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Procedures and Practices

Relevant to Parliamentary Scrutiny



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Introduction

This is the sixth bi-annual report from the COSAC secretariat.

COSAC's bi-annual reports

The XXX COSAC, which met in Rome in October 2003, decided that the COSAC secretariat should produce factual bi-annual reports, to be published ahead of each plenary conference. The purpose of the reports is to give an overview of the developments in procedures and practices in the European Union that are relevant to parliamentary scrutiny.

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

The six chapters of this report are based on information provided by the administrations of the national parliaments of the EU's Member States and the European Parliament. The COSAC Secretariat is very grateful to them for their cooperation in this project.

Chapter one provides an overview of the expectations of national parliaments concerning the strengthening of cooperation both between national parliaments and within the framework of COSAC when monitoring the respect of the principles of subsidiarity and proportionality.

Chapter two reports on the measures national parliaments intend to take with regard to the reception of, and response to, documents sent directly to them by the Commission since September 2006. It will also examine whether, and how, national parliaments scrutinised the Commission's Annual Policy Strategy in the past, and how they intend to deal with it in the future.

Chapter three takes a look at third pillar issues and seeks to establish which national parliaments have been informed by their governments about the possible activation of the "passerelle clauses" in the Treaties, which have already deliberated on the issue and what stance they have taken.

The aim of **chapter four** is to look at the new inter-institutional agreement relating to comitology, introduce the new system and establish whether national parliaments have an interest in examining the procedure.

Chapter five examines the organisation of a new form of parliamentary cooperation in the EU, namely the Joint Parliamentary Meetings and the Joint Committee Meetings that have taken place so far, and tries to establish the lessons learnt from them.

The aim of **chapter six** is to look into the concept of the EU's Northern Dimension from the parliamentary point of view.

A note on numbers

Of the 25 Member States of the European Union, 13 have a unicameral parliament and 12 have a bicameral parliament. Due to this mixture of unicameral and bicameral systems, there are 37 national parliamentary chambers in the 25 EU Member States.

Although they have bicameral systems, the national parliaments of Austria, Ireland and Italy each sent a single response to the COSAC questionnaire. The COSAC secretariat received a response to its questionnaire from 29 chambers of national parliaments from 23 Member States and the European Parliament. These answers are published in a separate annex which is also available on the COSAC website.

Summary

- National parliaments welcome the **subsidiarity and proportionality checks** conducted under the auspices of COSAC, but it remains to be seen how many of them will be in a position to conduct such checks within the short period of time provided by the current Treaties. Whether and how the EU Institutions will react to statements of national parliaments is still an open question. A debate during one of the next COSAC meetings about whether COSAC should continue to facilitate these checks could be useful.
- The overwhelming majority of parliaments welcome the **Commission's initiative to forward legislative proposals** and other documents directly to them. Its impact will depend on whether national parliaments make sufficient use of the new procedure and on the extent to which the Commission will consider their statements. In order to keep up the momentum of the initiative, a follow-up should be conducted within COSAC. There may also be scope for a discussion on whether the Commission should be regarded as an appropriate counterpart for national parliaments or whether they should concentrate on scrutinising the work of their governments.
- Unlike the Legislative and Work Programme, the **Annual Policy Strategy** of the Commission is open for discussion and amendment. It has so far only been debated by relatively few national parliaments, but the majority see an added value in doing so in the future. A clear majority would welcome an interparliamentary debate on the Annual Policy Strategy in the framework of COSAC.
- A great majority of the national parliaments are well informed about the Commission's initiative to make use of the **passerelle clauses in Articles 42 TEU and 67(2) TEC** which could lead to giving up the unanimity requirement in the third pillar of the European Union. However, few parliaments have reported that they actively influenced the position of their government before the informal Council meeting in September 2006. The fact that the passerelle may require a parliamentary ratification in many Member States would suggest a stronger role of national parliaments vis-à-vis governments during negotiations in the Council.
- Most national parliaments have limited experience with the **comitology** procedure and the scrutiny of measures adopted under it. Yet there is a growing awareness that governments are directly involved in the decision making process under the comitology regime and that there is scope for parliaments to exert influence through government control.
- Most national parliaments consider **Joint Parliamentary Meetings and Joint Committee Meetings** useful in bringing added value to inter-parliamentary cooperation. However, their number should not exceed the current level as this could affect the core work of national parliaments. The topics were found interesting but meetings on concrete proposals for legislation were called for. The need for more coordination of joint meetings with other interparliamentary forums was underlined by many parliaments. The idea of working towards basic rules for the organisation of such meetings received support.
- The **Northern Dimension** has only been scrutinised by those parliaments that maintain a system of scrutiny of all EU matters, irrespective of what policy heading they are given in the European institutions. The stated advantage of the Northern Dimension policy is that it can achieve results without an institutional overlay. Therefore there seems to be no need for a specific parliamentary dimension along the lines of the Euro-Mediterranean cooperation.

1 Subsidiarity and proportionality

At its meeting on 15–16 June 2006, the European Council agreed that “National parliaments are encouraged to strengthen cooperation within the framework of the Conference of European Affairs Committees (COSAC) when monitoring subsidiarity.”¹ Furthermore, the Conference of Speakers of EU Parliaments suggested, in the conclusions of their meeting on 1 July 2006, that COSAC consider initiating a discussion on strengthening cooperation on monitoring the principle of subsidiarity.²

Based on the Contribution of the XXXIV COSAC in London, COSAC has initiated two subsidiarity and proportionality checks by national parliaments on Commission legislative proposals during the second half of the year 2006. The first of these checks was launched on 17 July 2006 and concerned a Commission Proposal for a Council Regulation amending Regulation (EC) No 2201/2003 as regards jurisdiction and introducing rules concerning applicable law in matrimonial matters.³ By the deadline - which was set on 27 September - 11 parliamentary chambers from 9 Member States⁴ had concluded the check and sent the report to the secretariat. By the end of October 22 parliaments⁵ from 17 Member States had concluded the check/or informed the secretariat of the procedure of the check. In some parliaments the check is still going on.

The second subsidiarity check was launched on 18 October 2006. Its subject matter is a Commission Proposal for a Directive of the European parliament and of the Council amending Directive 97/67/EC concerning the full accomplishment of the internal market of Community postal services.⁶ National parliaments are asked to submit their reports to the Secretariat by the 11 December 2006⁷.

The results of the first check are summarised in a separate document.⁸ The aim of this chapter is to summarise some practical experiences gained from the first subsidiarity and proportionality check, as well as to gather information on the expectations of national parliaments concerning the strengthening of cooperation among national parliaments and within the framework of COSAC.⁹

¹ http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/90111.pdf

² <http://www.eu-speakers.org/upload/application/pdf/270746a2/Conslutoins%20-%20final%20-%20rev.pdf>

³ Relevant Commission documents and the Secretariat’s *aide-mémoire* are published on the COSAC website as well as the results of the participating parliaments. For more information please refer to:

<http://www.cosac.eu/en/info/earlywarning/doc/divorce/>

⁴ These were the Czech Senate, the Estonian *Riigikogu*, the Finnish *Eduskunta*, the French *Assemblée nationale* and *Sénat*, the Hungarian National Assembly, the Polish *Sejm* and Senate, the Slovakian National Council, the Hellenic Parliament and (jointly) the Houses of Parliament of the Netherlands.

⁵ The secretariat received answers from the Belgian Chamber of Deputies, the parliament of Cyprus, the Czech Chamber of Deputies, the Danish *Folketinget*, the German *Bundestag* and *Bundesrat*, the *Seimas* of the Republic of Lithuania, the Luxembourg *Chambre des Députés*, the Portuguese *Assembleia da Republica* and the UK House of Commons and House of Lords.

⁶ Relevant Commission documents and the Secretariat’s *aide-mémoire* are published on the COSAC website as well as the results of the participating parliaments. For more information please refer to:

<http://www.cosac.eu/en/info/earlywarning/postal/documents/>

⁷ The technical presentation of the Commission proposal takes place the same day in the Council

⁸ <http://www.cosac.eu/en/info/earlywarning/doc/>

⁹ The following questions were put to national parliaments:

1. Referring to the European Council conclusions, how would you like to see the role of COSAC strengthened when monitoring subsidiarity?

2. In this respect, how should the role of select committees be taken into account (i.e. in the case of a system where the select committees are responsible for the subsidiarity and proportionality check)?

1.1 THE ROLE OF COSAC IN MONITORING SUBSIDIARITY AND PROPORTIONALITY

As far as the treaty-based role of COSAC is concerned, none of the parliaments see any need for change. The protocol to the Amsterdam Treaty on the role of national parliaments already provides COSAC with a possibility to examine any legislative proposal or initiative and allows it to address contributions to the EU Institutions, notably in relation to the application of the principles of subsidiarity and proportionality.

An overwhelming majority of national parliaments agree that the current procedure of conducting collective subsidiarity and proportionality checks by COSAC works well. However, some consider that the possibility to submit common positions to the EU Institutions should be more readily employed. Several parliaments express their satisfaction with the more active approach of COSAC in the monitoring of the principle of subsidiarity and proportionality during the past two years. Yet quite a number of parliaments find that there is still room for strengthening the role of COSAC in this field.

Almost all parliaments underline that COSAC should be the main forum for an exchange of best practices concerning the new possibilities for influence offered by the Commission and the European Council. COSAC offers a possibility for contacts on subsidiarity and proportionality related questions, and an exchange of views can take place at political level. In other words the role of COSAC should be to facilitate an exchange of information and best practices regarding the subsidiarity principle in the national level, to discuss common problems and occasionally set out common recommendations for improved practices for the EU Institutions regarding compliance with the principles of subsidiarity and proportionality.

Some national parliaments want to add the possibility for a regular information exchange system on additional subsidiarity checks conducted by national parliaments which are not facilitated by COSAC. This exchange of information should preferably take place through the already existing IPEX website.¹⁰ In order to facilitate access to the information in the framework of IPEX, several parliaments asked for translations to English of the opinions where a national parliament or a chamber has found a breach of the subsidiarity principle. Some parliaments suggest that the COSAC secretariat compile annual summaries on subsidiarity and proportionality checks conducted by national parliaments, whether in the framework of COSAC or independently.¹¹

Most national parliaments agree that COSAC is a useful arena for exchanging information on subsidiarity and proportionality in general. Some would like to see these themes as permanent topics on the meeting agendas, where the discussions could concern subsidiarity control practices in general or specific, topical questions such as infringements found by parliaments or whether the Commission's assessments are adequate. Some parliaments even envisage the convocation of special meetings dealing only with subsidiarity and proportionality checks, where the annual legislative programme of the Commission could be discussed in depth rather than just pinpointing proposals for individual subsidiarity checks made by individual parliaments. Special meetings could also be arranged where individual important legislative proposals could be discussed in more detail.

