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Procedures and Practices

Relevant to Parliamentary Scrutiny

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Introduction

This is the fourth 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, which met in Dublin in May 2004; the second report was presented to the XXXII COSAC, in The Hague in November 2004; and the third biannual report was prepared for the XXXIII COSAC in Luxembourg in May 2004.

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

The first three chapters of this report are based on information provided by the national parliaments of the 25 EU Member States. Chapter One provides an overview of how CFSP and ESDP are scrutinised in national parliaments. Chapter Two examines how the Commission's impact assessments are used in the scrutiny process by national parliaments. And chapter three reviews initiatives taken to date in national parliaments towards implementation of a scheme to raise EU awareness.

The fourth and fifth chapters take a look at the practices of the EU legislative institutions. Chapter four provides information on when the Council meets in public. And chapter five examines the practice of 1st and 2nd Reading agreements in the co-decision procedure.

A presentation of the topics which national parliaments have suggested that COSAC should examine in 2006 is published in a separate document.

A note on numbers

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

Although they have bicameral systems, the national parliaments of Austria, Ireland and 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 to cover every national parliamentary chamber in the EU (i.e. there were 34 responses, and these are published in a separate annex, which is also available on the COSAC website).

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1 Scrutiny of CFSP and ESDP in national parliaments

UK Presidency suggestions for discussion at the XXXIV COSAC: Scrutiny of CFSP/ESDP

- Scrutiny of CFSP/ESDP can require fast-track processes due to fast decision-making in the Council. Such procedures can include informal contact between officials of the scrutiny committee and the relevant government department; governments alerting scrutiny committees to a proposal before a formal text is agreed; scrutiny committees calling extra meetings; and use of written procedures to allow the consideration of documents during parliamentary recesses.
- Formal agreements between governments and parliaments concerning the type of CFSP and ESDP non-legislative documents to be deposited for scrutiny would help to make CFSP decision-making in the Council more transparent.
- Up-stream scrutiny of CFSP is difficult. Governments could assist national parliaments by alerting scrutiny committees to policy reviews being undertaken by Council working groups.

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.¹ The Maastricht Treaty identified the general objectives of the CFSP and gave CFSP a separate legal base, making it largely an inter-governmental procedure. Consequently, the European Parliament has only a limited role in the conduct of CFSP. The European Parliament Committee is consulted "on the main aspects and basic choices" of the CFSP and "may ask questions of the Council or make recommendations to it" (Art 21 TEU). Also, most administrative and operational CFSP expenditure is charged to the EU budget, giving the European Parliament the opportunity to raise foreign policy issues during the budgetary procedure. For example, the European Parliament Committee on Foreign Affairs writes a report on the annual report from the Council to the European Parliament on the main aspects and basic choices of CFSP, including the financial implications for the general budget of the European Communities.² But the CFSP remains a primarily inter-governmental policy area, with the European Parliament's role confined to an advisory one. National parliaments may therefore be considered to have a particular role to play in scrutinising their own government in relation to the Union's activities in this field.

¹ Since the early 1970s Member States coordinated foreign policies under the name of European Political Cooperation. The change of name to CFSP was accompanied by the new policy instruments provided for in the second pillar.

² <http://www.europarl.eu.int/omk/sipade2?PUBREF=-//EP//NONSGML+REPORT+A6-2005-0062+0+DOC+PDF+V0//EN&L=EN&LEVEL=2&NAV=S&LSTDOC=Y>

The Maastricht Treaty (agreed in 1992) provided for common positions and joint actions to be adopted by unanimity, but they could then be implemented by qualified majority voting. The Amsterdam Treaty (agreed in 1997) revised the provisions for CFSP, including new policy instruments (including Common Strategies to be adopted by the European Council), greater use of QMV, the new concept of "constructive abstention" (by Member States not wishing to participate in a particular initiative), and the creation of the post of high representative for CFSP.³ The European Council in Helsinki in December 1999 established new institutional arrangements to manage the European Security and Defence Policy (ESDP): the Political and Security Committee, the Military Committee and the Military Staff. The Nice Treaty further modified the provisions for CFSP, for example, by enabling enhanced cooperation to be used for joint actions and common positions that do not have military or defence implications (enabling some Member States to go forward with an initiative).

1.1 SCRUTINY OF CFSP/ESDP IN NATIONAL PARLIAMENTS

26 national parliaments or parliamentary chambers (from 20 Member States) scrutinise CFSP/ESDP matters.

These are the following parliaments: Austria, the Belgian Chamber of Representatives, the Belgian Senate, the Czech Chamber of Deputies, the Czech Senate, Denmark, Estonia, Finland, the French *Assemblée nationale*, the French *Sénat*, the German *Bundestag*, Greece, Ireland, the Italian Chamber of Deputies, the Italian Senate, Latvia, Lithuania, the Dutch House of Representatives, the Polish *Sejm*, Portugal, the Republic of Slovakia, the Slovenian National Assembly, the Slovenian National Council, Sweden, the House of Commons and the House of Lords in the UK.⁴

1.1.1 What types of CFSP proposals do national parliaments scrutinise?

All of the above parliaments scrutinise proposals from the Council for Joint Actions, Common Positions and recommendations for Common Strategies, with the exception of the following. The French *Sénat* and the Irish Parliament do not scrutinise recommendations for Common Strategies (although the Joint EU Committee of the Irish Parliament may review including such documents in the future); and the Polish *Sejm* does not scrutinise Joint Actions or recommendations for Common Strategies.

