

European Policy Brief

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The Role of National Parliaments in the European Union

Introduction

A recurrent theme of the proposed European Constitutional Treaty is the desire of its drafters to bridge the political and psychological gap between the European citizen and the European Union's institutions. These latter institutions are widely seen by the European public as remote, mysterious and lacking in political legitimacy. In the hope of softening this unflattering perception, the draft Constitutional Treaty suggests a number of changes to the European Union's decision-making procedures, designed to simplify, to democratise and to clarify its workings. Prominent among these changes are proposals to enhance the role of national parliaments in the European political process, by giving them a limited right of scrutiny over new legislation put forward by the Commission. This *European Policy Brief* considers in detail these recommendations of the draft Treaty for involving national parliaments more fully in European legislative arrangements. It also asks whether national parliaments are genuinely suited, as the Treaty's drafters apparently hope, to act as a golden bridge between the European Union and its often estranged citizens.

Background

Even before the Constitutional Convention began its work in 2002, voices had already been raised in favour of the more direct involvement of national parliaments in the European legislative structure. This enhanced role for national legislatures, it was often argued, would in its turn enhance the political legitimacy of the European Union in general. In 2000, the British government called for the setting up of a European Second Chamber, consisting of national parliamentarians co-legislating with the European Parliament and the Council. This call was later echoed by the Spanish government. The Nice Treaty at the end of 2000 then called for further consideration of this whole issue before the Union's next wave of enlargement. The burgeoning interest in a larger European role for national parliaments (by no means confined only to Spain or the United Kingdom) sometimes reflected the fear of certain national parliamentarians that the evolution of the European Union's legislative structures was condemning them to an ever more marginal role. In other quarters, by contrast, the hope was occasionally expressed that national parliamentarians would be more enthusiastic advocates of continuing European integration if they had a greater direct stake in the process.

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EDITOR'S NOTE

This is the third in a series of regular *European Policy Briefs* produced by the Federal Trust. The aim of the series is to describe and analyse major controversies in the current British debate about the European Union. Forthcoming papers will consider democratic legitimacy in the European Union, the possibility of a 'two-speed Europe' and the forthcoming European elections.

We would welcome comments on and reactions to this policy brief. It and its successors will be available on the Federal Trust's website www.fedtrust.co.uk

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Given this background, it was inevitable that the Convention should spend a substantial amount of its time on the issue of national parliaments. One of its first steps was the creation of a special Working Group on the subject, chaired by the British parliamentary representative, Gisela Stuart. Although the group discussed the Anglo-Spanish proposal, no agreement could be achieved on this matter, its opponents persuasively arguing that the creation of a new European institution would further complicate rather than simplify decision-making.

Despite its inability to reach consensus on this radical reform, the Working Group was able to agree on certain, more limited proposals. These proposals were endorsed by the Convention's plenary sessions and provoked no particular controversy in the later Intergovernmental Conference. Even the British government, perhaps influenced by the leading role of one of its MPs in the Working Group, expressed itself satisfied with the Convention's recommendations, at least as a first step. If and when the European Council is able to overcome the deadlock of the Brussels meeting last December and adopt a European Constitutional Treaty, it is overwhelmingly likely that its content will be based upon the recommendations of the Convention. It can be taken as given that in the medium term national parliaments will play an increased role in the legislative process of the European Union.

The Convention's proposal

The principal texts dealing with the proposed new role for national parliaments in the European legislative system are laid out in two Protocols annexed to the draft Treaty: the 'Protocol on the Role of National Parliaments' and the 'Protocol on the Application of the Principles of Subsidiarity and Proportionality'. The first Protocol is designed to ensure that national parliamentarians are better informed about the European decision-making process. The latter Protocol is concerned specifically with the monitoring of subsidiarity and the new role for national parliaments in this area.

