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**Fifth bi-annual report:**

**Developments in European Union**

**Procedures and Practices**

**Relevant to Parliamentary Scrutiny**



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# Introduction

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

## **COSAC's bi-annual reports**

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

The first report was discussed at the XXXI COSAC in Dublin in May 2004; the second report was presented to the XXXII COSAC in The Hague in November 2004; the third biannual report was prepared for the XXXIII COSAC in Luxembourg in May 2005; and the fourth report was written for the XXXIV COSAC in London in October 2005.

All the biannual reports are available on the COSAC website: <http://www.cosac.org/en/documents/biannual/>

The five chapters of this report are based on information provided by the national parliaments of the 25 EU Member States. Chapters three and four also include information provided by the European Commission and the Council. We are very grateful to them for their cooperation with us in this project.

Chapter one provides an overview of different types of actions taken by national parliaments during the period of reflection by highlighting examples of different types of activities. Chapter two reports on developments relating to subsidiarity and proportionality since the last COSAC meeting. The last three Chapters follow up on issues raised in the Contribution addressed to the EU institutions adopted by the XXXIV COSAC in October 2005. Chapter three provides information on which Member States participate in recently agreed ESDP operations and examines how these missions have been scrutinised in national parliaments; chapter four presents the Commission's responses to the paragraphs in the Contribution on impact assessments; and chapter five reports on developments regarding openness in the Council.

### **A note on numbers**

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

Although they have bicameral systems, the national parliaments of Austria, Belgium, Ireland and Spain each sent a single response to the COSAC questionnaire. (The Irish Parliament and the Spanish Parliament both have joint committees on EU affairs.) The COSAC secretariat received a response to its questionnaire from the national parliament of every Member State. This means that there are 34 responses, including answers from the European Parliament and the parliament of FYROM; these are all published in a separate annex, which is also available on the COSAC website.

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# 1 Period of reflection

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## 1.1 BACKGROUND

The European Council in June 2005 called for a period of reflection on the Treaty establishing a Constitution for Europe to allow a wide debate in Member State involving citizens, civil society, social partners, national parliaments and political parties. This proposal for a wide debate on the future of Europe was the subject of paragraph 5 of the Contribution adopted at the XXXIV COSAC in London in October 2005:

"COSAC agrees that overcoming the current EU crisis requires a wide debate involving the citizens of the Union, not only its institutions and elites. Such a debate should take place at all levels — local, regional, national and European. Special responsibility for this endeavour lies with national parliaments and the European Parliament. A series of meetings should seek to stimulate, steer and synthesise the different debates, raise European awareness and lead to a clear definition of the role and objectives of the EU, understood and accepted by European citizens. This would in turn facilitate further decisions on the future of the Constitutional Treaty."

The UK and Austrian Presidencies presented a joint report to the European Council in December 2005 summarising national debates on the future of Europe in the Member States. That interim report will contribute to an overall assessment of national debates in the first half of 2006 under the Austrian Presidency.

This chapter adds to that interim report prepared by the UK and Austrian Governments by providing an overview of actions taken by national parliaments during the period of reflection.

The secretariat distributed the above-mentioned interim report (Council document 15576/05 DQPG) to national parliaments and asked whether they had additional information on initiatives they had organised or were planning to organise connected to the period of reflection.

This chapter provides a general overview of different types of actions taken by national parliaments during the period of reflection. Most of the national parliaments have taken a wide range of actions; here we categorise the activities by different types. The list of actions or the reference to parliaments is by no means exhaustive; for a complete picture, see the responses from national parliaments in the Annex to this report.

## 1.2 RATIFICATION

Three national parliaments have taken concrete steps to ratify the Constitutional Treaty since the last biannual report. In Belgium, the last of the regional parliaments adopted on 8 February 2006 the bill to approve the Constitutional Treaty<sup>1</sup>.

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<sup>1</sup> In the context of ratification of the Constitutional Treaty, the Presidents of the seven legislative assemblies of Belgium (Chamber of deputies, Senate, parliaments of the Regions and Communities) signed a co-operation agreement which foresees implementation of the protocol of the application of the subsidiary principle annexed in the Constitutional Treaty. For further information, see Chapter 2 of this report.

On 8 February 2006, the Estonian *Riigikogu* concluded its first reading of the Bill on the Ratification of the Treaty establishing a Constitution for Europe. Upon the initiative by the EU Affairs Committee the Riigikogu plenary held a debate on the "Future of Europe" as a deliberation of matter of significant national importance on 6 April 2006. On 20 April, the Constitution Committee unanimously decided to put the ratification act to the 2nd (final) reading in the plenary on 9 May 2006. The Treaty was ratified on the 9<sup>th</sup> of May by the Riigikogu.

The Finnish *Eduskunta* received a Government Report to Parliament on the Treaty establishing a Constitution for the European Union at the end of last year. According to the Finnish scrutiny system for international treaties, the Grand Committee (the EU Affairs Committee), as well as the specialised committees, gave their views with reasoning to the Foreign Affairs Committee. The Finnish parliament's EU Affairs Committee decided on 7 April to support Finnish ratification. On 28 April the Foreign Affairs Committee prepared the final report to the plenary, in which it asked the Finnish Government to submit the treaty for ratification before the beginning of the Finnish EU presidency. The plenary debate took place 10 May. The Parliament of Finland endorsed 12 May the report of the Foreign Affairs Committee by 104 votes against 24 (60 members were absent, 11 empty ballots). With the adoption of the report, parliament encourages the government to make a proposition on the ratification of the Constitutional Treaty. The Prime Minister has stated that a bill on the ratification of the Constitutional Treaty can be given to the Parliament 2 June at the earliest.

### 1.3 PARLIAMENTARY DEBATES

Most national parliaments have actively debated the question of the future of Europe during regular committee meetings or special plenary debates. Parliaments have often invited also members of the national government to present their views. The French *Assemblée Nationale*, for example, systematically organises a public debate before every European Council.

Several national parliaments also debated the Commission's Work and Legislative Programme for 2006<sup>2</sup> either in the plenary or in the EU Affairs Committee. On 25 October 2005, Mr. Mejdahl, the Speaker of the Danish Parliament (the Parliament holding the Presidency of the Conference of Speakers of European Union Parliaments), wrote to national parliaments regarding implementation of the initiative "Raising national European awareness"<sup>3</sup>. He proposed that, where possible, national parliaments finalise their examination of the Commission's annual work programme

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<sup>2</sup>Commission Communication COM(2005) 531 final:  
[http://www.europa.eu.int/comm/atwork/programmes/index\\_en.htm](http://www.europa.eu.int/comm/atwork/programmes/index_en.htm)

<sup>3</sup> The declaration on the role of national parliaments in the European debate: "Raise national European awareness" appeared in a document that was presented to the Convention on the Future of Europe by Mr René van der Linden and Mr Frans Timmermans (CONV 834/03, 24 July 2003). The document was co-signed by fifty other members and alternates of the Convention. The document proposed that a coinciding debate should take place in all the EU national parliaments on the Annual Legislative and Work Programme of the European Commission in the same week as this debate was scheduled in the European Parliament. The Conference of Speakers in Budapest in June 2005 welcomed the declaration on the role of national parliaments in the European debate and called upon the national parliaments "to hold a debate preferably in plenary session each year on the annual legislative and work programme of the European Commission with due respect for their internal work programme, legal framework and traditions." The Conference of Speakers requested Denmark – as the incoming "presidency" of the Conference – "to make the necessary consultations to find an appropriate timeframe for the implementation of the declaration, and report back to the Conference on the experience with the implementation of the declaration".

for 2006 by 16 December 2005<sup>4</sup>. The debates were also used in several national parliaments to decide on the subject for the second subsidiarity and proportionality check<sup>5</sup>.

The Italian Senate focused on the debate that took place during the scrutiny of the Commission's Legislative and Work Programme by the Committee on EU policies. The debate was an occasion to give a strong indication to the Government and to raise awareness among Senators about European issues. Furthermore, it aimed at presenting to other EU parliaments the position of Italy regarding the period of reflection. The scrutiny was carried out jointly on the Commission's Legislative Working Programme and the Operational programme of the Council for 2006<sup>6</sup>. On 26 January 2006, a resolution was unanimously passed highlighting the position of the EU Committee on major European matters and in particular on the future of Europe. It engaged the Government to adopt any useful initiative in order to resume the ratification process of the Constitutional Treaty and, for this purpose, asked it to encourage debate on the Commission's "Plan-D for Democracy, Dialogue and Debate".

The Joint Committee on European Affairs of the Irish Parliament has actively engaged in the period of reflection, particularly through pre-GAERC exchanges with the Minister for Foreign Affairs and through proactive engagement with practical examples of where the EU impacts on citizens' lives. The Irish Parliament plans to produce a number of reports of relevance to the approach taken by the Commission.

With a view to offering the public more information, since mid-2005 the Rules of Procedure of the Austrian National Council have allowed for regular special plenary meetings to discuss EU issues in which the working programmes of the EU Presidency and other topical EU projects are dealt with. Reports by the Austrian EU Main Committee can also be placed on the agenda of such meetings. Information dossiers for parliamentarians, which serve as a basis for discussion, are provided in preparation for the meetings by the new EU Coordination Division.

After the referenda on the Constitutional Treaty in France and the Netherlands and the European Council in June 2005, the European Parliament's Committee on Constitutional Affairs (AFCO) discussed options of action during the period of reflection within the process of ratification. On 7 July 2005, AFCO was authorised by the Conference of Presidents to draw up an own initiative report on the period of reflection. The report, prepared by the co-rapporteurs, Andrew Duff and Johannes Voggenhuber, led to a resolution adopted on 19 January 2006<sup>7</sup> by which it was proposed that the European Parliament and national parliaments should jointly organise conferences - 'Parliamentary Forums' - in order to stimulate the debate and to shape, step by step, the necessary political conclusions.