Many national parliaments also scrutinise other CFSP/ESDP proposals. The Austrian Parliament scrutinises all "EU projects", which is interpreted in quite a wide sense, so that the Austrian Government is obliged to inform the Parliament on all EU issues. In Estonia, in addition to draft legislation, the Government shall, on its own initiative or at the request of the EU Affairs Committee or the Foreign Affairs Committee, submit to the Parliament "other EU affairs of significance". Similarly in Lithuania, the competent committee scrutinises those documents considered "relevant" or "very relevant".

³ In June 1999, the European Council appointed Javier Solana the first high representative for CFSP.

⁴ In Cyprus, the House of Representatives is putting in place its scrutiny procedures, but their scope and precise nature are still under consideration. The House does not presently scrutinise CFSP matters as such, but the competent committees do invite the Government to appear before them and "provide information on issues pertaining to CFSP and ESDP".

The Irish Parliament scrutinises Council Decisions and all other CFSP/ESDP proposals. The Belgian Parliament is able to scrutinise whichever proposals it chooses, independently from the Government. The same is true for the Finnish Parliament.

The parliaments of Denmark, Latvia, the Republic of Slovakia, the Republic of Slovenia, Sweden and the Dutch House of Representatives scrutinise all items for discussion on a Council agenda. The Swedish Committee on EU Affairs also scrutinises important issues decided by the Council via written procedure.

The EU Sub-Committee on Foreign Affairs and Defence (Sub-Committee C of the EU Committee) of the UK House of Lords is concerned that certain documents are currently excluded from its scrutiny. "For example, the UK government did not deposit [in Parliament] for scrutiny the Battlegroups initiative, a significant commitment agreed in Council conclusions. The sub-committee is conducting an inquiry into the depositing of such documents, with the aim of arriving at a formal understanding of the types of non-legislative documents the Government should deposit in Parliament."

1.1.2 Do standard procedures for scrutiny of EU affairs also apply to the scrutiny of CFSP/ESDP proposals?

The majority of national parliaments that scrutinise CFSP proposals do so using their standard procedure for scrutinising EU legislation.⁵

The majority of those parliaments that do not use their standard procedures involve other parliamentary committees (as well as, or instead of, the EU Affairs Committee) in the scrutiny of CFSP.

In the Belgian Parliament, for example, the EU affairs committee of each Chamber has a role to coordinate and stimulate the scrutiny of CFSP/ESDP in the Chamber, but other committees (notably the Committee on External Relations and the Defence Committee) also play an important role. A similar set up, whereby the EU Affairs Committees cooperates with the Foreign Affairs (or other competent) Committee, operates in the parliaments of Denmark,⁶ Estonia, Finland, the German *Bundestag*,⁷ Portugal, and the Republic of Slovakia.

In the Czech Chamber of Deputies, CFSP/ESDP are not scrutinised on a "proposal-by-proposal" basis (as is the case for first pillar activities) by "on a matter-of-fact basis". This means that the EU Affairs Committee and the Foreign Affairs Committee monitor all CFSP/ESDP matters in the Council bodies and select items for discussion with the Government.

In the Czech Senate and the Lithuanian Parliament, the Foreign Affairs Committee scrutinises second pillar issues, not the EU Affairs Committee.

In Ireland, the Government's standard scrutiny information note is only sent to the Chairman of the Sub-Committee on European Scrutiny in advance of

⁵ These standard procedures were set out in Chapter 1 of COSAC's 3rd biannual report: <http://www.cosac.org/en/documents/biannual/>

⁶ In Denmark, another difference in the scrutiny procedure for CFSP is that the Government is not obliged to present a negotiating position to the *Folketinget* EU Committee ahead of decision-making in the Council on first pillar issues, as it does for first and third pillar issues.

⁷ In the *Bundestag*, the EU Affairs Committee is not expected to offer a statement of opinion on CFSP/ESDP measures as is the case on first pillar issues.

adoption of CFSP measures. Only once the measure has been adopted is the matter considered by the Sub-Committee on EU Scrutiny and the Joint Committee on Foreign Affairs.