The Protocol on the Role of National Parliaments gives national parliaments

the general right to receive at the same time as the European Parliament and Council of Ministers all Commission strategy papers, as well as the Commission's annual legislative programme. A similar system will apply to all the Commission's new legislative proposals in specific areas. Finally, the Council of Ministers will be required to forward its agendas and the minutes of its meetings discussing legislation to the national chambers. This material will be of particular use to national parliaments in their task of scrutinising the work of their individual national governments within the Council of Ministers. It cannot be stressed too often that the 'European' institution of the Council of Ministers is made up exclusively of national representatives, whose activities on behalf of their governments are not always as well scrutinised by national parliaments as they should be.

The Protocol on the Application of the Principles of Subsidiarity and Proportionality directly extends the role of national parliaments into the European decision-making process. They are given the task of scrutinising EU legislation in order to ensure its conformity with the principles of subsidiarity and proportionality. This process of scrutiny includes five steps, which are laid out in the annex to the draft Treaty:

- The first step requires the Commission to examine its legislative proposals for their conformity with the principles of subsidiarity and proportionality. The Commission, before it proposes any new legislation, has to satisfy itself that the matter in question could not be better regulated at national rather than European level ('subsidiarity') and that the measures proposed stand in a reasonable relationship to the goals to be achieved ('proportionality').
- The Commission is then required to forward all its legislative proposals to the national parliaments at the same time as it forwards them to the Council of Ministers and the European Parliament. Any resolutions of the European Parliament or positions adopted by the Council of Ministers on legislative proposals must equally be sent immediately to the member states' national parliaments.
- If a chamber of a national parliament believes that a proposal is in breach of the principles of subsidiarity and proportionality, it may then send to the Presidents of the European Parliament,

Council and Commission a 'reasoned opinion' on the proposed legislation, setting out the reasons for its concerns.

- If these 'reasoned opinions' represent at least one third of the votes allocated to national parliaments and their chambers (unicameral parliaments have two votes; each chamber of a bicameral system has one vote), the Commission must review its draft legislation. The Commission may then decide whether to maintain, amend or withdraw its proposal.
- Where a national parliament believes that a suggested piece of European legislation infringes the principle of subsidiarity, it may ask its national government to bring a case before the European Court of Justice. This step, however, can only be taken retrospectively when the legislation has been adopted.

This new system of scrutiny has been dubbed the 'early warning system'. The parliaments are given full and speedy access to all documents in the legislative procedure, be they from the Commission, the European Parliament or the Council of Ministers. They are encouraged to draw the Commission's and Council's attention to possible infringements of the principles of subsidiarity and proportionality. They are, however, not given a genuine veto in the legislative process. The Commission can choose to ignore the national parliaments' 'yellow card' and press forward its proposal without making any amendments. Parliaments can indicate their discontent but are not able to prevent legislation from being further discussed and adopted by the Council of Ministers and the European Parliament.

A critique of the new system

In its work, the Convention was seeking to achieve a number of related goals. Two of its central ambitions were to increase the efficiency and to strengthen the legitimacy of the EU's institutional decision-making. But it is questionable whether the new role envisaged by the Convention for national parliaments in the European legislative structure would help achieve either of these goals. The Convention's proposals would certainly add another level of consultation to the existing decision-making process, but it is not clear that it would thereby make

the process more efficient or legitimate. Critics have pointed to a number of shortcomings in the proposed system.

One obvious and fundamental difficulty would stem from the inevitably widely diverging application of the system throughout the Union's member states. The process is an entirely voluntary one, and differing national legislatures would undoubtedly react to it with differing degrees of interest and enthusiasm. Some national parliaments, such as the Danish and possibly the British, would be eager to review new European legislation to the very limit of the powers conferred upon them. Others, perhaps particularly in smaller new member states, may not see their participation in an essentially consultative system as being a high priority for the deployment of their limited resources. The third of national parliaments necessary to force the Commission to review its proposed legislation may well be as difficult administratively as politically to gather together. The whole question of 'subsidiarity' and the supposed need for national parliaments to restrain the excessive ambitions of the Commission is not one that has a political resonance everywhere in the European Union. For many national legislatures, the Convention's proposed system could well remain a purely formal affair, hopelessly inadequate as a contribution to solving the genuine problem of wide-ranging estrangement between the European Union and its citizens.