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<sup>4</sup> According to the Conclusions of the Conference of Speakers of European Union parliaments meeting in Budapest, the Danish Folketing was called upon to prepare a report on the declaration's implementation to the Conference in Copenhagen 29 June - 2 July. The interim report outlines the preliminary results of the implementation. The final conclusions of the initiative will be submitted to the Conference of Speakers meeting in Copenhagen. The interim report can be found from the EU Speakers website:

[http://www.eu-speakers.org/en/conferences/copenhagen/initiatives/european\\_awareness/doc/](http://www.eu-speakers.org/en/conferences/copenhagen/initiatives/european_awareness/doc/)

<sup>5</sup> Document prepared by the COSAC secretariat on Proposals from national parliaments for legislative proposals to be subject to the forthcoming subsidiarity and proportionality check can be found on the COSAC website:

<http://www.cosac.org/en/meetings/vienna2006/presidents/meetingdocs/>

<sup>6</sup> <http://register.consilium.eu.int/pdf/en/05/st15/st15216.en05.pdf>

<sup>7</sup> Link to the resolution: <http://www.europarl.europa.eu/omk/sipade3?PUBREF=-//EP//TEXT+TA+P6-TA-2006-0027+0+DOC+XML+V0/EN&L=EN&LEVEL=0&NAV=S&LSTDOC=Y&LSTDOC=N>

The European Scrutiny Committee of the UK House of Commons reported on Plan D in its twenty-second report (dated 15 March 2006) and recommended that it should be debated in a European Standing Committee. The Select Committee on the European Union of the UK House of Lords is conducting an inquiry into public awareness and the role of the House of Lords in scrutinizing EU legislation, which will report during May. The House as a whole regularly debates EU matters, including issues related to the future of Europe.

The European Union Affairs Committee of the *Sejm* of the Republic of Poland plans to organize a debate on the future of Europe at one of its meetings in April. Furthermore a plenary debate on the future of the European Union was envisaged in May.

#### 1.4 CONTACTS WITH THE COMMISSION

Numerous national parliaments have invited members of the Commission to visit and take part in debates and seminars in national parliaments. For example, the President of the Commission, José Manuel Barroso, addressed the plenary of the French *Assemblée Nationale* on the 24 January 2006. Other members of the commission have also actively visited National Parliaments<sup>8</sup>. The Slovenian National Assembly might hold a record in this respect, since in the early months of 2006 it has already hosted the President of the Commission, the EU Commissioner for Institutional Relations and Communication Strategy, Margot Wallström, the EU Commissioner for Science and Research, Janez Potočnik, the EU Commissioner for Transport, Jacques Barrot, the EU Commissioner for Enlargement Olli Rehn and the EU Commissioner for Economic and Monetary Affairs, Joaquin Almunia.

Contacts between national parliaments and the Commission are set to continue in the future as well. For example, the President of the German *Bundestag* has invited the President of the European Commission to a forum with high-ranking representatives of the *Bundestag* and other interested members in order to discuss topical issues of the European Union, like the role of national parliaments within European integration, the European constitutional process and the repercussions of the Lisbon Agenda on national legislation. On 11 May 2006 the President of the Commission will hold talks with both chambers of the Austrian Parliament.

The European Affairs committee of Latvia's *Saeima* is organizing a conference on the Future of Europe in cooperation with the European Commission Representation in Latvia, which will take place on 22 May 2006. The participants will include, among others, the President of the Commission José Manuel Barroso, Vice-President Margot Wallström and member of the commission Andris Piebalgs, as well as government representatives, NGOs, media, etc. The conference will mainly focus on communication issues and on Latvia's integration processes into the EU.

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<sup>8</sup> The College of Commissioners endorsed Vice President Wallström's Communication on the Commission's relations with the national parliaments, and the annual report 2005 on these relations on 22 March 2006 (SEC(2006) 350 final). Annexed to the Communication was a complete list of all visits by the members of the Commission to the National Parliaments. The Commission's communication is available here: <http://register.consilium.eu.int/pdf/en/06/st07/st07987.en06.pdf>

## 1.5 CONTACTS WITH THE CIVIL SOCIETY

The Slovenian National Assembly organised "the Spring Day in Europe" - a youth meeting - on 13 April 2005 on the European Constitution. The National Assembly also organised a European Week from 10 to 13 May 2005, with a series of public hearings on the topics such as the Constitutional Treaty, the Lisbon Strategy and Cohesion Policy.

The Hungarian National Assembly organised an "open day" on the Commission Legislative and Work Programme on 6 December 2005. This event gave the invited politicians, academics, journalists and NGOs an opportunity to intervene on the future of Europe and the on the way forward. As part of its information policy, the Hungarian Parliament also published a book on the Constitutional Treaty written by parliamentary officials of the EU Department of the Office for Foreign Relations.

The Dutch Chamber of Representatives plans a round table discussion with representatives of civil society. The results of this discussion could be sent to the Commission in the framework of Plan D and the public consultation following the White Paper on a European communication policy. Next to the round table discussion there will also be a public debate. The Dutch Senate organised a public hearing on the "Future of (The Netherlands in) the European Union" with employees and employers, journalists, former politicians and representatives of learning institutes. The Senate has also asked the civil society, different organisations and institutes to give their opinion on the Legislative and Working program of the European Commission 2006.

In Denmark, in February 2006, a nation-wide competition was arranged for students attending courses of youth education at upper secondary schools, higher preparatory courses, business schools, technical schools, etc. Classes were invited to send in proposals for three of the five questions that were identified as central for the Danish debate during the period of reflection. It will be possible to read all contributions to the EU Youth Parliament at [www.borgernesdagsorden.dk](http://www.borgernesdagsorden.dk) as they are received, and they will later be published as a whole in the middle of May 2006. A brief summary of all contributions will be prepared for inclusion in the report of the European Affairs Committee to the Prime Minister in time for the meeting of the European Council in June 2006. During May and June, 27 classes will be invited to take part in an EU Youth Parliament at Christiansborg on 27 September 2006.

Alongside the elaboration of the report on the period of reflection (the Duff-Voggenhuber Report) the European Parliament's Constitutional Affairs Committee, AFCO, continued exchanges with the academic world by organising a symposium on 13/14 October 2005 on the future of the constitutional process of the European Union. Fifteen experts from Universities and 'think tanks' all over Europe were heard and engaged in a debate. At the same time, AFCO developed the debate with the social partners and the civil society at large. Thus, a 'European Forum for the Social Partners' was held on 21 March with UNICE, ETUC and CEEP participating and a 'European Forum for the Civil Society' was held 24/25 April.

The European Affairs Committee of the *Seimas*, in cooperation with the representatives of various youth organisations from all over Lithuania, has taken an initiative to organise a Youth Conference on the Future of Europe, which would draw on the experience of the Youth Convention and, possibly, develop its activities with further involvement of the reflection period. The *Seimas*, together with the Government of the Republic of Lithuania and the Representation of the European

Commission in Lithuania has initiated an essay contest “My Opinion for Lithuania and Europe”, which invites Lithuanian citizens to give their opinion on various aspects of the future of European integration.

## 1.6 PARLIAMENTARY WEBSITES

A number of parliaments have opened special websites in order to activate the discussion on the future of Europe or related to their hearings or seminars with civil society.

In January 2006, the Danish parliament opened a website dedicated to the Danish debate on the Future of Europe: [www.citizensagenda.dk](http://www.citizensagenda.dk). The website is the central point of reference for the initiatives during the period of reflection, and contains an overview of public meetings to be held in Denmark and a web-based forum for debate. Furthermore, information and feedback from the public debate is collected on the site.

The Dutch Senate made an appeal to all citizens through the European website of the Senate [www.europapoort.nl](http://www.europapoort.nl) to give their remarks and opinions on European proposals as well as the Senate’s activities in the field of the EU. Likewise the EU Affairs Committee of the Parliament of Portugal decided in December 2005 to consult 151 organisations of civil society, academics and social partners, as well as of the other parliamentary standing committees, on the Constitutional treaty, on the ratification process and on the future of Europe. Related to this initiative, the Committee is designing a website dedicated to the debate on the future of Europe. This website was launched during a public hearing organised by the EAC on 2 May. The conclusions of the received contributions and questionnaires were presented and debated in the public hearing and can be found on the website: <http://www.europa.parlamento.pt>

Also the Slovak Parliament is in the process of finalising a website which will serve as an opinion exchange forum on current EU questions. Alongside information on the EU, there will be an interactive forum. The political parties represented in the Slovak Parliament, members of parliament, leading opinion makers and non-governmental organisations will be able to express their opinions on the questions as put forward in the European Parliament resolution on the period of reflection adopted in January 2006.

The French *Assemblée Nationale* plans also to include a new heading: "The European Union" on its website in order to grant wide public access to the activities and parliamentary scrutiny of European Affairs. Citizens are invited to answer an interactive questionnaire on the theme "What kind of Europe do you want?" Members of the Parliament have been encouraged to distribute the questionnaire in their constituencies.

## 1.7 MEDIA EVENTS

On 19 December 2005, a meeting with about 200 pupils was organised in the Austrian Parliament which gave them the opportunity to ask EU-related question, which were answered by members of the Conference of Presidents of the European Parliament as well as the EU State Secretary in the Austrian government. This meeting was broadcast live by the Austrian Broadcasting Corporation.

On 29/30 April the Danish Parliament organised a nationally televised hearing on the future of the EU. Approximately 400 participants were chosen as a representative sample of the Danish voting population on the basis of a major opinion poll regarding their attitude to European policy issues. Most of the work was carried out in groups that were led by an experienced chairman to ensure that everybody was able to express their opinion. Leading politicians and well-known experts were invited to take part in panel debates with the participants. In addition, parties and movements were allotted rooms in connection with the hearing where representatives had the opportunity to follow and comment on the hearing and participants could contact them if they wanted to discuss certain matters. The results of the public hearing will be included in the report that the European Affairs Committee will hand over to the Prime Minister before the meeting of the European Council in June 2006.

The German *Bundestag* has decided to seize the opportunity of the football World Championship in Germany (7 June – 9 July 2006) to enhance its public visibility in Berlin. A special visitor centre will provide information about the work and functioning of the *Bundestag*. The Committee on the Affairs of the European Union is planning to participate in this initiative in order to inform visitors and tourists about topical issues of European integration. In addition, the Committee has decided to open as many of its upcoming sessions as possible to the public, thereby fostering visibility and transparency of the German parliamentary debate on European issues.

