärenterer Verfassungsgebung führen und die möglicherweise die Aufgabe der nationalen Parlamente, die Minister zur Rechenschaft zu ziehen, erleichtern würde, begrüßen. (Paragraph 66)

Es ist außergewöhnlich, dass der primäre Gesetzgeber der EU (der Rat) auf solch schludrige Art funktioniert. Bürger und Parlamente haben ein Recht auf mehr Professionalität bei der Strukturierung der Ministerräte. (Paragraph 67)

Wir sind gegen die Wahl des Präsidenten der Kommission, weil dies die Effektivität der Kommission, sich über partikularistische Interessen hinwegzusetzen, schwächen würde, und weil es dem Kommissionspräsidenten eine weit größere Autorität verleihen und so das Gleichgewicht der EU-Institutionen untereinander bedeutend verändern würde. Hierbei hätte der Präsident weniger Rechenschaft abzulegen und würde nicht allzu viel tun müssen, um die Bürger und die Entscheidungsprozesse in der EU einander näher zu bringen. (Paragraph 80)

Die Kommission sollte strikt anhand von wohldefinierten Richtlinien, die vom Rat und vom EP vorgegeben werden, vorgehen. Die ihr zukommenden politischen oder gesetzgebenden Befugnisse sollten sich auf diejenigen beschränken, für die es eine klare Rechtfertigung gibt, wie in Bezug auf staatliche Subventionen und Wettbewerbsrecht. (Paragraph 82)

In Bezug auf die Bedenken, die die kleineren Mitgliedstaaten zum Ausdruck gebracht haben, sehen wir nicht, dass dadurch der Kommission das Recht zur Initiative entzogen wird. Jedoch ist eine größere Transparenz in Bezug darauf, wie die Kommission entscheidet, welche gesetzgebenden Maßnahmen zu befürworten sind und eine verbesserte Überprüfung der Vorgehensweise vonnöten. Das sollte die Parlamentarier der Mitgliedstaaten, die Anträge bei der Kommission stellen könnten, einbeziehen. (Paragraph 84)

Das EP und die nationalen Parlamente ergänzen sich. Es gibt Bereiche, bei denen beide von einer Kooperation profitieren können. (Paragraph 87)

Die Funktionsweise des sogenannten Mitentscheidungsverfahrens im EU-Gesetzgebungsprozess, bedeutet, dass ein Großteil der relevanten Debatte hinter verschlossenen Türen abläuft. Es ist jedoch für ein ausführendes und demokratisch gewähltes Parlament nicht angemessen, in bedeutsamem Maße in geheime legislative Verhandlungen eingebunden zu sein. Jegliche Ausweitung der Mitentscheidung auf neue Gebiete sollte eine Änderung des gegenwärtig angewandten Verfahrens bedingen, so dass

es auf eine Art und Weise funktionieren kann, die sowohl effektiv als auch transparent ist. (Paragraphen 90-1)

Die Stärkung der Beziehungen des EP zu den Bürgern durch bessere Informationen in bezug darauf, was im EP vor sich geht, wird sowohl seine Autorität erhöhen als auch zur demokratischen Legitimierung in der EU beitragen. (Paragraph 92)

Die EP-Wahlen im Vereinigten Königreich beinhalten nicht nur sehr große Wahlkreise, sondern auch Parteilisten. Es sollte eine kritische Neubewertung dieses System vorgenommen, so dass die Beziehung zwischen den Abgeordneten des EPs und den Wählern wiederhergestellt werden kann. Dazu sollte das Parteilistensystem abgeschafft werden. Stattdessen sollte es ein System des 'Erstqualifizierenden' (first past the post) sowie ein verfassungsbasierendes System geben. (Paragraph 93)

Wer macht was

Die EU sollte sich wenn immer möglich mit leichter Hand um die Gesetzesgebung kümmern und den Mitgliedsstaaten und ihren Behörden so viel Flexibilität wie möglich lassen. (Paragraph 97)

Eine klarere Zuweisung von ausübender Gewalt wäre wünschenswert, insbesondere dort, wo ausübende Gewalt aus Richtlinien, die in Abkommen festgesetzt worden sind, hervorgeht, jedoch für sich alleine wegen der geteilten Macht nur bedingten Einfluss hat. (Paragraph 102)

Es muss Vorkehrungen dafür geben, die Zuweisung von ausübender Gewalt in periodischen Abständen immer wieder neu zu bewerten und zwar mit der Möglichkeit, Mitgliedsstaaten sowohl neue ausübende Gewalt zuzusprechen als auch solche abzusprechen. Ob die EU-Institutionen allerdings gewillt sind, einmal gewonnene Macht tatsächlich wieder an die Mitgliedsstaaten zurückzugeben, bleibt abzuwarten. (Paragraph 102)

Der Grundsatz, dass *jegliche* ausübende Gewalt, die der EU nicht durch Abkommen übertragen worden sind, bei den Mitgliedsstaaten bleibt, muss bestehen bleiben. Auch muss klar gemacht werden, dass die ausübende Gewalt von Mitgliedsstaaten sich nicht aus Abkommen ableiten. Wir erachten jedoch die Vorzüge einer Liste von Kompetenzbereichen, von denen die EU spezifisch ausgeschlossen ist, für sinnvoll. (Paragraph 102)

'Ein vereinfachtes Grundlagenpapier, das in klar zu verstehender Sprache darlegt, wofür die EU steht und wie sie zum allgemeinen Wohl beitragen kann', wäre wünschenswert. (Paragraph 102)

Gegenwärtig verstößt die Gesetzesgebung innerhalb der EU vielfach immer noch klar gegen das Subsidiaritätsprinzip. Verbale Unterstützung dieses Grundsatzes in der Theorie führt nicht notwendigerweise zu dessen Durchführung und es gibt weit auseinandergehende Meinungen, was unter Subsidiarität zu verstehen ist. Wir teilen die Ansicht nicht, dass die EU-Institutionen dazu in der Lage sind, dem Subsidiaritätsprinzip nachzukommen. Wir stimmen mit jenen überein, die neue Vorgehensweisen fordern, um diese Grundsätze in die Tat umzusetzen. (Paragraphen 105-8).

Die Umsetzung des Subsidiaritätsprinzips in die Praxis sollte eine politische und keine Sache der Rechtsprechung sein. (Paragraph 112)

Die nationalen Parlamentarier sollte eine Rolle dabei spielen, Fragen in bezug auf das Subsidiaritätsprinzip zu formulieren, weil die EU-Institutionen in der Praxis nicht besonders erpicht darauf sind, diese Grundsätze anzuwenden und die nationalen Parlamentarier kein inhärentes, institutionelles Interesse daran haben, Macht an die EU abzugeben und die nationalen Parlamente ihren Bürgern relativ nahe stehen. Hier sind verschiedene Methoden möglich: Wenn Fälle von den nationalen Parlamenten zur Entscheidung durch eine andere Institution weitergereicht werden, sollte es sich bei dieser Institution um einen politische oder einen quasi-gerichtlichen Körper oder eine derartige Überwachungsbehörde handeln. (Paragraphen 113-14)

Der Verweis auf die Grundlagen 'für einen immer engeren Zusammenschluß' sollte aus den Abkommen entfernt werden. (Paragraph 116)

Die Rolle der nationalen Parlamente in der EU

Wir unterstützen den Vorschlag, dass jedes nationale Parlament ein Vetorecht in der EU-Gesetzgebung hat, nicht. (Paragraph 121)

Wir glauben nicht, dass die vorgeschlagene zweite Kammer die für sie aufgestellten Ziele erreichen kann. (Paragraph 126)

Die beiden wichtigsten Probleme, die der Vorschlag einer zweiten Kammer aufwirft, sind Zeit und Repräsentanz. Wir befürworten, dass (i) das Engagement nationaler Parlamentarier in der EU minimiert und die Aufgabenlast zudem auf verschiedene Abgeordnete je nach Ressort möglichst weit verteilt werden sollte, wobei zudem nicht mit der Teilnahme an Versammlungen und mit Reisetätigkeit verbundene Formen der Beteiligung in Betracht gezogen werden sollten, und (ii) Versammlungen nationaler Parlamentarier so anberaumt und gehandhabt werden, dass sich die Vertreter weit im Vorfeld beraten können und im Regelfall eher eine prüfende und beratende denn Verantwortung tragende Rolle wahrnehmen. Die Einbeziehung nationaler Parlamentarier lohnt nur, wenn eine echte Möglichkeit zur Einflussnahme besteht, und sie ist dann von größtem Nutzen, wenn sie deren Kompetenz zur Überwachung der Aktivitäten ihrer eigenen Ratsminister stärkt. (Paragraphen 127-8)

Der Rahmen des Konvents eignet sich zur offenen Debatte, zur Entwicklung von Ideen und zur Unterbreitung von Vorschlägen, (aufgrund des Repräsentanzproblems) jedoch nicht zur Entscheidungsfällung, und wir sind nicht der Ansicht, dass er Parlamente mit einer 'gemeinsamen konstituierenden Macht' ausstattet. (Paragraph 130)

Nationale Parlamentarier brauchen mehr als das Recht zur Konsultation in Subsidiaritätsfragen. Wir bevorzugen ein System, in dem nationale Parlamentarier Angelegenheiten der Legislative an einen 'Subsidiaritätswächter' oder eine andere Instanz zur Prüfung der Vereinbarkeit mit den Prinzipien von Subsidiarität und Verhältnismäßigkeit herantragen können. Versammlungen nationaler Parlamentarier zur Prüfung des Jahresarbeitsprogramms der Kommission vor dem Hintergrund der Subsidiarität könnten ebenfalls sinnvoll sein. Wir denken an einen Subsidiaritätswächter aus führenden Politikern. (Paragraphen 131-4)