¹⁰ <http://www.ipex.eu>

¹¹ National parliaments may already send their findings directly to the COSAC Secretariat in order to have the results published on the website. So far only the Houses of Parliament of the Netherlands have used this: <http://www.cosac.eu/en/info/earlywarning/nationalchecks/>

The Dutch Senate, the UK House of Commons and the Irish *Oireachtas* propose that the current procedures should be evaluated and perhaps discussed in 2007. The UK House of Commons suggests that the Presidential Troika should evaluate the experience of the subsidiarity and proportionality checks carried out on the Commission's 2006 Work Programme, and consider facilitating more such checks on the legislative proposals in the 2007 Work Programme.

The UK House of Commons proposes also that if a significant number of COSAC delegations consider that the Commission response to their individual concerns was inadequate or poorly founded, it would be open to the Presidency to propose a follow-up debate in COSAC. COSAC might also consider adopting a separate Contribution on the issue, requiring the Commission to respond in writing. In the case of legislative proposals subject to co-decision, the COSAC file should remain open throughout the legislative process.

A similar proposal was made by the UK House of Lords: Where national parliaments wish to coordinate their views on whether a specific item of EU legislation complies with the principles of subsidiarity and proportionality, COSAC should debate that specific legislative proposal and, if desired, adopt a Contribution addressed to the EU Institutions on it. Such a Contribution could be separate from and in addition to the usual Contributions issued at the end of each COSAC meeting¹². COSAC should ask the Commission to respond in writing to COSAC Contributions.

The two Polish chambers would be ready to take this a step further by proposing creation of a COSAC (or IPEX) website devoted to monitoring subsidiarity and proportionality by national parliaments and making possible a day-to-day exchange of information and experiences between parliaments in this field. The COSAC bi-annual report prepared each spring should contain information summing up the outcome of this work. At the same time, COSAC could notify the European Commission each time the threshold of one-third (or in some cases one quarter) of negative reactions to EU draft legislation on the part of national parliaments was reached.

The Irish *Oireachtas* would like to continue the current initiative in respect of the 2006 Legislative and Work Programme with a view to holding a similar exercise in 2007 on a small number of proposals. To facilitate this, consideration should be given to establishing a 'subsidiarity working group' at official level, in cooperation with the COSAC Secretariat. The role of the working group would be to monitor developments, provide regular updates on and facilitate an ongoing exchange of information and the experiences of participating national parliaments in their examination of subsidiarity and proportionality matters. This would facilitate an improvement in the quality of the subsidiarity and proportionality checks and would strengthen cooperation within the framework of COSAC when monitoring these matters.

1.2 THE ROLE OF SECTORAL COMMITTEES

A majority of the parliaments underline that the manner in which the scrutiny of subsidiarity and proportionality principles is conducted at the national level, and the question of which committees should be involved, should remain a national responsibility. The COSAC documents could naturally be used and COSAC itself may function as a channel of information for distribution of findings. The two French Chambers, the two UK

¹² The Rules of Procedure allow for Contributions to be adopted by qualified majority. They also provide for the European Parliament to abstain from any vote on a Contribution which is addressed to it.

Houses and the German *Bundesrat* replied that the EU Affairs committees in their respective parliaments are *de facto* responsible for the scrutiny of subsidiarity and proportionality. The Czech Senate and Slovakian National Council regard the different and incompatible structures of the different committees of national parliaments as the biggest challenge in the involvement of sectoral committees, though they can be engaged via the EU Affairs Committees.

The Danish *Folketinget* and the Swedish *Riksdagen* think that COSAC could be a more useful forum if national parliaments were to open COSAC meetings to the participation of those sectoral committees in some national parliaments which have a specific role in the scrutiny of European Union matters. The Parliament of Cyprus seems to be open to involvement of the sectoral committees, and proposes consultations with relevant European Parliament committees as soon as the annual legislative programme of the Commission is examined in order to get a first impression of their views of the legislative proposals.

Some national parliaments (i.e. Finnish *Eduskunta*, Estonian *Riigikogu*, Polish Senate, Slovenian National Assembly and National Council of the Slovak Republic) underline that the representation of sectoral committees does not constitute a problem, since they are already fully involved in subsidiarity monitoring by giving their opinion to the relevant EU Affairs Committee.

1.3 SOME REMARKS CONCERNING FUTURE CHECKS

National parliaments seem to welcome continuing and even intensifying cooperation within COSAC on the subsidiarity and proportionality checks. On the other hand only 11 parliamentary chambers from 9 Member States (i.e. about one-third) managed to give their responses within the agreed deadline. It should be noted that the first subsidiarity check was conducted during the 2006 summer break. Parliaments were given a period of about eight weeks to conclude the check. Therefore the deadline of six weeks¹³ was not even tested.

The subsidiarity check on the proposed Directive concerning the full accomplishment of the internal market of Community postal service will be therefore represent the real test for national parliaments' capacity to react in time, since the Commission plans to present the proposed Directive to the Council on the 11 December—exactly six weeks after the proposal has been being made available in all languages. Much of the impact of the responses from national parliaments will depend on whether they manage to conclude their scrutiny procedures before this Council meeting.

The early implementation of the commitment by the President of the Commission to transmit directly all new legislative proposals and consultation papers to national parliaments has been positively noted among the national parliaments. The communication from 24 October 2006 on the Commission's Legislative and Work Programme for 2007¹⁴ has already provoked some questions among national parliaments about the procedure to be followed in examining the document and the form in which the subsidiarity and proportionality checks should be continued.

¹³ The Protocol on the role of national parliaments in the EU attached to the Amsterdam Treaty provides that six weeks shall elapse between a proposal 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 (either for the adoption of an act or for adoption of a common position).

¹⁴ Link to the Commission's Legislative and Work Programme for 2007:
http://ec.europa.eu/atwork/programmes/docs/clwp2007_en.pdf

To ensure that national parliaments can react in a timely manner, the Commission is invited to provide more detailed information on the proposals in the 2007 Work Programme, allowing national parliaments to better programme their analysis. This information, together with the supporting impact assessments provided in all national languages, would also allow national parliaments better to identify the proposals where they could concentrate their focus regarding questions on subsidiarity and proportionality.

1.4 CONCLUSION

Most national parliaments responded positively to the subsidiarity and proportionality check conducted under the auspices of COSAC. It remains to be seen how many of them will in the future be in a position to conduct such checks within the short period of time provided by the current Treaties. Whether and how the EU Institutions will react to critical remarks concerning these principles emanating from national parliaments is also an open question. There should be a debate on the political level, preferably during one of the next COSAC meetings, on the issue of whether or not COSAC should continue to facilitate additional subsidiarity and proportionality checks. The aim of these checks—apart from exchange of best practices—is also worth considering, as is the number of Commission proposals which national parliaments are able to check collectively.

2 Cooperation with the Commission

Cooperation between Parliaments and the European Commission has recently gained new impetus through the following two initiatives:

Firstly, the Commission announced in its Communication to the European Council “A Citizens’ Agenda - Delivering Results for Europe” of 10 May 2006¹⁵ its intention to “...transmit directly all new proposals and consultation papers to national parliaments, inviting them to react so as to improve the process of policy formulation.” Following this announcement the European Council, in its Conclusions of June 2006, asked the Commission “to duly consider comments by national parliaments - in particular with regard to the subsidiarity and proportionality principles.”

The aim of the Commission’s initiative is to inform national parliaments of the Commission’s legislative initiatives, which could help to involve them in the decision-making process at an early stage. The direct transmission of documents by the Commission to national parliaments started on 1 September 2006.

Secondly, the most recent Conference of Speakers of EU Parliaments, held in Copenhagen in June/July 2006, encouraged national parliaments to scrutinise the Commission’s Annual Policy Strategy (APS) and to consult with the Commission on their findings. In this context, the Speakers called on their Secretaries General to consider specific provisions for the Commission to present its Annual Policy Strategy and Legislative and Work Programme (LWP) to national parliaments in 2007. The Annual Policy Strategy is covered by the Commission’s initiative of direct transmission of documents to national parliaments.

The Commission’s Annual Policy Strategy, usually released in February or March every year, is the first stage of the European Union’s annual policy cycle and provides a guide to the Commission’s policy priorities for the following year.¹⁶ The Commission’s Legislative and Work Programme, usually released in October of the same year, translates the Annual Policy Strategy into policy objectives and an operational programme of legislative proposals to be adopted by the Commission.

The major difference between the two documents lies in their openness to negotiation and possible changes. The Legislative and Work Programme is a final statement that cannot be amended or changed in any way, whereas the Annual Policy Strategy is basically open to amendment, since it only constitutes a first step in the process of setting up a final programme, namely the Legislative and Work Programme.

This chapter seeks to provide an overview of the measures national parliaments intend to take with regard to the reception of and response to documents directly transmitted by the Commission(I).¹⁷ Furthermore, it examines whether and how national parliaments have

¹⁵(COM(2006) 211 final)

¹⁶ In this context the Commission also adopts a budgetary framework which ensures that the human and financial resources needed to achieve the priorities are available.

¹⁷ The following questions were put to national parliaments:

1. *Does the direct transmission of documents by the Commission increase the amount of EU documents received by your parliament?*

scrutinised the Commission's Annual Policy Strategy in the past and how they intend to deal with it in the future (II).¹⁸

2.1 THE COMMISSION'S INITIATIVE

2.1.1 General Assessment

The majority of parliaments welcome the Commission's initiative. The main reasons mentioned in this context are:

- the earlier availability of EU Documents,
- the Commission's political commitment to establishing direct relations with national Parliaments
- the important signal it sends of the role national parliaments are considered to take in the EU decision-making process,
- the possibility of a direct dialogue with the Commission, and ideally, the possibility to exert influence on the Commission,
- the increase in transparency with regard to Commission activities.

Some parliaments are of the opinion that the initiative still has to prove its value with regard to the positioning and role of national parliaments *vis-à-vis* the Commission. According to the UK House of Commons it will be very important that the Commission should show that it has considered the responses of national parliaments, and ideally that it has taken into account in an appropriate fashion,

The Dutch Parliament regards the initiative as positive but calls for procedural improvements, as EU documents are obviously not immediately sent out by the Commission after adoption but only when the official translation in the respective national language is available. According to the Dutch Parliament, it is likely that the totality of Commission documents adopted are not transmitted directly.

2. How does your parliament intend to deal with documents directly forwarded by the Commission from a technical point of view? (e.g. establishment of a new means, like a separate database, for the reception of the documents, or use of existing mechanisms?)

3. How do you intend to react to the Commission's documents?

a) Which body in your parliament will scrutinise the documents and decide upon the content of the reaction towards the Commission (e.g. the EU committee, a sectoral committee, the plenary)?

b) Will your parliament only scrutinise/react to legislative proposals, or will it also react to consultation documents, working documents etc.?

c) Do you intend to keep a six-week time limit for your reaction?

d) In case your parliament is a bicameral one, will there be cooperation between the two chambers with regard to the scrutiny of and reaction to the documents transmitted by the Commission?

e) In which way will you formally reply (e.g. letter by your speaker; committee chairman etc)?

4. Does the way your parliament will deal with the documents directly transmitted by the Commission (compare question 3) differ from the procedure pursued by your parliament with regard to EU matters in the past?