The *Seimas*, the Government of the Republic of Lithuania and the Representation of the European Commission in Lithuania will organise a social action “60 minutes with Europe” with broad participation of regional radio and television stations. Members of the *Seimas* will meet with the Europe direct network in order to facilitate promotion of the European debate. It has also become a tradition for the *Seimas* to organise some social events – “Planting of the European Forest” and the bicycle ride to the “geographical centre of Europe”, which attract public attention.

The Czech Senate is opening in May 2006 a new information centre. One of its tasks will be explaining parliamentary aspects of EU Affairs.

## **1.8 SEMINARS, CONFERENCES AND VISITS**

Just about all the national parliaments have organised conferences and seminars on the topic of the Future of Europe. Up to March 2006, several conferences and seminars were organised by the Czech Senate (e.g. How to increase the efficiency and competitiveness of EU economy, European citizenship – virtue or void concept). In Sweden, several members of the Committee on the Constitution and on Foreign Affairs conducted series of visits to universities and public libraries in different Swedish cities in order to engage in the discussion the future of Europe.

On 31 October 2005, the Committee for European Affairs of the Chamber of Deputies of the Czech Republic organized an international conference "The Constitution for Europe – a Time for Reflection". Besides contributions from scholars and experts, the leading representatives of parliamentary groups also presented their approach to the further development of the European integration.

The European Parliament's Constitutional Affairs Committee (AFCO) has been sending delegations to national parliaments in order to discuss the state of affairs and trying to contribute positively to opinions on constitutional matters. AFCO has up to

now carried out nine delegation visits to national parliaments<sup>9</sup>. For the second half of the year a delegation is planned to Vilnius and a meeting with the European Affairs Committee of the German *Bundestag* will probably take place either in Berlin or in Brussels.

As part of the debate on the future of Europe, the Austrian Presidency of the EU Council, together with the Austrian Parliament and the Federal Land of Lower Austria, organized the 2006 European Subsidiarity Conference “Europe begins at home” on 18 and 19 April 2006. Representatives of the EU Member States and the EU institutions discussed with experts ways and means of contributing to a more citizen-oriented approach through a more effective application of the subsidiarity principle in the European legislative process<sup>10</sup>.

The *Seimas* of the Republic of Lithuania established a Working Group on the Future of Europe and Plan D in November 2005 to coordinate *Seimas* initiatives on the reflection period. Preparation for the Parliament’s activity in this field has been gradually evolving since spring 2006. A number of initiatives were developed, including open debates organised by parliamentary committees on a range of EU’s future related subjects. It has been decided to use an established framework for thematic debates. Most of the events were concentrated in April and early May and called “the April Debates on the Future of Europe”. The April Debates on the Future of Europe were followed by a plenary debate on 2 May, when the Parliament looked at Lithuania’s two-year experience of EU membership and outlined its activities in the second phase of the reflection period.

Debates on European policies were scheduled to take place in the German Federal States, *Länder*, during Europe Week. This year’s Europe Week took place in all *Länder* from 5 to 14 May 2006. It was organized in close cooperation with the Federal Government, the Commission and the European Parliament. Alongside the main European policy issues, the focus was on the European Constitutional Treaty and reform of the European Union. Numerous members of the *Bundesrat* were discussing these topics with citizens at a wide variety of events and campaigning for greater acceptance.

The Swedish *Riksdagen’s* Committee on the Constitution and the Committee for Foreign Affairs organised a seminar 9 May for a discussion on the future of Europe.

The Austrian Parliament and the European Parliament commonly organised a Joint Parliamentary Meeting on the Future of Europe on 8 and 9 May 2006. The meeting was intended to promote a debate on major issues of concern to citizens with regard to the future of Europe. In a coordinated effort to stimulate a joint parliamentary contribution to the period of reflection, it brought together national parliamentarians from the EU Member States, the candidate countries and the European Parliament.

The meeting, which took place at the premises of the European Parliament in Brussels, addressed a limited number of priority questions about the future of Europe and the governance of the European Union:

- i) Europe in the world and the borders of Europe

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<sup>9</sup> These visits took place in London, 25 January 2005, Brussels, 2 March, Paris, 16 March, Luxemburg, 29 April, Tallinn, 30/31 May, Warsaw, 27/28 June, Prague, 4/5 October, Lisbon, 21/22 November, and Helsinki, 7/8 March 2006.

<sup>10</sup> The complete conference documentation including the declaration by the Chair can be found on the website: [http://www.eu2006.at/en/The\\_Council\\_Presidency/subsidiarity/documentation/index.html](http://www.eu2006.at/en/The_Council_Presidency/subsidiarity/documentation/index.html)

- ii) Globalisation and the European social and economic model
- iii) Freedom, security and justice: what is the outlook?
- iv) Future resources of the Union

The meeting was co-chaired by the presidents of the European and the Austrian Parliament (*Nationalrat & Bundesrat*). The President-in-Office of the European Council, Chancellor Wolfgang Schäuble and the President of the European Commission, José Manuel Barroso, attended the meeting.<sup>11</sup>

## 1.9 FUTURE EVENTS

The Conference of the Speakers of European Union Parliaments, at its annual meeting in Copenhagen at the end of June 2006, will decide on whether further Joint Parliamentary Meetings on the Future of Europe should take place under the next EU Presidencies. The Joint Parliamentary Meeting may also stimulate further national debates, since for example the Committee for European Affairs of the Hellenic Parliament is considering further follow up meetings.

The Latvian *Saeima* traditionally contributes to the activities organized in the framework of Europe's yearly week during the first week of May. The EU Information centre of the Parliament of Latvia will also organize a meeting of the already established network of specialized EU information centres from the Baltic sea area from 14 to 16 June 2006.

A series of debates is to be organised by the Cabinet of the Marshal of the Polish *Sejm* with participation of members, experts and journalists. Issues to be discussed are: What is the goal of European integration? What role should Europe play in the world? What is the future of the European social and economic model? How do we define the boundaries of the European Union? The Polish Senate and *Sejm*, together with the European Parliament, will take part in the conference on "What Union? What Future? What Europe?" organized by the Jagiellonian University, in Krakow, on 11-14 September.

In the autumn of 2006, the Hungarian National Assembly will organise a large scale conference on the future of Europe and on the role of parliaments in the EU in the framework of Plan D. The conference will be co-chaired by the speaker of the National Assembly and the president of the European Parliament. Opinion formers such as European and national politicians, NGOs, journalists, academics will be invited to this event. The National Assembly will provide information material (booklets, brochures) and media coverage.

The Chairman of the Foreign and European Affairs Committee, together with the Head of Representation of the European Commission in Malta, is set to launch a series of initiatives aimed at raising awareness as to the latest developments within the European Union which are expected to result in confidence building among the general public.

In its working plan for 2006 and in the framework of the Commission Plan D, the Committee on EU Affairs of the National Assembly, Republic of Slovenia, intends to

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<sup>11</sup> Special website for this event can be found at: <http://www.futureofeuropa.parliament.gv.at/> or <http://www.futureofeuropa.europa.eu>

cooperate with other competent bodies of the National Assembly, with Slovenian Members of the European Parliament, the European Commission, the local authorities and civil society. In this regard, the Committee plans to organize a European Week in the National Assembly - public hearings, organized between 9 and 12 May 2006, concerning the priority topics of the Austrian EU Presidency and other topical issues. Plans also include cooperation with municipalities in presenting EU activities to the public. In 2006, the Committee will also organise monthly public joint meetings to discuss topical EU issues where the position of the Government will be presented by the relevant minister. Plans also include joint meetings every three months of members of the Committee on EU Affairs and Slovenian members of the European Parliament to exchange views, opinions and information on the current state of affairs in the EU.

The members of the delegation of the EU Affairs of the *Assemblée Nationale* are planning a tour of different European capitals before the June European Council in order to engage in the parliamentary dialogue on the future of Europe and the ratification of the Constitutional Treaty.

## 2 Subsidiarity

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### 2.1 SCRUTINY OF SUBSIDIARITY

In their responses to the questionnaire for the fourth biannual report, 18 national parliaments or parliamentary chambers (from 14 Member States) reported scrutinising EU legislation for compliance with the principles of subsidiarity and proportionality.

These were the following parliaments: Austria, the Czech Chamber of Deputies, the Czech Senate, Denmark, Estonia, Finland, the French *Assemblée nationale*, the German *Bundesrat*, Ireland, the Italian Chamber of Deputies and Senate, Lithuania, Malta, the House of Representatives and the Senate in the Netherlands, Portugal, the House of Commons and the House of Lords in the UK.

#### **National Parliaments and scrutiny of subsidiarity: The current Treaties**

Article 5 of the Treaty establishing the European Community gives a general definition of subsidiarity and proportionality, indicating respectively when and how the Community should act. The Treaty on European Union provides that any action taken by the EU to achieve its objectives must be in accordance with the principle of subsidiarity: Article 2 states that "the objectives of the Union shall be achieved as provided in this Treaty ... while respecting the principle of subsidiarity".

Furthermore, the Treaty of Amsterdam (which was agreed in June 1997 and came into force in May 1999) introduced a *Protocol on the application of the principles of subsidiarity and proportionality* to the Treaty on European Union. This Protocol provides that

"For any proposed Community legislation, the reasons on which it is based shall be stated with a view to justifying its compliance with the principles of subsidiarity and proportionality; the reasons for concluding that a Community objective can be better achieved by the Community must be substantiated by qualitative or, wherever possible, quantitative indicators."

Furthermore, the Protocol provides that the Commission should "justify the relevance of its proposals with regard to the principle of subsidiarity; whenever necessary, the explanatory memorandum accompanying a proposal will give details in this respect."

The Treaty of Amsterdam also included a *Protocol on the role of national parliaments in the European Union*. This Protocol recalls 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". The Protocol encourages "greater involvement of national parliaments in the activities of the European Union" and aims "to enhance their ability to express their views on matters which may be of particular interest to them". The Protocol also provides that

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

In addition, 3 further national parliaments - the French Senate, the German *Bundestag* and the Hungarian Parliament - did occasionally check whether EU legislation complies with subsidiarity and proportionality but did not do so systematically.