Eine gründlichere Durchleuchtung der politischen Strategie und des Arbeitsprogramms der Kommission auf EU-Ebene, einschließlich der Befragung von Kommissionsmitgliedern, wäre zweckmäßig und würde den undurchsichtigen Prozess, in dem die Kommission über die Einführung einer bestimmten Gesetzgebung entscheidet, erheblich transparenter machen. Ähnliche Fragen stellen sich bezüglich des 'Jahresprogramms' des Europarates und tatsächlich auch der gegenwärtigen sechsmonatlichen Prioritäten der Präsidentschaft – es besteht die Gefahr eines stark von oben nach unten gerichteten Ansatzes. Die Beratung

mit dem EP wäre zu indirekt: Nationale Parlamentarier sollten direkt in Diskussionen mit der Kommission einbezogen werden. Wir begrüßen den Vorschlag der Kommission einer 'gestärkten Kultur der Beratung und des Dialogs' und fordern gemeinsame Versammlungen nationaler Parlamentarier und Abgeordneter des EPs zur Untersuchung der jahrespolitischen Strategie und des Arbeitsprogramms der Kommission, zur Befragung der Kommissionsmitglieder sowie zur Debatte hierüber und befürworten ein ähnliches Verfahren auf für das Jahresprogramm des Europarates. (Paragraphen 138-40)

Gemeinsame Versammlungen nationaler Parlamentarier und Abgeordneter des EPs sollten in einen formaleren Rahmen mit einem kleinen Sekretariat und gemeinsamer Organisation durch nationale Parlamentarier und das EP gestellt werden. Auf diese Weise könnten nationale Parlamentarier sicherstellen, dass auf ihre Belange eingegangen wird, dass die Zahl der Versammlungen für sie nicht zu einer zu starken Belastung führt, und dass Themen im Hinblick auf eine Annäherung der EU-Bürger an die Entscheidungsfindung in der EU ausgewählt werden. (Paragraphen 141-3)

Wir unterstützen den Vorschlag regelmäßiger Versammlungen der Mitglieder der Ausschüsse für Verteidigung, Auswärtige Angelegenheiten und Europäische Angelegenheiten der nationalen Parlamente zur Untersuchung der ESDP. (Paragraph 147)

Wir befürworten nicht den Vorschlag, dass nationale Parlamentarier Minister zu Versammlungen des Rates begleiten. (Paragraph 148)

Die Möglichkeiten, die die COSAC bieten könnte, werden weitgehend vertan. Wir würden die Hauptrolle der COSAC neu definieren, nämlich als Unterstützung der nationalen Parlamente im Sinne einer verbesserten Überwachung der Regierungsaktivitäten in der EU durch die Parlamente durch den Austausch von Bewährtem und von Informationen und durch die Funktion als strategisches Organ im Namen der nationalen Parlamente. Die COSAC braucht ein kleines Sekretariat, das den Austausch von Informationen (z.B. über Probleme bei der Untersuchung, in Bezug auf bestimmte Dokumente oder ganz allgemein) begünstigt, Aktivitäten im Zusammenhang mit der nationalen Kontrolle (z.B. Einhaltung des Protokolls zur Rolle der einzelstaatlichen Parlamente durch den Rat) überwacht und verfahrenstechnische Fragen mit dem Sekretariat des Rates oder mit der Kommission aufgreift. Änderungen der COSAC-Regeln dürfen nicht länger an Einstimmigkeit gebunden sein. Die Rolle des EP in der COSAC sollte überdacht werden. (Paragraphen 149-51)

Zu den Problemen, mit denen nationale Parlamente, die die EU-Gesetzgebung aktiv überwachen, zu kämpfen haben, gehört, dass viele nationale Parlamente dies nicht tun. Entsprechend mangelt es im Rat insgesamt an einem Klima der Verantwortlichkeit. Die COSAC sollte Mindeststandards für die parlamentarische Kontrolle unter Definition sowohl der Rechte als auch der Pflichten nationaler Parlamente aufstellen. (Paragraphen 152-3)

Wir werden darauf drängen, dass unsere Anregungen in den detaillierten Vorschlag für eine effektivere COSAC aufgenommen werden, der der COSAC im Oktober vorgelegt werden wird. (Paragraph 154)

Wir regen an, dass die Arbeitsgruppe des Konvents erarbeitet, wie nationale Parlamente Regierungsaktivitäten in der EU überwachen und die Bürger näher an die EU-Entscheidungsfindung heranführen können. Es wäre hilfreich, wenn der Konvent die COSAC bitten würde, sich um die Anhebung des Gesamtniveaus der Kontrolle und Überwachung durch nationale Parlamente zu bemühen. (Paragraph 155)

Submitgliedsstaaten

Es sind noch Fragen offen, wie der Vorschlag zu Partnerregionen des Unionsstatus in der Praxis zu handhaben sei. (Paragraph 165)

Wir halten es für vernünftig, dass die Kommission sich mit gesetzgebenden Instanzen berät und deren Meinungen besonders zur Kenntnis nimmt. Der Konvent sollte eingehend untersuchen, ob eine solche Beratung oder der Zugang zur Kommission 'privilegiert' sein sollte. (Paragraph 167)

Volksabstimmungen

Wo die Ergebnisse von Volksabstimmungen zu einem Veto für die Aktivitäten anderer Mitgliedsstaaten führen, erscheint keine der Alternativen attraktiv. Trotzdem sind wir nicht gegen die Praxis, die Abstimmung bei geringer Wahlbeteiligung zu wiederholen. (Paragraph 169)

Wir halten die Idee europaweiter Volksabstimmungen für in absehbarer Zukunft nicht durchführbar. (Paragraph 170)

Schlußfolgerungen

Das Schließen der Kluft zwischen EU-Bürgern und EU-Entscheidungsfindung wird inhärent schwierig bleiben, nicht nur wegen der Größe der EU, sondern auch aufgrund ihrer einzigartigen Vermischung überstaatlicher und mitgliedsstaatlicher Organe. Dennoch würden unsere Vorschläge in zweierlei Hinsicht deutlich Wirkung zeigen, nämlich in einer stärkeren Offenheit des legislativen Prozesses und in einer gestärkten Rolle der nationalen Parlamente. Dadurch würden potentiell nationale Parlamente, Demokratie und Verantwortlichkeit in der EU und die EU selbst gestärkt werden. (Paragraphen 171-3)

PROCEEDINGS OF THE COMMITTEE RELATING TO THE REPORT

Wednesday 12 June 2002

Members present:

Mr Jimmy Hood, in the Chair

Mr Roger Casale
Mr William Cash
Mr Michael Connarty
Mr Tony Cunningham
Mr Wayne David
Mr Jim Dobbin

Mr Mark Hendrick
Miss Anne McIntosh
Mr Angus Robertson
Mr Anthony Steen
Mr Bill Tynan
Mrs Angela Watkinson

* * *

The Committee deliberated.

Draft Report [Democracy and Accountability in the EU and the Role of National Parliaments], proposed by the Chairman, brought up and read.

Draft Report [Democracy and Accountability in the EU and the Role of National Parliaments], proposed by Mr William Cash, brought up and read, as follows:

We agree that this is a very important Report about the fundamental dilemma facing the EU and the Member States, including in particular the United Kingdom, namely how to reaffirm real democracy and accountability through the predominant influence of the electors and of the national Parliaments in the face of deeper and further integration. We agree with many of the proposals in the Report and particularly with the repudiation of the concept of "Ever Closer Union".

However, we disagree with many of the proposals, as indicated by our proposed amendments. We believe that "shared sovereignty" is a myth which will lead to further emasculation of the national Parliaments. Although co-operation between the Member States is desirable, the time has come for a clear shift back to the national Parliaments of the ultimate decision making process. We are consequently deeply disturbed by the notion of co-decision by the European Parliament. Decisions by QMV are increasingly conferred by Treaty on Member States and are now in the sphere of European Government and each decision has an impact on other Member States, taking forward the concept and practice of "Ever Closer Union" which the Report repudiates. The reality is that Governments, through their control over national Parliaments, do not allow decisions of the Council of Ministers to be overturned.

Furthermore, given the inadequacy of the scrutiny process in many of the Member States and their commitment to "Ever Closer Union" and deeper and further integration, particularly in the sphere of European Government, we believe that the voters in the United Kingdom and elsewhere are entitled to referendums where Treaties are made by their Governments and then endorsed by their national Parliaments, without free votes and without the full consent of the voters affected, through the use of the whip system or the party list system as the case may be. This needs reform. Giving more power to the European Parliament which seeks more integration and more European Government, e.g. through extension of co-decision, is not the solution to the democratic deficit.

We agree with the proposals in the Conclusion to the Report which would tend to increase openness in the legislative process and by enlarging, in principle, the role of national Parliaments, although we do not believe that the practice of subsidiarity has or will derogate from the movement entrenched in the concept of the *acquis communautaire* towards ever more European Government and "Ever Closer Union".

However, we believe that the Report does not adequately seize the nettle of how to radically restore democracy and accountability to the electors and to the national Parliaments, however useful it may be to improve the openness and transparency of the way the EU and the Commission operate. Openness and transparency are not a substitute for democratic control where vital national interests are at stake.

We therefore reaffirm the use of the veto through the national Parliaments or referendums (where necessary in the absence of Government action) as the primary means of last resort in holding Governments and the EU to account. This is in accordance with the ultimate objective of the Report and

its terms of reference, which are aimed at restoring democracy and accountability in the UK and the EU and reconnecting the voters with the decisions which are taken on their behalf by Governments and by the institutions of the EU and through its procedures. As Maine correctly observed in his "Ancient Law" — "Justice is to be found in the interstices of procedure". This is within the general remit of the European Scrutiny Committee of the United Kingdom Parliament.

The EU is at a democratic watershed. The current and unrepresentative Convention, as the Report correctly points out, cannot be allowed to make the fundamental decisions which are needed to restore and reaffirm democracy and accountability. The problems are much deeper and require a reassertion of democratic political will by the electors of the nation states through their national Parliaments and, in default, by the democratic choice of the electors (irrespective of the Treaties and the *acquis communautaire*) through binding and full and fair referendums in each of the Member States on the practical, legal and constitutional implications of the concept of "Ever Closer Union" which the Report rightly repudiates.

Motion made, and Question proposed, That the Chairman's draft Report be read a second time, paragraph by paragraph. — (*The Chairman.*)

Amendment proposed, to leave out the words "Chairman's draft Report" and insert the words "draft Report proposed by Mr William Cash". — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 1).

Ayes, 2

Mr William Cash
Mrs Angela Watkinson

Noes, 8

Mr Roger Casale
Mr Michael Connarty
Mr Tony Cunningham
Mr Wayne David
Mr Jim Dobbin
Mr Mark Hendrick
Mr Angus Robertson
Mr Bill Tynan

Main Question put and agreed to.