It is difficult moreover to see how scrutiny by national parliaments of European legislation could avoid being embroiled in domestic political controversy. Many opposition parties would be much more interested in using the new scrutiny process to attack their national governments rather than in contributing to the drafting of effective European law. The system proposed by the Convention would particularly lend itself to political point scoring in the UK. Far from bridging the gap between the European electorate and the European Union, an enhanced role in European law-making for national parliamentarians in the form envisaged by the Convention would be a standing incitement for political parties in opposition, particularly those of a Eurosceptic tendency, to claim that national interests were being betrayed

at the European level by their political opponents.

In general, the aspiration of the proposed system (mentioned in the Convention's text) to create co-operation between parliamentary bodies throughout the European Union is surely unrealistic. Quite apart from the obvious linguistic and administrative barriers, parliaments in different countries function in different ways, with different understandings of their national roles and different expectations vested in them by their electors. It might well be that on an individual piece of proposed legislation a number of different national parliaments could come to a similar conclusion about its compatibility with the principle of subsidiarity. But it is difficult to see that there could ever be the administrative and political basis for a coherent national parliamentary voice in the law-making procedures of the European Union.

In short, the 'early warning system' brings national parliaments into the European decision-making process, but it does so in an ineffective and marginal way. The Commission is not bound to accept their opinions, and if national legislatures wish to institute legal action when ignored by the Commission, they can only do so through their national governments. The Convention's supporters have argued that the force of the 'early warning system' resides in the political signal which it sends, relatively early in the legislative process, to the Commission and the Council that they may be going further in their proposals than national sensitivities will tolerate. The 'early warning system' is seen by some of its advocates as a further bulwark against the 'competence creep' to which the European Commission in particular is supposedly prone. Given the care with which the Commission already canvasses opinion in the member states before putting forward its proposals, this argument has a greater theoretical than practical potency. Even if the underlying idea of involving national parliaments more fully in the EU law-making process is sound, the Convention's proposal in this area is unlikely to make a significant change to the present, supposedly unsatisfactory, functioning of the European Union.

A step in the wrong direction?

Few commentators would question that the European Union, and particularly its central institutions, lack the familiarity and political legitimacy generally accorded to national political institutions in Europe. The vast discrepancy between the turnout in national and European parliamentary elections throughout Europe is an apparent instance of this general truth. But it is far from obvious that the EU's democratic deficit can genuinely be resolved, as some analysts seem to hope, simply by binding national parliamentarians a little more firmly into the European legislative process. In addition to any specific criticisms of the Convention's proposals, a number of general considerations speak against the superficially seductive argument that an enhanced role for national parliaments in the European Union's institutional structure will of itself increase the democratic legitimacy of the Union.

National parliaments are not equipped to deal with European issues. National parliamentarians in general are not well informed about the European political process. Their tasks as national legislators are demanding, complex and time-consuming. It is more than doubtful whether any substantial number of them would have the time and level of expertise to make a significant contribution to the detailed scrutiny of European legislation. Ill-prepared and occasional contributions by national parliamentarians on international issues which are not their area of specialisation are unlikely to improve either the quality of European legislation, the perceived democratic legitimacy of that legislation or indeed the public standing of MPs themselves.

National parliaments have no mandate to legislate at the European level. It is clear that in their national elections, European electors generally cast their votes in the hope of securing the implementation of an essentially domestic political agenda. They primarily choose their governments to administer and legislate on national issues such as education, health care, social policy and crime prevention. In so far as foreign policy influences this choice, it is only in the broadest possible terms. Once elected, parties, and to a lesser extent individual MPs, are judged upon their

performance as national government or opposition, on the policy choices they have made and implemented. A positive verdict on their performance assures their re-election, a negative verdict their replacement.