Furthermore, 6 other national parliaments - Latvia, Luxembourg, the Polish *Sejm*, the Polish Senate, the Republic of Slovakia and Spain - reported that although they did not currently perform this scrutiny, they might do so in the future.

The aim of this chapter is to take note on developments relating to subsidiarity and proportionality since October 2005.

## 2.2 NEW DEVELOPMENTS IN NATIONAL PARLIAMENTS

In the context of ratification of the Constitutional Treaty, the Presidents of the seven legislative assemblies of Belgium (Chamber of deputies, Senate, parliaments of the Regions and Communities) signed a co-operation agreement which foresees implementation of the protocol of the application of the subsidiary principle annexed in the Constitutional Treaty.

The agreement concerns the way in which the “two critical points” - foreseen in the "early warning mechanism" of the Constitutional Treaty - of Belgium will be allotted. It is up to the assemblies themselves to decide in which manner they will formulate their opinion on subsidiarity. The internal repartition of the subsidiarity votes happens as follows:

1. In case of a proposal of the European Commission belonging exclusively to the federal level: the House of Representatives and the Senate can give each one point.
2. In case of a mixed competence of a legislation proposal (federal and regional competence): two points are allotted if one of the federal and one of the regional assemblies formulates subsidiarity objections.
3. In case of a proposal belonging exclusively to the competence of the regional assemblies: two points are allotted when two regional assemblies belonging to a different “language group” have subsidiarity objections.

In Belgium, there are 7 regional assemblies (communities or regions) and four different language regimes. In order to bring out two points one always needs a combination, for example, of a French-speaking assembly and a Dutch-speaking assembly; or French-speaking and German-speaking. Even a small language group has thus the possibility to formulate a fully-fledged subsidiarity opinion. When the two points are allotted, this cannot impede other assemblies from formulating their opinion. All opinions will be transferred to the European institutions; and it must be clearly identifiable by which assembly they are formulated.

The German Bundestag reported that new legislation has recently entered into force that was designed primarily to implement the new procedures regarding the “early warning mechanism” on subsidiarity and proportionality as foreseen in the Constitutional Treaty. The majority of the new provisions will enter into force, however, only when and if the Constitutional Treaty itself will enter into force.

The new legislation provides, however, the legal basis for a new memorandum of understanding between the Federal Government of Germany and the *Bundestag* concerning information and co-operation in Affairs of the European Union. This provision entered into force on 18 November 2005. The negotiations on this memorandum began in March. The German government should provide more extensive information for the parliament and improve the ways of co-operation between the parliament and the government. In this way the *Bundestag's* capacities to scrutinise EU legislation on the principles of subsidiarity and proportionality as well as on the merits will be improved.

The Netherlands reported that the temporary committee for scrutiny of subsidiarity and proportionality (of both the Senate and the House of Representatives) was disbanded since its reports on a new States-General procedure for scrutinizing European proposals were adopted by both the House of Representatives and the Senate. At this moment the instalment of a new joint committee to actually carry out the scrutiny is being discussed. The foreseen date for the official instalment was around the beginning of April. The committee will (at least) scrutinize the two proposals for the second subsidiarity check, as decided upon by the COSAC chairpersons in Vienna in February.

The Dutch Senate also reports that its scrutiny procedure is improving due to the involvement of the Senate's select committees. Often a European proposal that has been brought to the attention of a select committee by the committee for European Cooperation Organisations is further scrutinised by the select committee. Normally, a European proposal is scrutinised by the Senate when the Dutch government has sent its opinion with regard to the proposal to the Senate. During the last months, several European proposals became subject to the Senate's scrutiny procedure when the government's opinion had not yet been received. This trend is in conformity with the opinion that earlier involvement is necessary in order to influence the wording of a proposal.

In the Spanish Parliament a working group on the early warning system included in the Protocol on Subsidiarity has been created by the Joint EU Committee. This Working Group will conduct a series of hearings starting on 30 March in order to eventually draft a report on the scrutiny of subsidiarity and proportionality.

The Slovakian National Council reported plans to establish a special working group on subsidiarity and proportionality composed of civil servants (legal experts) coming from within the Chancellery. This working group will prepare possible scrutiny of subsidiarity and proportionality in the National Council.

The report on subsidiarity by the EU Committee of the United Kingdom House of Lords of April 2005<sup>12</sup> was followed by a Government response and a follow-up report from the Committee in November 2005.<sup>13</sup> The two reports were debated together in the House on 15 December 2005.<sup>14</sup>

Several chambers (including Cyprus) indicated in their answers that the subsidiarity check is a usual part of parliamentary scrutiny. Consequently, it is now the case that 22 national parliaments or parliamentary chambers (from 16 member states) have mechanisms to scrutinise EU legislation for compliance with the principles of subsidiarity and proportionality.

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<sup>12</sup> The report on subsidiarity is available at:

<http://www.publications.parliament.uk/pa/ld200405/ldselect/ldcom/101/101.pdf>

<sup>13</sup> The follow-up report, which includes the UK Government's response to the main report, is available at:

<http://www.publications.parliament.uk/pa/ld200506/ldselect/ldcom/66/66.pdf>

<sup>14</sup> A transcript of the debate is available at:

[http://www.publications.parliament.uk/pa/ld199900/ldhansrd/pdvn/lds05/text/51215-24.htm#51215-24\\_head0](http://www.publications.parliament.uk/pa/ld199900/ldhansrd/pdvn/lds05/text/51215-24.htm#51215-24_head0)

### 3 Scrutiny in national parliaments of civilian ESDP operations

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The EU Common Foreign and Security Policy (CFSP) and the European Security and Defence Policy (ESDP) contain military and non-military elements. The fourth COSAC biannual report included a breakdown of the personnel involved in all the EU's CFSP/ESDP missions - the first time that the Council had released this information. The XXXIV COSAC welcomed the Council's decision to publish information regarding which Member States participate in which CFSP/ESDP missions and called on the Council "to continue this good practice, which improves openness and helps parliamentary scrutiny." The Council has met this request and has continued to provide up-to-date information on the personnel involved in CFSP/ESDP missions, including which Member States contribute personnel to which operations.

ESDP missions are an area of rapid growth of EU activity, with 16 operations launched in just over 3 years. The civilian side of the ESDP, which comprises 12 of these operations, is formed around the EU's civilian crisis management capabilities.<sup>15</sup> The first civilian ESDP operation was the police mission to Bosnia (EUPM) in January 2003. When the questionnaire for the 4th biannual report was sent to national parliaments on 21 June 2005, six civilian ESDP operations had been launched:

- EU Police Mission in Bosnia-Herzegovina (EUPM);
- European Union Police Mission in the Former Yugoslav Republic of Macedonia (Proxima) (*Mission now completed*);
- European Union Law Mission in Georgia (EU JUST – Themis) (*Mission now completed*);
- EU Integrated Rule of Law Mission for Iraq (EUJUST Lex);
- EU Police Missions in Kinshasa (EUPOL Kinshasa);
- EU Mission in the DRC (EUSEC DRC).

In between June 2005 and the publication of the 4th biannual report in October 2005, two more ESDP missions with a civilian component were agreed by the Council:

- EU civilian-military supporting action to the African Union mission in the Darfur region of Sudan (AMIS II) (AMIS EU supporting action)
- Aceh monitoring mission (Indonesia)

Four further civilian EU operations were launched between the October 2005 and the questionnaire for this biannual report being sent out on 24 February 2006, namely:

- an EU border assistance mission to Moldova and Ukraine;
- an EU police mission in the Palestinian territories (EU POL COPPS);
- an EU police advisory team in the Former Yugoslav Republic of Macedonia (EUPAT); and
- an EU border assistance mission at Rafah crossing point in the Palestinian territories (EU BAM Rafah).

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<sup>15</sup> There have been three ESDP military operations so far: the EU Military Operation in Former Yugoslav Republic of Macedonia (FYROM/CONCORDIA), which ran from 31 March 2003 until 15 December 2003; the EU Military Operation in Democratic Republic of Congo (DRC/ARTEMIS) from 12 June 2003 until 1 September 2003; and the EU Military Operation in Bosnia and Herzegovina (EUFOR - Althea), which started on 2 December 2004 and will continue until 2006-07. Althea is the largest ESDP operation so far. The fourth military ESDP mission has been agreed but is not yet operational.

Since the questionnaire for this report was sent out to national parliaments another ESDP operation has been agreed by the Council:

- EU support to MONUC during the election process in the Democratic Republic of Congo (DRC)<sup>16</sup>

The Council's power to conduct a Common Foreign and Security Policy (CFSP) was created in the Maastricht Treaty under the so-called second pillar of the Union. The Maastricht Treaty identified the general objectives of the CFSP and gave CFSP a separate legal base, making it largely an inter-governmental procedure. National parliaments may therefore be considered to have a pivotal role to play in scrutinising the Union's activities in this field and holding their government to account for the EU's foreign policy. This chapter provides factual details of the six new civilian EU operations and information on how they were scrutinised in national parliaments.

### 3.1 SCRUTINY IN NATIONAL PARLIAMENTS OF RECENT CIVILIAN ESDP OPERATIONS

Only 7 national parliamentary chambers (from 6 Member States) reported scrutinising all 6 ESDP operations. These were Estonia, Finland, Ireland, Latvia, Sweden, the UK House of Commons and the UK House of Lords. A further 4 national parliamentary chambers (from a further 3 Member States) reported scrutinising 5 of the 6 operations: Austria, Denmark, the French *Assemblée nationale* and the French *Sénat*.