Ordered, That the Chairman's draft Report be read a second time, paragraph by paragraph.

Paragraph 1 read.

Amendment proposed, in line 3, after 'include', to insert 'Romano Prodi's remarks on '. — (*Mr William Cash.*)³⁰⁹

Question put, That the Amendment be made.

The Committee divided (Div. 2): Ayes 2, Noes 8 [names as for Div. 1].

An Amendment made.

Paragraph, as amended, agreed to.

A paragraph — (*Mr Roger Casale*) — brought up, read the first and second time, and added (now paragraph 2).

Paragraph 2 read.

Amendment proposed, in line 4, after 'IGC.', to leave out 'We believe national parliaments have considerable potential for reconnecting citizens and EU decision-making, and therefore strengthening the democratic legitimacy of the EU.' and insert 'National parliaments and national parliamentarians can play a key role in bridging the gap between remote EU institutions and the citizens of the EU Member States and in making EU decision-making more relevant and EU decision-makers more accountable.' — (*Mr Roger Casale.*)

Question proposed, That the Amendment be made.

Amendment proposed to the proposed Amendment, after 'parliamentarians', to insert 'with a veto and referendums'. — (*Mr William Cash.*)

Question put, That the Amendment to the proposed Amendment be made.

The Committee divided (Div. 3)

³⁰⁹ Line numbers relate to the paragraphs as printed in the Report.

Ayes, 2

Mr William Cash
Mrs Angela Watkinson

Noes, 7

Mr Roger Casale
Mr Michael Connarty
Mr Tony Cunningham
Mr Wayne David
Mr Jim Dobbin
Mr Angus Robertson
Mr Bill Tynan

Proposed Amendment made.

Paragraph, as amended, agreed to (now paragraph 3).

Paragraphs 3 to 5 read and agreed to (now paragraphs 4 to 6).

Paragraph 6 read.

Amendment proposed, in line 3, to leave out 'potential' and insert 'role'. — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 4).

Ayes, 3

Mr William Cash
Mr Angus Robertson
Mrs Angela Watkinson

Noes, 6

Mr Roger Casale
Mr Michael Connarty
Mr Tony Cunningham
Mr Wayne David
Mr Jim Dobbin
Mr Bill TynanAnother Amendment proposed, in line 8, to leave out 'giving new roles to' and insert 'reaffirming the roles of'. — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 5): Ayes 2, Noes 7 [names as for Div. 3].

Paragraph agreed to (now paragraph 7).

Paragraph 7 read.

Amendment proposed, in line 15, to leave out 'perceptions of' and insert 'role in'. — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 6): Ayes 2, Noes 7 [names as for Div. 3].

Paragraph 7 agreed to (now paragraph 8).

Paragraphs 8 and 9 read and agreed to (now paragraphs 9 and 10).

Paragraph 10 read.

Amendment proposed, in line 5, at the end to add 'and to reaffirm the role of the national parliaments as the bedrock of democratic legitimacy'. — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 7): Ayes 2, Noes 7 [names as for Div. 3].

Paragraph agreed to (now paragraph 11).

Paragraph 11 read and agreed to (now paragraph 12).

Paragraph 12 read.

Amendment proposed, in line 11, after 'decision-making' to insert 'and intrusion into areas of governmental decision-making'. — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 8): Ayes 2, Noes 7 [names as for Div. 3].

Paragraph agreed to (now paragraph 13).

Paragraphs 13 and 14 read, amended and agreed to (now paragraphs 14 and 15).

Paragraph 15 read.

Amendment proposed, in line 8, to leave out 'might be given some' and insert 'should be given a'. — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 9): Ayes 2, Noes 7 [names as for Div. 3].

Another Amendment proposed, in line 9, at the end to add 'National Parliaments could also agree on a broad set of principles and objectives which would define their role more clearly in the EU. The idea of such a broad strategic framework, or Charter, will be discussed later in the report.' — (*Mr Roger Casale*.)

Question put, That the Amendment be made.

The Committee divided (Div. 10).

Ayes, 3

Mr Roger Casale
Mr William Cash
Mrs Angela Watkinson

Noes, 6

Mr Michael Connarty
Mr Tony Cunningham
Mr Wayne David
Mr Jim Dobbin
Mr Angus Robertson
Mr Bill Tynan

Paragraph agreed to (now paragraph 16).

Paragraph 16 read and amended.

Another Amendment proposed, in line 16, at the end to add 'which can only be achieved if the whip system or, where it applies, the party list system is changed so that national parliaments can achieve that influence.' — (*Mr William Cash*.)

Question put, That the Amendment be made.

The Committee divided (Div. 11): Ayes 2, Noes 7 [names as for Div. 3]

Paragraph, as amended, agreed to (now paragraph 17).

Paragraphs 17 and 18 read and agreed to (now paragraphs 18 and 19).

Paragraph 19 read.

Amendment proposed, in line 4, after 'they' to insert 'propose to act and have'. — (*Mr William Cash*.)

Question put, That the Amendment be made.

The Committee divided (Div. 12): Ayes 2, Noes 7 [names as for Div. 3].

Paragraph agreed to (now paragraph 20).

Paragraph 20 read and agreed to (now paragraph 21).

Paragraph 21 read and amended.

Another Amendment proposed, in line 13, after 'procedures' to insert 'We agree'. — (*Mr William Cash*.)

Question put, That the Amendment be made.

The Committee divided (Div. 13): Ayes 2, Noes 7 [names as for Div. 3].

Paragraph, as amended, agreed to (now paragraph 22).

Paragraph 22 read and amended.

Another Amendment proposed, in line 16, after 'State' to insert 'at an earlier enough stage'. — (*Mr William Cash*.)

Question put, That the Amendment be made.

The Committee divided (Div. 14).

Ayes, 3

Mr William Cash
Mr Bill Tynan
Mrs Angela Watkinson

Noes, 6

Mr Roger Casale
Mr Michael Connarty
Mr Tony Cunningham
Mr Wayne David
Mr Jim Dobbin
Mr Angus Robertson

Another Amendment proposed, in line 17, at the end to add: 'We should review the scrutiny process in the House of Commons with a view to promoting openness and transparency.' — (*Mr Roger Casale*.)

Question put, That the Amendment be made.

The Committee divided (Div. 15): Ayes 3, Noes 6 [names as for Div. 10].

Paragraph, as amended, agreed to (now paragraph 23).

Paragraph 23 read and agreed to (now paragraph 24).

Paragraph 24 read.

Amendment proposed, in line 15, at the end to add 'The fact that so much European Union legislation has been removed from the influence of national parliamentarians and is now controlled to a very high degree by civil servants is a point not lost on European citizens. We believe it is at the heart of the democratic deficit. A number of practical measures can be taken to make COREPER more open and transparent. For example, national parliaments should be able to request information on legislation at any point of its passage through COREPER, or should receive briefings from COREPER officials.' — (*Mr Roger Casale*.)

Question put, That the Amendment be made.

The Committee divided (Div. 16)

Ayes, 4

Mr Roger Casale
Mr William Cash
Mr Angus Robertson
Mrs Angela Watkinson

Noes, 5

Mr Michael Connarty
Mr Tony Cunningham
Mr Wayne David
Mr Jim Dobbin
Mr Bill Tynan

Paragraph agreed to (now paragraph 25).

Paragraphs 25 and 26 read and agreed to (now paragraphs 26 and 27).

Paragraph 27 read.

Amendment proposed, in line 3, at the end to insert 'but we consider that national parliaments must be involved in the *avant projet* stage so that their influence is not delayed until too late in the process. We note that the European Parliament is becoming involved at an earlier stage.' — (*Mr William Cash*.)

Question put, That the Amendment be made.

The Committee divided (Div. 17): Ayes 2, Noes 7 [names as for Div. 3].

Another Amendment proposed, in line 6, at the end to insert 'This has democratic dangers.' — (*Mr William Cash*.)

Question put, That the Amendment be made.

The Committee divided (Div. 18): Ayes 3, Noes 6 [names as for Div. 14].

Paragraph agreed to (now paragraph 28).

Paragraphs 28 to 31 read and agreed to (now paragraphs 29 to 32).

Paragraph 32 read.

Amendment proposed, in line 6, to leave out 'potential for involving' and insert 'need to involve'. — (*Mr William Cash*.)

Question put, That the Amendment be made.

The Committee divided (Div. 19): Ayes 2, Noes 7 [names as for Div. 3].

Paragraph agreed to (now paragraph 33).

Paragraph 33 read.

Amendment proposed, in line 34, to leave out from 'We' to 'agreed' in line 6 and insert 'are disturbed that proposals relating to the Common Foreign and Security Policy are sometimes'. — (*Mr William Cash*.)

Question put, That the Amendment be made.

The Committee divided (Div. 20): Ayes 2, Noes 7 [names as for Div. 3].

Paragraph agreed to (now paragraph 34).

Paragraph 34 read and agreed to (now paragraph 35).

Paragraph 35 read.

Amendment proposed, in line 12, at the end to add 'We are disturbed by the so-called "grounds of urgency"'. — (*Mr William Cash*.)

Question put, That the Amendment be made.

The Committee divided (Div. 21): Ayes 2, Noes 7 [names as for Div. 3].

Paragraph agreed to (now paragraph 36).

Paragraph 36 read and agreed to (now paragraph 37).

Paragraphs 37 and 38 read and agreed to (now paragraphs 38 and 39).

Paragraph 39 read.

Amendment proposed, in line 5, after 'agreement.', to insert: 'The project management approach will help in this regard, as a particular stage of the legislative process could be given over to scrutiny, whether individual parliaments choose to exercise their scrutiny rights/discharge their duty to scrutinise or not.' — (*Mr Roger Casale*.)

Question put, That the Amendment be made.
The Committee divided (Div. 22).

Ayes, 1

Mr Roger Casale

Noes, 6

Mr Michael Connarty
Mr Tony Cunningham
Mr Wayne David
Mr Jim Dobbin
Mr Angus Robertson
Mr Bill Tynan

Another Amendment proposed, in line 13, at the end to insert: 'For the reasons given above, the project management approach should help to make sure that no member state is disadvantaged by the fact that its Parliament wishes to discharge its scrutiny role.' — (*Mr Roger Casale.*)

Question put, That the Amendment be made.
The Committee divided (Div. 23).

