WESTMINSTER AND EUROPE

Proposals for Change

The Role of National Parliaments in the European Union

Graham Leicester

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WESTMINSTER AND EUROPE: THE PROPOSALS FOR CHANGE

INTRODUCTION AND SUMMARY

From the moment the Danish people voted 'No' to the Maastricht Treaty on 2 June 1992, the role of national parliaments in the European Union became an unavoidable item on the Union's agenda for institutional reform. The Reflection Group established to prepare for the 1996 Inter-Governmental Conference (IGC) devoted almost as much space in its report to national parliaments as to the European Parliament (EP). The Turin European Council, which launched the IGC on 29 March 1996, included the role of national parliaments, individually and collectively, in the formal remit for the IGC.

This paper looks at the proposals now before the Conference as it approaches its conclusion and considers what view the British Government should take in response to them. It is based on the proceedings of two joint seminars held in the course of 1996 by the Hansard Society and the European Policy Forum and with the support of the UK office of the European Parliament. A list of participants is included at Annex A.[1]

The paper concludes that:

- The United Kingdom should continue to press for the inclusion in a revised Treaty of the Irish Presidency's draft protocol on the role of national parliaments, even though it goes further than some might wish. The protocol will make sure that Union procedures provide both the time and the information that governments need to allow national parliaments to conduct adequate scrutiny. If adopted in its present form, the protocol will also formally establish a Treaty-based forum to help national parliaments ensure that the sum of their individual efforts is harnessed (through COSAC, the Conference of European Affairs Committees) for maximum effect on the Union's processes and policies. Both elements should be welcomed. The United Kingdom should make common cause with France to see that they are adopted;

- The paper further suggests additional modifications and other elements which might be included either in the protocol or elsewhere in the Treaty to improve national parliaments' effectiveness. A definition of the "scope" of a Commission proposal to control the range of possible amendments would be a significant improvement. A detailed urgency procedure for legislation to ensure speed does not become a routine excuse for avoiding scrutiny should also be included;

- In order to make best use of the Treaty provision and to increase Westminster's - and the British people's - confidence in Union decision-making, the scrutiny procedures of the House of Commons should be improved, notably to extend scrutiny to the Inter-Governmental pillars. National parliamentary scrutiny should be an integral part of Inter-Governmental cooperation;

- Parliament also needs to find new ways of scrutinising the Community budget. In preparing for the negotiation of the new medium term financial perspective to run from 2000, the UK Government should give special consideration with other member states to improving the involvement of national parliaments in that crucial decision.

NATIONAL PARLIAMENTS AND THE IGC: THE CONTEXT

Enhancing the capacity of national parliaments to participate in EU decision-making is not a new idea. In March 1991, early in the last IGC, the British Government tabled a paper proposing a greater role for national parliaments in the Community's processes. The French Government offered some support, but their preference was for a collective role for EU parliaments meeting together in a regular "Congress" or "Conference of Parliaments". Many saw the British initiative as a diversion, to defuse the IGC's principal concern with increasing the powers of the European Parliament. In the event the EP's role was substantially increased in the Maastricht Treaty, and the British and French ideas found a place only in Declarations 13 and 14 appended to it.

Since then the atmosphere has changed. The difficulties experienced in Denmark and the United Kingdom, and to a lesser extent in France and Germany, in ratifying the Maastricht Treaty have placed a premium on reinforcing links between European citizens and the activities of the European institutions. Thoughts have turned away from the EP in favour of other means of reassurance: greater openness in the Community's procedures, respect for subsidiarity as a check on growing Community competence, and an enhanced role and respect for national parliaments.

The judgement of the German constitutional court on the democratic legitimacy of the European Union, issued on 12 October 1993, pointed in the same direction:

"If a Union of democratic states assumes sovereign tasks and exercises sovereign powers to carry them out, it is first and foremost for the national peoples of the Member States democratically to legitimate this via their national Parliaments. Thus democratic legitimation is effected by establishing links between the activities of European institutions and the Member States' Parliaments. In addition - and to an increasing extent, as the nations of Europe grow together -

[1] This paper reflects the personal views of the author and does not purport to represent a view of all the participants, nor a concensus at the meetings

democratic legitimation is conveyed within the institutional framework of the European Union via the European Parliament, elected by the citizens of the Member States."

The need for a significant and substantive involvement of national parliaments in the EU to complement the role of the EP is increasingly accepted. That is good news for a Conservative government committed to a predominantly Inter-Governmental vision of Europe in which "national parliaments remain the primary focus of democratic legitimacy in the European Union, holding national Ministers in the Council to account".[2] It seems good news too for any incoming Labour administration whose vision of Europe "is not that of a federal superstate, but an alliance of independent nations choosing to cooperate with one another".[3] And it also looks encouraging for Westminster itself, which has fiercely resented the erosion of its sovereignty over the years of Community membership.

Even so, capitalising on this change of mood at the IGC will not be easy. There is a feeling still among some member states that increasing the role of national parliaments will inevitably be to the detriment of the EP. That is particularly true of proposals to give national parliaments a collective role in Union procedures. Germany has raised significant objections, both on grounds of principle and for fear of further complicating an already dense institutional structure.

There is also doubt about the will of Westminster to make an enhanced role in the EU work in practice. Members of the House of Commons take pride in their strong traditions of holding the executive to account, a pride encapsulated in the Prime Minister's remark that most of his colleagues in the European Council could not find their way to their national parliaments even with the aid of a white stick. Yet on EU affairs the House is not performing as well as it could.

In view of this background, and the proposals for enhancing national parliaments' role now before the IGC, this paper aims to do three things:

- to take stock of current failings in the scrutiny system in the House of Commons, and to put forward proposals for reform;

- to suggest ways in which the operation of the European institutions can be improved to make national parliaments' scrutiny of European business more effective, including proposals for the current IGC; and

- to consider the case for a collective role for national parliaments in the operation of the Union.

UNITED KINGDOM SCRUTINY: PRESENT FAILINGS AND POSSIBLE REMEDIES

It was clear even before the UK joined the Community in 1973 that membership would have a profound effect on the role of Westminster in the legislative process. In the areas covered by the treaties, Westminster ceased to be the sovereign legislature: its role became, like other national parliaments in the Community, one of *influence* upon a process in which the final *power* of decision lay elsewhere.[4] The establishment of procedures for making sure that Westminster could exercise maximum influence therefore became a high priority, particularly for those who had not favoured entry in the first place.

The Foster Committee, set up shortly before entry to consider changes in parliamentary procedure, reported twice during 1973. Its recommendations were eventually adopted by the minority Labour government in 1974. The House agreed to establish a select committee to sift through Commission proposals for legislation and other Commission documents submitted to the Council and to report on whether such proposals raised questions of "legal or political importance". The Government agreed to keep the committee informed about developments in the Community, to provide a written Explanatory Memorandum to the committee to accompany any Commission legislative proposal, to make oral statements after all Council meetings, to hold twice yearly debates on "EEC matters generally" and to set aside parliamentary time for other debates during the course of the year. The Government also accepted that it would not assent to any legislative proposal recommended for debate by the Scrutiny Committee until that debate had taken place.

The House of Lords considered its own procedures. It too voted to establish a select committee, but with a wider remit. The Lords Committee was empowered to make reports on the policy and substance of proposals rather than just flagging up issues for the House as a whole, and was asked to conduct broader inquiries into Community matters if it considered that necessary. The Lords and Commons committees were seen as complementary: the suggestion that scrutiny should be a joint activity between the two Houses had been ruled out early on. The Lord President, Ted Short, hailed the establishment of the two committees as "a means of restoring to the House the sovereignty that has been eroded since the Treaty of Accession".[5]

The role of parliamentary scrutiny has changed very little since those beginnings twenty years ago. The House of Lords has developed a reputation for the

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[2] Foreign and Commonwealth Office, *A Partnership of Nations*, Cm 3181, March 1996. The phrase is taken from Select Committee on European Legislation, 24th Report, July 1995, HC 239-1.