*Which national parliaments scrutinised which civilian ESDP missions?*

**Table 1: Scrutiny in national parliaments of recent CFSP/ESDP operations**

Member State	Scrutiny of EU supporting action to AMIS?	Scrutiny of Aceh monitoring mission?	Scrutiny of EU border assistance mission to Moldova and Ukraine?	Scrutiny of EU POL COPPS?	Scrutiny of EUPAT?	Scrutiny of EU BAM Rafah?
<b>Austria</b>	Yes - 13 December 2005	Yes - 7 September 2005	No	Yes - 13 December 2005	Yes - 13 December 2005	Yes - 13 December 2005
<b>Belgium</b>	Yes - July 2005	No	No	No	No	No
<b>Cyprus</b>	No, but took note	No, but took note	No, but took note	No, but took note	No, but took note	No, but took note
<b>Czech Republic</b> - Ch. of Deputies	No	No	No	No	No	No
<b>Czech Republic</b> - Senate	No	No	No	No	No	No
<b>Denmark</b>	Yes - 15 July 2005	Yes - 15 July 2005	Yes - 30 September 2005	Yes - 4 November 2005	No	Yes - 18 November 2005
<b>Estonia</b>	Yes - when discussing the GAERC agenda	Yes - when discussing the GAERC agenda	Yes - when discussing the GAERC agenda	Yes - when discussing the GAERC agenda	Yes - when discussing the GAERC agenda	Yes - when discussing the GAERC agenda
<b>Finland</b>	Yes - by FAC on 26 June 2005	Yes - by FAC on 8 September 2005	Yes - by FAC on 11 October 2005	Yes - by FAC on 8 September 2005	Yes - by FAC on 22 November 2005	Yes - by FAC on 22 November 2005

<sup>16</sup> On 23 March 2006, the Council approved the concept for an EU operation in support to the United Nations' mission in the Democratic Republic of Congo (MONUC) during the upcoming electoral process. It decided to start military planning and preparation on that basis. Planning for police support is also being pursued. See: <http://ue.eu.int/showPage.asp?id=1091&lang=en>

Member State	Scrutiny of EU supporting action to AMIS?	Scrutiny of Aceh monitoring mission?	Scrutiny of EU border assistance mission to Moldova and Ukraine?	Scrutiny of EU POL COPPS?	Scrutiny of EUPAT?	Scrutiny of EU BAM Rafah?
<b>France</b> - <i>Assemblée nationale</i>	Yes - 4 October 2005	Yes - 4 October 2005	No <sup>17</sup>	Yes - 22 November 2005	Yes - 22 November 2005	Yes - 22 November 2005
<b>France</b> - <i>Sénat</i>	Yes - 12 July 2005	Yes - 1 September 2005	No <sup>18</sup>	Yes - 31 October 2005	Yes - 14 November 2005	Yes - 22 November 2005
<b>Germany</b> - <i>Bundestag</i>	No formal scrutiny, but the Parliament was informed by letter	No formal scrutiny, but the Parliament was informed by letter	No formal scrutiny, but the Parliament was informed by letter	No formal scrutiny, but the Parliament was informed by letter	No formal scrutiny, but the Parliament was informed by letter	No formal scrutiny, but the Parliament was informed by letter
<b>Germany</b> - <i>Bundesrat</i>	No <sup>19</sup>	-	-	-	-	-
<b>Greece</b>	No	No	No	No	No	No
<b>Hungary</b>	No <sup>20</sup>	-	-	-	-	-
<b>Ireland</b>	Yes - 27 July 2005	Yes - 6 October 2005	Yes - 15 December 2005	Yes - 15 December 2005	Yes - 26 January 2006	Yes - 26 January 2006
<b>Italy</b> - Chamber of Deputies	Yes - 26 May 2005	Yes - 11 October 2005	No	No	No	No
<b>Italy</b> - Senate	No	No	Yes - mission budget approved by law of 23 February 2006	No	No	Yes - mission budget approved by law of 23 February 2006
<b>Latvia</b>	Yes - in the context of approving the national position at the GAERC	Yes - in the context of approving the national position at the GAERC	Yes - in the context of approving the national position at the GAERC	Yes - in the context of approving the national position at the GAERC	Yes - in the context of approving the national position at the GAERC	Yes - in the context of approving the national position at the GAERC
<b>Lithuania</b>	No	No	No	No	No	No
<b>Luxembourg</b>	No <sup>21</sup>	No	No	No	No	Yes - 17 November 2005
<b>Malta</b>	No	No	No	No	No	No
<b>Netherlands</b> - House of Representatives	Yes - 19 December 2005	Yes - informed by Government letter of 22 July 2005	No	Yes - 1 November 2005	No	Yes - 1 November 2005
<b>Netherlands</b> - Senate	No <sup>22</sup>	-	-	-	-	-

<sup>17</sup> The French Government declared that the Community action establishing this operation was not legislative and therefore did not submit the operation to the French Parliament for scrutiny, in accordance with Articles 34 and 37 of the French constitution.

<sup>18</sup> *ibid.*

<sup>19</sup> The Act on Cooperation between the Federation and the Federal States in European Union Affairs (EUZBLG) does not apply for the CFSP or the ESDP.

<sup>20</sup> The Hungarian Parliament does not scrutinise CFSP and ESDP matters.

<sup>21</sup> However, certain aspects of CFSP or ESDP are discussed in the Luxembourg Chamber of Deputies in the context of the declaration on foreign affairs, which the Minister for Foreign Affairs makes to the Parliament once a year.

<sup>22</sup> However, the Dutch Senate discusses these matters with the Government in an annual debate on the defence budget and the foreign affairs budget.

Member State	Scrutiny of EU supporting action to AMIS?	Scrutiny of Aceh monitoring mission?	Scrutiny of EU border assistance mission to Moldova and Ukraine?	Scrutiny of EU POL COPPS?	Scrutiny of EUPAT?	Scrutiny of EU BAM Rafah?
<b>Poland</b> - <i>Sejm</i>	No <sup>23</sup>	-	-	-	-	-
<b>Poland</b> - Senate	No <sup>24</sup>	-	-	-	-	-
<b>Portugal</b>	Yes <sup>25</sup>	No	No	No	No	Yes
<b>Republic of Slovakia</b>	No	No, because agreed by written procedure	Yes - 3 November 2005	Yes - 3 November 2005	No	No, because agreed by written procedure, although EAC informed in writing by Government
<b>Slovenia</b> - National Assembly	Yes - by FAC on 20 May 2005	No	No	No - although FAC informed in writing	No	No - although FAC informed in writing
<b>Slovenia</b> - National Council <sup>26</sup>	-	No	No	No	No	No
<b>Spain</b>	No	No	No	No	No	No
<b>Sweden</b>	Yes - 15 July 2005	Yes - 15 July 2005	Yes - 3 October 2005	Yes - 15 July and 9 November 2005	Yes - 18 November 2005	Yes - 28 October and 18 November 2005
<b>United Kingdom</b> - House of Commons	Yes - 13 July 2005	Yes - 12 October 2005 <sup>27</sup>	Yes - 13 July 2005	Yes - 2 November 2005 <sup>28</sup>	Yes - 16 November 2005 <sup>29</sup>	Yes - 23 November 2005 <sup>30</sup>
<b>United Kingdom</b> - House of Lords	Yes - 14 July 2005	Yes - 27 July 2005	Yes - 3 November 2005	Yes - 3 November 2005	Yes - 17 November 2005 <sup>31</sup>	Yes - 24 November 2005

<sup>23</sup> According to the Act on Cooperation of 11 March 2004 of the Council of Ministers with the *Sejm* and the Senate in Matters Related to the Republic of Poland's Membership in the European Union with amendments, the European Union Affairs Committees do not discuss CFSP/ESDP missions.

<sup>24</sup> *ibid.*

<sup>25</sup> The Committee on National Defence of the Portuguese Parliament reviews the participation of Portuguese military contingents abroad (including when armed forces are involved in humanitarian and evacuation missions; building and peace keeping missions; or peace making or crises management missions). Of the six operations considered in this table, Portuguese personnel are involved in the EU supporting action to AMIS II, the EU BAM to Moldova and Ukraine, and EU BAM Rafah. The personnel for EU BAM are unarmed.

<sup>26</sup> The International Relations and European Affairs Commission of the Slovenian National Council scrutinises those documents which are on the agenda of the Committee on EU Affairs and Committee on Foreign Policy of the Slovenian National Assembly.

<sup>27</sup> For the Committee's short report on the Aceh monitoring mission, see: <http://www.publications.parliament.uk/pa/cm200506/cmselect/cmeuleg/34-v/3442.htm>

<sup>28</sup> For the Committee's short report on the EU POL COPPS mission, see: <http://www.publications.parliament.uk/pa/cm200506/cmselect/cmeuleg/34-viii/3418.htm>

<sup>29</sup> For the Committee's short report on the EU PAT mission, see: <http://www.publications.parliament.uk/pa/cm200506/cmselect/cmeuleg/34-x/3420.htm>

<sup>30</sup> For the Committee's short report on the EU BAM Rafah mission, see: <http://www.publications.parliament.uk/pa/cm200506/cmselect/cmeuleg/34-xi/3418.htm>

<sup>31</sup> The Committee Chairman wrote to the Government Minister about this mission on 22 November 2005. See: [http://www.parliament.uk/parliamentary\\_committees/lords\\_s\\_comm\\_c/cwm\\_c.cfm](http://www.parliament.uk/parliamentary_committees/lords_s_comm_c/cwm_c.cfm)

### ***EU supporting action to AMIS***

A ceasefire to the conflict in the Darfur region of Sudan was agreed on 8 April 2004. In June 2004, the African Union (AU) deployed a small observer mission (AMIS). In October 2004, the AU decided to supplement this operation with a larger military and police mission with a mandate to pro-actively monitor compliance with the ceasefire agreement (AMIS II). On 9 January 2005, the Government of Sudan and the Sudan Peoples Liberation Movement/Army (SPLM/A) signed a Comprehensive Peace Agreement. Since that date, AMIS has worked to secure areas which all parties have agreed to demilitarise.

On 23 June 2005 the Council approved the Concept for an EU civilian-military supporting action to AMIS II. On 18 July 2005, the Council agreed Joint Action 2005/557/CFSP establishing the supporting action (AMIS EU supporting action). The mission includes military and civilian elements and may involve up to 30 military personnel and 50 police officers.