Ayes, 1

Mr Roger Casale

Noes, 7

Mr Michael Connarty
Mr Tony Cunningham
Mr Wayne David
Mr Jim Dobbin
Mr Angus Robertson
Mr Bill Tynan
Mrs Angela Watkinson

Another Amendment proposed, to leave out lines 17 and 18 and add 'We do not believe that there are circumstances in which UK Ministers should breach the scrutiny reserve resolution, because the issues involved are often of critical political or legislative importance.' — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 24): Ayes 3, Noes 6 [names as for Div. 4].

Paragraph agreed to (now paragraph 40).

Paragraph 40 read.

Amendment proposed, in line 3, to leave out 'would also help if more national parliaments were' and insert 'is essential that all national parliaments are'. — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 25): Ayes 3, Noes 6 [names as for Div. 4].

An Amendment made.

Paragraph, as amended, agreed to (now paragraph 41).

Paragraph 41 read.

Amendment proposed, in line 4, to leave out from 'Council.' to the end of line 7. — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 26): Ayes 2, Noes 7 [names as for Div. 3].

Paragraph agreed to (now paragraph 42).

Paragraph 42 read.

Amendment proposed, in line 4, to leave out from 'reserve.' to the end of line 15. — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 27): Ayes 2, Noes 7 [names as for Div. 3].

Paragraph agreed to (now paragraph 43).

Paragraph 43 read and agreed to (now paragraph 44).

Paragraph 44 read.

Amendment proposed, in line 11, at the end to add 'We find this disturbing.' — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 28): Ayes 2, Noes 7 [names as for Div. 3].

Paragraph agreed to (now paragraph 45).

Paragraph 45 read.

Amendment proposed, in line 4, to leave out from 'legislation.' to 'The' in line 5. — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 29): Ayes 2, Noes 7 [names as for Div. 3].

Paragraph agreed to (now paragraph 46).

Paragraph 46 read.

Amendment proposed, in line 7, to leave out 'but we see no prospect of defining 'substantially revised'.'
— (Mr William Cash.)

Question put, That the Amendment be made.

The Committee divided (Div. 30): Ayes 2, Noes 7 [names as for Div. 3].

Another Amendment proposed, in line 12, to leave out from 'urgency' to 'We' in line 13 and insert '(requiring unanimity)'. — (Mr William Cash.)

Question put, That the Amendment be made.

The Committee divided (Div. 31): Ayes 2, Noes 7 [names as for Div. 3].

Another Amendment proposed, in line 14, to leave out 'might' and insert 'would'. — (Mr William Cash.)

Question put, That the Amendment be made.

The Committee divided (Div. 32): Ayes 2, Noes 7 [names as for Div. 3].

Paragraph agreed to (now paragraph 47).

Paragraphs 47 to 52 read and agreed to (now paragraphs 48 to 53).

Paragraph 53 read.

Amendment proposed, in line 7, at the end to add: 'We believe that national parliaments should be involved (as already the European Parliament is becoming involved, with its co-decision procedure which greatly increases its powers) in the *avant projet* stage of proposals.' — (Mr William Cash.)

Question put, That the Amendment be made.

The Committee divided (Div. 33): Ayes 2, Noes 7 [names as for Div. 3].

Paragraph agreed to (now paragraph 54).

Paragraph 54 read.

Amendment proposed, in line 2, after 'input' to insert 'as Jean Monnet originally proposed.' — (Mr William Cash.)

Question put, That the Amendment be made.

The Committee divided (Div. 34): Ayes 2, Noes 7 [names as for Div. 3].

Paragraph agreed to (now paragraph 55).

Paragraph 55 read.

Amendment proposed, in line 14, to leave out 'although some changes are clearly needed as regards the CFSP'. — (Mr William Cash.)

Question put, That the Amendment be made.

The Committee divided (Div. 35): Ayes 2, Noes 7 [names as for Div. 3].

Another Amendment proposed, in line 22, at the end to add 'working to co-operate rather than to co-ordinate. We advocate the latter.' — (Mr William Cash.)

Question put, That the Amendment be made.

The Committee divided (Div. 36): Ayes 2, Noes 7 [names as for Div. 3].

Paragraph agreed to (now paragraph 56).

Paragraph 56 read.

Amendment proposed, in line 6, at the end to add 'We would add "but subject to national democratic control by national parliaments"'. — (Mr William Cash.)

Question put, That the Amendment be made.

The Committee divided (Div. 37): Ayes 2, Noes 7 [names as for Div. 3].

Another Amendment proposed, in line 6, at the end to add: 'We call for an enhancement of the role of national parliaments as we move more towards a "Europe of the Nation-States"'. — (Mr Roger Casale.)

Question put, That the Amendment be made.

The Committee divided (Div. 38).

Ayes, 2

Mr Roger Casale
Mr Angus Robertson

Noes, 6

Mr William Cash
Mr Michael Connarty
Mr Wayne David
Mr Jim Dobbin
Mr Bill Tynan
Mrs Angela Watkinson

Paragraph agreed to (now paragraph 57).

Paragraphs 57 and 58 read and agreed to (now paragraphs 58 and 59).

Paragraph 59 read.

Amendment proposed, in line 4, after 'Chairmen', to insert 'We disagree'. — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 39): Ayes 2, Noes 7 [names as for Div. 3].

Paragraph agreed to (now paragraph 60).

Paragraph 60 read.

Amendment proposed, in line 4, to leave out from 'figure.' to the end of line 8 and add 'We do not accept the idea of an elected President'. — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 40): Ayes 2, Noes 7 [names as for Div. 3].

Paragraph agreed to (now paragraph 61).

Paragraph 61 read.

Amendment proposed, in line 10, at the end to add 'There is therefore a fundamental need to preserve the veto for matters of national vital interest in the interests of democratic accountability through the national parliaments and the stability of the system.' — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 41): Ayes 2, Noes 7 [names as for Div. 3].

Paragraph agreed to (now paragraph 62).

Paragraph 62 read and agreed to (now paragraph 63).

Paragraph 63 read.

Amendment proposed, in line 7, after 'Treaties.' to insert 'We believe that unanimity is essential where a national parliament regards a matter as being in the vital national interest and that procedures are needed for scrutiny and decision by those national parliaments to be made effective.' — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 42): Ayes 2, Noes 7 [names as for Div. 3].

Paragraph agreed to (now paragraph 64).

Paragraph 64 read.

Amendment proposed, in line 1, after 'sense' to insert 'provided that national parliaments have the last say'. — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 43): Ayes 2, Noes 7 [names as for Div. 3].

Paragraph agreed to (now paragraph 65).

Paragraph 65 read.

Amendment proposed, in line 17, at the end to add 'However, we re-emphasise the concept of co-operation rather than co-ordination and the need to preserve the veto.' — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 44): Ayes 2, Noes 7 [names as for Div. 3].

Paragraph agreed to (now paragraph 66).

Paragraph 66 read.

Amendment proposed, in line 17, to leave out 'Citizens' and insert 'Voters'. — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 45): Ayes 2, Noes 7 [names as for Div. 3].

Paragraph agreed to (now paragraph 67).

Paragraph 67 read.

Amendment proposed, in line 3, to leave out 'We do not share that view'. — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 46): Ayes 2, Noes 7 [names as for Div. 3].

An Amendment made.

Paragraph, as amended, agreed to (now paragraph 68).

Paragraph 68 read.

Amendment proposed, in line 4, at the end to add 'We believe that the time has come for the Commission to be reduced to that of a secretariat and for its legislative role to be removed.' — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 47): Ayes 2, Noes 7 [names as for Div. 3].

Paragraph agreed to (now paragraph 69).

Paragraph 69 read.

Amendment proposed, in line 11, at the end to add 'The question however remains, on what basis does the unelected Commission claim the right to decide essentially political matters?' — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 48): Ayes 2, Noes 7 [names as for Div. 3].

Paragraph agreed to (now paragraph 70).

Paragraph 70 read and agreed to (now paragraph 71).

Paragraph 71 read.

Amendment proposed, in line 11, at the end to add 'but we reiterate that it should no longer perform legislative or political functions although its role as the guardian of the Treaties is defensible.' — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 49): Ayes 2, Noes 7 [names as for Div. 3].

Paragraph agreed to (now paragraph 72).

Paragraph 72 read and agreed to (now paragraph 73).

Paragraph 73 read.

Amendment proposed, in line 10, at the end to add 'We agree.' — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 50): Ayes 2, Noes 7 [names as for Div. 3].

Paragraph agreed to (now paragraph 74).

Paragraph 74 read.

Amendment proposed, in line 6, at the end to add 'We disagree.' — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 51): Ayes 2, Noes 7 [names as for Div. 3].

Paragraph agreed to (now paragraph 75).

Paragraph 75 read.

Amendment proposed, in line 18, after 'UK.' to insert 'We agree that the Commission President should not be elected'. — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 52): Ayes 2, Noes 7 [names as for Div. 3].

Paragraph agreed to (now paragraph 76).

Paragraphs 76 to 79 read and agreed to (now paragraphs 77 to 80).

Paragraph 80 read.

Amendment proposed, in line 1, after 'accountability', to insert 'which is gravely deficient'. — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 53): Ayes 2, Noes 7 [names as for Div. 3].

Paragraph agreed to (now paragraph 81).

Paragraph 81 read.

Amendment proposed, in line 8, to leave out 'in which we find much to welcome'. — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 54): Ayes 2, Noes 7 [names as for Div. 3].

Another Amendment proposed, in line 15, to leave out 'the EP, and for any political and legislative' and insert 'for any'. — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 55): Ayes 2, Noes 7 [names as for Div. 3].

Another Amendment proposed, in line 17, after 'clear' to insert 'administrative'. — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 56): Ayes 2, Noes 7 [names as for Div. 3].

Another Amendment proposed, in line 17, to leave out 'as in respect of state aids and competition' and add 'but without political or legislative competence for which democratic capacity is exclusively required.' — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 57): Ayes 2, Noes 7 [names as for Div. 3].

Paragraph agreed to (now paragraph 82).

Paragraph 82 read.

Amendment proposed, in line 13, at the end to add 'We agree.' — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 58): Ayes 2, Noes 7 [names as for Div. 3].
Paragraph agreed to (now paragraph 83).

Paragraph 83 read.