Table 1: Scrutiny of CFSP/ESDP in the national parliaments

Member State	Scrutiny of CFSP/ESDP?	Using standard EU scrutiny procedures?	Scrutiny of Joint Actions?	Scrutiny of Common Positions?	Scrutiny of Common Strategies?	Scrutiny of other CFSP/ESDP proposals?
Austria	Yes	Yes	Yes	Yes	Yes	Yes, all "EU projects"
Belgium - Chamber of Deputies	Yes	No	Yes	Yes	Yes	Yes
Belgium - Senate	Yes	No	Yes	Yes	Yes	Yes
Cyprus	Not as such	-	-	-	-	-
Czech Republic - Chamber of Deputies	Yes	No	Yes	Yes	Yes	No
Czech Republic - Senate	Yes	No	Yes	Yes	Yes	No
Denmark	Yes	No	Yes	Yes	Yes	Yes
Estonia	Yes	Yes, but in cooperation with the FAC	Yes	Yes	Yes	Yes
Finland	Yes	Yes, in cooperation with the FAC	Yes	Yes	Yes	Yes
France - <i>Assemblée Nationale</i>	Yes	Yes, except that documents are transmitted by the Ministry of Foreign Affairs	Yes	Yes	Yes	Not in practice
France - <i>Sénat</i>	Yes	Yes	Yes	Yes	No	No
Germany - <i>Bundestag</i>	Yes, depending on subject	No	Yes	Yes	Yes	Yes
Germany - <i>Bundesrat</i>	No ⁸	-	-	-	-	-
Greece	Yes, in principle	Yes	-	-	-	Yes, any proposal with regulatory content
Hungary	No	-	-	-	-	-
Ireland	Yes	No, however an agreed procedure is in place for handling such measures	Yes	Yes	No, but may do so in future	Yes: Council Decisions and all proposals in these areas
Italy - Chamber of Deputies	Yes	Yes	Yes	Yes	Yes	Yes
Italy - Senate	Yes	Yes	Yes	Yes	Yes	-

⁸ The Act on Cooperation between the Federation and the Federal States in European Union Affairs (EUZBLG) does not apply for CFSP or ESDP.

Member State	Scrutiny of CFSP/ESDP?	Using standard EU scrutiny procedures?	Scrutiny of Joint Actions?	Scrutiny of Common Positions?	Scrutiny of Common Strategies?	Scrutiny of other CFSP/ESDP proposals?
Latvia	Yes	Yes	Yes	Yes	Yes	Yes, all B points on a Council agenda
Lithuania	Yes	Yes, except FAC not EUAC	Yes	Yes	Yes	Yes
Luxembourg	No ⁹	-	-	-	-	-
Malta	No	-	-	-	-	-
Netherlands - House of Representatives	Yes	Yes	Yes	Yes	Yes	Yes, all items on a Council agenda
Netherlands - Senate	No ¹⁰	-	-	-	-	-
Poland - Sejm	Yes, in two cases	Yes	No	Yes	No	No
Poland - Senate	Not yet	-	-	-	-	-
Portugal	Yes	Yes, in cooperation with FAC and DC	Yes	Yes	Yes	Yes - an overall assessment of CFSP
Republic of Slovakia	Yes	Yes, in cooperation with FAC	Yes	Yes	Yes	Yes, all items on GAERC agenda
Slovenia - National Assembly	Yes	Yes	Yes	Yes	Yes	Yes, all items on GAERC agenda
Slovenia - National Council	Yes	Yes	Yes	Yes	Yes	Yes, all considered by the Slovenian National Assembly
Spain	No	-	-	-	-	-
Sweden	Yes	Yes	Yes	Yes	Yes	Yes, all items on a Council agenda and issues decided by written procedure
United Kingdom - House of Commons	Yes	Yes	Yes	Yes	Yes	Yes
United Kingdom - House of Lords	Yes	Yes, but with additional fast-track procedures	Yes	Yes	Yes	Yes

⁹ 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.

¹⁰ However, the Dutch Senate discusses these matters with the Government in an annual debate on the defence budget and the foreign affairs budget.

1.2 SCRUTINY OF CIVILIAN ESDP OPERATIONS IN NATIONAL PARLIAMENTS

Several aspects of European Security and Defence Policy (ESDP) are classified as non-military.¹¹ These civilian crisis management capabilities have four main aims: policing; the administration of justice (rule of law); civilian administration; and civil protection.¹² Their combined goal is to allow the EU to provide assistance to countries in crisis. The first 'civilian ESDP' mission was the police mission to Bosnia (EUPM) in January 2003.

A recent concept, civilian ESDP missions are an area of rapid growth of EU activity. They are intended to allow Member States to respond at short notice to crises requiring non-military intervention. Consequently, they are sometimes agreed by the Council at short notice. It follows from this that they may not allow a lot of time for scrutiny by national parliaments. The EU Committee of the House of Lords conducted an inquiry into the EU's crisis management capabilities, and "the greatest surprise of the inquiry was that both Member States and media have so far shown little interest in the subject."¹³

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);
- European Union Law Mission in Georgia (EU JUST – Themis) (*Mission 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).

Since then, two more ESDP missions with a civilian component have been 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)¹⁴
- Aceh monitoring mission (Indonesia)¹⁵

¹¹ 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.

¹² The Cologne European Council meeting in June 1999 placed crisis management tasks at the core of the process of strengthening the ESDP and agreed these four aims; these are also known as the 'Petersberg Tasks' (named after the place where the Western European Union Ministerial Council met in June 1992).