5. Does your parliament regard the direct transmission of legislative proposals and consultation papers of the Commission to national parliaments as an added value, compared to the situation in the past?

¹⁸ The following questions were put to national parliaments:

1. Has your parliament held debates on the Commission's Annual Policy Strategy in the past?

a) If yes, which bodies were involved in the discussion?

What was the outcome of the debates, and how was it used (e.g. adoption of an opinion for submission to the government)?

b) If not, how do you plan to deal with the Annual Policy Strategy in the future?

2. Does your parliament regard the discussion of the Annual Policy Strategy as an asset?

3. Would you be interested to discuss the Annual Policy Strategy in an interparliamentary context (i.e. COSAC)?

A small group of parliaments do not see any added value in the initiative (Finnish *Eduskunta*, Italian Parliament), mainly because the documents transmitted by the Commission were already available from other sources. The Finnish *Eduskunta* points out that the Commission had always invited comments from anyone interested.

Only a minority of parliaments receive additional EU documents through the Commission's initiative (Parliament of Cyprus, Dutch Parliament, Portuguese *Assembleia da Republica* and Slovakian National Council). Most parliaments already receive the same documents now directly transmitted by the Commission, mostly via their governments.

Some parliaments argue that it is too early to give a definite answer on whether the documents transmitted by the Commission entirely coincide with those being made available by their respective governments (German *Bundestag*, German *Bundesrat*, French *Assemblée nationale*; UK House of Commons and House of Lords with regard to Commission working documents). The Swedish *Riksdagen* is currently discussing whether direct communication between the *Riksdagen* and the Commission is compatible with the Swedish scrutiny system..

2.1.2 Reception of Documents

All parliaments have the technical prerequisites necessary to receive and process the documents sent directly to them by the Commission. The majority of parliaments have introduced new mechanisms or devices, in most cases separate mailboxes used in combination with existing databases. A number of parliaments have created new databases or are still in the process of deciding on the establishment of a separate database. The Portuguese *Assembleia da Republica* has not only created a new mail address but also employed a new staff member responsible for reception and further transmission of the documents to competent committees. Other parliaments have used pre-existing instruments.

2.1.3 Procedure of Decision-Making

The great majority of parliaments report that the procedure to be applied for the scrutiny of documents directly sent in by the Commission does not significantly differ from the general procedure pursued with regard to EU matters in the past.

Some chambers state that there is a difference in procedure, since they are now in a position to react to Commission documents without having to consider their government's opinion, as is obligatory under the usual scrutiny procedure (Dutch Parliament, Maltese House of Representatives; Hungarian National Assembly (in the case of a subsidiarity test)).

A new procedure has been introduced by the Portuguese *Assembleia da Republica* based on a newly revised law that enables the Parliament to submit written opinions on subsidiarity matters directly to the EU institutions (previously opinions could only be submitted through the government).¹⁹ In this context the Portuguese *Assembleia da Republica* EU Committee organised special training sessions for staff as well as information sessions for members of sectoral committees. The Finnish *Eduskunta* points

¹⁹ The revision of the law ("Law for monitoring, assessment and pronouncement by the Assembly of the Republic within the scope of the process constructing the European Union") broadly coincided with the Barroso announcement of the new Commission initiative in May 2006 as well as with the European Council Conclusions of June 2006.

out that it does not intend to deal with the documents directly transferred by the Commission at all.

The different procedures applied by national parliaments in the context of the Commission's initiative are as follows:

a) Competent Body

In all cases the scrutiny of the documents directly sent by Commission is conducted at committee level (the EU Committee and/or specific sectoral committees). In most parliaments the final decision on the reaction to the Commission also lies in the competence of the committees. In some cases, however, the vote on the statement to be sent to the Commission is usually reserved to the plenary. No parliament has thus far made any plans to establish a new body for the scrutiny of Commission documents.

b) Documents Subject to Scrutiny

The majority of parliaments argued that they would at least be able or competent to scrutinise all categories of documents transmitted by the Commission, namely legislative proposals, consultation documents and working documents. Some parliaments however explicitly stated that they would put their current focus on legislative proposals (Cypriot Parliament, Hungarian National Assembly, Irish *Oireachtas*, Latvian *Saeima*, Polish Parliament), and legislative proposals and consultation documents respectively (German *Bundesrat*, Danish *Folketinget*, Slovenian National Assembly).

c) Timeframe

Most parliaments expressed their intention to keep a six week deadline for the scrutiny of the documents directly sent by the commission with regard to the Amsterdam Treaty.²⁰ However, most parliaments see a problem to stick to the deadline due to constraints of their parliamentary agendas or legal constraints, for instance an obligation to consider the government's point of view before being able to react (e.g. Estonian *Riigikogu*).

Others do not explicitly intend to keep the deadline, although they think it is most probable that it will be kept in many cases (German *Bundesrat*). Some want to react as soon as possible independent from a six week deadline as a comparable time limit was not set up by the Commission (Danish *Folketinget*), or to keep the deadline on a case to case basis (UK House of Lords). The Dutch Parliament intends to keep the deadline only for a selection of 11 legislative proposals on which the two chambers have agreed to conduct a subsidiarity check in 2006.

d) Bicameral Cooperation

Chambers from 9 bicameral parliaments have taken part in the survey. There are to date no new forms of cooperation planned between the chambers of these parliaments as a result of the Commission's initiative.

Institutionalised cooperation already takes place in the Dutch Parliament, where a specialised Joint Committee on Subsidiarity has been established in order better to reach a

²⁰ The Protocol on the role of national parliaments in the EU attached to the Amsterdam Treaty provides that six weeks shall elapse between a proposal 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 (either for the adoption of an act or for adoption of a common position).

consensus between the two parliamentary chambers in subsidiarity and proportionality matters. At the Irish *Oireachtas*, Joint Sectoral Committees are, next to the EU Scrutiny Committee, in charge of reacting to the Commission. These committees comprise members from both chambers of the Irish Parliament sitting and voting together.

The National Council of the Slovenian Parliament has the right to submit opinions on legislative proposals to the EU Committee of the first chamber. The two Houses of the UK Parliament cooperate mainly through the exchange of information. The Austrian Parliament states that cooperation and coordination between the chambers is ensured as political groups comprise members from both chambers as well as due to the fact that there is only one common parliamentary administration for both chambers.

There is so far no formal bicameral cooperation in place within the German, Czech, French, Italian and Polish Parliaments. The German *Bundesrat*, the Polish Senate and the Czech Senate say that a decision on a possible future cooperation has not been taken yet.

2.1.4 Response to the Commission

The overall majority of parliaments said they would either reply with a letter from their Speaker or from the chair of the committee in charge of the decision on the document in question. Some parliaments explicitly mentioned that they would attach the formal resolution or report voted by their plenary or committee to their letter of notification (German *Bundesrat*, Czech Senate, UK House of Commons). Only a limited number of parliaments specified who would be the addressee of their reply (German *Bundesrat*: the President of the Commission; UK House of Commons: the Commissioner responsible).

2.2 THE ANNUAL POLICY STRATEGY (APS)

Although the majority of parliaments which took part in the survey have no or only limited experience of scrutiny or debate of the Annual Policy Strategy to date, a great number of them take a positive stance on the issue and would regard a parliamentary debate of the APS as an asset. Consequently, a considerable number of parliaments are thinking about introducing parliamentary debates on the APS in the future. A great majority of parliaments also welcome the idea of using COSAC as a forum for interparliamentary discussion of the Annual Policy Strategy.

2.2.1 Debate on the Annual Policy Strategy

Only six national parliaments/chambers report that the Annual Policy Strategy has been subject to parliamentary debate in the past (the Czech Senate, the Danish *Folketinget*, the Latvian *Saeima*, the French *Assemblée nationale*, the Slovenian National Assembly, the UK House of Lords and the European Parliament).

The Czech Senate held a debate on the APS in 2004 as part of a debate on the Legislative and Work Programme. In the following year, however, the debate on the LWP did not include the APS. The Danish *Folketinget* reviewed the APS in the regular course of its EU affairs scrutiny. In addition, it has been discussed in a joint meeting with Danish members of European Parliament. The European Affairs Committee of the Latvian *Saeima* contributed to Latvia's national government position on the APS. An additional debate took place in a separate meeting of the *Saeima* EU Committee with members of the European Parliament from Latvia.

The French *Assemblée nationale* held a plenary debate with Commission President Barroso in January 2006 during which the LWP as well as the APS were touched upon. The Slovenian National Assembly held a debate on the APS at EU Committee level in

which the Commissioner Potočnik as well as government representatives took part. The UK House of Lords and the Irish *Oireachtas* have discussed the APS at EU Committee level.

All other parliaments have never had the APS on their parliamentary agenda before. A number of those have, however, scrutinised the LWP in the past (Cypriot Parliament, Estonian *Riigikogu*, Finnish *Eduskunta*, French *Sénat*, German *Bundestag*, Hungarian National Assembly, Italian Parliament, Luxembourg *Chambre des Députés*, Portuguese *Assembleia da Republica*, Slovak National Council, Swedish *Riksdagen*, UK House of Commons). The Austrian Parliament explained that a parliamentary debate in committee is held on reports submitted by the government on the Legislative and Work Programme. The Annual Policy Strategy can also be referred to in these debates, which sometimes also take place at plenary level

The European Parliament deals with the Annual Policy Strategy as follows: According to the framework agreement between European Parliament and Commission, the Commission presents the APS to the European Parliament plenary at the beginning of the year. The APS is then discussed in the European Parliament committees involving the competent Commissioners. In September of the same year the committee chairs adopt a report that has to be approved by the president of the European Parliament and the presidents of the political groups. The report is finally sent to the Commission as the European Parliament contribution to the Commission's Legislative and Work Programme. The Commission usually presents the Legislative and Work Programme to the European Parliament in November, and the EP adopts a resolution on it in December..

In addition, the European Parliament's Committee on Budgets draws up a regular own initiative report based on the Annual Policy Strategy. The European Parliament points out that through its report on the APS it can directly express its criticism on the programme to the Commission which with regard to the new Legislative and Work Programme for 2007 can then take some of the European Parliament's demands into account.

2.2.2 General Assessment of a Parliamentary Debate on the APS

A debate of the APS is regarded as an asset by a majority of parliaments, including the European Parliament, for the following reasons:

- it provides a general overview of the European policy agenda (French *Sénat*, Hungarian National Assembly)
- it helps to establish an agenda for parliamentary scrutiny (Slovenian Parliament), and formulates perspectives in the EU Committee respectively (Irish *Oireachtas*,)
- it provides an opportunity to influence content of the Legislative and Work Programme (Hungarian National Assembly).
- it provides a base for discussion with the Commission (French *Assemblée nationale*)

The Estonian *Riigikogu* argues that the debate of the APS only adds value if it takes place at committee level rather than at plenary level. The Swedish *Riksdagen* has not taken a definite position yet. However, its Speaker supported the conclusions of the 2006 Speakers Conference with regard to the APS; its Secretary General will participate in the considerations on how the Commission could present the APS to national parliaments in 2007.²¹

²¹ For a short summary of the Conclusions of the Conference of Speakers of July 2006 see the introduction to chapter 2 above.