Amendment proposed, in line 2, to leave out 'but, given the concerns of the smaller Member States, we see no prospect of the IGC deciding that the Commission's right of initiative should be removed.' — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 59): Ayes 2, Noes 7 [names as for Div. 3].

An Amendment made.

Another Amendment proposed, in line 5, after 'States.' to insert 'This must be overcome, as it can be.' — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 60).

Ayes, 2

Noes, 6

Mr William Cash
Mrs Angela Watkinson

Mr Roger Casale
Mr Michael Connarty
Mr Tony Cunningham
Mr Wayne David
Mr Jim Dobbin
Mr Angus Robertson

Another Amendment proposed, in line 5, to leave out from 'States' to the end of line 9. — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 61): Ayes 2, Noes 6 [names as for Div. 60].

Paragraph, as amended, agreed to (now paragraph 84).

Paragraphs 84 and 85 read and agreed to (now paragraphs 85 and 86).

Paragraph 86 read.

Amendment proposed, in line 1, after 'role' to insert 'although the balance must be shifted back to the national parliaments with removal of the power of co-decision.' — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 62): Ayes 2, Noes 6 [names as for Div. 60].

Another Amendment proposed, in line 12, after 'own' to insert 'in their vital national interests'. — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 63): Ayes 2, Noes 6 [names as for Div. 60].

Paragraph agreed to (now paragraph 87).

Paragraph 87 read.

Amendment proposed, in line 8, at the end to add 'We do not accept the co-decision procedure.' — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 64): Ayes 2, Noes 6 [names as for Div. 60].

Paragraph agreed to (now paragraph 88).

Paragraph 88 read.

Amendment proposed, in line 12, at the end to add 'This is unacceptable.' — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 65): Ayes 2, Noes 6 [names as for Div. 60].

Paragraph agreed to (now paragraph 89).

Paragraph 89 read.

Amendment proposed, in line 12, to leave out 'so extensively'. — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 66): Ayes 2, Noes 6 [names as for Div. 60].

Paragraph agreed to (now paragraph 90).

Paragraph 90 read.

Amendment proposed, in line 12, to leave out from 'areas.' to the end of line 14 and add 'We believe that co-decision is unacceptable and undermines the role of national parliaments.' — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 67): Ayes 2, Noes 6 [names as for Div. 60].

An Amendment made.

Paragraph, as amended, agreed to (now paragraph 91).

Paragraph 91 read.

Amendment proposed, in line 10, at the end to add 'provided that the balance is shifted back to the national parliaments.' — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 68): Ayes 2, Noes 6 [names as for Div. 60].

Paragraph agreed to (now paragraph 92).

Paragraph 92 read.

Amendment proposed, in line 7, after 'EP' to add 'in an attempt to reconnect MEPs to constituencies small enough to re-establish a representative relationship with communities and their electorates.' — (*Mr Michael Connarty.*)

Question put, That the Amendment be made.

The Committee divided (Div. 69).

Ayes, 5

Noes, 3

Mr Michael Connarty
Mr Tony Cunningham
Mr Jim Dobbin
Mr Angus Robertson
Mr Bill Tynan

Mr William Cash
Mr Wayne David
Mrs Angela Watkinson

Another Amendment proposed, after the words last added, to add 'and that the party list system is abandoned in favour of "first past the post" and a constituency-based system in which the electors know for whom they are voting to represent them in a given area.' — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 70).

Ayes, 4

Noes, 4

Mr William Cash
Mr Tony Cunningham
Mr Bill Tynan
Mrs Angela Watkinson

Mr Michael Connarty
Mr Wayne David
Mr Jim Dobbin
Mr Angus Robertson

Whereupon the Chairman declared himself with the Ayes.

Paragraph, as amended, agreed to (now paragraph 93).

Paragraph 93 read.

Amendment proposed, in line 9, at the end to add 'We agree.' — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 71): Ayes 2, Noes 7 [names as for Div. 3].

Paragraph agreed to (now paragraph 94).

Paragraph 94 read.

Amendment proposed, in line 8, at the end to add 'and democratic and that the EU should not engage in the sphere of European Government such as the CFSP, Economic and Monetary Union or Taxation.' — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 72): Ayes 2, Noes 7 [names as for Div. 3].

Paragraph agreed to (now paragraph 95).

Paragraph 95 read.

Amendment proposed, in line 14, at the end to insert 'Subsidiarity, as Alain Lamassoure has indicated does not work. It begs the question, which is essentially political, as to what could or should be done at what level and whether it would be effective and democratically accountable.' — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 73): Ayes 2, Noes 7 [names as for Div. 3].

Paragraph agreed to (now paragraph 96).

Paragraph 96 read.

Amendment proposed, in line 3, after 'achieved' to insert 'or whether framework legislation would be democratically accountable.' — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 74): Ayes 2, Noes 7 [names as for Div. 3].

Another Amendment proposed, in line 13, to leave out from 'touch' to the end of line 14 and add 'but above all only on the basis of co-operation, not co-ordination, leaving control with the Member States, the national parliaments to which they must remain democratically accountable and authorities within them.' — (Mr William Cash.)

Question put, That the Amendment be made.

The Committee divided (Div. 75): Ayes 2, Noes 7 [names as for Div. 3].

Paragraph agreed to (now paragraph 97).

Paragraph 97 read.

Amendment proposed, in line 1, after 'Treaties' to insert 'from time to time.' — (Mr William Cash.)

Question put, That the Amendment be made.

The Committee divided (Div. 76): Ayes 2, Noes 7 [names as for Div. 3].

Paragraph agreed to (now paragraph 98).

Paragraph 98 read and agreed to (now paragraph 99).

Paragraph 99 read.

Amendment proposed, in line 5, to leave out 'extensive' and insert 'the extensive and objectionable'. — (Mr William Cash.)

Question put, That the Amendment be made.

The Committee divided (Div. 77): Ayes 2, Noes 7 [names as for Div. 3].

An Amendment made.

Another Amendment proposed, in line 8, at the end to add 'This is true.' — (Mr William Cash.)

Question put, That the Amendment be made.

The Committee divided (Div. 78): Ayes 2, Noes 7 [names as for Div. 3].

Paragraph, as amended, agreed to (now paragraph 100).

Paragraph 100 read.

Amendment proposed, in line 2, to leave out 'and necessarily so.' — (Mr William Cash.)

Question put, That the Amendment be made.

The Committee divided (Div. 79): Ayes 2, Noes 7 [names as for Div. 3].

Paragraph agreed to (now paragraph 101).

Paragraph 101 read.

Amendment proposed, in line 2, after 'clearer' to insert 'and reduced'. — (Mr William Cash.)

Question put, That the Amendment be made.

The Committee divided (Div. 80): Ayes 2, Noes 7 [names as for Div. 3].

Another Amendment proposed, in line 4, at the end to insert 'In particular it needs to be stated that there cannot be any such thing as shared sovereignty — the question who governs is the essential democratic issue and this cannot be left to European Government nor to the principle of "Ever Closer Union"'. — (Mr William Cash.)

Question put, That the Amendment be made.

The Committee divided (Div. 81): Ayes 2, Noes 7 [names as for Div. 3].

Another Amendment proposed, in line 5, to leave out 'periodically, with the possibility both of adding new powers and of returning' and insert 'with the need to return'. — (Mr William Cash.)

Question put, That the Amendment be made.

The Committee divided (Div. 82): Ayes 2, Noes 7 [names as for Div. 3].

Another Amendment proposed, in line 12, at the end to insert '— this is a matter of practical will for the United Kingdom.' — (Mr William Cash.)

Question put, That the Amendment be made.

The Committee divided (Div. 83): Ayes 2, Noes 7 [names as for Div. 3].

Another Amendment proposed, in line 15, after 'Treaties' to insert 'but from their parliaments'. — (Mr William Cash.)

Question put, That the Amendment be made.

The Committee divided (Div. 84): Ayes 2, Noes 7 [names as for Div. 3].

Another Amendment proposed, in line 16, after 'a' to insert 'substantive'. — (Mr William Cash.)

Question put, That the Amendment be made.

The Committee divided (Div. 85): Ayes 2, Noes 7 [names as for Div. 3].

Amendment proposed, in line 17, at the end to insert 'particularly in the sphere of European Government, the existing recent ingredients of which must be reversed, such as the CFSP.' — (Mr William Cash.)

Question put, That the Amendment be made.

The Committee divided (Div. 86): Ayes 2, Noes 7 [names as for Div. 3].

Another Amendment proposed, in line 20, at the end to add 'if based on the above.' — (Mr William Cash.)

Question put, That the Amendment be made.

The Committee divided (Div. 87): Ayes 2, Noes 7 [names as for Div. 3].

Paragraph agreed to (now paragraph 102).

Paragraphs 102 and 103 read and agreed to (now paragraphs 103 and 104).

Paragraph 104 read.

Amendment proposed, in line 10, at the end to add 'It is significant that a former President of the European Court of Justice, Lord Mackenzie Stuart, described the concept of subsidiarity as "gobbledegook"!'
— (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 88): Ayes 2, Noes 7 [names as for Div. 3].

Paragraph agreed to (now paragraph 105).

Paragraph 105 read.

Amendment proposed, in line 32, at the end to add 'We agree with this assessment and the reasons behind it, namely that it enables Ministers and governments to avoid political responsibility — this is disreputable.'
— (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 89): Ayes 2, Noes 7 [names as for Div. 3].

Paragraph agreed to (now paragraph 106).

Paragraph 106 read and agreed to (now paragraph 107).

Paragraph 107 read.

Amendment proposed, in line 3, to leave out from 'Lamassoure.' to the end of line 5 and insert 'We do not agree with the principle of subsidiarity because it does not and cannot work. We are prepared however to ask the following questions:' — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 90): Ayes 2, Noes 7 [names as for Div. 3].

Another Amendment proposed, in line 11, at the end to add 'We do not believe that these questions, in practice, can be answered, in line with the assessment of Alain Lamassoure and Lord Mackenzie Stuart.'
— (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 91): Ayes 2, Noes 7 [names as for Div. 3].

Paragraph agreed to (now paragraph 108).

Paragraphs 108 to 110 read and agreed to (now paragraphs 109 to 111).

Paragraph 111 read, amended and agreed to (now paragraph 112).

Paragraph 112 read.