The following 12 Member States contribute personnel to the EU supporting action:

- Austria, Cyprus, Finland, France, Germany, Ireland, Italy, the Netherlands, Portugal, Spain, Sweden and the United Kingdom.<sup>32</sup>

The following 16 parliamentary chambers (from 14 Member States) reported scrutinising the EU's supporting action:

- Austria, Belgium, Denmark, Estonia, Finland, the French *Assemblée nationale*, the French *Sénat*, Ireland, the Italian Chamber of Deputies, Latvia, the Netherlands House of Representatives, Portugal, the Slovenian National Assembly, Sweden, the UK House of Commons and the UK House of Lords.

### ***EU's Aceh monitoring mission (Indonesia)***

The EU monitoring mission in Aceh (Indonesia) is designed to monitor the implementation of various aspects of the peace agreement set out in the Memorandum of Understanding signed by the Government of Indonesia and the Free Aceh Movement on 15 August 2005. It is a joint mission, led by the EU, with five countries from the Association of South East Asian Countries (ASEAN), Norway and Switzerland. An initial monitoring presence was launched on 15 August. The Council agreed Joint Action 2005/643/CFSP on 9 September. The full mission became operational on 15 September and may involve 219 international participants.<sup>33</sup> It was scheduled to last for 6 months, but on 27 February 2006, the Council extended the duration of the mission for a further three months, until 15 June 2006.

The following 12 Member States contribute personnel to the mission:

- Austria, Denmark, Finland, France, Germany, Ireland, Italy, Lithuania, the Netherlands, Spain, Sweden, and the United Kingdom.

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<sup>32</sup> In addition, the EU contributes to the expanded version of AMIS through military technical assistance, planning experts, financial, material and logistical support. The following 9 Member States contribute personnel to the AMIS II operation: Belgium, Denmark, Finland, Germany, Poland, Portugal, Spain, Sweden and the United Kingdom. For further information on the EU supporting action to AMIS II, see: <http://ue.eu.int/showPage.asp?id=956&lang=en&mode=g>

<sup>33</sup> For further information on the Aceh Monitoring Mission, see: <http://ue.eu.int/showPage.asp?id=961&lang=en&mode=g>

The following 13 parliamentary chambers (from 11 Member States) reported scrutinising the EU's Aceh monitoring mission:

- Austria, Denmark, Estonia, Finland, the French *Assemblée nationale*, the French *Sénat*, Ireland, the Italian Chamber of Deputies, Latvia, the Netherlands, Sweden, the UK House of Commons and the UK House of Lords.

### ***EU border assistance mission to Moldova and Ukraine***

On 20 September 2005, the Political and Security Committee agreed to establish an EU Border Mission for Moldova-Ukraine, including through reinforcing the team of the EU Special Representative for Moldova. The mission is funded by the External Relations budget and operates under the auspices of the European Commission and its implementing partner the UNDP, and in close cooperation with the OSCE. It was established with a mandate for two years by a Memorandum of Understanding between the European Commission, the Government of the Republic of Moldova and the Government of Ukraine. On 7 November 2005, the Council agreed Joint Action 2005/776/CFSP, amending the mandate of the EUSR for Moldova. The mission's aims are:

- to assist Moldova and Ukraine to harmonise their border management standards and procedures with those prevalent in EU member states;
- to assist in enhancing the professional capacities of the Moldovan and Ukrainian customs official and border guards at operational level;
- to improve risk analysis capacities; and
- to improve co-operation and complementarity between the border guard and customs services between each other and with other law enforcement agencies.<sup>34</sup>

The Mission includes 70 experts from the following 16 Member States:

- Belgium, the Czech Republic, Denmark, Estonia, Finland, Germany, Greece, Hungary, Italy, Latvia, Lithuania, the Netherlands, Poland, Portugal, Slovakia, and the United Kingdom.

The following 10 parliamentary chambers (from 9 Member States) reported scrutinising the EU BAM to Moldova and Ukraine:

- Denmark, Estonia, Finland, Ireland, the Italian Senate, Latvia, Slovakia, Sweden, the UK House of Lords, and the UK House of Commons.

### ***EU police mission in the Palestinian territories (EU POL COPPS)***

On 14 November 2005, the Council agreed Joint Action 2005/797/CFSP establishing an EU police mission in the Palestinian territories (EU POL COPPS). The mission's objective is to support the Palestinian Authority in establishing sustainable and effective policing arrangements. (COPPS stands for Co-ordinating Office for Palestinian Police Support.) The mission started on 1 January, has a mandate for three years, and will include approximately 33 unarmed personnel.<sup>35</sup>

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<sup>34</sup> For further information, see: <http://ue.eu.int/showPage.asp?id=986&lang=en&mode=g> and [www.eubam.org](http://www.eubam.org)

<sup>35</sup> For further information on EU POL COPPS, see: <http://ue.eu.int/showPage.asp?id=974&lang=en&mode=g>

The following 11 Member States contribute personnel to the mission:

- Austria, Belgium, Denmark, Estonia,<sup>36</sup>Finland, France, Germany, Ireland, Spain, Sweden, and the United Kingdom.

The 13 following parliamentary chambers (from 11 Member States) reported scrutinising EU POL COPPS:

- Austria, Denmark, Estonia, Finland, the French *Assemblée nationale*, the French *Sénat*, Ireland, Latvia, the Netherlands, Slovakia, Sweden, the UK House of Commons and the UK House of Lords.

#### ***EU police advisory team in the Former Yugoslav Republic of Macedonia (EUPAT)***

On 24 November 2005, the Council agreed Joint Action 2005/826/CFSP establishing an EU police advisory team in the Former Yugoslav Republic of Macedonia (EUPAT). The EU team supports the development of an efficient and professional police service based on European standards of policing. EUPAT became operational on 15 December 2005, following the termination on 14 December 2005 of the mandate of the EU Police Mission PROXIMA, launched on 15 December 2003. The Mission is scheduled to last 6 months and will include around 30 police advisors.<sup>37</sup>

The following 16 Member States contribute personnel to the mission:

- Austria, Belgium, Cyprus, Denmark, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom

The 10 following parliamentary chambers (from 8 Member States) reported scrutinising EU PAT:

- Austria, Estonia, Finland, the French *Assemblée nationale*, the French *Sénat*, Ireland, Latvia, Sweden, the UK House of Commons and the UK House of Lords.

#### ***EU border assistance mission at Rafah crossing point in the Palestinian territories (EU BAM Rafah)***

On 15 November 2005, Israel and the Palestinian Authority concluded an "Agreement on Movement and Access", including agreed principles for Rafah crossing (Gaza). On 21 November 2005, the Council of the EU welcomed the Agreement and agreed that the EU should undertake the Third Party role proposed in the Agreement. On 12 December 2005, the Council agreed Joint Action 2005/889/CFSP establishing an EU border assistance mission at Rafah crossing point in the Palestinian territories (EU BAM Rafah). The operational phase of the Mission, which will last for 12 months, began on 30 November 2005. During the initial phase, approximately 55 police officers from 15 Member States were deployed. In the full deployment phase this number will increase to 75.<sup>38</sup>

The following 12 Member States currently contribute personnel to the mission, and others are planning to do so:

- Austria, Denmark, Estonia, Finland, France, Germany, Italy, Luxembourg, Portugal, Spain, Sweden, and the United Kingdom.<sup>39</sup>

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<sup>36</sup> Estonia will participate from 1 June with one policeman

<sup>37</sup> For further information on EU PAT, see: <http://ue.eu.int/showPage.asp?id=994&lang=en&mode=g>

<sup>38</sup> For further information on EU BAM Rafah, see: <http://ue.eu.int/showPage.asp?id=979&lang=en&mode=g>

<sup>39</sup> Romania also contributes personnel to the mission.

The 15 following parliamentary chambers (from 13 Member States) reported scrutinising this mission:

- Austria, Denmark, Finland, the French *Assemblée nationale*, the French *Sénat*, Ireland, the Italian Senate, Latvia, Luxembourg, the Netherlands, Portugal, Sweden, the UK House of Commons and the UK House of Lords.

## 4 Impact Assessments

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Chapter 2 of the 4th biannual report looked at how national parliaments use impact assessments from the Commission in the process of scrutinising EU legislation.<sup>40</sup> On 11 October 2005 in London the XXXIV COSAC adopted a Contribution addressed to the EU Institutions. The Contribution, which was translated into 19 of the 20 official EU languages and published in the *Official Journal of the European Union* on 17 December 2005 (OJ C 322 2005), included nine sub-paragraphs on impact assessments.<sup>41</sup>

The Austrian Presidency wrote to Commission President Barroso on 8 March 2006, asking the Commission to answer a series of questions regarding what action the Commission was taking on the issues covered by the Contribution's paragraphs on impact assessments.

This chapter gives the Commission's responses to those questions, reporting on the various initiatives and developments in this area. The chapter also includes a section outlining what action the European Parliament has taken regarding the better regulation agenda.

### 4.1 IMPACT ASSESSMENTS FOR WORK PROGRAMME ITEMS

A number of national parliaments, including the Austrian Parliament, the Latvian Parliament, the Polish *Sejm*, expressed dissatisfaction with the fact not all Commission proposals were accompanied by an impact assessment.

In its Communication "Better Regulation for Growth and Jobs in the European Union" (COM(2005) 97 final) the Commission announced that, "as a rule, initiatives set out in its Legislative and Work Programme 2005 - key legislative proposals as well as the most important cross-cutting policy-defining non-legislative proposals - should be the subject of an integrated impact assessment."<sup>42</sup> The Austrian Parliament welcomed this commitment from the Commission and said it would be "very useful". Similarly, the Latvian Parliament welcomed the Commission's recent announcement that impact assessments were a priority, and hoped that the Commission would deliver on this commitment.

In its October 2005 Contribution, COSAC welcomed the better regulation initiative and called on the Commission to produce an integrated impact assessment for all major initiatives in its work programme, as proposed on page 5 of the Communication.

The Commission reported that during the period from 1 November 2005 to 28 February 2006 the Commission adopted 32 items from its work programme. 23 of these items were accompanied by an impact assessment report. The other 8 items

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<sup>40</sup> See <http://www.cosac.org/en/documents/biannual/>

<sup>41</sup> All the different language versions are available via:

<http://europa.eu.int/eur-lex/lex/JOhtml.do?uri=OJ:C:2005:322:SOM:EN:HTML>

<sup>42</sup> The Commission noted that "Acts that fall under the executive powers of the Commission (for instance competition decisions or acts which scope is limited to the internal sphere of the Commission) are normally not subject to impact assessment."

were items that did not require an impact assessment (i.e. periodical reports and Green Papers).