A rather critical stance is taken by the Czech Senate, which has discussed the APS in the past and considers it to be too general to trigger a discussion of any substance. The possible participation of a Commissioner is however seen as a means to add a certain value to the discussion. The Finnish *Eduskunta* is of the opinion that a parliamentary debate on the APS can only be considered as useful as far as it entails a sort of result or at least interaction. According to the *Eduskunta* it is questionable whether national parliaments can really be regarded as counterparts of the European Commission.

The European Parliament points out that the debate of the APS constitutes an essential element of its relations with the European Commission. As the APS can be seen as the first step in the procedure of the making and adoption of the Legislative and Work Programme, the European Parliament underlines that its debate on the APS offers a great opportunity to influence the content of the Commission's legislative and political priorities to be set up in the LWP.

2.2.3 Future Plans to hold Parliamentary Debates on the APS

Nine national parliaments and one parliamentary chamber are considering introducing a regular parliamentary debate on the Annual Policy Strategy in the future (Parliament of Cyprus, Estonian *Riigikogu*, Hungarian National Assembly, Lithuanian *Seimas*, Luxembourg *Chambre des Députés*, Polish Parliament, Portuguese Assembleia da Republica, UK Parliament, Lithuanian *Seimas*, Dutch *Eerste Kamer*). The Latvian *Saeima* and the Slovenian National Assembly intend to continue their practice of debating the APS.²²

A debate at EU committee level is foreseen by the Parliament of Cyprus, the Luxembourg *Chambre des Députés* and the Lithuanian *Seimas* as well as by both chambers of the Polish Parliament. The EU Committee of the UK House of Lords is currently reviewing its scrutiny of the APS.

According to the new Portuguese Monitoring Law,²³ the Portuguese *Assembleia da Republica* will in the future hold a debate following the conclusions of the last European Council of each European Presidency. The debate to be held in the first half of the year may include consideration of the Annual Policy Strategy. The first parliamentary debate on the APS will take place in the beginning of 2007.

The UK House of Commons explains that the Select Committee on the Modernisation of the House of Commons has proposed the establishment of a Parliamentary European Committee that would be open to all members of both Houses of Parliament and could serve as a forum for the debate of the APS. EU Commissioners and UK Members of the European Parliament would be invited to the meetings. However, the UK Government has yet to bring forward detailed proposals for the establishment of such a body.

The Hungarian National Assembly considers discussing the APS in a fashion similar to the debate on the Legislative and Work Programme: that is debated in the EU Committee together with the select committee chairmen, the political group leaders, Hungarian Members of European Parliament, ambassadors of EU Member States and civil society stakeholders.

²² See above under II 1).

²³ See above under I 3).

A number of parliaments have not yet taken a definite decision on how to treat the APS. The Conference of Speakers scheduled to meet in Slovakia in May 2007 was mandated to look into the possibilities of holding coinciding debates on the APS and the LWP. The Danish *Folketinget* is awaiting the outcome of that deliberation. Members of the EU Committee in the German *Bundestag* support the idea of holding a regular debate on the APS in the future; a possibility would be to also engage the plenary. A definite decision on the matter is still to be taken. The Finnish *Eduskunta* says that a debate of the APS could possibly be held in its Grand Committee; though the interest in such a debate would be rather limited.

2.2.4 Debate in the framework of COSAC

The clear majority of parliaments would welcome a discussion of the APS in the framework of COSAC. The UK House of Lords considers COSAC as the best interparliamentary forum for a debate of the Annual Policy Strategy.

Some parliaments think that a discussion of the Annual Policy Strategy in the framework of COSAC would be most fruitful if the Commission itself presented the strategy to the Conference (French *Sénat*; Dutch *Eerste Kamer*, which however thinks that a discussion should first take place at national level). The Finnish *Eduskunta* is of the opinion that the discussion could be a useful topic for COSAC only if the meeting took place immediately after the release of the APS. The UK House of Commons supports the idea provided that the addition of a fixed item to COSAC's bi-annual agendas does not mean a restriction to the freedom to discuss other topical issues. According to the Irish *Oireachtas* the idea should be kept under review.

2.3 CONCLUSION

The overwhelming majority of parliaments welcome the Commission's initiative to forward legislative proposals and other documents directly to them. The impact of the initiative will however largely depend on whether national parliaments make sufficient use of the new procedure and on the extent to which the Commission will consider their statements. In order to keep up the momentum of the initiative, a regular follow-up should be conducted at interparliamentary level. COSAC could be an appropriate forum for a continuing evaluation of the Commission's initiative. There may also be interest for a discussion in COSAC on whether the Commission should be regarded as the appropriate counterpart of national parliaments or whether they should rather concentrate on scrutinising their governments.

The Annual Policy Strategy has so far only been debated by a few national parliaments. The majority see an added value in a parliamentary debate on the Strategy, and some are considering introducing a debate in the future. A clear majority would welcome an interparliamentary debate on the Annual Policy Strategy in the framework of COSAC.

3 Justice and Home Affairs: the question of the *passerelle*

In its Communication “A Citizens’ Agenda—Delivering Results for Europe”²⁴ of 10 May 2006, the Commission announced an initiative to improve decision taking and accountability in the area of police and judicial cooperation and legal migration. It refers to Articles 42 of the Treaty on European Union (TEU) and 67(2) of the Treaty establishing the European Community (TEC or EC Treaty). Both provisions allow for changes to the current decision making arrangements in the area of Justice and Home Affairs (“*passerelle* clauses”). The initiative was specified in the Commission communication “Implementing the Hague Programme: the way forward”²⁵ of 28 June 2006.

The June 2006 European Council called upon the Finnish Presidency to explore, in close collaboration with the Commission, the possibilities of improving decision-making and action in the area of Freedom, Security and Justice on the basis of the existing treaties. The Finnish presidency addressed the issue at an informal meeting of Interior and Justice Ministers in Tampere on 21 and 22 September, but no consensus could be reached.

Under Article 42 TEU, the Council may decide that action the fields of police and judicial cooperation in criminal matters shall fall under Title IV of the EC Treaty and shall determine the relevant voting conditions. The areas chosen by the Council would be moved from the third to the first pillar of the European Union. Depending on the decision of the Council, qualified majority voting and the co-decision procedure could be made applicable to matters of police and judicial cooperation where the Council currently decides unanimously and the European Parliament is consulted. Activating the *passerelle* requires a unanimous decision of the Council after consulting the European Parliament and an adoption of that decision in accordance with the respective constitutional requirements in each Member State.

The use of Article 67(2) TEC leads to the application of the co-decision procedure to all or parts of Title IV (Visas, Asylum, Immigration and other Policies related to Free Movement of Persons). Currently, the Council decides unanimously after consulting the European Parliament. Article 67(2) requires a unanimous decision by the Council after consultation of the European Parliament.

Chapter 3 of the bi-annual report seeks to establish which national parliaments have been informed by their governments about the initiative to use the *passerelle* clauses, which have already deliberated on the issue and what stance they have taken. Special attention is given to the degree in which national parliaments are involved in the decision-making process of their governments at an early stage.²⁶

²⁴ COM(2006) 211 final

²⁵ COM(2006) 331

²⁶ The following questions were put to national parliaments:

1. Has your parliament discussed the Commission initiative?
2. What is the view of your parliament vis-à-vis this initiative?
3. Has your government taken a position regarding this initiative and if yes, how has your parliament been informed about it?
4. Can your parliament exert influence on the stance of your government regarding this initiative? If so, what are the means available?
5. Would the transfer of certain Justice and Home Affairs matters from the third to the first pillar in any way affect the way your parliament scrutinises these policies?

3.1 PARLIAMENTARY DEBATES

19 parliamentary chambers in 17 Member States and the European Parliament have held a debate or discussion on the Commission initiative. In most instances, discussions were held on the committee level and in conjunction with the above-mentioned Commission communications of 10 May 2006 and 28 June 2006. The French *Assemblée nationale* recalls that it has already suggested using the passerelle in Article 42 TEU in a resolution adopted in March 2006.²⁷ The European Parliament points out that it has repeatedly stated the need to start the procedure for using the passerelle.

3.2 THE VIEWS OF PARLIAMENTS

The French *Assemblée nationale*, the Italian Senate and Camera, the Luxembourg *Chambre des Députés* and the European Parliament expressed unequivocal support. According to the *Assemblée nationale*, the use of the passerelle would clarify the legal framework for measures in the area of criminal law and would give a new impetus to European judicial cooperation. The Italian parliament hopes for progress in the establishment of a European area of freedom, security and justice through the co-decision procedure and majority decisions. The House of Lords considers that the United Kingdom should not stand in the way of other Member States deciding to transfer criminal law competence to the Community on the condition that the British “opt-in” would be preserved.

The German *Bundesrat* rejected the initiative, considering that the draft Constitutional Treaty should not be pre-empted. According to the *Bundesrat*, the Commission’s initiative would go beyond the repartition of powers and responsibilities envisaged in the draft Constitutional Treaty which is considered a fine-tuned and well-balanced system. The Slovakian National Council also gives priority to the conclusion of the ratification of the Constitutional Treaty with a view to obtaining a more efficient decision making process, but at the same time voices a certain flexibility towards further negotiations on the passerelle. The Swedish *Riksdagen* demands security guarantees for the transition from unanimity to majority decisions and considers that further discussions should await future developments on the Constitutional Treaty. Some parliaments express general support for improvements in the decision-making process of the European Union but state concern about using the passerelle for areas like criminal law and demand a deeper discussion (Estonian *Riigikogu*, Finnish *Eduskunta*, Latvian *Saeima*).

The European Parliament argues that the legitimacy of the cooperation in Justice and Home Affairs would be increased through the co-decision procedure and the extension of the jurisdiction of the Court of Justice. Only the inclusion of judicial and police cooperation on criminal matters in the Community pillar would provide the conditions for adopting European provisions in full compliance with the principles of democracy and efficient decision-making and under appropriate judicial control.

Many national parliaments have not concluded the debate, pointing out that the Commission has not yet produced a formal legislative proposal (UK House of Commons, Czech Senate, Maltese Parliament) or that further specification of the proposal is needed (Lithuanian *Seimas*, French *Sénat*).

²⁷ <http://www.assemblee-nationale.fr/12/pdf/ta/ta0560.pdf>

3.3 THE POSITION OF NATIONAL GOVERNMENTS

The governments of Austria, Belgium, Finland and Luxembourg have taken a position in favour of using the passerelle clauses and informed their parliaments thereof. France has supported invoking Art. 42 TEU but gave no formal opinion on the extension of qualified majority voting under Article 67(2) TEC. The Czech and the German government have stated their opposition against activating the clauses.