Amendment proposed, in line 14, at the end to add 'but we have no confidence that subsidiarity will work in principle or in practice and therefore it should be abandoned in favour of express and specific reductions in the allocation of powers under the Treaties.' — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 92): Ayes 2, Noes 7 [names as for Div. 3].

Paragraph agreed to (now paragraph 113).

Paragraphs 113 and 114 read.

Motion made, and Question put, that paragraphs 113 and 114 be left out. — (*Mr William Cash.*)

The Committee divided (Div. 93): Ayes 2, Noes 7 [names as for Div. 3].

Paragraphs agreed to (now paragraphs 114 and 115).

Paragraphs 115 and 116 read and agreed to (now paragraphs 116 and 117).

Paragraph 117 read.

Amendment proposed, in line 6, to leave out 'and the EP must not see itself as the exclusive' and insert 'but the EP must see itself as the secondary'. — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 94): Ayes 2, Noes 7 [names as for Div. 3].

Another Amendment proposed, in line 7, at the end to insert:

'with the primary role accorded to the national parliaments, any one of which can exercise the veto where its vital national interests are involved as the United Kingdom White Paper clearly stated in 1970 — not only in its own interests but also to preserve the "very fabric of the Community". This is true because overriding national concerns and national vital interests is a source of discord and instability which will reap its own dividend. By failing to grapple with the fact that there cannot be two sovereign parliamentary systems representing the views of electorates (which compete with one another for

ultimate control over the law making process), an inevitable vacuum of power emerges. This has led to alienation, a feeling of irrelevance for the voters, low turnouts in national and European elections and instability, which will get worse. When this reaches a critical mass, there will be implosion. When this happens the Rule of Law throughout Europe will be undermined. This will lead to extremism, as is already happening. As this accelerates, authoritarianism will increase as the State struggles to maintain control, with an inevitable backlash and civil disturbance. Suppressing the concerns of electorates of individual Member States is a source of disruption and instability and was indicated by the Dutch elections where a substantial proportion of the electorate indicated that they do not want the exclusive competence of the EU (which is currently a transitional matter) to prevail in respect of immigration.'

— (Mr William Cash.)

Question put, That the Amendment be made.

The Committee divided (Div. 95): Ayes 2, Noes 7 [names as for Div. 3].

Another Amendment proposed, in line 9, after 'parliaments' to insert 'and willing co-operation between the Member States'. — (Mr William Cash.)

Question put, That the Amendment be made.

The Committee divided (Div. 96): Ayes 2, Noes 7 [names as for Div. 3].

Paragraph agreed to (now paragraph 118).

Paragraphs 118 and 119 read and agreed to (now paragraphs 119 and 120).

Paragraph 120 read.

Amendment proposed, in line 3, after 'veto.' to insert 'This principle, as indicated above, was advocated by the UK White Paper in 1970.' — (Mr William Cash.)

Question put, That the Amendment be made.

The Committee divided (Div. 97): Ayes 2, Noes 7 [names as for Div. 3].

Another Amendment proposed, in line 11, to leave out from 'them.' to the end of line 18 and add 'We adhere to this principle. We support proposals for national parliament vetoes, given that proper notice, in good time, of proposals are made available to a national parliament and that, essentially, they are made subject to free votes on a motion by significant numbers of members of that parliament, enforced by Standing Orders.' — (Mr William Cash.)

Question put, That the Amendment be made.

The Committee divided (Div. 98): Ayes 2, Noes 7 [names as for Div. 3].

Paragraph agreed to (now paragraph 121).

Paragraphs 121 to 124 read and agreed to (now paragraphs 122 to 125).

Paragraph 125 read.

Amendment proposed, in line 5, to leave out from 'IGC.' to the end of line 9. — (Mr William Cash.)

Question put, That the Amendment be made.

The Committee divided (Div. 99): Ayes 2, Noes 7 [names as for Div. 3].

Paragraph agreed to (now paragraph 126).

Paragraph 126 read.

Amendment proposed, in line 2, to leave out 'representativeness' and insert 'representation and accountability'. — (Mr William Cash.)

Question put, That the Amendment be made.

The Committee divided (Div. 100): Ayes 2, Noes 7 [names as for Div. 3].

Another Amendment proposed, in line 3, to leave out 'Busy'. — (Mr William Cash.)

Question put, That the Amendment be made.

The Committee divided (Div. 101): Ayes 2, Noes 7 [names as for Div. 3].

Another Amendment proposed, in line 6, to leave out from 'did.' to the end of line 17 and add 'We conclude that a Second Chamber is impracticable.' — (Mr William Cash.)

Question put, That the Amendment be made.

The Committee divided (Div. 102): Ayes 2, Noes 7 [names as for Div. 3].

Paragraph agreed to (now paragraph 127).

Paragraph 127 read and agreed to (now paragraph 128).

Paragraph 128 read.

Amendment proposed, in line 13, at the end to add 'We reject the concept of "joint constituent powers" because there is no such thing as joint sovereignty — there can only be one sovereign power of government in the spheres of Government (e.g. CFSP) as compared for example to the spheres of trade and commerce as under the Single European Act.' — (Mr William Cash.)

Question put, That the Amendment be made.

The Committee divided (Div. 103): Ayes 2, Noes 7 [names as for Div. 3].

Paragraph agreed to (now paragraph 129).

Paragraph 129 read and agreed to (now paragraph 130).

Paragraph 130 read.

Amendment proposed, to leave out lines 1 to 6 and add 'We do not accept that the principle of subsidiarity can work in practice as Alain Lamassoure and Lord Mackenzie Stuart have indicated.' — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 104): Ayes 2, Noes 7 [names as for Div. 3].

Paragraph agreed to (now paragraph 131).

Paragraphs 131 to 134 read.

Motion made, and Question put, That paragraphs 131 to 134 be left out. — (*Mr William Cash.*)

The Committee divided (Div. 105): Ayes 2, Noes 7 [names as for Div. 3].

Paragraphs agreed to (now paragraphs 132 to 135).

Paragraph 135 read.

Amendment proposed, in line 3, to leave out 'matters of subsidiarity or should be a more general examination. For the latter' and insert 'a more general examination. For this'. — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 106): Ayes 2, Noes 7 [names as for Div. 3].

Paragraph agreed to (now paragraph 136).

Paragraphs 136 and 137 read and agreed to (now paragraphs 137 and 138).

Paragraph 138 read, amended and agreed to (now paragraph 139).

Paragraph 139 read.

Amendment proposed, in line 13, to leave out 'While we believe national parliamentarians alone should consider matters of subsidiarity,' and insert 'We believe that'. — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 107): Ayes 2, Noes 7 [names as for Div. 3].

Another Amendment proposed, in line 20, after 'agenda' to insert 'provided that the EP was not granted co-decision in this sphere.' — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 108): Ayes 2, Noes 7 [names as for Div. 3].

Paragraph agreed to (now paragraph 140).

Paragraph 140 read and agreed to (now paragraph 141).

Paragraph 141 read.

Amendment proposed, in line 1, to leave out 'CFSP, Justice and Home Affairs (meeting some of the concerns expressed by Statewatch and Fair Trials Abroad)'. — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 109): Ayes 2, Noes 7 [names as for Div. 3].

Amendment proposed, in line 9, to leave out 'such as the annual report on the CFSP'. — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 110): Ayes 2, Noes 7 [names as for Div. 3].

Paragraph agreed to (now paragraph 142).

Paragraph 142 read.

Amendment proposed, in line 10, at the end to add 'but strictly on the basis that co-decision by the European Parliament did not prevail.' — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 111): Ayes 2, Noes 7 [names as for Div. 3].

Paragraph agreed to (now paragraph 143).

Paragraph 143 read and agreed to (now paragraph 144).

Paragraph 144 read.

Amendment proposed, in line 10, at the end to add 'The CFSP and ESDP are dangerously lacking in the area of accountability and there is insufficient scrutiny. Merely scrutinising CFSP and ESDP, however would achieve little unless there was also the capacity to veto.' — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 112): Ayes 2, Noes 7 [names as for Div. 3].

Paragraph agreed to (now paragraph 145).

Paragraph 145 read and agreed to (now paragraph 146).

Paragraph 146 read.

Amendment proposed, in line 7, after 'participation' to insert 'and we believe that the ESDP role under the Treaties needs radical review.' — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 113): Ayes 2, Noes 7 [names as for Div. 3].

Paragraph agreed to (now paragraph 147).

Paragraph 147 read.

Amendment proposed, in line 3, to leave out from 'generally' to 'support' in line 9 and insert 'We'.

Question put, That the Amendment be made.

The Committee divided (Div. 114).

Ayes, 2

Noes, 5

Mr Michael Connarty
Mr Jim Dobbin

Mr William Cash
Mr Wayne David
Mr Angus Robertson
Mr Bill Tynan
Mrs Angela Watkinson

Paragraph agreed to (now paragraph 148).

Paragraphs 148 to 150 read and agreed to (now paragraphs 149 to 151).

Paragraph 151 read.

Amendment proposed, in line 6, after 'documents.' to insert 'This is very disturbing.' — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 115): Ayes 2, Noes 7 [names as for Div. 3].

Another Amendment proposed, in line 14, at the end to insert 'We would go further. Each Member State, including of course the UK, is affected by the decisions made by the other Member States and especially by the increasing use of QMV, co-decision by the EP and by the legislative role of the Commission. National parliamentary scrutiny is not an option — it is vital for democracy and accountability in the EU.' — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 116): Ayes 2, Noes 7 [names as for Div. 3].

Paragraph agreed to (now paragraph 152).

Paragraph 152 read.

Amendment proposed, in line 2, to leave out from 'operate' to 'However' in line 3 and insert '(although we have no confidence that it works). It would certainly be inappropriate for any EU institution to seek to tell national parliaments what to do.' — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 117): Ayes 2, Noes 7 [names as for Div. 3].

Paragraph agreed to (now paragraph 153).

Paragraph 153 read and agreed to (now paragraph 154).

Paragraph 154 read.

Amendment proposed, in line 6, to leave out from 'to' to 'COSAC' in line 9 and insert 'insist that national parliaments should fully scrutinise government activity in the EU, as in Denmark and the UK, and reconnect citizens and EU decision-making. It would also be essential for the Convention to ask'. — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 118): Ayes 2, Noes 8 [names as for Div. 1].