¹³ The Committee's report on was published in March 2003: *EU-Effective in a Crisis?* (7th Report of Session 2002-03, HL 53)

¹⁴ 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 adopted Council Joint Action 2005/557/CFSP, establishing the supporting action. The Council shall, not later than 31 December 2005, evaluate whether the EU supporting action should be continued. Denmark does not participate in the military component of this EU supporting action. The mission involves 30 military personnel and up to 50 police officers (although currently only 25 are in place).

¹⁵ This is a joint mission, led by the EU, with five countries from ASEAN, Norway and Switzerland. The mission is monitoring 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. An initial monitoring presence was launched on 15 August. The full mission was launched on 15 September for 6 months and involves 219 participants. For further information, see:

As the paragraphs below describe, the Proxima and Themis missions are considerably larger than the other civilian ESDP operations.

1.2.1 Which national parliaments scrutinised which civilian ESDP missions?

All 25 Member States contribute to one or more civilian ESDP mission.

19 national parliamentary chambers (from 15 Member States) reported scrutinising civilian ESDP missions. These are the following parliaments:

- Austria, the Belgian Chamber of Representatives, the Belgian Senate, the Czech Senate, Denmark, Estonia, Finland, the French *Assemblée nationale*, the French *Sénat*, the German *Bundestag*, Ireland, the Italian Chamber of Deputies, the Italian Senate, Luxembourg, the Dutch House of Representatives, the Slovenian National Assembly, Sweden, the House of Commons and the House of Lords in the UK.

In addition, the Czech Chamber of Deputies constantly monitors all activities in the field of civilian ESDP operations.

In the Belgian Senate a special committee for "participation in missions abroad" heard from the Belgian Defence Minister and had an exchange of views on the civilian ESDP missions.

A number of national parliaments scrutinise those civilian ESDP missions in which their country participates. This is the case for the Austrian Parliament, which scrutinises the civilian ESDP missions in which Austria participates.¹⁶ Similarly, the Luxembourg Parliament only scrutinises the missions in which Luxembourg participates. The Dutch House of Representatives discusses those missions which feature on a Council agenda. "Then, if and when the government decides to participate in a mission, that decision is discussed in Parliament. For civilian missions, no formal assent is required. However, should Parliament withhold its assent, this would normally mean the decision is cancelled." Denmark does not take part in EU military operations because of the Danish opt out on EU cooperation with defence implications.

Annex III to the biannual report contains tables, provided by the Council Secretariat, indicating which Member States have personnel participating in which civilian ESDP missions. These figures are for 31 August 2005, which means that the support to AMIS II mission in Sudan/Darfur and the Aceh mission are not included.

EU Police Mission in Bosnia-Herzegovina (EUPM)

The European Union Police Mission (EUPM) in Bosnia and Herzegovina (BiH) was established by a Decision of the Council on 11 March 2002 (Council Joint Action 2002/210/CFSP).

http://jpn.cec.eu.int/home/news_en_newsobj1283.php

http://ue.eu.int/uedocs/cmsUpload/050815_Aceh_Council_Factsheet_LATEST.pdf and

http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/declarations/85995.pdf

¹⁶ The *Hauptausschuss* (Main Committee) of the *Nationalrat* is the only committee of the Austrian Parliament which is entitled to authorize the delegation of peace keeping forces in the framework of international organizations like the UN, OSCE and explicitly the ESDP.

This was three months after the General Affairs Council said that it would examine the "possibility of the European Union taking part in the development of the international police force in Bosnia and Herzegovina" in its Conclusions of 10 December 2001. The European Council's declaration that the ESDP was operational and that the EU was capable of conducting crisis-management operations followed in the Laeken Conclusions of 15 December 2001. The General Affairs Council Conclusions of 28 January 2002 included consideration of what an EU police mission to BiH would involve. And the General Affairs Council announced its readiness to establish the EUPM in its Conclusions of 18 February 2002.

The EUPM started on 1 January 2003. It is the first civilian crisis management operation launched under the ESDP. It is scheduled to last till the end of 2005, but it is likely to be extended with a focus on police restructuring and fight against organised crime.¹⁷

All 25 Member States contribute personnel to the mission. There are currently 371 personnel from the EU on the mission.¹⁸ The following 14 parliamentary chambers (from 11 Member States) reported scrutinising this mission:

- Austria, the Belgian Chamber of Representatives, the Belgian Senate, the Czech Senate, Denmark, Estonia, Finland, the French *Assemblée nationale*, the French *Sénat*, Luxembourg, the Dutch House of Representatives, Sweden, the UK House of Commons and the UK House of Lords.

European Union Police Mission in the Former Yugoslav Republic of Macedonia (Proxima)

On 16 September 2003, the authorities of the former Yugoslav Republic of Macedonia (fYROM) invited the European Union to assume responsibility for an enhanced role in policing and the deployment of an EU Police Mission. The European Union established an EU Police Mission in fYROM, in partnership with the country's authorities, on 29 September 2003 by adopting a Council Joint Action (2003/681/CFSP). On 11 December 2003 the Council adopted by written procedure a Decision concerning the conclusion of the Agreement between the EU and fYROM on the status and activities of the mission.