[3] New Labour, New Life for Britain, page 35.

[4] See Philip Giddings and Gavin Drewry, *Scrutiny Without Power?*, in Westminster and Europe, London, 1996.

[5] HC Deb 18 March 1974 cc 796-798.

thoroughness and insight of its reports, although some question whether they have much influence on the Government's position. They are also very labour intensive: some two-thirds of the resources available for committee work in the House of Lords are engaged in the European select committee and its sub-committees, involving some fifty peers (cut from eighty in 1993). Even so, the Lords committee only reports on about 20 documents a year. The Lords has been broadly successful in carrying out its original remit by concentrating its resources on proposals it regards as particularly significant.

The Commons has experienced greater frustration of its original purpose. The same points of difficulty in operating the system have recurred in numerous committee reports over the years. They are still the source of friction today, even though procedures have been steadily improved. The main points at issue are: the timely provision of information to the select committee, a minimum period of notice, the treatment of the committee's reports, the scrutiny reserve, the range of the committee's remit and scrutiny of the Community budget. These points are addressed in turn in the following paragraphs.

The Timely Provision of Information

The Commons scrutiny committee was established to process on behalf of the House the large number of proposals submitted by the Commission to the Council each session. It was originally envisaged that there might be some 300 scrutiny events a year, but in practice the number was closer to 700 in 1974-75, and stands today at around 1200. The Committee meets every Wednesday during the parliamentary session and typically considers around 50 documents at a sitting. It publishes a weekly report of its deliberations, now available on-line at www.parliament.uk. Some 500 of the documents it scrutinises each year are deemed to be of legal and/or political importance. It recommends about 80 of these for debate.

Under the provisions of Standing Order 127 (on which see more below under discussion of the committee's remit), any eligible document, including all proposals for Community legislation, must be formally deposited in Parliament within two working days of receipt in London. Within ten days of deposit, the Government prepares an Explanatory Memorandum (EM) which includes a full analysis of the proposal from the UK point of view, including compliance costs, financial implications, subsidiarity, and the Government's view of the policy implications. The process of detailed scrutiny begins on receipt of the EM. **The EM on each legislative proposal is a public document and may be obtained on demand from the Government Department concerned - a fact that deserves to be more widely known. Provision on-line would be a useful innovation.**

The efficiency and effectiveness of the scrutiny system depends on the timely provision of official information. In the absence of official texts from the Council Secretariat the whole process becomes increasingly ad hoc. In those circumstances an "unnumbered EM" is submitted to the committee giving as much detail about the proposal as possible based on the lead Department's knowledge of it. The same procedure may be followed where an item appears on a Council agenda at short notice.

The Scrutiny Committee's special report on *The Scrutiny of European Business*[6] published in July 1996, raised alarm at the increasing dependence on unnumbered EMs rather than official Commission texts as the basis for scrutiny. Seventy-five documents of legal and/or political importance had been examined in the 1995-96 session in the absence of any official text, some only two or three days prior to a Council meeting.
The Scrutiny Committee noted that "this lamentable state of affairs has four main causes:

- unpredictability of Council agendas;
- late production of proposals and other documents by the Commission;
- preparedness of the Council to take items at short notice; and
- slow transmission of documents."

It went on to recommend that "the difficulties will be solved only by the introduction of a binding ... period of four weeks between the official text of a document being available in the appropriate language in every national capital and a decision on that document being taken in the Council". In the meantime the Scrutiny Committee has said that there will be a "presumption" from now on that no document may be cleared through its procedures in the absence of an official text.

Minimum Period of Notice

A minimum period of notice before an item appears on the Council's agenda would tackle the four problems identified above. It would force the Commission and the Council to plan proposals and Council agendas further in advance so that there is time for the provision of adequate documentation in the right language to all national parliaments before Council consideration. The British Government have accepted this view, and tabled treaty language in the IGC in October last year to give it effect. The British proposal is appended at Annex B. The principle of a minimum notice period has won wide support.

The Irish Presidency's outline for a new treaty text submitted to the Dublin European Council in December 1996 incorporates this idea. It contains a draft protocol on the role of national parliaments (Annex C), which includes the following article:

[6] Select Committee on European Legislation, 27th Report, HC 51-xxvii.

"A four-week period shall elapse between a legislative 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 pursuant to article 189b [codecision] or 189c [cooperation], subject to exceptions on grounds of urgency."

By comparison with the text proposed by the UK, there are two defects in this proposed language. First, it should be made explicit that the clock only starts ticking once proposals are available to the *governments* of every member state. There is too much room for ambiguity in relying on transmission to "the Council". It will clearly be for national parliaments then to ensure through their own arrangements that they obtain documents quickly from their governments. Although there is increasing direct communication between parliaments, and between parliaments and the Commission, for the purposes of formal scrutiny it is still useful to have the government act as intermediary. It is their government's view of a proposal that is each national parliament's prime concern.

Second, the urgency procedure needs to be spelt out in detail if it is not to become a routine way of avoiding the purpose of the protocol. The UK proposal suggests that the voting requirement for overruling the minimum notice period should be the same as for the substance of the proposal itself. Hence if there were a qualified majority in favour of adopting a proposal, that same body of member states could overrule the notice required for prior scrutiny. The Scrutiny Committee has accepted that recommendation. But the procedure seems clearly open to abuse, allowing a majority in Council in favour of the substance to rally also in favour of adopting the proposal in advance of scrutiny. A stiffer test is needed, divorcing the procedure from the substance. A better voting rule for waiving the notice period might thus be one of the double majority provisions (votes and members) elsewhere in the Treaty - for QMV (qualified majority voting) in the CFSP (Common Foreign and Security Policy) pillar, for example - or otherwise agreed during the course of the IGC negotiation on reweighting of Council votes.

The defects in the Dublin draft protocol relating to the minimum notice period should be remedied by bringing it closer to the language proposed by the UK, with a modified form of QMV (eg a qualified majority including at least 10 member states) required to waive the notice requirement, and the explicit inclusion of pre-legislative documents within the notice period.

Finally, it should be noted that the UK may be able to play an important role when acting as Presidency of the Council in the first half of 1998. **Whatever new Treaty provisions are agreed, the UK should use its Presidency to encourage the adoption of better practice in managing the Council's agenda, including a minimum notice period, even in advance of any revised Treaty's entry into force.**

Treatment of the Scrutiny Committee's Reports

From its inception in 1974, the role of the Scrutiny Committee in the Commons has been to act as an early warning system. It sifts proposals and, by means of its weekly reports, alerts the House to items of legal and/or political significance. The effectiveness of the scrutiny system depends on the committee's concerns providing the impetus for wider political action. The committee can only sound the burglar alarm: it is up to other parts of the system to apprehend the villain.

The level of action in response to committee reports has long been a source of frustration. The one tool at the committee's disposal is the power to recommend "further consideration" of any of the documents presented to it. When the committee was first established this further consideration took the form of a debate on the floor of the House. At a time when unanimity or consensus was the general rule for decision-making in the Council, the House felt it could still play a decisive role in European legislation - and the anti-marketeers would settle for nothing less than full debate in the Commons.

However there was a large backlog of proposals when the United Kingdom joined the Community in 1973. Even though items referred for debate were few in number it proved impossible to find adequate parliamentary time to debate them all. A number were adopted in Council in advance of any debate - prompting calls for a more formal scrutiny reserve. Other good intentions went the same way under pressure of parliamentary time: the system of making oral statements after all Council meetings, for example, was rapidly dropped as unworkable.