## 4.2 SUMMARIES OF IMPACT ASSESSMENTS

The Belgian Chamber of Representatives indicated that national parliaments could have a problem handling the volume of information involved in impact assessments and integrating it into their decision-making systems. The UK House of Lords recommended that the Commission should produce one-page summaries of impact assessments to enable MEPs and national parliamentarians to get to grips with the material quickly and efficiently.

Consequently, COSAC called on the Commission to produce one-page summaries of all its impact assessments to assist in understanding of the material quickly and efficiently.

The Commission's revised internal impact assessment guidelines introduced a standard reporting format for impact assessments, which includes the requirement to produce an Executive Summary of the impact assessment. The guidelines state that the Summary must be: "No more than one page, written in non-technical language, presenting the conclusions of the comparison of short-listed options."<sup>43</sup>

## 4.3 TRANSLATING IMPACT ASSESSMENTS

A number of national parliaments reported that their scrutiny work was hampered by the fact that impact assessments were not available in their national language. For example, the *Seimas* of the Republic of Lithuania reported that it could not scrutinise impact assessments produced by the Commission, because they were "not produced in the Lithuanian language. The *Seimas* receives impact assessments in English; therefore under domestic legislation the Committees of the *Seimas* can not deliberate them."

COSAC therefore called on the Commission to translate its impact assessments and roadmaps; and to publish in all the official Community languages.

The Commission responded that impact assessments are prepared as an aid to the internal political decision-making process within the Commission. They have the status of staff working documents, which means that there is no requirement for them to be translated from the original drafting language, which is usually English.

The Commission said that, given the current pressures on the translation capacity of the Commission (where a transitional set of rules is in place to respond to these pressures), it is not in a position to translate impact assessments.

## 4.4 SENDING IMPACT ASSESSMENTS TO NATIONAL PARLIAMENTS

Not all national parliaments receive the Commission's impact assessments. For example, the German *Bundestag* reported that the Commission's impact assessments

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<sup>43</sup> See page 97 of the revised guidelines:

[http://ec.europa.eu/comm/secretariat\\_general/impact/docs/SEC2005\\_791\\_IA%20guidelines\\_annexes.pdf](http://ec.europa.eu/comm/secretariat_general/impact/docs/SEC2005_791_IA%20guidelines_annexes.pdf)

were not forwarded formally to the *Bundestag*. The Austrian Parliament also considered that it had been "quite difficult to find" impact assessments that the Commission had produced.

COSAC called on the Commission to send all impact assessments and roadmaps directly to national parliaments.

The Commission responded that it is the responsibility of Member State governments to forward impact assessments to national parliaments in line with their respective scrutiny arrangements.

The Commission makes them publicly available and sends them to the Council and European Parliament together with the Commission proposal.

#### **4.5 A COMMON APPROACH TO ASSESSING ADMINISTRATIVE COSTS**

In its Contribution, COSAC called on the EU institutions and Member States to develop a common approach to assessing administrative costs.

The COSAC Presidency then asked the Commission to outline the steps it had taken to developing a common approach to assessing administrative costs.

The Commission replied that a prototype approach called 'EU net administrative cost model' had been outlined in the Staff Working Document (SEC (2005) 1329) annexed to the Communication "Better Regulation for Growth and Jobs in the European Union". This prototype was tested from April to September 2005. At the end of that pilot phase, the Commission concluded that a common approach at EU level was feasible and would have clear added value. The prototype was accordingly revised on the basis of the findings from the pilot phase and best practices at Member State level.

The methodology validated by the pilot phase (common definition, common core equation, and common reporting sheet) was presented in a Communication adopted on 21 October 2005 (COM (2005) 518), in which the Commission also declared its longer-term intention to explore whether the proposed EU common methodology could be used to assess cumulative administrative burden at sectoral level.

The common methodology was included in the Commission's impact assessment guidelines and evaluation guidelines. An operational manual for applying the model was included in the guidelines on 15 March 2006.<sup>44</sup>

The Commission started the optimisation of the methodology with the help of the Member States (Standard Cost Model Steering Group). By the end of March, it aimed to set up a virtual network of experts through SINAPSE, a web-platform for the collection of expertise. This will prepare the ground for the work of the High Level Group of national experts on better regulation, set up to advice the Commission on this issue and others. One aim of this is to agree on standard ratios for overheads.

DG ENTR will launch a pilot project to test the model when applied to a number of related acts (assessing cumulative burden put on a sector).

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<sup>44</sup> These documents are all available on line at:  
[http://www.europa.eu.int/comm/secretariat\\_general/impact/docs\\_en.htm](http://www.europa.eu.int/comm/secretariat_general/impact/docs_en.htm)

The Council has neither accepted the Commission's proposed model, nor offered to discuss possible amendments. The Commission has reiterated its invitation at different levels.

#### **4.6 UPDATING IMPACT ASSESSMENTS**

COSAC requested that under the co-decision procedure the Commission update its impact assessments following first reading in the European Parliament, a common position from the Council and second reading in the European Parliament and before the meeting of a conciliation committee.

The Commission reiterated that impact assessments are prepared first and foremost as an aid to political decision-making within the Commission itself. However, the Commission may choose to update any its original impact assessment in the light of new or previously unavailable information.

The Commission said that it is for the Council and the European Parliament to carry out impact assessments on substantive amendments to the Commission's proposal. The Commission, however, retains the right to carry out impact assessments on such amendments if it believes it to be necessary.

Co-ordinating work on impact assessments across the three EU Institutions was the subject of a Common Approach to Impact Assessment, agreed by all three institutions in December 2005.<sup>45</sup> This sets out certain 'traffic rules' on how impact assessment should be handled throughout the legislative process.

#### **4.7 ENSURING IMPACT ASSESSMENTS ARE OBJECTIVE**

COSAC stressed the need for impact assessments to be objective, and the COSAC Presidency asked the Commission how it ensures that its impact assessments are objective.

The Commission replied that there are many 'checks and balances' in their approach to impact assessment which help to ensure that the analysis is rigorous and comprehensive, including the requirement to establish inter-service steering groups for all impact assessments with a cross-cutting dimension. The early publication of the impact assessment roadmaps allows stakeholders to see the work already undertaken and planned for the impact assessment, and to prepare their input and relevant data for the integral stakeholder consultation. The IA guidelines make it clear that Commission services preparing an impact assessment are required to consider data from a wide range of sources. There are separate guidelines for the collection and use of expert advice which apply also in the preparation of impact assessments. The Commission is establishing an e-network of scientific and technical experts who can be called upon to give objective advice in the preparation of Commission impact assessments.

The COSAC Presidency also asked whether the need for impact assessments to be objective was an issue that would be covered in the independent evaluation of the Commission's impact assessment system.

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<sup>45</sup> It has still to receive formal endorsement by the European Parliament's Conference of Presidents.

The Commission replied that the independent evaluation being launched will examine the Commission's impact assessment system and is likely to offer options for further enhancement. This may cover questions relating to the organisational set-up for the implementation of the impact assessment system.

#### **4.8 FOCUSING IMPACT ASSESSMENTS ON THE THREE ELEMENTS OF THE LISBON STRATEGY**

COSAC called on the Commission to focus its impact assessments on the three elements of the Lisbon Strategy, that is, the economic, social and environmental impacts.

The Commission's approach is an integrated one, which means that impact assessments need to consider the positive/negative and direct/indirect impacts of a range of policy options across the social, economic and environmental dimensions. To help Commission services in preparing a balanced assessment across these three dimensions, the impact assessment guidelines include tables of impacts (one for each dimension) which indicate a wide range of potential impact areas that ought to be examined as part of the impact assessment. In addition, each impact assessment which has a cross-cutting dimension, which in practice means most impact assessments must be steered by an inter-service steering group whose membership is normally drawn from a wide range of Commission services. This helps to ensure that all three dimensions are considered as part of the impact assessment.

#### **4.9 IMPACT ASSESSMENTS FOR LEGISLATIVE PROPOSALS THAT THE COMMISSION PROPOSES TO WITHDRAW**

COSAC requested the Commission to produce impact assessments for those legislative proposals that it proposes to withdraw.

The Commission has not produced impact assessments for those legislative proposals that it proposes to withdraw as a result of screening proposals pending before the legislature since before 1 January 2004. However, the Commission pointed out that consideration of the pending proposals' potential impact on EU competitiveness was a central element in the process of screening and was based on assessments and evidence made available in the course of the inter-institutional negotiations or by stakeholders. If a decision is taken to modify and re-present any of the proposals which are to be withdrawn, then they will be subject to normal impact assessment requirements.

#### **4.10 A PUBLIC DATABASE**

COSAC called on the Commission to create a public database to include all the proposals in the annual legislative and work programme, with links to their impact assessments and roadmaps.

The Commission replied that the proposals in its legislative and work programme, together with the roadmaps and, when completed, the impact assessment report and policy document, can now all be found on the Commission's impact assessment web pages: [http://www.europa.eu.int/comm/secretariat\\_general/impact/practice\\_en.htm](http://www.europa.eu.int/comm/secretariat_general/impact/practice_en.htm)

#### 4.11 WORK IN THE EUROPEAN PARLIAMENT ON BETTER REGULATION

The European Parliament adopted several reports related to the Better Regulation agenda in its plenary session on 16 May 2006.

The Legal Affairs Committee put forward an own-initiative report on *Better lawmaking 2004: application of the principle of subsidiarity*<sup>46</sup> (rapporteur: Bert Doorn, EPP-ED, NL), stressing the need for any Community legislation adopted to comply fully with the principles of subsidiarity and proportionality. The report supported the ambition of improving European legislation, with a view to enhancing growth and jobs, and underlined the need for an integrated and consistent approach to initiatives on "better regulation". The "better regulation" debate is seen by the EP as an occasion for reflection on legislation as a process designed to achieve clearly defined policy goals by committing and involving all stakeholders during all phases of the process from preparation to enforcement. Moreover, Member States were encouraged to exchange experiences in the use of impact assessment. Among other recommendations, the need for the European Parliament to play a more active role in monitoring the implementation of European legislation in the Member States, and to make use of the network between the European Parliament and the national and/or regional parliaments, was underlined.