The governments of Estonia, Cyprus, Italy and Latvia, the Netherlands and Slovenia seem not to have formed a definitive position or communicated positions to their parliaments which leave room for interpretation. The Government of the United Kingdom took a reserved stance, stating that it would have to be satisfied that the passerelle would bring a genuine improvement to the decision making process of the EU.

The Danish government said it would not hinder a transfer from the third pillar to the first, but, due to its “opt out” in the field of justice and home affairs, Denmark would not be able to participate in this part of the cooperation in the event of a transfer. The parliaments of Hungary, Malta, Portugal and the Polish *Sejm* and Senate have received no official information about the position of their respective governments.

The information took place during an exchange of views in with the Prime Minister (Belgium) or Government Ministers (UK), during question time in the plenary with the Foreign Minister (Denmark), during Committee meetings (Latvia, Luxembourg, Slovenia), through civil servants (Cyprus), or in writing (France, UK).

3.4 PARLIAMENTARY INFLUENCE ON NATIONAL GOVERNMENTS

The instruments of national parliaments to influence the position of their respective governments differ considerably according to the traditions and constitutional provisions of the Member State in question. Options range from exercising merely political influence to legally binding the government. In the United Kingdom, the so-called scrutiny reserve stops the government from agreeing to legislation in the Council as long as a proposal is still under scrutiny in Parliament. The Dutch House of Representatives points out that the government needs consent of both Houses before it can decide upon the question of using the passerelle in the Justice and Home Affairs Council. The Dutch Senate specifically asked the government not to make any guiding comments on this matter during the informal Council discussions in Tampere on 21 and 22 of September. In most other cases, opinions formed by the parliaments are only politically binding. The German Federal Government took the *Bundesrat*'s critical opinion on the passerelle into account; it took a rejective stance at the informal Justice and Home Affairs Council in September 2006 in Tampere.

Parliamentary opinions can take the form of oral statements in an exchange of views with members of the government, written contributions, opinions, recommendations or resolutions (French *Assemblée nationale* and *Sénat*, Italian Camera, Polish *Sejm*, Lithuanian *Seimas*). In some Member States a national position is drafted which can be amended by parliament (Latvia, Malta).

In some Member States, the national parliament will normally act through the plenary (France, Germany, Slovenia, Sweden), but in most cases the committees will be competent to consult with the government and give an opinion (Estonia, Latvia, Lithuania, United Kingdom). The Dutch Senate has established a special committee to monitor work in the JHA Council. In Denmark, parliamentary influence can be exerted through a decision in

the Chamber or a mandate in the European Affairs Committee. The Irish Chamber and Senat have formed a Joint Committee on European Affairs for both houses.

Several parliaments have pointed out the need for parliamentary ratification of any decision taken in the framework of Art. 42 TEU (UK House of Commons, Czech Senate, French *Assemblée nationale* and *Sénat*). The Czech Senate adds that there will also be ex-ante scrutiny if a formal legislative proposal has been published. According to the French *Assemblée nationale* an amendment to the French Constitution could be necessary.

3.5 POSSIBLE IMPACT ON PARLIAMENTARY SCRUTINY

Six national parliaments and the European Parliament report that a transfer of certain Justice and Home Affairs matters from the third to the first pillar would affect the way they scrutinise these policies: In the Belgian Chamber of Deputies the “traditional” method of parliamentary scrutiny applies to all matters within the scope of the third pillar of the European Union Treaty. The transfer to the first pillar would lead to a more systematic parliamentary control, especially under new Belgian procedures for scrutinising legislation with regard to the principle of subsidiarity. The Portuguese parliament expects that recently approved monitoring legislation would become applicable; this would enhance its right to influence European affairs in the field of justice and home affairs.

The Danish *Folketinget* recalls that Denmark currently participates fully in the justice and home affairs area; all decisions are subject to full scrutiny by parliament. In some cases it is obligatory for the Government to obtain the consent of Parliament; in other cases a mandate can be granted by the European Affairs Committee. Because of Denmark’s opt-out in the field of justice and home Affairs, a transfer of areas from the third to the first pillar would mean that Denmark would no longer be bound by decisions in these areas. Consequently Denmark would not take part in any adoptions or votes in the Council.

In some Member States the changes would lead to procedural changes within parliaments: The Czech Senate expects that the transfer would shift internal competences in the Senate from the Foreign Affairs Committee to the Committee on European Affairs. Similarly, the EU Affairs Committee in the Polish *Sejm* would gain competences in additional areas of European legislation. It is also pointed out that the statutory prerogatives of the *Sejm* and the Senate are associated with the first pillar, not with the third.

The French *Assemblée nationale* and the German *Bundesrat* envisage no procedural changes but expect that a shift to majority decisions in justice and home affairs could increase the legal impact and amount of European Union legislation in this field. The Dutch Chamber of Representatives and the Senate as well as the French *Sénat* foresee no changes in scrutiny procedure but are aware that they would lose the current right of consent to legislation under the third pillar.

For the European Parliament, the transfer of some Justice and Home Affairs matters from the third pillar to the first pillar would be of special significance: If under Article 42 TEU the Council would decide to apply the co-decision procedure, the Council would need to reach an agreement with the European Parliament on all texts, therefore greatly increasing the influence of the European Parliament on these matters.

15 chambers have stated that the transfer would not affect their scrutiny procedures in any way (Austrian Nationalrat and *Bundesrat*, Belgian Senate, Cyprus, Estonia, Finland, Hungary, Italian Camera and Senate, Latvia, Lithuania, Malta, Slovakia Slovenia and both Houses of the UK Parliament). The Austrian Nationalrat and *Bundesrat* point out,

however, that the shift from unanimity to majority decisions might affect the ability of the Austrian parliament to politically influence EU legislation.

3.6 CONCLUSION

A great majority of the national parliaments which answered the questionnaire are well informed about the initiative, either through their governments, through the communications of the Commission or through having taken part in the interparliamentary meeting on the future of Europe in May 2006. Roughly half of the national parliaments discussed the issue with their governments before the informal Council in Tampere. The predominant points raised were the need for a more efficient decision making process in Justice and Home Affairs on the one hand and the concern not to pre-empt the Constitutional Treaty on the other.

However, very few parliaments have reported that they actively influenced the position of their government before the informal Council meeting. This is surprising given that the passerelle clauses could mean giving up the veto position Member States currently enjoy. The fact that Article 42 TEU may require a parliamentary ratification in many Member States would suggest a stronger role of national parliaments *vis-à-vis* their governments during negotiations in the Council. Many have pointed out that they are waiting for a formal proposal from the Commission or have asked governments for further information before finalising their position.

4 Comitology

On 17 July 2006, the Council adopted a decision to change the so-called “comitology”-procedure (2006/512/EC). This procedure allows for the delegation of legislative measures to the Commission and provides for the control of these measures by committees composed of representatives from the Member States. The Council, the European Parliament and the Commission have also adopted an interinstitutional agreement relating to the new procedure.

The most significant change to the current procedure (which dates from 1999) applies where the basic legislative act has been adopted jointly by the European Parliament and the Council under the co-decision procedure. In this case, the European Parliament has obtained a new right to reject by an absolute majority any “quasi-legislative” measures proposed by the Commission, on the ground that these measures exceed the implementing powers provided for in the basic instrument, are not compatible with the aim or the content of the basic instrument or do not respect the principles of subsidiarity or proportionality.

The aim of chapter 4 is to take a deeper look at the new inter-institutional agreement and establish whether national parliaments have dealt with the changes in the comitology procedure, and, if so, what stance they have taken. It also examines the extent to which national parliaments have scrutinised decisions taken within the comitology procedure in the past and whether or how they want to deal with such decisions in the future.

This theme is considered in the bi-annual report following a special request from the Chair of the EU Affairs Committee of the Danish *Folketinget*.²⁸

4.1 THE NEW COMITOLOGY SYSTEM

After complex negotiations, on 2nd June 2006 the three Institutions agreed on a package to review the comitology provisions included in Council Decision 1999/468/EC²⁹ laying down the procedures for the exercise of implementing powers conferred on the European Commission. This package is composed of a new Council Decision and a set of accompanying statements, one made by the three Institutions jointly, and three made by the Commission individually. The Amending Decision of the Council (2006/512/EC)³⁰ entered into force on 23 July 2006 and introduced a new *regulatory procedure with scrutiny*, a new type of comitology procedure for a specific type of implementing measure for acts proposed on the basis of co-decision.

The new regulatory procedure with scrutiny comprises two separate phases, a so-called executive phase, where the European Commission submits its draft measures to the representatives of national authorities in the relevant committee and a so-called supervisory phase, where the draft will be submitted to the European Parliament and the Council. The main feature of the supervisory phase is that, parting from the existing comitology procedures, the European Parliament and the Council are in principle placed on an equal footing.

²⁸ See the letter from Mrs. Arnold to the Austrian COSAC presidency:
<http://www.cosac.eu/upload/application/pdf/324a804b/Letter%20to%20Austrian%20presidency%20concerning%20Comitology.pdf>

²⁹ O.J.L. 184, 17.7.1999, p.23

³⁰ O.J.L. 200, 22.7.2006, p.11

The new regulatory procedure with scrutiny only applies to the implementation of legal acts adopted under the co-decision procedure (Article 251 of the Treaty). It concerns the adoption of measures of general scope which seek to amend non-essential elements of a basic act, for example by deleting some of those elements or by supplementing the basic act through the addition of new non-essential elements (the so-called “quasi-legislative” measures). The “essential elements” of a legislative act remain in the domain of the legislator and can only be amended through the normal legislative procedure. Following the jurisdiction of the Court of Justice, the legislator enjoys a large margin to decide what is essential and what is not essential.

In practical terms, ”quasi-legislative” measures are measures to revise non-essential elements in the main text or the annexes or to add such elements, i.e. measures to specify definitions, to adapt to technical progress, lay down minimum or maximum norms and levels or conditions, criteria and categories.

Once the criteria set above are met, the new procedure is obligatory. The European Commission will consequently introduce the new procedure, where appropriate, in its forthcoming legislative proposals. It must also be included in pending legislation.

For existing legislation, the new procedure has to be introduced into legislative texts in two steps:

- Firstly, the Parliament, Council and Commission have identified 25 pieces of existing legislation in a common declaration, which should be adjusted as a matter of priority to the new procedure.
- Secondly, the European Commission has also committed itself to examining all acts in force adopted by co-decision with a view to putting forward the appropriate legislative proposals before the end of 2007.

Furthermore, all pending legislation will have to be adapted by the two branches of the legislative authority.

With the new comitology decision, the European Parliament has, for the first time ever, the effective right to control and to block quasi-legislative measures proposed on the basis of co-decision acts. This block can be justified by wide-ranging reasons (the draft proposal exceeds the implementing powers provided for in the basic act, or is incompatible with the aim or the content of that instrument or fails to respect the principles of subsidiarity or proportionality).

The European Commission has committed itself to improving the information system on comitology. In this regard, the declarations of the Commission are essential to improving the flow of information especially in the field of financial services legislation. They make it also clear that the “Lamfalussy acquis” with regard to special information rights in the field of the financial services remains in place.