Attempts have been made over the years to improve the effectiveness of the Scrutiny Committee's power to refer matters for debate. The Procedure Committee recommended in 1975 the option of referring proposals for debate in a standing committee, by analogy with statutory instruments. The recommendation was accepted by the Government, so long as debate was limited to one and a half hours. Very little changed in practice since the House routinely blocked motions to refer items to standing committee. A rather unsatisfactory process thus dragged on into the 1980s, with poorly attended scrutiny debates late at night (after ten o'clock) doing little to reassure the public that Westminster had any real purchase on the European legislative process.

The Procedure Committee held a further inquiry in 1988-89. This was at a time when the extension of Qualified Majority Voting and the increase in legislative proposals occasioned by the introduction of the Single European Act was placing the scrutiny system under great strain. The main conclusion was that scrutiny business should be taken off the floor of the House

into a number of standing committees. **The Procedure Committee recommended the establishment of five European Standing Committees, each responsible for a specific subject area, and each with ten members.**

The Procedure Committee also introduced a novel procedure for standing committee debates, involving up to an hour of questions to the responsible Minister before debate on a resolution, and allowing any Member of the House to attend, to speak, to put down amendments, but not to vote.

In the event the Government could assemble only two standing committees, each with thirteen members. They also decided that all proposals should be referred automatically to the standing committees unless the Government put down a motion for debate on the floor of the House. The decision to hold a full debate in the House rather than in committee thus lies in the hands of the Government. These are the arrangements in force today. They became a source of controversy most recently in November 1996 when the Government refused to yield to the Scrutiny Committee's request for a debate in the House on a set of documents relating to EMU, even under considerable backbench pressure from members of all parties.

The Scrutiny Committee has hailed the two standing committees and their novel procedure as "an unsung triumph" and the envy of a number of other national parliaments who attach a high priority to European scrutiny. Nevertheless, the committee has proposed three refinements to improve the system further, all of which deserve being taken up by a government committed to effective European scrutiny. They are:

The number of standing committees should be increased - to spread the load, to allow a wider scope for scrutiny eg of the Inter-Governmental pillars, and to involve a larger proportion of the House in the scrutiny process;

Proposals referred to the House for debate should be debated in the House unless a motion to refer them to a standing committee is passed - ie the decision whether to hold a debate in the House should be taken by the House itself;

Scrutiny debates in the House might follow the procedure of standing committee debates, with a period of questioning of the Minister(s) responsible followed by a debate. That should concentrate debates on the substance of the proposal, rather than polarise the House in any debate between pro- and anti-Europeans. It would also serve to publicise the opportunity that all Members of the House already have to question Ministers on legislative proposals in committee, an opportunity which few of them take up.

Scrutiny Reserve

The heart of the scrutiny system has always been the scrutiny reserve. That is the Government's undertaking not to consent to legislative proposals until any scrutiny debate that has been called for has taken place. The Procedure Committee has underlined the fact: "The importance of this undertaking cannot be overstated since it underpins and gives purpose and meaning to the entire machinery of scrutiny which the House has developed."[7]

Refraining from action in the Council until the domestic scrutiny process is complete is a basic courtesy to Westminster. Failure to observe this basic courtesy undermines confidence in the system. The Scrutiny Committee has voiced some misgivings in its recent report on the state of the scrutiny system. There are cases in which the reserve is lifted by accident or ignorance. Whitehall is taking steps to improve knowledge of the scrutiny process and its importance in the hope of preventing any more errors in the future.

Where there are good reasons of policy or urgency for reaching agreement in the Council before scrutiny has been completed, Ministers need to take more seriously their commitment to inform the Scrutiny Committee at "the first opportunity" about the reasons for their actions. It is important that the scrutiny reserve is broken only knowingly, after careful thought, and that the committee is then given a full explanation of the decision. Cavalier treatment of this point undermines confidence in the system as a whole.

The operation of the scrutiny reserve can also be undermined by the increasing complexity of Community legislative procedures. The introduction of the cooperation procedure in the Single European Act gave the EP a second reading of a proposal and the Council a second opportunity to adopt a revised common position. The codecision procedure introduced at Maastricht went further, providing for a third reading in the Parliament and the opportunity for negotiation in a joint Council/EP conciliation committee if the two institutions disagree. Both then have to take a final view on the compromise text, which the EP may reject outright.

In time, the drive for simplification of the Community's legislative procedures may serve to allay problems for domestic scrutiny. The distinction between the Council's legislative and executive roles, which the demands for open Council meetings might clarify, could also help define the points in the legislative process where member states' governments should be acting on the basis of advice from their parliaments. But in the short term it seems unlikely that the legislative process is likely to become significantly simpler or easier to understand in a Union seeking to

[7] Select Committee on Procedure, First Report, 1991-92, HC 31.

balance the roles of national parliaments and the European Parliament, looking forward to the entry of new member states and considering greater flexibility in its provisions for cooperation.

Since the scrutiny system is going to have to cope with complexity for the foreseeable future, there are a number of steps that might be taken at the European and at the domestic level to improve the system's ability to cope.

One of the tasks of the six-monthly meetings of the Conference of European Affairs Committees (COSAC: on which see more below) might be to compare practice across the Community in the search for more effective ways of maintaining scrutiny through the complex interaction between the Council and the EP in codecision.

The House of Commons Scrutiny Reserve resolution might be formally amended to reflect the new points at which the Council effectively "takes a decision": where political agreement is reached on the substance of a proposal, where a common position is reached under cooperation or codecision, and where a joint text is adopted under conciliation.

The Scrutiny Committee suggest that under codecision the final adoption of a text in the absence of agreement in the Conciliation Committee should also be subject to a national scrutiny reserve. Yet the essence of this final stage is the EP's right to block legislation. It seems a complication too far to insist also on an effective right for any Member State Parliament to enjoy the power of veto. Here the roles of national parliaments and of the European Parliament should be seen as truly complementary.

At the least, however, it seems appropriate to open the Conciliation Committee to the public. That should reassure national parliaments that a fair and thorough negotiation, in accord with each institution's mandate, has taken place.

Finally, the Scrutiny Committee has proposed a number of initiatives that will improve national parliaments' ability to track legislative proposals through a complex process of negotiation and amendment. First they propose that **where an amendment significantly changes the substance of a proposal, it should be subject to a fresh impact assessment by the Commission, if any one national parliament requests it.**

Second, and potentially of very wide benefit, is the suggestion that the concept of the "scope" of a legislative proposal should be written into the Treaty. This would place a limit on the extent to which amendments to the proposal could depart from its original purpose. Amendments outside the scope of the original proposal would be ruled out of order. If the EP or the Commission wished to pursue ideas in amendments outside the scope, they would have to introduce substantially new proposals to do so.

A limitation of this kind would give national parliaments the confidence to know that any initial scrutiny of their government's position would remain relevant throughout the legislative process. It would also encourage them to trust the EP more if it were clear from the outset that a proposal could not be amended beyond recognition after it had completed Westminster scrutiny. That could in itself make the scrutiny process under cooperation or codecision easier to manage since national parliaments would be more willing to entrust subsequent stages to the EP. **A definition of the scope of a legislative proposal would considerably improve the legislative process in the EU, and the arrangements for parliamentary scrutiny. A definition should therefore be incorporated in the Treaty, perhaps in Article 189a.**

The Scrutiny Committee's Remit

The House of Commons scrutiny system was not established with any defined remit. The first task of the Foster Committee was to decide which Community documents required scrutiny. The resulting definition was a narrow one: regulations, decisions, directives, the Community budget and instruments concluding treaties. It became clear over the years, and especially when the documents leading up to the negotiation of the Single European Act were found to lie outside the Scrutiny Committee's remit, that it would be desirable to widen the committee's role to bring it closer to its House of Lords equivalent. But successive Governments have resisted any expansion of the committee's terms of reference. Those terms are now set out in Standing Order 127, which defines documents depositable for scrutiny as:

"(i) any proposal under the Community treaties for legislation by the Council of Ministers;

(ii) any document which is published for submission to the European Council or the Council of Ministers;

(iii) any document (not falling within ii above) which is published by one Community institution for or with a view to submission to another Community institution and which does not relate exclusively to consideration of any proposal for legislation;

(iv) any other document relating to European Community matters deposited in the House by a Minister of the Crown."