The Mission, code-named EUPOL PROXIMA (and often referred to as simply "Proxima"),¹⁹ was launched on 15 December 2003 for an initial period of one year,²⁰ and, upon invitation of the fYROM authorities, was subsequently extended for an additional year.²¹ The aim of operation Proxima is to "monitor,

¹⁷ For further information on EUPM, see

http://ue.eu.int/cms3_fo/showPage.asp?id=585&lang=en&mode=g and <http://www.eupm.org/>

¹⁸ For the numbers of people involved in EUPM from different countries, see

<http://www.eupm.org/Documents/Weekly.pdf>

¹⁹ For further information on Proxima, see

http://ue.eu.int/cms3_fo/showPage.asp?id=584&lang=en&mode=g

²⁰ Proxima followed the EU-led military operation in fYROM - "Concordia" - which was launched on 31 March 2003 and ended on 15 December 2003. The Concordia operation itself followed a NATO operation, which ended on 31 March 2003.

²¹ On 1 October 2004, the Prime Minister of FYROM, Mr Hari Kostov, sent a letter to the Secretary-General/High Representative of the Council, inviting the EU to extend Proxima by 12 months after 14 December 2004. 10 days later, on 11 October 2004, the Council agreed to this extension. This agreement was in the form of a Council conclusion and was announced in the Conclusions to the General Affairs and External Relations Council meeting of 11 October 2004. The extension to the mission was then formalised by the Council in Joint Action 2004/789/CFSP of 22 November 2004.

mentor and advise the local police, thus help to fight organised crime more effectively and consolidate public confidence in policing. 'Proxima' will support the development of an efficient and professional police service and promote European standards of policing. The strength of the mission will be of around 200 police officers and civilians."

The following 24 Member States participate in the Mission with police officers or other contracted or seconded staff:

- Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Portugal, the Republic of Slovakia, Slovenia, Spain, Sweden, United Kingdom.

The following 14 parliamentary chambers (from 11 Member States) reported scrutinising this mission:

- Austria, the Belgian Chamber of Representatives, the Belgian Senate, Denmark, Estonia, Finland, the French *Assemblée nationale*, the French *Sénat*, the German *Bundestag*, Luxembourg, the Dutch House of Representatives, Sweden, the UK House of Commons and the UK House of Lords.

European Union Law Mission in Georgia (EU JUST – Themis)

On 6 April 2004, the President of Georgia visited Brussels and requested support in the area of Rule of Law. On 3 June 2004, the Prime Minister of Georgia, Mr Zhvania, wrote to the High Representative for the CFSP and Secretary-General of the Council, Javier Solana, inviting the EU to deploy a Rule of Law Mission in Georgia in the context of the ESDP. On 28 June 2004, the Council adopted Joint Action 2004/523/CFSP on the European Union Rule of Law Mission in Georgia (EUJUST THEMIS) - the 3rd civilian ESDP operation, and the first Rule of Law mission launched by the EU in the context of the ESDP. On 16 July 2004, the Council approved the Operational Plan for Themis, thus launching the mission, which was foreseen to last 12 months. Themis finished its work as planned on 14 July 2005.

Themis involved 3 EU staff members (from Greece, France and Poland).²²

The 10 following parliamentary chambers (from 8 Member States) reported scrutinising this mission:

- The Belgian Chamber of Representatives, the Belgian Senate, Denmark, Estonia, Finland, the French *Assemblée nationale*, the Dutch House of Representatives, Sweden, the UK House of Commons and the UK House of Lords.

²² For further information on Themis, see http://ue.eu.int/cms3_fo/showPage.asp?id=701&lang=en&mode=g

EU Police Missions in Kinshasa (EUPOL Kinshasa)

On 20 October 2003, the government of the Democratic Republic of Congo (DRC) addressed an official request to the EU for assistance in setting up an Integrated Police Unit (IPU), which "should contribute to ensuring the protection of the state institutions and reinforce the internal security apparatus".

On 15 December 2003, the EU's Political and Security Committee (PSC) agreed that the EU should support the establishment of the IPU (Joint Action 2004/494/CFSP of 17 May 2004).²³ On 17 May 2004, the Council adopted Joint Action 2004/494/CFSP in which the EU committed to "support the process of the consolidation of internal security in the DRC [...] through assistance to the setting up of an Integrated Police Unit (IPU) in Kinshasa". That Joint Action provided that the assistance to the IPU might be followed by an ESDP.

At its meeting on 16 November 2004, the PSC agreed to the concept of an ESDP mission in the DCR. This agreement was followed by the General Affairs Council adopting Joint Action 2004/847/CFSP on 9 December 2004 to establish a police mission in Kinshasa (EUPOL Kinshasa).