4.2 THE REASONS FOR A REFORM

The new comitology procedure is justified principally by the imbalance between the two branches of the legislative authority in respect of executive acts relating to basic instruments adopted under the co-decision procedure. The European Parliament’s part in the procedure was until now restricted to the control of the “legitimacy” of the executive instrument, (when it exceeded the implementing powers provided for in the basic act),

whereas the Council could alter the substance of the instrument. The European Parliament regarded this as incompatible with its role as a co-legislator

In fact the need for supervision by the legislative authority arises mainly when executive measures to be adopted by the Commission have a legislative substance, implementing non-essential elements of basic instruments or adopting others, such as when Directives are brought into line with scientific and technical progress or their annexes are amended. In such cases, the legislative authority needs to be able to supervise the exercise of the powers conferred.

For the European Parliament, the new procedure constitutes a good example of developing the institutional system without Treaty change in order to improve the governance of the European Union.

4.3 THE DIMENSION OF COMITOLOGY

While 278 pieces of legislation were adopted in 2004,³¹ the last year for which figures are available, 75 under the co-decision procedure by the European Parliament and the Council and 203 by the Council alone, the European Commission adopted 1199 legal acts on the basis of delegation of implementing powers conferred by the Council under Article 202 of the EC Treaty. In fact, the Commission now exercises the implementing powers conferred on it in accordance with comitology procedures laid down in the Comitology Decision 199/468/EC.

The number of comitology Committees involved in the context of implementing legislative acts was 250 in the year 2005. By policy sector, transport/energy (38), enterprise (32), environment (32) and agriculture (31) continue to have by far the largest number of committees. While the legislator has established new committees in some policy areas with increased activities (for example, justice, liberty and security and health and consumer protection), the Commission's objective is to limit the number to around 250³². As regards the "output" of the committees, the evolution of the number of implementing measures adopted by the Commission in the period 2002-2005 is shown in the table below.

Number of implementing measures^{33,34}

POLICY SECTORS	2002	2003	2004	2005
Agriculture	1.455	1.413	1.279	1.481
Health and Consumer Protection	244	392	352	303
Research	175	60	185	202
Europe Aid	167	153	182	124
Information Society	50	21	34	85
Enlargement	66	90	89	83
Education and Culture	54	47	115	55
Environment	601	352	59	55
Enterprise	48	31	40	47
Humanitarian Aid	36	42	52	50
Others	181	167	238	169
TOTAL	3.077	2.768	2.625	2.654

³¹ Data are retrieved from the 2004 Annual General Report on the European Union.

³² COM(2006)446 final

³³ Legal Acts and administrative and financing decisions

³⁴ See the Annual Report from the Commission on the working of Committees

A slight decrease in the overall number of implementing measures can be noted. The large number of implementing measures adopted in certain policy sectors—agriculture (1481), health and consumer protection (303), research (202), Europe Aid (124), and information society (85)—reflect the intensity of work delegated to the Commission in these areas via the comitology procedures.

In this context, it should be noted that around 1000 of the approximately 2600 implementing measures adopted every year are based on co-decision acts: from 1999, the European Parliament was formally granted the right to receive full information and could claim that an implementing measure exceeded the scope of powers delegated. However, the European Parliament has had major difficulties in exercising this “scrutiny right”. In the old system, the proposals were mostly transmitted in only one language; the European Parliament had only one month to control measures and could only oppose the proposed measures by arguing that the Commission had exceeded its implementing powers. In any case the Commission could simply override this opposition.

All these obstacles explain the limited involvement of the European Parliament in comitology in recent years. In fact, only six Resolutions have been adopted by the European Parliament in which it claims that the Commission has exceeded the implementing powers when adopting specific implementing measures. The last two resolutions concerned the environment sector.³⁵

According to the “new system” after the adoption of the comitology committee, the European Parliament or the Council can say “no” to a quasi-legislative measure. (The Council by a qualified majority, the Parliament by a majority of members) and this only justifying by indicating that the proposed measure exceed the implementing powers or is not compatible with the aim or the content of the basic act or does not respect the principles of subsidiarity or proportionality. In the case of opposition the Commission cannot adopt the measure. The Commission can propose a new measure to the comitology committee or a completely new legislative act.

The “new” system also changes the conditions under which the right of scrutiny of Parliament is implemented:

- the Parliament has in normal cases 3 months extendable to 4 months
- the time limit for the right to control will only start once the proposal has been submitted in all official languages
- the Commission commits itself to set up an improved information system of all committee activities.

Thus, the Parliament has for the first time ever the effective right to control the important part of the comitology system and it now also has the means to exercise this right.

4.4 BETTER LAWMAKING

In the Inter-institutional Agreement on Better Lawmaking, the three Institutions stressed the important role played by implementing measures in legislation. The new provisions

³⁵ Furthermore, the resolution adopted on 6 July 2005 (B6-0392/2005) led to the European Parliament bringing an action against the Commission before the European Court of Justice claiming an annulment of Commission Decision 2005/717/EC of 13 October 2005, arguing that the Commission had failed to comply with the conditions laid down in RoHS (Restriction of the use of certain hazardous substances in electrical and electronic equipment) Directive for exempting DecaBDE in the specific application from the ban contained in that Directive. The case is pending before the European Court of Justice.

will have an impact on the drafting of legislation and the Institutions will probably concentrate more on a clear drafting of recitals and the legal text with the aim of a clear differentiation of what has to be agreed on in the legislative text and what can be done by comitology under the new procedure. Legislation could become slimmer and more easily readable, contributing to the better-lawmaking agenda.

On the other hand, the implementation of the new system will represent a political challenge for inter-institutional cooperation and will affect its procedures and working methods in view of efficient handling of the new procedure. Particular attention will be paid by the Institutions over the next months to the proposals to introduce the new procedure into 25 existing priority acts, to the screening of pending proposals before each institution and the general alignment package to come forward before the end of 2007 with the modifying proposals (around 130) in order to apply the new procedure not only to future legislation but also to the entire existing Community legislation.

4.5 ROLE OF THE NATIONAL PARLIAMENTS IN THE COMITOLOGY PROCEDURE

The comitology procedure seems to be a relatively new and unknown subject area for many national parliaments.³⁶ Some parliaments (both of the Italian chambers and the Dutch *Tweede Kamer*) raise the question of as to whether or not national parliaments should even be interested in comitology, and question the role of COSAC in the debate.

Most parliaments have not followed the recent changes in the comitology procedure or only at an expert level within the secretariats. The parliament of Luxembourg wishes to increase its awareness and obtain more information and is consequently preparing a committee hearing with Luxembourg's Permanent Representative to the European Union.

The Danish *Folketinget* and the UK House of Commons were exceptions amongst the respondents to the questionnaire. The *Folketinget* examined the new comitology procedure and gave a mandate to the government before the Council adopted the new decision. The UK House of Commons discussed the matter and adopted a report on the proposed Decision.³⁷

A small number of parliaments have scrutinised decisions taken under the comitology procedure in the past: the UK House of Commons and House of Lords, the Irish *Oireachtas*, the Danish *Folketinget*, the Estonian *Riigikogu* and the *Eduskunta* of Finland. The Hungarian National Assembly has the right to scrutinise the decisions taken in the comitology procedure, though this possibility has not been made use of in the past. The

³⁶ The following questions were put to national parliaments:

1. *Did your parliament follow the recent changes in the comitology procedure?*
2. *Has your parliament/chamber scrutinised decisions taken within the comitology procedure in the past? If so, how does the procedure work? Do you have plans to deal with comitology in the future?*
3. *Do you find that there is enough time available for parliamentary scrutiny of decisions taken within comitology procedures? If no, how would you suggest that this could be improved?*
4. *Do you find that the Commission's Register of Comitology, which was established in December 2003, provides sufficient information about pending comitology procedures? If no, how could the register be improved?*
5. *Does your chamber distinguish between political and technical items? If so, how? Do you scrutinise both of them?*

³⁷ The European Scrutiny Committee remains "sceptical about the adequacy and legal certainty of the distinction between quasi-legislative and other comitology measures", though it has accepted the UK Government's view that "for as long as the proposed comitology reform does not confer on the European Parliament the power to adopt implementing measures, it does not seem obviously incompatible with Article 202 TEC."

procedure in these parliaments is similar to the general scrutiny of the legislative proposals. The *Folketinget* applies a written procedure to most of the proposals; items of “greater importance” are put on the agenda of the European Affairs Committee to enable it to mandate the government on these matters.

The overwhelming majority of parliaments have not performed scrutiny in the past; they are simply informed by their governments. Few parliaments plan to become more involved in the comitology procedure or to introduce new procedures in this respect. The Portuguese *Assembleia da Republica* intends to increase its involvement in the framework of the new Monitoring Law which is giving a new impetus to the debate on European matters in general. The Latvian *Saeima* and the Lithuanian *Seimas* as well as the Czech Senate indicate a possible future interest in the topic, but the latter referred also to the lack of resources. The Belgian *Chambre des Députés* sees a connection with the new subsidiarity control mechanism; it suggests that the comitology proposals are submitted to a subsidiarity test.

As most of the parliaments have no experience with the scrutiny of comitology matters, they were not in a position to answer the question regarding the time available for parliamentary scrutiny of these decisions. Those chambers performing scrutiny believe the time provided is sufficient, with the exception of Denmark which proposes an extension of the timeframe.

Few parliaments use the Commission’s Register of Comitology. This is a logical consequence of the fact that the vast majority of parliaments do not scrutinise comitology at all. In the cases where the parliament is involved, it receives the relevant information from the government. The Danish *Folketinget* values the Commission’s Register as a contribution to transparency and proposes that the Register should contain not only the references to draft legislation but also the draft measures themselves.

4.6 CONCLUSION

Most national parliaments have limited experience with the comitology procedure and the scrutiny of measures adopted under it. However, there is a growing awareness that governments are directly involved in the decision making process under the comitology regime; consequently there is scope for parliaments to exert influence through government control.

5 Future cooperation with the European Parliament

The cooperation between national parliaments and the European Parliament is becoming ever more intensive. In that context some new methods of cooperation have been developed, namely “Joint Parliamentary Meetings” and “Joint Committee Meetings” are organised jointly by the European Parliament and the parliament of the Member State holding the Presidency of the Council of Ministers.

The practice was initiated during the Luxembourg Presidency in the first half of 2005. Since then, these meetings have become a regular form of cooperation. Joint meetings have been organised during the presidencies of Luxembourg, the United Kingdom, Austria and Finland. The phenomenon being still fairly new, the aim of this chapter is to take a closer look at how the meetings have been organised and what conclusions can be drawn for the organisation of future meetings of this kind.

Joint Parliamentary Meetings and Joint Committee Meetings are different from inter-parliamentary meetings organised by committees of the parliament of the Member State holding the presidency. Neither should they be confused with hearings or other meetings organised by the European Parliament, where representatives from the national parliaments are occasionally invited.