The range is quite broad. Category (iv) gives the Government discretion to make available almost any document it wishes. It is under this category that some of the 1996 IGC documents, including the draft outline for a new treaty, have been deposited.

But there are significant gaps. The system does not cover secondary legislation enacted under delegated powers by the Commission - the vast majority of Community law. It is impractical, as the Scrutiny Committee has itself concluded, to expect to monitor every instrument adopted by the Commission. However, some provision to take stock from time to time and to conduct spot check inquiries into the way the Commission is using its delegated powers might help fill the gap.

Most important, the scrutiny system does not cover the Inter-Governmental pillars of the treaty relating to Common Foreign and Security Policy (CFSP) and Justice and Home Affairs (JHA). This is a startling omission. The essence of the Inter- Governmental method is that normal Community procedures should not apply. The Commission and the European Parliament play only a limited role and the Government have accepted that accountability for work in these areas should be to national parliaments rather than to the European Parliament.

Because the Inter-Governmental pillars are not sources of Community law, the Government have been keen to keep parliamentary scrutiny of Inter-Governmental instruments and Community instruments separate and distinct. Hence such scrutiny of CFSP and JHA texts as now takes place is performed by the Foreign Affairs Select Committee and the Home Affairs Select Committee respectively. This is unsatisfactory: the terms of reference of these Committees have not been altered to include a scrutiny function, neither can insist on the deposit of documents, neither can operate a scrutiny reserve, and neither has yet published a report on a document submitted to it.

What needs to change is the Government's perception of cooperation in the Inter-Governmental pillars as little different from the traditional conduct of state to state relations. This need not mean folding the pillars into the Community and subjecting all activity to Community procedures. But it does mean taking the existing Inter-Governmental structures seriously as sources of Union policy and action for which member states' governments should be held accountable. It would be possible to achieve this by the simple expedient of adding documents arising from the Inter-Governmental pillars to the Scrutiny Committee's terms of reference.

With a little imagination it should be possible to overcome the Government's objection that scrutiny as it applies in the Community pillar is inappropriate elsewhere. The existing system includes provision for Ministers to act in advance of the completion of scrutiny if the subject matter of the proposal is confidential, or if there are "special reasons" for doing so (eg urgency). The rules for deposit of documents could exclude those which are confidential, for which unclassified unnumbered Explanatory Memorandums might instead be provided to give the committee as much information as possible.

Even so, it would be wrong to underestimate the magnitude of this proposed change. International agreements, which are for the most part what the Inter-Governmental pillars will produce, are not subject to parliamentary scrutiny in the normal course of events. To introduce special procedures for those which originate in the Union will be a significant change in parliamentary practice. Yet it will be a change that does no more than recognise the fact that cooperation within the European Union is different in kind from any other form of international cooperation in which the UK is engaged.

The Community Budget

The Foster Committee identified the Community budget in its first report in February 1973 as an area needing Commons scrutiny. Yet the Procedure Committee's first review of scrutiny arrangements published in 1975[8] quickly identified that this was a problem area, principally because of the timing of the Community budget-making process. The Community process has changed markedly since then, notably with the introduction of medium term planning - the financial perspectives - from 1988. But the changes have made the process ever more complicated, and national parliaments still struggle to exercise any influence. The House of Lords scrutiny committee has complained that the process of setting the Community budget "makes a mockery of scrutiny arrangements".[9] What can be done to improve matters?

The complexities of the budget process, and the room in that process for national parliamentary input, are set out in Annex D, a note by a Treasury official supplied for one of the seminars associated with this paper. The note identifies three elements in the Community's financing and budget system:

- the *Own Resources Decision,* which sets the overall level of resources available to the Community. These are the Community's "own resources" in the sense that they are payable automatically to the Community by the member states and are the Community's by right, rather than national contributions. In the UK they are paid directly out of the Consolidated Fund and do not require to be voted by Parliament. However, any amendment to the overall level of Community resources - a change in the Own Resources Decision as a percentage of GNP - has to be implemented by Act of Parliament;

- the *Financial Perspective,* which sets out medium term expenditure plans designed to keep the budget within the level of own resources, and embodied in an

[8] Select Committee on Procedure, First Report, 1974-75, HC 294.

[9] Preliminary Draft Budget for 1997, 14th Report from the Select Committee on the European Communities, 1995-96.

Inter-Institutional Agreement between the Commission, the Council and the EP. This device was first introduced in 1988 for a five year period. The perspective adopted at the Edinburgh European Council in December 1992 is set to run until the end of 1999; and

- the *annual Community budget,* adopted under detailed procedures set down in the Treaty (Article 203) by the Council and the EP. The Commission submits a preliminary draft budget to the Council in June of the preceding year, which the Council considers first at a meeting in July. The Council then adopts a draft budget by QMV, which it must transmit to the EP by 15 October. At its first reading the Parliament can amend and modify any of the spending proposals in the Draft Budget. The Council may make amendments to these amendments and modifications at its November second reading. The Budget is then passed back to the European Parliament for a second reading, at which the Parliament may amend the Council's amendments to non-compulsory spending (broadly speaking everything except the Common Agricultural Policy), and adoption.

The main problems in terms of securing parliamentary oversight arise in the setting of the annual budget and in subsequently tracking and accounting for expenditure from it. The scrutiny committees of both Houses try to play as full a part as possible in assessing the implications of the Commission's draft budget proposals from mid-June onwards. The House of Lords committee examines officials and sometimes Ministers and produces a report on the budget. But the volume of paper, the complexity of the budget, and the short time interval between the production of proposals and consideration in the Budget Council at the end of July make for a less than satisfactory process at Westminster.

In practice the room for manoeuvre in setting the budget is heavily circumscribed, both by the financial perspective and the large amount of spending already committed in legislation supporting multi-annual spending programmes (although the Budgetary Authority is not ultimately bound by the spending profiles attached to these programmes, it has agreed to respect them except in exceptional circumstances). Spending decisions are at the margins. Westminster's record to date in influencing spending priorities is based on cumulative reports and a consistent stance: Ministers tailor their position in the budget negotiations to what it is felt the scrutiny committees will accept (a form of anticipatory scrutiny); and raising the same issues year after year (fraud, tobacco subsidies) can have the effect of slowly altering the Government's position.

Even so, the key to successful scrutiny in this area is to get ahead of the game. **Given the narrow margins within which the budget is set each year, it should be possible to anticipate which areas the budget negotiations are likely to focus on and for Westminster itself to put forward its own pre-emptive proposals.** The aim would then be to engage Ministers and officials in debate on the substance of the budget and to formulate an overall negotiating stance as early as possible and ideally in advance of the Commission's formal proposal.

The same process should apply to the setting of the medium term financial perspective. If anything Parliament's role here is likely to be even more valuable since the medium term plan is based on political judgements about how the Union will develop over the next 5/7 years, the priorities it must pursue and the challenges it will face. These are judgements that either House is experienced in making. **When discussions preparing for the next financial perspective get underway the British Government should take the lead in making sure that the need for national parliamentary involvement is also accommodated.**

This approach to the Community budget would be a significant departure from normal scrutiny arrangements in the House of Commons. While it would be well within the remit of the Lords committee, in the Commons it is more akin to the process of inquiry performed by the departmental select committees. **The best House of Commons body to engage in the European budget process in the way described above might be a sub-committee of the Treasury Select Committee dedicated to the Community budget. That committee would be able to develop a body of expertise from year to year which would then equip it to begin making forward proposals for spending priorities and overall resource levels which were informed and authoritative.**

Also problematic is the tracking of Community expenditure. Given that the budget is owned by the Community, the financial probity of the system is in the hands of the European institutions, in particular the Commission, the EP and the Court of Auditors. The Maastricht Treaty introduced new rigour into the system, but the key to making the accounting procedures effective is the link with national procedures. The new Article 209a makes that explicit: "Member states shall take the same measures to counter fraud affecting the financial interests of the Community as they take to counter fraud affecting their own financial interests.... Member States shall coordinate their action aimed at protecting the financial interests of the Community against fraud."