EUPOL Kinshasa - the first civil mission for crisis management in Africa within the ESDP framework - was launched on 30 April 2005. Its mandate was for a period of 12 months, but it is likely to be extended due to delay with DRC elections.

The Mission was expected to have approximately 30 staff (including 23 international staff, including police officers and civilian staff seconded from Member States). The budget for the mission was 4.37 million euros to cover the costs during the planning phase and the year 2005. On 31 August 2005, the following 6 Member States had staff contracted or seconded to the mission:

- Belgium, France, Italy, the Netherlands, Portugal and Sweden.

The 11 following parliamentary chambers (from 8 Member States) reported scrutinising this mission:

- The Belgian Chamber of Representatives, the Belgian Senate, Denmark, Estonia, Finland, the French *Assemblée nationale*, the French *Sénat*, the Dutch House of Representatives, Sweden, the UK House of Commons and the UK House of Lords.

EU Integrated Rule of Law Mission for Iraq (EUJUST Lex)

A joint European Commission/Council fact-finding mission for a possible integrated police, rule of law and civilian administration mission for Iraq took place in October 2004. The European Council in Brussels on 5 November 2004 considered the report from the fact-finding mission and agreed that the EU "could usefully contribute to the reconstruction and the emergence of a stable, secure and democratic Iraq through an integrated police, rule of law and civilian administration mission".

Following the European Council Conclusions, an expert team was sent to Iraq on 30 November 2004 to follow up the work of the fact-finding mission and to work with the interim Iraqi government with a view to a possible EU integrated

²³ For further information, see <http://www.eupol-kinshasa.org/>

police and rule of law mission for Iraq. The expert team reported to the Council in January 2005.

The Council reached political agreement on an integrated mission to Iraq on 21 February 2005. And on 7 March 2005 the Council adopted a Joint Action (2005/190/CFSP) establishing the EU Integrated Rule of Law mission for Iraq (EUJUST LEX).²⁴

The planning phase of the mission was to begin no later than 9 March 2005. The operational phase (including training activities) began in July 2005 and was expected to cover an initial period of 12 months. The common costs of the mission are to be covered by 10 million euros from the EU budget. Member States and EU institutions second staff to the mission. The mission was expected to have 30 staff (5 in Baghdad; 25 in Brussels). In addition, nine Member States contribute further by running training courses with their own trainers in the Member States. On 31 August 2005, the following 10 Member States had staff contracted or seconded to the mission:

- Czech Republic, Denmark, Finland, Germany, Italy, the Netherlands, Portugal, Spain, Sweden and the UK.

The 12 following parliamentary chambers (from 10 Member States) reported scrutinising this mission:

- Austria, the Belgian Chamber of Representatives, the Belgian Senate, Denmark, Estonia, Finland, the French *Assemblée nationale*, the Dutch House of Representatives, the Slovenian National Assembly, Sweden, the UK House of Commons and the UK House of Lords.

EU Mission in the DRC (EUSEC DRC)

On 13 December 2004, the Council, in its conclusions, stated the EU's readiness to contribute to security sector reform in the Democratic Republic of the Congo (DRC). On 26 April 2005, the DRC government officially requested EU assistance with advice and assistance for security sector reform. But in fact the Council had already approved the General Concept for setting up such a mission on 12 April 2005. On 2 May 2005 the Council adopted - by written procedure - a Joint Action (2005/355/CFSP) on the European Union mission to establish an EU advisory and assistance mission for security reform in the Democratic Republic of Congo ("EUSEC - R.D. CONGO" mission).²⁵

The mission was launched on 8 June 2005 and was expected to last 12 months. It has 12 (mainly military) staff, including experts seconded by the Member States and by the EU institutions. A six-month review will be conducted under the UK Presidency, and the mission may be expanded. Its budget was 1.6 million euros.

The 10 following parliamentary chambers (from 8 Member States) reported scrutinising this mission:

- The Belgian Chamber of Representatives, the Belgian Senate, Denmark, Estonia, Finland, the French *Assemblée nationale*, the Dutch House of

²⁴ For further information on EUJUST LEX, see http://ue.eu.int/cms3_fo/showPage.asp?id=823&lang=en&mode=g

²⁵ For further information on EUSEC DRC, see http://ue.eu.int/cms3_fo/showPage.asp?id=909&lang=en&mode=g

Representatives, Sweden, the UK House of Commons and the UK House of Lords.

1.2.2 Scrutiny in very short time periods

Council decisions can be taken in short periods of time for ESDP missions, and so may not allow a lot of time for parliamentary scrutiny, as the following figures show:

EUPM: two months and one week between the Council saying that it would examine the "possibility of the European Union taking part in the development of the international police force in Bosnia and Herzegovina" in its Conclusions of 10 December 2001 and announcing its readiness to establish the EUPM in its Conclusions of 18 February 2002.

Proxima: 13 days between the authorities of FYROM inviting the EU to deploy a Police Mission on 16 September 2003 and the Council adopting a Joint Action on 29 September 2003 to establish the mission.