An Amendment made.

Paragraph, as amended, agreed to (now paragraph 155).

Paragraph 155 read.

Amendment proposed, in line 8, at the end to add 'The situation will be made worse if there are to be Regional Assemblies in the UK.' — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 119): Ayes 2, Noes 8 [names as for Div. 1].

Paragraph agreed to (now paragraph 156).

Paragraph 156 read and agreed to (now paragraph 157).

Paragraph 157 read.

Amendment proposed, in line 4, after 'Subsidiarity' to insert 'in theory'. — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 120): Ayes 2, Noes 8 [names as for Div. 1].

Paragraph agreed to (now paragraph 158).

Paragraphs 158 and 159 read and agreed to (now paragraphs 159 and 160).

Paragraph 160 read.

Amendment proposed, in line 2, to leave out 'are more controversial' and insert 'are a matter of ongoing debate'. — (*Mr Michael Connarty.*)

Question put, That the Amendment be made.

The Committee divided (Div. 121).

Ayes, 7

Noes, 2

Mr Roger Casale
Mr Michael Connarty
Mr Tony Cunningham
Mr Wayne David
Mr Jim Dobbin
Mr Angus Robertson
Mr Bill Tynan

Mr William Cash
Mrs Angela Watkinson

Paragraph, as amended, agreed to (now paragraph 161).

Paragraph 161 read.

Amendment proposed, in line 15, to leave out 'common sense'. — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 122): Ayes 2, Noes 8 [names as for Div. 1].

Paragraph agreed to (now paragraph 162).

A paragraph — (*Mr Michael Connarty*) — brought up and read.

Question put, That the paragraph be read a second time.

The Committee divided (Div. 123): Ayes 7, Noes 2 [names as for Div. 121].

Paragraph added (now paragraph 163).

Paragraph 162 read and agreed to (now paragraph 164).

Paragraph 163 read, as follows:

163. We would not support new rights which undermined the position of Member States by making sub-Member State authorities their competitors in the EU, or rights for authorities with legislative powers which disadvantaged those without. Also, we emphasise that the EU should not intervene in the internal organisation of Member States. Making any special status dependent on Member States designating the regions to benefit does not resolve the subsidiarity problem here, as it would still involve the EU offering special rights to particular regions and in practice putting pressure on Member States to allow them to take up such rights. Therefore we do not support the proposal for partner regions of the Union status. However, despite the silence of the Laeken Declaration on the subject, we do believe the Convention should discuss the involvement of sub-Member State authorities in the EU.

Amendment proposed, in line 2, to leave out 'or rights for authorities with legislative powers which disadvantage those without'. — (*Mr Michael Connarty.*)

Question put, That the Amendment be made.

The Committee divided (Div. 124): Ayes 7, Noes 2 [names as for Div. 121].

Another Amendment proposed, in line 5, to leave out from the beginning to 'However' in line 9 and insert 'There are still unanswered questions about how the proposal for partner regions of the Union status might work in practice.' — (*Mr Michael Connarty.*)

Question put, That the Amendment be made.

The Committee divided (Div. 125): Ayes 7, Noes 2 [names as for Div. 121].

Paragraph, as amended, agreed to (now paragraph 165).

Paragraph 164 read and agreed to (now paragraph 166).

Paragraph 165 read, as follows:

165. As for consultation, we note that the Government welcomes improved consultation between EU institutions and the devolved, regional and local authorities. We regard it as common sense for the Commission to consult authorities with legislative powers which will have to transpose and implement new EU legislation and to take particular notice of their views. However, we are less convinced that any such consultation or access to the Commission should be 'preferential'. It may be that the Commission's 'more systematic dialogue ... at an early stage' will be sufficient, or the 'framework to allow for earlier input' requested by the Deputy First Minister.

Amendment proposed, in line 5, to leave out 'However, we are less convinced that' and insert 'We believe that the Convention on the future of Europe should fully explore whether'. — (*Mr Michael Connarty.*)

Question put, That the Amendment be made.

The Committee divided (Div. 126): Ayes 7, Noes 2 [names as for Div. 121].

Another Amendment made.

Another Amendment proposed, in line 6, to leave out from 'privileged.' to the end of line 8. — (*Mr Michael Connarty.*)

Question put, That the Amendment be made.

The Committee divided (Div. 127): Ayes 7, Noes 2 [names as for Div. 121].

Paragraph, as amended, agreed to (now paragraph 167).

Paragraph 166 read.

Amendment proposed, in line 4, after 'unconstitutional' to insert 'which raises the democratic question as to why the voters in such countries are excluded from deciding their political and constitutional future, particularly where there is a party list system for elections.' — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 128): Ayes 2, Noes 8 [names as for Div. 1].

Paragraph agreed to (now paragraph 168).

Paragraph 167 read.

Amendment proposed, in line 1, after 'matters' to insert 'appears to'. — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 129): Ayes 2, Noes 8 [names as for Div. 1].

Another Amendment proposed, in line 4, to leave out 'In such a case there are only two possible responses:' and add 'However, what happens in one EU Member State affects all the others. There are certain consequences which flow from referendums —'. — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 130): Ayes 2, Noes 8 [names as for Div. 1].

Amendment proposed, to leave out lines 9 and 10. — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 131): Ayes 2, Noes 8 [names as for Div. 1].

Paragraph agreed to (now paragraph 169).

Paragraph 168 read.

Amendment proposed, in line 6, to leave out 'would certainly not be appropriate' and insert 'of those voting throughout the EU as a whole would certainly not be appropriate. Each Member State should be able to decide for itself as in the case of Ireland and Denmark (and the UK) but once that decision had been made that decision should not be reopened by another referendum. It is intolerable that the Danish no vote on the Maastricht Treaty was disgracefully reopened and after the no vote in Ireland on the Nice Treaty, Romano Prodi alleged that the decision was "undemocratic" although every elector had been sent a full and fair summary of the arguments.' — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 132): Ayes 2, Noes 8 [names as for Div. 1].

Amendment proposed, in line 15, to leave out from 'idea' to the end of line 17 and add 'of a Europe wide referendum as undemocratic although we regard individual Member States referendums as democratic while they give the electors a last resort opportunity to decide their own political and constitutional future with full and fair information, such as a White Paper and with every elector or household sent a proper summary as to the matters involved.' — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided (Div. 133): Ayes 2, Noes 8 [names as for Div. 1].

Paragraph agreed to (now paragraph 170).

Paragraphs 169 and 170 read.

Motion made and Question put, That paragraphs 169 and 170 be left out. — (*Mr William Cash.*)

The Committee divided (Div. 134).

Ayes, 2

Mr William Cash
Mrs Angela Watkinson

Noes, 7

Mr Roger Casale
Mr Michael Connarty
Mr Wayne David
Mr Jim Dobbin
Mr Mark Hendrick
Mr Angus Robertson
Mr Bill Tynan

Paragraphs agreed to (now paragraph 171 and 172).

Paragraph 171 read and agreed to (now paragraph 173).

Annexes [Summary, Glossary, Summary in French, Summary in German] amended and agreed to.

An Annex [Strengthening the Role of National Parliaments in the European Union] — (*Mr Roger Casale*)
— brought up and read, as follows:

'Strengthening the role of national parliaments in the European Union'

Introduction

In liberal societies, such as those that make up the member states of the European Union, the legitimacy of decision-making is based on the principle of consent. That is why one of the most urgent democratic challenges facing the European Union today, is the need to make the governance of the EU more open, more accessible and more transparently related to the interests and concerns of European citizens. This paper argues that national parliaments are well placed to bridge the gap between EU decision-making and the citizens of Europe, and so to overcome the EU's 'democratic deficit'. That deficit has eroded and continues to erode the trust of the people of Europe in the future of the European project.

In addition to their function as legislative assemblies, national parliaments are the physical embodiment of the link between the government and the governed. Most EU citizens rightly look to their national members of parliament in the first instance to hold individual ministers and their government to account. As more and more legislation is introduced at the European rather than the national level, i.e. as the legislative function of national parliaments declines, so their scrutiny role should increase. The EU's law-making institutions are simply too remote for the ordinary citizen of the EU to be able to access directly. National parliaments can provide that vital intermediate link. But if this is to succeed, the role of national parliaments must be strengthened significantly.

This paper sets out three sets of proposals, strategic, practical and legal, to enhance the role of national parliaments in EU decision-making. The issues raised could be addressed at the current Convention on the Future of Europe and the changes to existing EU Treaties necessary to implement the proposals brought forward through the subsequent inter-governmental conference.

1. Charter for National Parliaments

The Charter would offer a set of broad principles and objectives to guide national parliaments in relation to their role in the European Union and to which national parliaments would subscribe. As such, it would represent a strategic framework within which the role of national parliaments could be developed and strengthened.

The implementation of specific measures or procedures to meet these common objectives would be a matter for individual parliaments (although a process of peer review could be undertaken via COSAC). In practice, this would be the only realistic option, given that parliaments, as sovereign bodies, will want to decide how best to exercise their own scrutiny role according to their own traditions and norms.

Objectives and principles to be anchored in the charter should include:

- a pledge by national parliaments to promote the openness and transparency of decision-making in the European Union;
- a pledge by national parliaments to review their own procedures with a view to increasing the opportunities for holding their own government ministers to account in relation to EU decision-making;

- a pledge by national parliaments to review their own procedures with a view to promoting the engagement of the citizen in the European Union.

The Charter could be worked up and drafted by the Working Group on National Parliaments at the Convention (Chaired by Gisela Stuart MP) and presented to national parliamentary representatives at the Convention. There could then be a process of consultation with MPs from national parliaments, interest groups and civil society groups. After further discussion in the Working Group, a working text could be agreed at the Convention. The Charter could also be presented to an inter-parliamentary conference such as COSAC at the time of the next IGC.