The gap between the Community and its member states is the weak link in the accounting process at present. One solution would be to give the Community powers to protect its own financial interests, to investigate and prosecute fraud at any level in the system. Some Member States, the United Kingdom included, might find that too intrusive. It is also doubtful whether it could be effective since a central authority would be ignorant of local conditions.

The only alternative is that national procedures become more effective in the service of the Community's financial interests. That might involve:

- encouraging the work of the Public Accounts Committee systematically to follow up reports from the Court of Auditors which suggest the need for further investigation in the UK. There might be room too to explore how areas where problems are suspected in other member states might be brought to the attention of the Court of Auditors; and

- greater collaboration between national parliaments in the field of financial scrutiny, both to compare best practice in protecting the Community's financial interests at the national level, and to consider the implications of reports from the Court of Auditors including remedial action.

COSAC: A COLLECTIVE ROLE FOR NATIONAL PARLIAMENTS?

Incorporation of a minimum notice period and a definition of the scope of a legislative proposal, as described above, are two ways of facilitating an effective role for individual parliaments in holding their executives to account. But the present IGC is also mandated to look at the scope for strengthening the role of national parliaments in the European Union *collectively*.

This has been a goal of the French Government for some time. It was the French Government which pressed the ill-fated "Congress" proposal during the Maastricht negotiations. But the new importance attached to the principle of subsidiarity, and the need for political judgement about the correct level for government action for any particular proposal, has served to increase interest in a collective body for national parliaments since the Treaty came into force.

On 19 April 1995, Philippe Séguin the President of the French National Assembly, established a Parliamentary Reflection Group to parallel the work of the Reflection Group preparing the agenda of the IGC. The Parliamentary Group was asked to investigate how national parliaments, individually and/or collectively, could "add value" in terms of improving the democracy, transparency and efficiency of the Union. The Group's conclusions, adopted at a meeting in Athens in December 1995, unsurprisingly reflected the French Government's view. They called for the role of national parliaments to be given a specific reference in any revised Treaty. They also pressed for Treaty language formalising the role of COSAC (the Conference of European Affairs Committees or *Conférence des organes specialisés dans les affaires communautaires - acronym COSAC)* as the forum through which national parliaments might play a collective role.

COSAC is a forum first established by the French Presidency in 1989. It meets every six months in the country holding the Presidency and consists of delegations of up to six members from each member state drawn from the European Affairs Committees (of both chambers where that applies) of each parliament and six members of the EP. The delegations are not mandated and the conference proceeds always by consensus.

The French delegation proposed in November 1995 a series of measures to reform COSAC's procedures in order to allow it to play a more effective formal role. Those changes included: a consultative role in deciding disputed questions of the interpretation of subsidiarity, a similar role in other areas where the Council proceeds by unanimity (eg own resources, taxation, accession and action under Article 235) and in the Inter-Governmental pillars, majority voting based on six votes per delegation, and the removal of the EP delegation's voting rights since it has a role of its own in the Union's decision-making process.

Other proposals for giving parliaments a collective role - the idea of a second chamber of the EP consisting of representatives of national chambers, for example, or a high consultative council consisting of two representatives of each national parliament to play an advisory role - have failed in the IGC for lack of support. But there is a good deal of interest in building on the existing activity of COSAC to fulfil this purpose, even if the Germans and the Scandinavians in particular are wary of providing a basis for this in the Treaty.

The Dublin meeting of COSAC in October 1996 reached unanimous conclusions on developing its future role. The conclusions supported treaty amendment to improve the flow of information to national parliaments including a minimum notice period of four weeks, agreed a number of practical measures to make its own working methods more efficient (these should in time be reflected in changes to COSAC's rules of procedure), and looked forward to COSAC playing a collective role in certain areas:

"COSAC may pursue certain specific issues, eg subsidiarity, second and third pillar items and questions relating to the fundamental rights of European Union citizens, with a view to arriving at some ideas as to the way forward for these items. However, its conclusions will be offered as suggestions and would not seek to bind any delegate or delegations. The communiqués on the above will be forwarded by the President of COSAC to the Institutions of the European Union and to the Governments of Member States."

The Dublin draft protocol on the role of national parliaments (Annex C) is based broadly on COSAC's conclusions. The text gives COSAC the right to "make any contribution it deems appropriate for the attention of the EU institutions", the right to examine proposals

under the JHA pillar "which might have a direct bearing on the rights and freedoms of individuals", and to hold debates and make reports on "the normative aspects of the activities of the Union" including "the implementation of subsidiarity".

This careful and non-committal language is evidence of a number of difficulties with developing COSAC along the lines proposed by the French National Assembly. These difficulties will need to be resolved to make the most of the opportunity for treaty revision. They are considered below.

National Parliaments and National Governments

There is some reluctance on the part of a number of member states, notably the Scandinavian countries, to mention national parliaments in the Treaty at all, still less COSAC. This reluctance is born of a feeling that any reference to national parliaments alongside reference to national governments might imply an awkward distinction between the two. In an ideal model, after all, it might be argued that if domestic scrutiny procedures are working, Parliament and Government should be expressing the same view in the Union.

This seems an extraordinarily purist position viewed from a Westminster perspective. COSAC is after all only a conference of parliamentary committees. If any parliamentary committee is assumed to share the same view as the Government it is more likely to be because the committee has become effectively an organ of Government than vice versa. The symbiosis is in general not that close in most European parliaments - and certainly not at Westminster. Further, there are areas of Union activity - the Inter-Governmental pillars - in which the EP plays a reduced role and which national parliaments have enjoyed varying degrees of success in scrutinising individually. The case for enhancing COSAC's role to help fill this gap is a strong one, but it needs to be advanced with sensitivity if it is to win consensus support.

A related point is the status of delegates to COSAC. At present delegates do no more than represent the European Affairs Committees of their respective chambers. Whilst all national parliaments are represented, this is not a conference of representatives of national parliaments as such. Nor are the delegates mandated to hold a position: the conference is a deliberative body for the exchange of views and ideas about best practice, not a decision-making body.

However, if COSAC were to develop a formal role in European decision-making, especially if it did so by means of majority vote, then the nature of the parliamentary delegations would have to change. The French proposal skirts round this difficulty by leaving it to national parliaments to decide how to structure a delegation and how to mandate it to exercise its six votes. But in practice no parliament will find this an easy task. Party political balance, plus balance between two chambers where that is necessary, will lead to pressure to increase the size of delegations. Mandating delegations will also tend to make them the creatures of government: what other mandate can they seek? COSAC will then turn into an extension of the Council under another guise.

Hence the emphasis in the Dublin conclusions of COSAC on the fact that its opinions on any subject would not be binding on any delegate or delegation. COSAC will become more formalised at the administrative level: more meetings, better preparation, and the development perhaps of a permanent secretariat (based on existing parliamentary offices in Brussels). These are necessary steps to provide greater continuity between meetings and to allow COSAC to fulfil its potential in contributing to the substance and process of the Union's decision-making. But its substantive role must remain consultative and non-binding, otherwise the other advantages of the forum will be lost.

What Role for COSAC?