EU JUST – Themis: 25 days between the Prime Minister of Georgia on 3 June 2004 inviting the EU to deploy a Rule of Law Mission in Georgia and the Council adopting a Joint Action on 28 June 2004.

EU JUST – Lex: 3 and a half months between the European Council on 5 November 2004 considering the report of the fact-finding mission to Iraq and the Council reaching political agreement on 21 February 2005 on an integrated mission to Iraq .

EUSEC DRC: no time for parliamentary scrutiny? On 26 April 2005, the DRC government officially requested EU assistance with advice and assistance for security sector reform. But in fact the Council had already approved the General Concept for setting up such a mission on 12 April 2005. On 2 May 2005 the Council adopted - by written procedure - a Joint Action to establish the mission.

On 9 February 2005, the UK Government wrote to the European Scrutiny Committee in the House of Commons to say that the Government would "make every effort to ensure that it can meet its scrutiny obligations in ESDP, as in other areas of CFSP. However, the nature of ESDP and the relative speed at which decisions are agreed will mean that there will inevitably be times when the Government will have to decide to take part in EU decisions before scrutiny is completed".

Recognising this fast nature of ESDP, just over half of the 26 national parliaments or parliamentary chambers that scrutinise CFSP/ESDP matters have arrangements for scrutinising civilian ESDP missions within very short time periods.

These are the following 15 parliaments: Austria, the Belgian Chamber of Representatives, the Belgian Senate, Denmark, Estonia, Finland, the French *Assemblée Nationale*, Greece, the Italian Senate, Lithuania, the Slovenian National Assembly, the Slovenian National Council, Sweden, the UK House of Commons and the UK House of Lords.

In Austria, the Government may decide without the authorization of the Parliament to send personnel abroad in operations on humanitarian aid but the

Hauptausschuss Committee may raise an objection within 2 weeks (in which Austrian participation in the operation would have to be stopped).

1.2.3 Scrutiny during parliamentary recesses

The most recent ESDP missions with a civilian component - the Aceh monitoring mission in Indonesia - was announced by the Council on 15 August 2005 and launched on 15 September 2005. Many national parliaments were on recess during this period.

The same 15 parliamentary chambers that have arrangements for scrutinising civilian ESDP missions within very short time periods (see above) also have arrangements for scrutinising civilian ESDP missions during parliamentary recesses,²⁶ as does the Italian Chamber of Deputies.

1.2.4 Do Council procedures allow time for parliamentary scrutiny?

The questionnaire sent to national parliaments asked whether the procedures of the Council on civilian ESDP operations allowed adequate time for parliamentary scrutiny. Of the 21 parliamentary chambers that answered this question, 16 answered it positively.

The Czech Chamber of Deputies reported that the Council's procedures on civilian ESDP operations did not allow enough time for national parliaments "to have an effective discussion on each single matter." And this is why that Chamber took a selective approach to scrutinising CFSP proposals.

The Danish Parliament explained that it was "very important to get all kinds of relevant information on EU issues as soon as possible, thereby making the Committee able to handle the relevant issues properly. Now and then the Committee receives information at a rather late stage in the process, but this happens within all policy areas, and does not count for CFSP/ESDP issues in particular." The German *Bundestag* agreed that there was not always adequate time for parliamentary scrutiny of civilian ESDP operations.

The EU Affairs Committee of the Slovak Parliament explained that most ESDP missions were agreed prior to a meeting of Ministers in the Council (e.g. at Coreper or COPS - the Political and Security Committee). This was a problem, because in theory the Slovak Minister at the Council is bound to hold the position of the EU Committee, which it will adopt on the basis of a draft position presented by the Government two weeks before the meeting of Ministers in the Council. But if by that stage a political agreement had already been made at a lower level of the Council, then the parliamentary Committee was not left with much scope for proposing any amendment to the ESDP mission.

1.2.5 The classification of documents as 'restricted' or 'confidential'

The majority of national parliaments reported no problem with the classification of documents as 'restricted' or 'confidential'.

²⁶ The *Hauptausschuss Committee* in the Austrian Parliament is one of the few committees in the *Nationalrat* that can hold sessions during a parliamentary recess.

The Czech Chamber of Deputies, however, said that the classification by Council of documents as 'restricted' or 'confidential' had proven a hindrance to parliamentary scrutiny of ESDP missions, explaining that "Good accessibility of documents is a primary condition for each effective discussion, especially in the area of CFSP/ESDP." But saying that the present system of classification prevented Members of Parliament "from immediate access to relevant EU Council documents."

The Czech Senate explained that the classification of documents as "restricted" made access for Senators who want to consult a given document difficult because the classified documents were only accessible from a database operated by the government that required a password. The Senate was concerned that, in practice, classified documents would probably be "virtually inaccessible because the government has opted for an extremely securised system of transmission, which is now being tested and will become operational at the end of 2005." The Slovak Parliament also reported problems where Members were not authorised to have access to classified documents.