5.1 JOINT PARLIAMENTARY MEETINGS

Joint Parliamentary Meetings are meetings on broad political topics that are organised and chaired jointly by the parliament of the Member State holding the presidency of the Council of Ministers and the European Parliament. They have hitherto always taken place at the European Parliament in Brussels. The usual number of participants is six per national parliament (in the case of bicameral parliaments, the chambers divide the places) and 33 for the European Parliament. The list of speakers for the debates is made so that the floor is given to 2 MPs followed by 1 MEP. The meetings are often co-chaired by the speakers of the organising parliaments.

The first Joint Parliamentary Meeting took place during the Luxembourg presidency, on 16-17 March 2005, when a “*Parliamentary Meeting on the Lisbon Strategy*” was organised. The meeting was designed to discuss the mid-term review of the Lisbon strategy and the strengthening of the parliamentary dimension of that strategy prior to the Spring European Council of 2005. The meeting format was considered to be a success and further meetings were organised. Today, altogether five meetings considered to have been Joint Parliamentary Meetings have taken place:

- 2-3 October 2006, “From Tampere to The Hague: moving forward? Progress and shortcomings in the Area of Freedom Security and Justice”
- 8-9 May 2006, “The Future of Europe”
- 31 January-1 February 2006, “Parliaments on the Road to Lisbon”
- 17-18 October 2005, “Liberty and Security: Improving Parliamentary Scrutiny of Judicial and Police Co-operation in Europe”
- 16-17 March 2005, “Parliamentary Meeting on the Lisbon Strategy”

The first meeting on the Lisbon Strategy was followed by a further one on the same topic a year later during the Austrian Presidency. Two meetings on Justice and Home Affairs have

also been organised about a year apart during the United Kingdom and Finnish presidencies. However, it should be noted that the decision to organise each meeting is made separately, by the parliament of the Member State holding the Presidency and the European Parliament.

5.2 JOINT COMMITTEE MEETINGS

Joint Committee Meetings are meetings on specific political sectors or issues that are organised and chaired jointly by a committee of the parliament of the country holding the Council Presidency and a committee of the European Parliament. They have hitherto taken place at the European Parliament in Brussels. The number of participants from national parliaments is not determined, but is below the level of Joint Parliamentary Meetings (i.e. smaller in format). The participants from the European Parliament are members of the organising committee. The list of speakers for the debates is made so that the floor is given to 2 MPs followed by 1 MEP. The meetings are co-chaired by the chairmen of the organising committees.

The first Joint Committee Meetings also took place during the Luxembourg Presidency. On 4 April 2005 the Temporary Committee on Policy Challenges and Budgetary Means of the Enlarged Union 2007-2013 of the European Parliament organised a meeting between the European Parliament and national parliaments on “Policy Challenges and budgetary means of the enlarged union 2007-2013” which was co-chaired by the European Parliament and the Luxembourg Chamber of Deputies. This was followed by a co-organised meeting between the Economic and Monetary Affairs Committee of the European Parliament and the Luxembourg Chamber of Deputies on European economic policy. Despite two meetings during the Luxembourg presidency, it took until the Finnish presidency before new meetings of this kind were organised. Four Joint Committee Meetings have taken place to date:

- 9-10 October 2006, “Joint Committee Meeting on Budgetary Control”
- 4 October 2006, “Joint Committee Meeting on Development Policies”
- 25 April 2005, “European Economic Policy: a National and European Perspective”
- 4 April 2005, “Policy Challenges and Budgetary means of the Enlarged Union 2007-2013”

5.3 ADDED VALUE OF JOINT MEETINGS

Most of the parliaments that answered the questionnaire³⁸ found joint meetings useful. None of the parliaments disagreed with the statement that joint meetings brought added value to inter-parliamentary cooperation and/or the work of the national parliament.

³⁸ The following questions were put to national parliaments:

1. *Does your parliament feel that the joint meetings bring added value to inter-parliamentary cooperation and/or the work of your parliament? Please explain.*
2. *Does your parliament consider that the topics selected to the meetings are interesting and topical? Do the topics selected to the meetings meet the interests of both the national parliaments and the European Parliament?*
3. *Is your parliament satisfied with the number of meetings currently organised (i.e. about two Joint Parliamentary Meetings and two Joint Committee Meetings per presidency)?*
4. *Does your parliament have any comments on how to further develop organisation of Joint Parliamentary Meetings or Joint Committee Meetings?*
5. *Do you have any suggestion concerning other possible forms and ways of co-operation between national parliaments and the European Parliament? Please explain.*

Information exchange, raising awareness and networking are considered as the main elements for the value added. However, the Irish *Oireachtas* specifies that “where joint meetings have a clear agenda and purpose, value can be added to the separate processes underway in national parliaments and the European Parliament”.

Some parliaments noted that the meetings are an opportunity to meet experts that otherwise would not necessarily have the time to visit all the national parliaments. Especially, the opportunity to exchange of views with commissioners, representatives of the Commission and Council secretariat, and Presidents-in-Office of the Council were considered as benefits of the meetings

A couple of the parliaments were of the opinion that the ideas raised during joint meetings could influence parliamentary decision-making processes at home. For the Parliament of Cyprus the joint meetings also provided an opportunity for programming measures and actions related to the different issues under debate.

On the negative side, the UK House of Commons believed that the agendas of some meetings had been too ambitious, particularly in the time allocated to visiting speakers, and had left insufficient time for proper debate. The Belgian House of Representatives also noted that the meetings were often “too organised” with questionnaires and preparatory meetings. National parliaments did not always have the capacity to follow the proliferation of initiatives from the European Parliament.

5.3.1 Topics selected for joint meetings

In general, parliaments were of the opinion that the topics selected for the meetings had been interesting and topical. Most parliaments report that the topics selected also met the interests of both the national parliaments and the European Parliament. The Swedish *Riksdagen* found that the topics more often met the interests of the European Parliament and its preparation of business.

While the Lithuanian *Seimas* found that broad topics in the meetings make it possible to discuss many interconnected policy aspects, some feel that there are sometimes too many points and topics on the agenda. The House of Commons says that on occasion when the sessions have been organised with a very broad focus, parliamentarians have tended to arrive with pre-prepared speeches, which has resulted in an unconstructive exchange of views on disparate topics rather than a proper debate. The Italian Chambers propose that each meeting should concentrate on one or two questions as this could help in getting deeper into the prioritised themes and enable an effective dialogue between parliamentarians.

Three chambers considered the distribution of topics across the three pillars of the EU. They note that Joint Parliamentary Meetings have been organised on issues which fall either partly or wholly within the competences of national parliaments. They propose to hold Joint Parliamentary Meetings in areas of political concern where the European Parliament is co-legislator.

Several parliaments would like to discuss concrete proposals for legislation at the joint meetings. The French *Sénat* proposes to have meetings on new themes such as trade policy, environment, social policy or health. The Netherlands *Tweede Kamer* says a more strategic selection of topics could facilitate a breakthrough on stalemate dossiers, such as the Community patent.

A number of parliaments believed that the selection of topics ought to involve consultation of the other parliaments. The Irish *Oireachtas* said that consideration might be given to COSAC having an input into the process for agreeing the topics for discussion. The Polish *Sejm* agreed with this, but feels consultation could be done equally well through the Conference of Speakers of EU Parliaments. The UK House of Commons considered that the parliament of the Member State holding the Council Presidency should invite national parliaments to suggest subjects to be selected for debate. The Hungarian National Assembly pointed out that according to the Hague guidelines on interparliamentary cooperation³⁹, the Secretaries General already have the possibility to submit issues of common interest to focus on during the following period to the Conference of Speakers.

5.3.2 Number of meetings

The general line of the answers of the parliaments was that the number of meetings was sufficient. No parliament called for the number of meetings to be increased, and some felt there were too many of them. Most made the point that more frequent meetings could affect the work of national parliaments. As the Finnish *Eduskunta* points out, more meetings would disturb the main task of parliaments as a legislator and scrutiniser of EU legislation.

Several parliaments raised the question of timetabling of meetings. More long term planning of the meeting dates and coordination with the calendars of national parliaments was called for. The Lithuanian *Seimas* specified that organising parliaments should try to avoid topics overlapping between joint meetings in Brussels and those organised by the presiding country in the capital.

The importance of coordination of the different types of inter-parliamentary meetings was highlighted in the answers in general. Some chambers felt that invitations to hearings or other meetings organised by the European Parliament were sent out unilaterally and at relatively short notice, which often resulted in an overlap of inter-parliamentary events. Therefore, for example, the Austrian Parliament suggested that these meetings should be included in a working programme coordinated between the President of the parliament of the Member State holding the presidency and the President of the European Parliament. Some parliaments said it could be difficult for Members of Parliament to understand the differences between the type of meeting. Furthermore, it could be difficult for national MPs to prioritise their attendance at parliamentary meetings, as there did not appear to be an overall strategy for the organisation of meetings *vis-à-vis* national parliaments.

5.3.3 Further development of joint meetings

Both the current and the previous presidencies address the issue of cooperation of the organisers of the meetings on an equal basis. The Austrian Parliament and the Finnish *Eduskunta* stressed that it was crucial that the European Parliament and the national parliament of the country holding the presidency should plan and work together as equal partners from the beginning. This meant that agendas, issues surrounding the practical organisation of meetings (speaking time, keynote speakers, working groups etc.) and output (reports, public information etc.) needed to be agreed between the co-organisers, and the agreement respected by both.

³⁹ Inter-parliamentary Co-operation in the European Union, adopted by the Conference of Speakers of the EU Parliaments at The Hague on 2-3 July 2004: <http://www.cosac.eu/en/documents/basic/interparliamentary/>

Some parliaments tackled invitation letters to the meetings in their replies. The Italian Chambers underlined that invitations to joint meetings should always be sent by the presidents of the organising parliaments, according to the commonly agreed guidelines. The Swedish *Riksdagen* says the invitations should be sent to Speakers in order to facilitate the best representation from national parliaments. Some parliaments called for the invitations to the joint meetings to be issued at longer notice.

Regarding debates, a couple of parliaments raised the question of handling the speaking list in an open and transparent way. The Danish *Folketinget* says that particular consideration should be given to the administration of speaking time during the meetings. The French *Assemblée nationale* would like to reinforce the interactive character of the joint meetings.

The German *Bundestag* said that if a topic were introduced by a panel of experts on a particular subject, members of national parliaments or the European Parliament should not be part of the panel, but should rather contribute to the debate. If panels of parliamentarians were deemed necessary, they should represent not only one but a wide range of political families.

The UK House of Commons noted suggestions that the joint meetings should seek to adopt resolutions or conclusions. At this stage, such suggestions were not considered helpful. Such developments would change the nature of joint meetings, focussing attention away from the debate and onto the drafting of an agreed text. If it were decided that parliamentary meetings should seek to adopt resolutions or conclusions, the process whereby these were drafted and agreed would have to be carefully considered.

The French *Sénat* would like to have a detailed report of the meetings afterwards, including the interventions of parliamentarians.