2. Raising the public profile of national parliaments

National parliaments must be more pro-active in seeking to engage the citizen with Europe and should use their own deep-seated legitimacy to this purpose. Whilst there is a significant level of lobbying by interest groups at the European level, there has been little similar activity in national parliaments. The attention of the public and interest groups therefore needs to be re-focused on national parliaments, so that a balance is struck between European institutions and national parliaments with in relation to influencing European legislation. This could be achieved in a number of ways, for example:

- Media presentation and public perceptions

Decision-making bodies in the European Union, including governments, European Commission and the Council of Ministers, must seek to ensure that the media focus more attention on national parliaments and their role in the European Union. National Parliaments, in turn, could then improve access to information and provide a more positive image of Europe to citizens. There could, for example, be regular briefings by national parliaments on European legislation, briefings on EU legislation on the web-site, newsletters and/or briefings to national newspapers. National parliamentarians should be able to initiate more debates in parliament about issues of real concern to the citizen. Parliaments should be encouraged to experiment with new ways of disseminating information relating to such debates to media interests, business interests and civil society groups, which would not only help to engage the citizen by better informing them, but could encourage the national press to cover European legislation more widely.

- Parliamentary conventions on the 'Future of Europe'.

These could be 'mini' conventions, held at regular intervals, to discuss the issues relating to the 'Future of Europe Debate'. This would enable national parliaments to take a pro-active role in reaching out to civil society and to promote openness and transparency in the European Union. Civil society could include trade unions, pressure groups and employers' associations, who could meet and debate the Europe they would like to see, with responses from Ministers, MPs, MEPs and Commissioners. This would give practical expression to the principles of openness and transparency, and provide a source of information on European issues. This idea has already been put into practice by the French National Assembly and could be institutionalised as a mechanism for engaging civil society in the European debate on a regular basis.

3. Incorporating the protocol on national parliaments into the European Treaties into a new 'Article' in the Treaties on the role of national parliaments.

The current protocol on national parliaments in the Amsterdam Treaty could be formalised into the Treaties, under a new 'Article' or 'Chapter' - National Parliaments in the European Union. This would help to strike the balance that is needed between the European institutions and the European nation-states. It would safeguard the position of national parliaments as equal partners to the European Parliament and enhance their influence over EU decision-making in a way commensurate with the increased authority and prestige of the Council of Ministers. The new section of the Treaty would seek to define the role of national parliaments in the following ways:

- National Parliaments and the Council of Ministers.

There should be at the very least, a parliamentary privileged access to documents and discussions of COREPER I and II. This ensures that decisions made by civil servants are open and transparent.

Ministers should have to provide parliament with a warning or prediction of the legislation they will discuss at the Council. National parliamentary committees could then submit reports before the Council meeting and/or call debate before or after European Councils.

— National Parliaments and the European Commission.

National Parliaments could exert a greater role in the policy formation of the European Commission. This could be achieved by requiring Commissioners to attend Committee hearings, thereby holding them to account and by requesting briefings on European legislation.

National Parliaments could also ensure that they are better informed of the Commission's annual legislative programme by requesting a 'Queen's Speech' type briefing from the Commission on its annual legislative programme (similar to the broad economic guidelines and the financial framework).

This would enable national parliaments to predict potential problems in legislation. National parliaments or national parliamentary committees could then publish a consultation document on the forthcoming legislative programme, request submissions from interest groups, civil society, etc and then feed this back to the Commission. National Parliaments could then request a written answer to the consultation and any clarifications of particular points of legislation.

4. Conclusion

There is an urgent need for national parliaments to take on a greater role in the European Union. The Convention on the Future of Europe provides a historic opportunity to assert the role of national parliaments in new and innovative way. In doing so, national parliaments can be part, indeed a large part, of the solution to the European Union's biggest problem, namely the lack of trust on the part of EU citizens in the EU decision-making process or the so-called 'democratic deficit'. National parliaments will need a defined strategy, with target dates, for how they see their role developing in the future and with specific measures to be implemented if they are to achieve an enhanced role. It is important that this does not become another House of Lords type reform, which has taken over 90 years.

National Parliaments in the European Union could be recognised as a fourth part of the European decision-making process, with a clearly defined and interactive part together with the European Parliament, the European Commission and the Council of Ministers. The above paper sets out a number of practical and strategic suggestions for this to happen, which could be addressed at the Convention itself.

National parliaments have a key role to play in making sure that the European citizen does not become further disengaged from the European project. National parliamentarians should themselves take the lead in developing the role of national parliamentarians in relation to EU decision-making. They can do so by strengthening the scrutiny role of parliamentary committees in their own parliaments. They can do so by ensuring that the reforms put forward by the Convention make it easier for national parliaments to assert their influence, in relation to all aspects of EU decision-making. And they can do so by making sure that as a result of these reforms, national parliamentarians are seen to be exercising some degree of democratic control over EU decision-making on behalf of the citizens of the individual EU member states.

Question put, That the Annex be added to the Report.
The Committee divided (Div. 135).

Ayes, 2

Mr Roger Casale
Mr Jim Dobbin

Noes, 5

Mr Michael Connarty
Mr Wayne David
Mr Mark Hendrick
Mr Angus Robertson
Mr Bill Tynan

Resolved, That the Report, as amended, be the Thirty-third Report of the Committee to the House.

Ordered, That the Chairman do make the Report to the House.

Ordered, That the provisions of Standing Order No. 134 (Select committees (reports)) be applied to the Report.

Several Papers were ordered to be appended to the Minutes of Evidence.

Ordered, That the Appendices to the Minutes of Evidence taken before the Committee be reported to the House. — (*The Chairman*.)

[Adjourned till Wednesday 26 June at half-past Ten o'clock.

THE COMMITTEE'S STANDING ORDER AND MEMBERSHIP AND THE SCRUTINY RESERVE RESOLUTION

The European Scrutiny Committee is appointed under Standing Order No. 143 to examine European Union documents and—

- (a) to report its opinion on the legal and political importance of each such document and, where it considers appropriate, to report also on the reasons for its opinion and on any matters of principle, policy or law which may be affected;
- (b) to make recommendations for the further consideration of any such document pursuant to Standing Order No. 119 (European Standing Committees); and
- (c) to consider any issue arising upon any such document or group of documents, or related matters.

The expression 'European Union document' covers —

- (i) any proposal under the Community Treaties for legislation by the Council or the Council acting jointly with the European Parliament;
- (ii) any document which is published for submission to the European Council, the Council or the European Central Bank;
- (iii) any proposal for a common strategy, a joint action or a common position under Title V of the Treaty on European Union which is prepared for submission to the Council or to the European Council;
- (iv) any proposal for a common position, framework decision, decision or a convention under Title VI of the Treaty on European Union which is prepared for submission to the Council;
- (v) any document (not falling within (ii), (iii) or (iv) above) which is published by one Union institution for or with a view to submission to another Union institution and which does not relate exclusively to consideration of any proposal for legislation;
- (vi) any other document relating to European Union matters deposited in the House by a Minister of the Crown.

The committee consists of sixteen Members, appointed for the duration of a Parliament. Its quorum is five. It has power to send for persons, papers and records, to sit notwithstanding any adjournment of the House, to adjourn from place to place, to report from time to time, and to appoint sub-committees. It also has power to seek from any Committee appointed under Standing Order No. 152 (Select committees related to government departments), the Select Committee on Public Administration, the Committee of Public Accounts, and the Environmental Audit Committee, that Committee's opinion on any European Union document, and to require a reply to such a request within such time as it may specify.

The present membership of the Committee is as follows:¹

Colin Breed MP (*Liberal Democrat, Cornwall South East*)
Roger Casale MP (*Labour, Wimbledon*)
William Cash MP (*Conservative, Stone*)
Michael Connarty MP (*Labour, Falkirk East*)
Tony Cunningham MP (*Labour, Workington*)
Wayne David MP (*Labour, Caerphilly*)
Terry Davis MP (*Labour, Birmingham Hodge Hill*)
Jim Dobbin MP (*Labour, Heywood and Middleton*)
Mark Hendrick MP (*Labour, Preston*)
Jimmy Hood MP (*Labour, Clydesdale*)
Anne McIntosh MP (*Conservative, Vale of York*)
Jim Marshall MP (*Labour, Leicester South*)
Angus Robertson MP (*SNP, Moray*)²
Anthony Steen MP (*Conservative, Totnes*)
Bill Tynan MP (*Labour, Hamilton South*)
Angela Watkinson MP (*Conservative, Upminster*)³

On 18 July 2001, the Committee elected *Mr Jimmy Hood* as its Chairman.

¹ Appointed on 16 July 2001.

² Appointed on 12 November 2001.

³ Appointed on 23 May 2002.

Resolution of the House of 17 November 1998⁴

That,

(1) No Minister of the Crown should give agreement in the Council or in the European Council to any proposal for European Community legislation or for a common strategy, joint action or common position under Title V or a common position, framework decision, decision or convention under Title VI of the Treaty on European Union—

- (a) which is still subject to scrutiny (that is, on which the European Scrutiny Committee has not completed its scrutiny) or
- (b) which is awaiting consideration by the House (that is, which has been recommended by the European Scrutiny Committee for consideration pursuant to Standing Order No. 119 (European Standing Committees) but in respect of which the House has not come to a Resolution).

(2) In this Resolution, any reference to agreement to a proposal includes—

- (a) agreement to a programme, plan or recommendation for European Community legislation;
- (b) political agreement;
- (c) in the case of a proposal on which the Council acts in accordance with the procedure referred to in Article 251 of the Treaty of Rome (co-decision), agreement to a common position, to an act in the form of a common position incorporating amendments proposed by the European Parliament, and to a joint text; and
- (d) in the case of a proposal on which the Council acts in accordance with the procedure referred to in Article 252 of the Treaty of Rome (co-operation), agreement to a common position.

(3) The Minister concerned may, however, give agreement—

- (a) to a proposal which is still subject to scrutiny if he considers that it is confidential, routine or trivial or is substantially the same as a proposal on which scrutiny has been completed;
- (b) to a proposal which is awaiting consideration by the House if the European Scrutiny Committee has indicated that agreement need not be withheld pending consideration.

(4) The Minister concerned may also give agreement to a proposal which is still subject to scrutiny or awaiting consideration by the House if he decides that for special reasons agreement should be given; but he should explain his reasons—

- (a) in every such case, to the European Scrutiny Committee at the first opportunity after reaching his decision; and
- (b) in the case of a proposal awaiting consideration by the House, to the House at the first opportunity after giving agreement.

(5) In relation to any proposal which requires adoption by unanimity, abstention shall, for the purposes of paragraph (4), be treated as giving agreement.

⁴ *Votes and Proceedings*, 17 November 1998, p 1250.