The remaining issue is what role COSAC can realistically play under the Treaties. An obvious task, and one which the Conference performs already, is to act as facilitator for exchanges between parliaments. As the Dublin COSAC conclusions put it: "COSAC can assist individual National Parliaments by making available to them the experience and information of other Parliaments". That should help individual parliaments tackle scrutiny problems that arise at home. The role might be developed in three ways:

- greater use of electronic transmission for the exchange of information between parliaments. The House of Commons has established an e-mail group for all COSAC members. This could be developed in the future, by the embryonic COSAC secretariat, to help prepare for more frequent and more focused meetings of the Conference;

- a formal role for COSAC, set out in the Treaty, to provide a six-monthly or annual report on the operation of any new treaty provisions relating to the provision of information to national parliaments. The report might highlight problems in individual member states in the operation of the four-week minimum notice period, or of national parliaments generally in exercising scrutiny under complex Community procedures like codecision, or under the Inter-Governmental pillars. In time the complexities resulting from any differentiated integration (flexibility) might be included in such reviews. The operation of the Council's Code of Conduct on access to information might also fall within the remit of COSAC's report;

- the ability for COSAC on occasion to invite other parliamentarians to attend their meetings, as proposed by the French Parliamentary

Reflection Group. This applies especially to discussion of activity under the Inter-Governmental pillars, which does not necessarily fall automatically within the remit of European Affairs Committees in all member states (including at present the UK). The suggestion that members of the Parliamentary Assembly to the WEU should be engaged in any discussion of defence and security issues is a particularly apposite one, since it is far from clear how the Assembly otherwise contributes to debate as the WEU moves closer to the Union.

Beyond the exchange of information, the French proposal envisages COSAC delivering opinions - to the Council - on questions of subsidiarity, on major EU developments (treaty amendment, international treaties, enlargement, use of Article 235, own resources), and on issues relating to CFSP and JHA. All such opinions would be non-binding.

These opinions would be fed into existing decision-making processes. COSAC would not seek to complicate these processes further. It is not clear how influential COSAC's opinions might prove to be, nor how substantial their content could be so long as consensus must be the rule for adopting them. In practice all opinions would be likely to canvass a range of views, in order to command support.

COSAC is most likely to develop as a forum in which individual or groups of national parliaments attempt to gain collective support from their colleagues to press specific concerns about the operation of the Union's decision-making. The French proposal suggests that national parliamentary concerns are most likely to arise in the areas where Union action has a direct impact on national sovereignty. This seems right. COSAC's role in these areas will be to add weight, where it agrees to do so, to concerns which will already have been raised with national governments individually. COSAC's new role should allow the expression of a collective concern at the European level.

Hence, in addition to the points mentioned above, any protocol or treaty article on the role of national parliaments might also contain the following elements to establish COSAC's new role in the future:

- recognition of COSAC as having a legitimate right to contribute to Union activities;

- a formal statement that the EP delegation to COSAC henceforth has observer status for the purposes of COSAC issuing opinions under the Treaty. The EP should not be required to be a member of the consensus;

- provision for COSAC to publish opinions on any matter it chooses, but in particular on matters relating to subsidiarity, the Inter-Governmental pillars, enlargement, Community resources and treaty revision;

- opinions to be forwarded to the Council, the European Parliament and the Commission as appropriate;

- in the case of subsidiarity questions alone, where COSAC reaches a consensus or near consensus view that the subsidiarity provision in the Treaty has been misinterpreted in a particular case, there might be a formal requirement on the Community institutions to respond to COSAC's concern and to take appropriate remedial action.

These are modest proposals. But they would at least serve to establish COSAC's role as the collective voice of national parliaments in the Union. It will then be up to COSAC and its membership to make the most of the opportunity it offers. The provisions will be open to revision in the future. For the moment it is important to establish a principle through a clear reference to COSAC's role in the Treaty, and encourage the practice by channelling the Conference's activities in a certain direction. Adoption of a version of the Dublin draft protocol (Annex C) would provide a good platform from which to advance the collective role of national parliaments as necessary in the future.

CONCLUSIONS

It is now accepted by all member states that a Union closer to its citizens must involve an enhanced role for national parliaments. It is also accepted by all the main political parties in the UK: Labour and the Liberal Democrats have made a joint public commitment to "overhaul the process for scrutinising European legislation so that decisions from the EU are more transparent and Parliament's role is more clearly defined".[10] This paper has suggested a number of practical steps that might be taken to make that aspiration a reality.

Most important will be changes to the Treaty aimed at facilitating national parliaments' ability to hold Ministers to account for their actions in the Council of Ministers. That means a requirement for the provision of timely information, and ideally some definition of the "scope" of Community legislation to prevent proposals changing beyond recognition during the lengthy legislative process. The Treaty should also formalise the position of COSAC as the collective voice of national parliaments and give it a legitimate role in Union activities.

Changes along these lines enjoy wide support, but are still sensitive matters for some member states. Britain has long been a supporter of enhancing individual

[10] Report of the Joint Consultative Committee on Constitutional Reform, March 1997.

parliaments' role, and was the instigator of the Maastricht declaration to that effect. France has for its part championed a collective role for national parliaments, and the work of the Parliamentary Reflection Group, the French National Assembly and COSAC itself has brought that goal close to realisation.

Yet so far the British Government has not chosen to voice strong support for the French proposals to tip the balance in their favour. That stems from a reluctance in the domestic arena to extend normal scrutiny arrangements into the areas covered by the Inter-Governmental pillars, particularly CFSP. That in turn stems from an unwillingness to accept that Inter-Governmental cooperation within the Union is substantially different from any other form of international cooperation, even if it produces instruments common to other arenas.

This fastidious protection of the distinction between Inter-Governmental and Community cooperation is surely misplaced when it comes to the role of national parliaments. If democratic intergovernmentalism is ever to gain credence as a form of Union activity equally deep and equally legitimate as cooperation under the Community method - as the present Government, and any likely future Government, believe - then national parliaments, both individually and collectively, must be given greater powers to contribute to policy in these areas.

A change of heart at home and at the European level must therefore go hand in hand. Each will support the other. Procedural reforms in the Westminster scrutiny system, such as those suggested in this paper and in reports by the Commons Scrutiny Committee itself, will demonstrate to our partners a commitment to making sense of national parliaments as a source of democratic legitimacy in the Union. It will help dispel the feeling that our support for the concept is merely tactical - a means of resisting greater powers for the EP. Greater participation and interest in scrutiny by members of the House of Commons will also encourage that perception: scrutiny will only be effective if it acts as a stimulus to political action.

Changes at home are one part of the jigsaw. Changes at the European level should be complementary. Enshrining COSAC in the Treaty is a worthwhile end in itself. We should not expect to be able to itemise its terms of reference and its degree of influence in minute detail at this stage. Its role will develop over time. Any British Government genuinely committed to closer cooperation with our partners in the Union, but equally committed to a vision which preserves some element of intergovernmentalism, must see that the development of a collective role for national parliaments has to form an integral part of that vision. COSAC's value may prove to be transitory as the Union moves closer to a federal structure. But in the challenging years ahead - years of flexibility, monetary union and enlargement - the Union should value any addition to the mechanisms for providing cohesion and contact with national citizens.

Finally, lest these words are interpreted as a call to turn the clock back to happier times, it is appropriate to echo the words of warning with which this paper began. The Union is here to stay. Parliamentary sovereignty is no longer absolute. The context in which this paper and its proposals should be read is of a highly integrated Union of interdependent member states. The closer involvement of national parliaments in its structures and in policy-making at home may be able to make policy more responsive to the democratic impulse, but it cannot change the fact that control of the decision-making process is no longer in the hands of any one Government or any one Parliament.

The Procedure Committee's report of 1989 on the House of Commons scrutiny system expressed this truth very well:

"Those seeking from this Report some form of procedural antidote to the legal and political implications imposed on scrutiny by this country's treaty obligations will be disappointed.... It was never envisaged that the House would be able to exercise the same degree of control over the final form of European legislation as it does over its domestic equivalent. By the same token it has never been seriously contended that United Kingdom Ministers can be mandated to adhere rigidly, on pain of censure by the House, to a single specific negotiating stance in the Council of Ministers... Nevertheless, the House has always expected, entirely with reason, that Ministers should not, save in the most exceptional circumstances, enter into negotiations in the Council without at least knowing, and taking fully into account, the collective views of Members".