The Internal Market Committee (rapporteur: Arlene McCarthy, PES, UK) put forward an own-initiative report<sup>47</sup> on the implementation, consequences and impact of the internal market legislation in force. The committee emphasized the need for a common approach to better regulation, based on a core set of regulatory principles, namely subsidiarity, proportionality, accountability, consistency, transparency and targeting. The report also stressed the need for Parliament, Council and the Commission to establish 'better regulation' task forces, to set up an inter-institutional working group to develop training, skills and quality control and to share and benchmark better regulation best practice. The report also highlighted that Member States must ensure that they are not causing new implementation problems by imposing additional requirements at national level when transposing Community legislation ('gold-plating').

As part of its debate on the 'Better Lawmaking' initiative, the European Parliament considered two further reports on how EU laws are applied. The first, drawn up by Monica Frassoni (Greens/EFA, IT)<sup>48</sup> for the Legal Affairs Committee, set out a range of measures the Commission should take to improve Member States' implementation of their obligations, while the second, by Giuseppe Gargani (EPP-ED, IT)<sup>49</sup>, for the same committee, strongly backed the Commission's proposals on regulatory simplification,

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<sup>46</sup>Link to the report A6-0082/2006:

<http://www.europarl.europa.eu/omk/sipade3?PUBREF=-//EP//NONSGML+REPORT+A6-2006-0082+0+DOC+PDF+V0//EN&L=EN&LEVEL=1&NAV=S&LSTDOC=Y>

<sup>47</sup>Link to the report A6-0082/2006:

<http://www.europarl.europa.eu/omk/sipade3?PUBREF=-//EP//NONSGML+REPORT+A6-2006-0083+0+DOC+PDF+V0//EN&L=EN&LEVEL=1&NAV=S&LSTDOC=Y>

<sup>48</sup> Link to the report A6-0089/2006:

<http://www.europarl.europa.eu/omk/sipade3?PUBREF=-//EP//NONSGML+REPORT+A6-2006-0089+0+DOC+PDF+V0//EN&L=EN&LEVEL=1&NAV=S&LSTDOC=Y>

<sup>49</sup> Link to the report A6-0080/2006:

<http://www.europarl.europa.eu/omk/sipade3?PUBREF=-//EP//NONSGML+REPORT+A6-2006-0080+0+DOC+PDF+V0//EN&L=EN&LEVEL=1&NAV=S&LSTDOC=Y>

whether by repealing irrelevant or obsolete texts, codifying texts which have become over complex thanks to repeated amendment, or recasting measures which need revising and updating.

## 5 Transparency in the Council

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### 5.1 BACKGROUND

Openness and transparency have been an issue for the EU, and in particular the Council of Ministers, for more than a decade. Developments have been agreed in stages. The Edinburgh European Council in 1992 introduced measures aimed at improving access to the work of the Council, some of which remain central elements of the Council's transparency policy today, notably occasional open debates.<sup>50</sup> The Amsterdam Treaty provided that the Council must make public the results of votes and explanations of votes, as well as statements in the minutes, when it acts in its legislative capacity.<sup>51</sup> The European Council agreed in Seville in June 2002 to open up Council meetings in the initial and the final stages of the co-decision procedure. The Constitutional Treaty, signed in October 2004, takes this principle further by providing that the Council should "meet in public when it deliberates and votes on a draft legislative act".<sup>52</sup>

However, as the Constitutional Treaty has not come into force, it remains the case that the presumption is that Council meetings are in general closed to the public, in accordance with article 5(1) of the Council's rules of procedure. Article 8 sets out exemptions to this general rule.

The Council does not require a change in the Treaties to make it a presumption that it shall meet in public when deliberating and voting on legislation; it could be achieved by the Council amending its rules of procedure. A change in the rules of procedure of the Council requires a simple majority of votes in the General Affairs Council.

### 5.2 COSAC'S POSITION

The XXXIV COSAC called on the Council of Ministers

*"immediately to change its Rules of Procedure so as to provide for its meetings to be in public whenever it considers and votes on draft legislation, in order to reduce the gap between citizens and the Union, to make possible more effective scrutiny of Ministers' decisions by national parliaments and to remedy the intolerable situation whereby legislation is discussed and agreed to in secret."*

This chapter reports on developments regarding this issue since COSAC adopted this Contribution in October 2005.

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<sup>50</sup> Available in English, French and German at: [http://www.europarl.eu.int/summits/edinburgh/default\\_en.htm](http://www.europarl.eu.int/summits/edinburgh/default_en.htm)

<sup>51</sup> TEC, article 207(3).

<sup>52</sup> Articles I-24(6) and I-50(2) of the Treaty establishing a Constitution for Europe.

### 5.3 DEVELOPMENTS SINCE LAST COSAC (OCTOBER 2005)

(in chronological order)

#### ***COSAC***

On 20 October 2005, the UK COSAC Presidency sent the Contribution to the Rt Hon. Jack Straw MP, as President in Office of the Council, drawing attention to the paragraph on the Council meeting in public.<sup>53</sup>

The Contribution (adopted in a single original in English and French) was translated into 19 of the 20 official Community languages. It was published in the *Official Journal* on 17 December 2005 (OJ C 322 2005).<sup>54</sup>

#### ***The Ombudsman***

In a special report, submitted to the European Parliament in October 2005, the European Ombudsman, P. Nikiforos Diamandouros, concluded that "the fact that the Council refuses to decide to meet publicly whenever it is acting in its legislative capacity without giving good reasons for this refusal is an instance of maladministration."

The Ombudsman called on the Council to review its refusal to meet publicly "whenever it is acting in its legislative capacity".<sup>55</sup>

#### ***The Council of Ministers***

The UK Presidency put an options paper to Coreper on the issue of the Council meeting in public. The Council agreed its position without debate on 21 December 2005, and issued conclusions on "improving openness and transparency in the Council".<sup>56</sup>

The Council concluded that "All final Council deliberations on legislative proposals under the co-decision procedure, i.e. all debates that take place once the other institutions or bodies have submitted their opinions, will be open to the public." In addition Coreper may consider making "other deliberations on co-decision items" open to the public.

However, the Council decided not to amend its rules of procedure, although Ministers did agree that:

"During the Austrian and Finnish Presidencies, the Council will assess the functioning of these measures. In the light of this assessment, it will reflect on all possible options for further improving openness and transparency, including, inter alia, the possibility of amending the rules of procedure."

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<sup>53</sup> <http://www.cosac.org/en/meetings/London2005/ordinary/meetingdocuments/strawdoc/>

<sup>54</sup> All the different language versions are available via:

<http://europa.eu.int/eur-lex/lex/JOhtml.do?uri=OJ:C:2005:322:SOM:EN:HTML>

<sup>55</sup> Special Report from the European Ombudsman to the European Parliament following the draft recommendation to the Council of the European Union in complaint 2395/2003/GG, 4 October 2005.

<sup>56</sup> The Council - 2702nd session (Agriculture and Fisheries) (15834/05 + ADD1): [http://ue.eu.int/ueDocs/cms\\_Data/docs/pressData/en/agricult/87826.pdf](http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/agricult/87826.pdf)

The Council website now includes MP3 audio files of Council public deliberations and press conferences. They are archived by Council formation back to the beginning of this year.<sup>57</sup>

### ***The Ombudsman***

The Ombudsman welcomed the decision of the Council of the European Union to open more of its debates to the public: "The recent move by the Council is a step in the right direction." Nevertheless, the Ombudsman pointed out that the Council will only open sessions related to the co-decision procedure, thereby covering only a part of the debates in the legislative process.<sup>58</sup>

### ***The European Parliament***

Following a report for the Petitions Committee by David Hammerstein Mintz, the European Parliament on 4 April 2006 adopted a resolution on the Special Report from the European Ombudsman following the draft recommendation to the Council of the European Union in complaint 2395/2003/GG concerning the openness of the meetings of the Council when acting in its legislative capacity.<sup>59</sup>

In its resolution, the European Parliament endorsed the European Ombudsman's recommendation to the Council. In its resolution, the European Parliament also says that it

"Considers that it is of the utmost importance for national parliaments to be able to hold their governments and ministers to account; is of the opinion that this cannot be done effectively if it is unclear how ministers have acted and voted in the Council and on what information their decisions were based;"

"Calls on the Council further to amend its Rules of Procedure and change its working methods so that the meetings in which it acts in its legislative capacity are open and accessible to the public" and

"Calls on all interested parties to bring maximum pressure to bear on the Council in order to persuade it to follow the Ombudsman's recommendation and adapt its Rules of Procedure".

Following a report for the Committee on Civil Liberties, Justice and Home Affairs by Michael Cashman, the European Parliament on 4 April 2006 also adopted a resolution with recommendations to the Commission on access to the institutions' texts. In its resolution, the European Parliament requested the Commission to submit to Parliament in 2006 a legislative proposal on "the right of access to European Parliament, Council and Commission documents, and general principles and limits on grounds of public or private interest governing this right of access".<sup>60</sup>

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<sup>57</sup> These files can be found at [http://ue.eu.int/cms3\\_fo/showPage.asp?id=997&lang=en&mode=g](http://ue.eu.int/cms3_fo/showPage.asp?id=997&lang=en&mode=g) or <http://ue.eu.int/audiovisual/audiofiles>

<sup>58</sup> <http://www.ombudsman.europa.eu/release/en/2006-04-05.htm>

<sup>59</sup> <http://www.europarl.europa.eu/omk/sipade3?TYPE-DOC=TA&REF=P6-TA-2006-0121&MODE=SIP&L=EN&LSTDOC=N>

<sup>60</sup> <http://www.europarl.europa.eu/omk/sipade3?TYPE-DOC=TA&REF=P6-TA-2006-0122&MODE=SIP&L=EN&LSTDOC=N>