But none of this system is easily, if at all, transposable to the European level. It is as potential legislators in the British legislative system that British governments and MPs are chosen by their electors, not as European law-makers. The fundamental political and legal structure of the European Union is erected on the interaction of a number of supranational institutions, namely the Council of Ministers, the European Commission, the European Parliament and the European Court of Justice. To attempt to insert into this supranational system purely national institutions such as the House of Commons or the Bundestag would require a fundamental reworking of the whole institutional balance of the Union. The Convention (rightly) proposes no such reworking. Its proposals on the role of national parliaments in the European legislative system are fragmentary and unsatisfactory as a result.

National governments can bridge the gap between the electorate and the EU. In the United Kingdom in particular, there are widespread misconceptions about the European legislative process, misconceptions which national governments should do more to correct. European laws are often seen as issuing from and being adopted by the huge bureaucratic and unaccountable institution of the European Commission. In fact, the number of staff working at the Commission is smaller than the number of people working for Kent County Council and the Commission can only propose, not adopt European legislation. Every law that is passed at European level has to receive the approval of national governments as well as the European Parliament. Both of these institutions are directly linked to the European citizens. The European Parliament is elected by universal suffrage and the Council is made up of national governments, held accountable by their parliaments and citizens.

There are two negative consequences following from the reluctance of many national governments in the European

Union to explain to their electorates the existing democratic legitimacy of the European legislative process. The first is to undercut the role and standing of the European Parliament. Poor turnout in European Elections is largely due to the reluctance of national politicians to recognise and speak about the democratic legitimacy of a supranational parliament which, wrongly, they sometimes regard as a rival to their own. The second consequence is that national governments often fail to stress sufficiently their own leading role in the adoption of European legislation. The most natural and appropriate role for national parliaments in the European legislative structure is the enhanced scrutiny of what their own national governments do in the Council of Ministers. This is not a fact that national governments have always been eager to expound to their domestic parliamentarians.

Conclusion

The Convention's proposals on the role of national parliaments in the EU's legal system represent an unhappy and unsatisfactory compromise. They seem to reflect an underlying, but questionable belief that the Union's political and legal structure will be improved by an increased formal role for national parliamentarians in European law-making. Even so, the formal role allocated to national parliaments by the Convention is extremely limited in scope and purely consultative in effect. If the Convention genuinely believed that it was important to involve national legislators more fully in European legislation, they could surely have found a more credible way of doing so.

A particularly strange aspect of the Convention's recommendations in this area is the proposed continuation of the present arrangement whereby national parliaments cannot bring a case before the European Court of Justice except with the help (which may be refused) of a national government. It seems highly illogical to claim that national parliaments have a particularly valuable contribution to make on questions of subsidiarity and proportionality, and then deny them the right to seek to have their views tested on these legal issues before the European Court of Justice. A more

coherent system would have been to give a certain number of national parliaments, such as two thirds of the total, a right to go in their own name to the European Court of Justice to have legislation struck down where they believed that the principles of subsidiarity or proportionality had been infringed.

Much criticism has been directed by a variety of commentators at the totality of the Convention's recommendations on institutional questions. A common complaint has been that the Convention's draft Treaty reflects too wide a gamut of institutional models and philosophies to be intellectually coherent. This criticism has considerable force when directed towards the Convention's proposals for national parliaments. But there is force too in the frequent riposte of the Convention's advocates, that it needed in its draft Treaty to reflect the widely divergent views which already exist within the European Union about the Union's appropriate institutional structure. The Convention could not manufacture a consensus where none existed. In the European Union soon to have 25 member states, there is very little consensus on the role, legitimacy and working methods of the Union's institutions. The Convention's unsatisfactory recommendations on the role of national parliaments are simply one consequence of this disharmony.

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Forthcoming titles in the *European Policy Briefs* series will include contributions on democratic legitimacy in the European Union, the possibility of a 'two-speed Europe' and the forthcoming European elections.