It is that sensible approach to national parliamentary involvement in EU affairs which should prevail. As Chancellor Kenneth Clarke said when he was forced to come to the House of Commons on the day before the 1996 budget to comment on a number of EMU texts under scrutiny, "a process of permanent parliamentary debate, permanent parliamentary scrutiny and occasional parliamentary hysteria is not always in the national interest".

A sensible balance must be maintained. But a minimal requirement in a functioning parliamentary democracy must be that Ministers act at the EU level in the full knowledge of the views of Westminster on points of legal and political significance. The proposals in this paper ask no more than that, and suggest changes at the domestic and the European level to make sure the condition is fulfilled. This reform agenda is a modest but a necessary one for rebuilding public confidence in the Union's decision-making, and giving some democratic credibility to the Inter-Governmental method. It should be advanced and championed by the British Government at Westminster and Amsterdam.

EPF
EUROPEAN
POLICY
FORUM

ANNEX A

"The Relationship of National Parliaments to the European Parliament"

Seminars on 24 June 1996 and 2 December 1996

London

LIST OF ATTENDANCE

* attended both meetings

Jean-Pierre Asvazadourian - First Secretary, French Embassy
Professor Fulvio Attina - University of Catania, Italy
David Beamish - Clerk, European Communities Committee, House of Lords
*Professor Patrick Birkinshaw - University of Hull
*Dr Martyn Bond - Head of UK Office, European Parliament
Jens-Peter Bondé MEP, Denmark
*Dr David Butler - Chairman, The Hansard Society
Nicole Catala MP - Deputy Chairman of Committee for European Union and Deputy Speaker, Assemblée Nationale
Professor Clive Church - University of Kent
Beatrice Covassi - University of Hull
*George Cunningham - Parliamentary Consultant
Sarah Davies - Second Clerk, Foreign Affairs Committee, House of Commons
Brigitte Ederer MP - Austrian Parliament
Lord Ezra - House of Lords
John Fitz-Maurice - Office of the Secretary General, European Commission
John Goddard - Clerk, Sub-Committee A: Economic and Financial Affairs, Trade and External Relations, House of Lords
Andrew Green - Development Officer, The Hansard Society
Damian Green - Director, European Media Forum
David Harris - Director, The Hansard Society
Professor Jack Hayward - Social Studies Faculty Centre, Oxford University
Robert Hazell - Director, The Constitution Unit
Rt Hon David Howell MP - Chairman, Foreign Affairs Select Committee, House of Commons
*Lord Hunt of Tanworth - Chairman, EPF Council
Nick Ilett - Head of EU Finance, HM Treasury
Robert Jackson MP - House of Commons
*Francis Jacobs - Secretariat, European Parliament
Christian Jung - Centre for Applied Policy Research, Munich
Dr Christopher Kerse - Legal Adviser, House of Lords
Graham Leicester - Consultant on European and Public Policy
David Lloyd - Select Committee on European Legislation, House of Commons
Tom Mohan - Committee Clerk, House of Lords
Praveen Moman - Special Adviser to the Lord President, The Privy Council
Neil Mulcock - Office of Joyce Quin MP
Andrew Mylne - Clerk, Sub-Committee B: Energy, Industry and Transport, House of Lords
Annemie Neyts-Uyttebroeck MEP, Belgium
Professor Philip Norton - University of Hull
Michael O'Neill - IGC Unit, Foreign and Commonwealth Office
*G M W van Oven - Member of Second Chamber, the Netherlands
Alessandro de Pedys - First Secretary, Italian Embassy
*Timothy Pratt - Speaker's Counsel, European Legislation Committee, House of Lords
Tom Radice - Clerk to Sub-Committee C: Environment, Public Health and Consumer Protection, House of Lords
Peter Riddell - Assistant Editor (Politics), The Times
Dr Ann Robinson - Director, National Association of Pension Funds
Robert Rogers - Clerk of the Select Committee on European Legislation, House of Commons
Professor Olof Ruin - Stockholm University
Dr Thomas Saalfeld - University of Kent at Canterbury
Professor Rinus Van Schendelen - Erasmus University, Rotterdam
Elizabeth Scholes - Foreign and Commonwealth Office
Nigel Spearing MP - House of Commons
Michael Stübgen - Deputy Chairman, EU Committee, Deutscher Bundestag
*Anthony Teasdale - Special Adviser, HM Treasury
Lord Tordoff - Chairman, European Communities Committee, House of Lords
Erkki Tuomioja - Chairman, Grand Committee, Finnish Parliament
*Frank Vibert - Director, European Policy Forum
Dr Christopher Ward - Clerk, Foreign Affairs Committee, House of Commons
Martin Westlake - Associate Member, University of Hull
Jan Wiebenga MEP, The Netherlands
Professor Daniel Wincott - University of Birmingham

ANNEX B

United Kingdom proposal on the Role of National Parliaments in the European Union

(Reproduced in the 13th Report of the Select Committee on European Legislation of February 1997)

1. The United Kingdom believes national parliaments play a vital role in enhancing confidence in, and the legitimacy of , the EU, particularly by their role in examining legislative proposals. In the IGC we should seek to facilitate this role.

Minimum Scrutiny Period

2. Previous discussion has shown wide support for specifying in the Treaty a minimum period for examination of legislative proposals. We suggest a period of four weeks after a document is available in each language in capitals before the Council reaches a common position in co-decision or co-operation, or before the Council reaches a decision on a proposal in other cases. There should be provision for the Council to override the period in urgent cases only, after careful consideration and stating its reasons. In such cases the Council should vote according to the voting procedure for the item concerned.

Reports on Justice and Home Affairs and Common Foreign and Security Policy Matters

3. Another measure to strengthen national parliaments' role would be for the Council to circulate regular written reports on Justice and Home Affairs and the Common Foreign and Security Policy, for example at the beginning or end of each Presidency, for Member States to send to national parliaments. This provision too should be specified in the Treaty.

4. Draft Treaty language is attached on these points. The United Kingdom believes the role of national parliaments in the EU is also enhanced by members and officials of the Commission giving evidence to national parliaments and contact between national parliaments and the European Parliament. All encouragement should be given to build upon these practices.

PROPOSED TREATY LANGUAGE ON NATIONAL PARLIAMENTS

A: New Article for insertion in the EC Treaty

1. To allow Member States to seek the views of their parliaments, each Commission proposal for an act to be adopted by the Council shall be made available to the government of each Member State in its own language:

(a) at least four weeks before the Council adopts a common position pursuant to Article 189b or 189c; or

(b) in all other cases, at least four weeks before the Council adopts the proposed act.

2. By way of derogation from paragraph 1, where the Council considers that urgency so requires it may, acting in accordance with the voting procedure prescribed by the Treaty in relation to proposed act, decide to disregard the requirement in paragraph 1. In such cases it must state its reasons in the act.

3. Each document submitted to the Council by the Commission which envisages the possibility of a proposal for an act to be adopted by the Council shall, except in cases or urgency, be made available to the government of each Member State in its own language at least four weeks before it is considered by the Council.

B: New Article for insertion in the TEU

The Council shall produce sic monthly reports about activities carried out in Titles V and VI of the Treaty which Member states may submit to their participants.

October 1996

ANNEX C

IRISH DRAFT PROTOCOL

New Protocol on the role of National Parliaments in the European Union to be annexed to the Treaty on European Union.