The UK House of Commons said that the authority under which joint meetings have been convened needed to be clarified, and that the development of joint meetings required careful guidance. To this end the Conference of EU Speakers should be invited to undertake a review of the development to date of such inter-parliamentary meetings, and to draw up guidelines for their future operation.

The question of a more practical level “handbook” on how to organise joint meetings was also raised. The Finnish *Eduskunta* stated that basic rules should be agreed upon, because this would make cooperation more simple and efficient between the organising parliaments. The Slovak Parliament supported this by saying that it might be useful to stabilise the number of meetings, the means of convening them, and set deadlines and means of communication about the meeting. It also felt that a certain set of guidelines for the technical organisation of inter-parliamentary meetings was needed.

The Netherlands Senate warned that joint parliamentary meetings should not develop into a new institutionalised cooperation form. It was not in favour of creating new standard structures and organisation if the current mechanism can be optimised. The current *ad hoc* meetings, on the basis of important topics and relevance, should remain.

5.4 SUGGESTIONS ON OTHER POSSIBLE FORMS AND WAYS OF COOPERATION

Several parliaments suggested intensifying visits between national parliaments and the European Parliament. The Hungarian Parliament proposed that members of national

parliaments be given the opportunity on an *ad hoc* basis to take the floor in committee meetings of the European Parliament if they had important comments on certain issues.

There were also suggestions for intensifying cooperation between parliamentary officials. Some parliaments would like to see expert exchange and traineeships taking place between national parliaments and the European Parliament. The Danish *Folketinget* considered it might be useful if the European Parliament decided to host meetings for accompanying staff members from the national parliaments. This would allow parliamentary officials to strengthen their parliamentary networks with officials from EU parliaments.

A couple of national parliaments call for more optimisation and consolidation of current forms and ways of cooperation. The Netherlands Senate felt that the European Parliament and national parliaments could keep each other informed about current issues, and that contacts between the subject committees could be improved in particular, on the basis of cooperation instead of competition.

The Portuguese Parliament suggested that a mechanism similar to the one used by the European Commission since last September be created, in order that the documents produced by the European Parliament throughout the legislative procedure could be transmitted to national parliaments.

The Belgian Senate would like to see the proposals on reports of the European Parliament on parliamentary cooperation (*e.g.* the Leinen, Neyts and Cravinho reports) brought into effect.

5.5 CONCLUSIONS

Most national parliaments consider Joint Parliamentary Meetings and Joint Committee Meetings useful in bringing added value to inter-parliamentary cooperation. However, their number should not exceed the current level, as this could affect the core work of national parliaments. The topics were considered interesting, though meetings on concrete proposals for legislation were called for. It was proposed that the selection of meeting topics could involve broader consultation of parliaments. The need for more coordination of joint meetings with other interparliamentary forums was underlined by many parliaments. The idea of working towards basic rules for the organisation of such meetings received support.

6 Northern Dimension of the European Union

6.1 FRAMEWORK OF THE NORTHERN DIMENSION

Among the external and cross-border policies of the European Union, the Northern Dimension (ND) reflects the EU's relations with Russia and other states adjoining the Baltic Sea and Arctic Sea regions. The Northern Dimension addresses the activities, challenges and opportunities in those regions and aims to strengthen dialogue and cooperation between the states concerned. These are the EU Member States, Norway, Iceland, the Russian Federation and the United States and Canada. Among the EU Member States, ND projects involve Sweden, Finland, Estonia, Latvia, Lithuania, Poland, Germany, the United Kingdom and France. The Northern Dimension is implemented in tandem with the Partnership and Cooperation Agreement with Russia.

Activities include energy policy, trade, investment and business cooperation, environment and nuclear safety, transport and transport infrastructure, technology, regulatory reform, telecommunication, maritime safety and security, scientific research, higher education and public health, cross border cooperation and justice and home affairs.

What distinguishes the Northern Dimension from other neighbourhood programmes is the partnership operational model. Practical cooperation is planned, implemented and funded by many different actors, such as the European Commission and the Member States, the Northern Dimension's partnership countries Iceland, Norway and Russia, the observer countries Canada and the USA, regional organisations (Nordic Council of Ministers, Council of the Baltic Sea States, Barents Euro-Arctic Council, Arctic Council), international financial institutions, local-level actors, companies, the scientific community and nongovernmental organisations.

Unlike other Neighbourhood policies, the Northern Dimension does not call for its own financial instrument or institutional structure. The intention is that the ND provides extra efficiency and added value by coordinating the use of EU funds with non-Union sources.

A particular emphasis of the Northern Dimension is placed on subsidiarity and on ensuring the active participation of all stakeholders in the North, including regional organisations, local and regional authorities, the academic and business communities, and civil society.

The importance of the Northern Dimension has been accentuated since the Union's enlargement in 2004 and has gained added prominence as one of the instruments of the Union's policy on Russia. In this regard the energy dialogue has gained increased importance on the agenda not only within the ND framework or the cooperation and partnership agreement, but on the agenda of high level meetings both of the EU-councils and summits as well of the EU and Russia in general.

The Northern Dimension is organised as a policy in its own right ensuring that the ND and its partnerships are not subject to swings in relations between the EU and Russia.

The purpose of this chapter of the bi-annual report is to examine whether the Northern Dimension, which by any political and financial measure is an important policy segment, is subject to adequate parliamentary scrutiny and supervision.⁴⁰ It is taken for granted that

⁴⁰ The following questions were put to national parliaments:

all external relations and neighbourhood policies should be subject to parliamentary scrutiny. It is further taken for granted that Euro-Mediterranean cooperation can be used for comparison: both are policies that attempt to integrate the EU's adjacent areas with the European economic and political sphere. The comparison should take note of the obvious similarities and differences between the two policies. The Northern Dimension and Euro-Mediterranean cooperation are both directed at geographically huge, politically unstable areas whose political, ethnic and economic cohesion provide challenges for policy. The difference is that the Euro-Mediterranean cooperation has a large and well-developed institutional structure and specific financial instruments, whereas the Northern Dimension attempts similar goals without these, simply by coordinating existing funds and structures.

6.2 THE INVOLVEMENT OF NATIONAL PARLIAMENTS IN THE NORTHERN DIMENSION

6.2.1 Participation of National Parliaments within the organisational framework of the ND

The Northern Dimension involves the full plethora of inter-parliamentary organisations that are active in the region, notably the Nordic Council, Arctic Council, Baltic Sea Parliamentary Conference, Council of the Baltic Sea States, and the Barents Euro-Arctic Council.

As expected, participation in these organisations is limited to the national parliaments (and some regional parliaments) that are located in the concerned regions.

6.2.2 Monitoring and scrutiny of National Parliaments of the Northern Dimension policies and activities

Northern Dimension measures generate the same type of decisions and documents as any other EU activities. ND measures thus are available for parliamentary scrutiny both as Commission documents and as items on agenda of the EU Council.

Of the 29 parliamentary chambers that responded to the questionnaire, 14 report that they do monitor ND policies and activities (Estonia; Finland; France: *Assemblée nationale* and *Sénat*; Germany: *Bundestag*; Ireland; Latvia; Lithuania; Netherlands: *Tweede Kamer* and *Senate*; Slovenia; Sweden and the United Kingdom: House of Lords and House of Commons). In all cases, the ND has come up in the course of regular scrutiny of governmental European policies by the relevant chambers. In addition, Austria reports that elements of the ND could be scrutinised, but none have so far been selected for scrutiny.

The development of the Northern Dimension takes place in both European and inter-governmental as well as in several international organisations, some of which have a parliamentary dimension (e.g. Council of the Baltic Sea States – CBSS; Barents Euro Arctic Council – BEAC; Arctic Council – AC; Nordic Council of Ministers – NCM; “Parliamentary cooperation in the Arctic Region”; “Baltic Sea Parliamentary Conference”; Nordic Council).

- 1. Please indicate whether your parliament participates in the work of any of the afore mentioned organisations. If applicable, how does your parliament coordinate the work of its delegations to these organisations with its overall participation in, or scrutiny of, European and foreign affairs?*
- 2. Does your parliament follow the Northern Dimension policies and activities of the EU (e.g. Northern Dimension for the policies of the Union, Guidelines for the implementation of the Northern Dimension, First and Second Northern Dimension Action Plan, Guidelines for the development of a political declaration and policy framework document for the Northern Dimension policy from 2007)?*
- 3. Does your parliament consider that the Northern Dimension is subject to appropriate parliamentary scrutiny? Should a parallel be drawn with the Union's Euro-Mediterranean dimension?*

With regard to the participation of the European Parliament in ND activities the European Parliament informed that it was actively participating in a number of the organisations within the ND framework by the chair of the Bureau of the SINEEA Delegation,⁴¹ whereas EP representatives report back to the European Parliament on the different conference meetings they attended.

6.2.3 Appropriateness of parliamentary scrutiny of the Northern dimension and possible common features with the EU's Euro-Mediterranean dimension

Those parliaments that do scrutinise Northern Dimension activities were also satisfied with the existing level of scrutiny. Among other parliaments, the level of interest in the subject matter of the Northern Dimension varied, with several parliaments expressing no opinion about whether existing scrutiny was appropriate.

There was no agreement about whether there were or should be commonalities between parliamentary scrutiny of the Northern Dimension and of Euro-Mediterranean cooperation. The range of answers included parliaments that felt there was a commonality (notably in the Northern and Baltic Sea member states), those that believed there should be a parallel (e.g. the Belgian Chamber of Deputies and Cyprus) and those who considered that there was no parallel. The latter could be subdivided into those that noted the different institutional structures of the two policies (e.g. French National Assembly and *Sénat*), those who viewed the ND and Euro-Med programmes as separate in kind (e.g. German *Bundesrat*) and those who noted the relatively greater interest to their parliament of the Euro-Med cooperation. Several chambers expressed no opinion. The Polish *Sejm* and Senate, while agreeing that there was a commonality, also pointed out that the Eastern Dimension of the European Union should be examined in this context.

6.3 CONCLUSIONS

The answers to the questionnaire indicate national parliaments' general approach to the scrutiny of EU business. The Northern Dimension has been scrutinised by those parliaments that maintain a system of scrutiny of all EU matters, irrespective of what policy heading they are given in the European institutions. This scrutiny may be focussed on either European documents or on meetings of the EU Council. In these parliaments, the Northern Dimension has been scrutinised as part of routine scrutiny activities.

For the purpose of the bi-annual report, a distinction should be made between national scrutiny work and inter-parliamentary work. National scrutiny is the process by which national parliaments ensure the legitimacy and transparency of the positions expressed on behalf of their state by their government in the EU Council. Inter-parliamentary cooperation brings together representatives of parliaments to discuss issues of joint interest; such cooperation does not necessarily intend to have a direct effect on the policies adopted by the European institutions.

The stated advantage of the Northern Dimension policy is that it can achieve results without an institutional overlay. For this reason, a specific ND parliamentary dimension along the lines of the Euro-Mediterranean cooperation has not been contemplated by the Member States.

⁴¹ Delegation for relations with Switzerland, Iceland and Norway and to the EEA Joint Parliamentary Committee