THE HIGH CONTRACTING PARTIES

RECALLING that scrutiny by individual national parliaments of their own Government in relation to the activities of the Union is a matter for the particular constitutional organization and practice of each Member State,

DESIRING, however, to encourage greater involvement of national parliaments in the activities of the European Union and to enhance their ability to express their views collectively on matters which may be of particular interest to them,

HAVE AGREED upon the following provisions, which shall be annexed to the Treaty on the European Union:

I. INFORMATION FOR NATIONAL PARLIAMENTS OF MEMBER STATES

1. All Commission consultation documents (green and white papers) shall be promptly forwarded to national parliaments of the Member States.

2. Commission proposals for legislation, as defined in Article 151 of the Treaty establishing the European Community, shall be made in good time so that the Government of teach Member State may ensure that its own national Parliament receives them as appropriate.

3. A four-week period shall elapse between a legislative proposal, as defined in Article 151 of the treaty establishing the European Community, 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 pursuant to article 189b or 189c, subject to exceptions on grounds of urgency.

II. THE CONFERENCE OF EUROPEAN AFFAIRS COMMITTEES

4. The Conference of European Affairs Committees, hereinafter referred to as COSAC, established in Paris on 16-17 November 1989, may contribute to the activities of the Union under the conditions set out in this Protocol.

5. COSAC may make any contribution it deems appropriate for the attention of the EU institutions, in particular on the basis of draft legal texts which Representatives of Governments of the Member States may decide by common accord to forward to it, in view of the nature of its subject matter.

6. COSAC may examine, at the request of any national Parliament, any proposal or initiative falling in particular under Title VI and which might have a direct bearing on the rights and freedoms of individuals. The European Parliament, the Council and the Commission shall be informed of any request made to COSAC under this paragraph and shall receive any contribution made by COSAC in the light of that request.

7. COSAC may hold debates at regular intervals on the normative aspects of the activities of the Union. It may address to the European Parliament, the council and the Commission any contribution which it deems appropriate in this regard, notably concerning the implementation of the principle of subsidiarity.

ANNEX D

Financial Scrutiny, N J Ilett, Head of EU Finance, HM Treasury

Article presented at the second seminar on the relationship between national parliaments and the European Parliament, 2 December 1996.

1. The starting point is the way in which the Community Budget is handled in Community law and in national law.

2. So far as Community law is concerned, there are three main elements of the EC financing and budget system:

   - the revenue ceiling, contained in the Own Resources Decision which for most practical purposes is akin to a Treaty;

   - the medium-term expenditure plans contained in the Financial Perspective (FP) attached to the Inter-Institutional Agreement (IIA). This procedure involves neither a Treaty nor Community legislation, but rather an agreement between all concerned as to how they will operate the relevant Treaty provisions;

   - the annual Community Budget, which is *sui generis* Community legislation for which the Treaty prescribes a particular procedure.

3. So far as national law is concerned, the procedure for the UK Treasury is as follows (procedures are thought to be broadly similar in their effect in at least France[1] and Germany). Under Article 2(3) of the European Communities Act 1972, UK contributions to the Community Budget are paid direct out of the Consolidated Fund. This means that UK contributions are not subject to voting or supply arrangements. The Treasury must pay provided it is satisfied that the demand to pay is lawful. In other words there is no annual appropriation procedure in the legal sense. UK contributions, receipts and the "Fontainbleau" abatement are however taken into account in the annual national Budget round and full information is presented to Parliament in that context. (See paragraphs 10 and 11 below.)

4. The way scrutiny proceeds depends on which bit of the system is involved.

5. Changes to the Own Resources Decision require adoption by an Act of Parliament - most recently, the European Community (Finance) Act 1995. In a political sense, this approved the future financing deal struck at the Edinburgh Council in December 1992. Technically, the Act constituted UK Parliamentary agreement to the 1994 Own Resources Decision whose key provision was the raising by stages of the Own Resources Ceiling so as to permit the 7-year spending plan in the Financial Perspective to be financed. The IIA and FP last until 1999, though there is a provision for automatic roll-forward of the FP thereafter if the IIA is neither denounced nor replaced. But the Own Resources Decision remains in force unless and until replaced.

6. The Government deposited the Commission's proposal for the IIA with Parliament when the proposal was made. Later, the House of Commons voted to approve the Government's stance before the European Edinburgh Council, and subsequently the Prime Minister reported back to Parliament. The proposals for the Community legislation necessary to put the Edinburgh agreement into effect were themselves scrutinised in the usual way - in particular, there was a full debate in Standing Committee on the Own Resources Decision proposal in December 1993. Once the Own Resources Decision had been negotiated, and the European Community (Finance) Bill, as it then was, to ratify (technically "adopt") the ORD had been presented to Parliament in November 1994, the passage of the Bill allowed for full discussion of the IIA, the FP, the implications for Community finances up to the end of the decade, UK contributions, and indeed a range of other matters such as financial management and fraud.

7. It is too early to say in detail how the next 5/7 year "package" will be handled, not least because we do not know what proposals will be made. Presumably Parliamentary consideration will broadly follow the precedents.

8. Moving to the annual Budget, the Treasury keeps the Scrutiny Committees of both Houses of Parliament closely informed at all stages. There is usually a Standing Committee debate in the House of Commons. The House of Lords Select Committee on the European Communities generally prepares a Report on the Budget, on the basis among other things of oral examination of Treasury officials and sometimes of a Treasury Minister.

9. However, the timescale for the scrutiny of the considerable mass of Budget documentation is

[1] In France the "levy" on the revenue side of the national Budget which constitutes the gross contribution is now approved by the National Assembly, but - since there is a Treaty obligation to pay - formally the position remains that the levy could and would still be paid if for some reason the vote did not take place.

very short, between the arrival of (most of) it in mid-June and the first Budget Council at the end of July. There are special arrangements for handling this documentation as fast as possible. Nevertheless the lack of time is a matter of concern both for Parliament and the Government. Indeed the French National Assembly made a similar complaint this year.

10. Opportunities for Parliament to consider the UK's contributions to the EC Budget, net and gross, arise both in the scrutiny of the annual EC Budget and in consideration of the national Budget. The key information is published in the Financial Statement and Budget Report (FSBR) at each national Budget. More information is available in the Chancellor of the Exchequer's Departmental Report, usually published in March, which covers this part of the Government's expenditure plans in more detail.

11. There is also relevant information in the Treasury's annual White Paper on European Community Finances, which comprises a Statement on the EC Budget for the year in question together with an account of measures to counter fraud and financial mismanagement against the Community Budget and some historical material.

12. Finally there is the question of "value for money" (VFM) audits of UK contributions to the EC budget.

13. In the Treasury's experience, Parliament is naturally and actively interested in questions of financial management, value for money and fraud involving the Community Budget. Hence, for example, the Government's decision, first reflected in the 1995 White Paper, to give more details of recent developments in this area in the annual White Paper. The Government deposits important Community documents such as the Annual Report of the Fight Against Fraud, and the Annual and Special Reports of the European Court of Auditors. These will usually be the subject of debates, usually in Committee, in the House of Commons and may also feature in the extended oral Parliamentary Question exchanges of the House of Lords.

14. In 1995, the National Audit Office reported on the ECA Annual Report for 1994 and the ECA's first Statement of Assurance. The NAO Report included specific comments on matters relating to the UK on both the expenditure and revenue sides of the Community Budget, and more general comments on other matters. The Parliamentary Accounts Committee subsequently reported to the House.

15. However, Parliament's authority to investigate Community expenditure in the traditional way in which it investigates national expenditure is limited to Community expenditure which passes through Government Departments in the United Kingdom, ie to expenditure for which these Departments account. For obvious reasons, neither Parliament as a whole nor the Public Accounts Committee has authority over what happens in Community Institutions, or in other Member States (any more than the Parliaments of other Member States have authority in the UK). As the UK's contributions to the EC budget are not hypothecated to any particular expenditure, whether within or (in respect of our net contribution) outside the UK public sector, it is not possible to perform a VFM audit of the contributions themselves.

NJ Ilett, Head of EU Finance, HM Treasury

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