The Austrian Parliament said the classification of documents only had implications for whether the debate had to be confidential. Similarly, the Belgian Senate said classified documents were not made public by the Parliament.

1.2.6 Political agreements in the Council

The Council of Ministers often reaches 'political agreement' on a CFSP or ESDP policy proposal before the legislative instrument is finalised, in which case certain details will be agreed at a later meeting, possibly after parliamentary scrutiny has been completed.

The French *Assemblée Nationale* reported that this practice of political agreement had caused them problems and was explained by the urgency of decision making in the area of CFSP and ESDP.

The Irish Parliament said that such instances were considered on a case-by-case basis, and reported that problems had often arisen "in respect of annexes to 'sanction' measures." The Polish *Sejm* reported that it had agreed special rules of cooperation for EU proposals setting up international sanctions. These rules obliged the Government to "present an issue and its position to the Committee even if it does not have the final draft document."

The House of Lords EU Committee was concerned, "across the board, about the question of political agreement, provisional agreement or agreement to a general approach" which governments may reach in the Council. On CFSP, the UK Government has given assurances that items that will be subject to political agreement will be submitted for parliamentary scrutiny.

Member State	Scrutiny of civilian ESDP operations?	Scrutiny in very short time periods?	Scrutiny during parliamentary recesses?	Adequate time for scrutiny?	Problem with the classification of documents?	Problem with political agreements?
Austria	Yes	Yes	Yes	Yes	No	No
Belgium - Chamber of Deputies	Yes	Yes	Yes	Yes	No	No
Belgium - Senate	Yes	Yes	Yes	Yes	No	No
Cyprus	No	-	-	-	-	-
Czech Republic - Chamber of Deputies	No ²⁷	No	No	No	Yes	No
Czech Republic - Senate	Yes	No	No	No	No	Not yet
Denmark	Yes	Yes	Yes	Not always	No	No
Estonia	Yes	Yes	Yes	Yes	No, not yet	No
Finland	Yes	Yes	Yes	Yes	No	No
France - <i>Assemblée Nationale</i>	Yes	Yes	Yes	Yes	No	Yes, because of the urgency of CFSP decision-making
France - <i>Sénat</i>	Yes	No	No	Yes	No	No
Germany - <i>Bundestag</i>	Yes	No	No	Not always	Yes	No
Germany - <i>Bundesrat</i>	No	-	-	-	-	-
Greece	No	Yes	Yes	Yes, in general	Not particularly	-
Hungary	No	-	-	-	-	-
Ireland	Yes	No	No	No difficulties to date	No	No, however, problems arise in respect of annexes to "sanction" measures
Italy - Chamber of Deputies	Yes	No	Yes	Yes	No	No
Italy - Senate	Yes ²⁸	Yes	Yes	-	No	-
Latvia	No	No	No	-	No	Not so far
Lithuania	No	Yes	Yes	Yes	No	Not to date
Luxembourg	Yes	-	-	-	-	-
Malta	No	-	-	-	-	-
Netherlands - House of Representatives	Yes	No	No	-	No problems so far	No
Netherlands - Senate	No	-	-	-	-	-
Poland - Sejm	No	-	-	-	-	No
Poland - Senate	No	-	-	-	-	-
Portugal	No	No	No	-	No	No
Republic of Slovakia	No	No	No	No	Yes	Not yet

²⁷ However, the Czech Chamber of Deputies constantly monitors all activities in the field of civilian ESDP operations.

²⁸ Especially during scrutiny of budget for such operations

Member State	Scrutiny of civilian ESDP operations?	Scrutiny in very short time periods?	Scrutiny during parliamentary recesses?	Adequate time for scrutiny?	Problem with the clasification of documents?	Problem with political agreements?
Slovenia - National Assembly	Yes	Yes	Yes	Yes	No	No
Slovenia - National Council	No	Yes	Yes	Yes	No	No
Spain	No	-	-	-	-	-
Sweden	Yes	Yes	Yes	Yes	No	No
United Kingdom - House of Commons	Yes	Yes	Yes	In general yes	No	No
United Kingdom - House of Lords	Yes	Yes	Yes	Yes	EU Committee considering this question	EU Committee has concerns

2 Scrutiny of Impact Assessments

UK Presidency suggestions for discussion at the XXXIV COSAC: Scrutiny of Impact Assessments

- To what extent do national parliaments think that the Commission's plans for regulatory reform represent an achievable culture change and will allow for more effective scrutiny? Do parliaments think the revised impact assessment guidelines will lead to improved, fuller assessments and will this assist scrutiny?
- In practical terms how can a parliamentary scrutiny committee deal with an impact assessment? When is the best time to do so? What resources does a scrutiny committee need to do this work?
- Should institutions amending EU legislation have to produce impact assessments on their changes and how should scrutiny committees handle revisions to impact assessments as they proceed through the legislative process?
- Are national parliaments fully supportive of the Commission's better regulation agenda?
- What could national parliaments do to help ensure that the simplification programme progresses?

Note: A report from the House of Lords EU Committee on ensuring more effective EU regulation is available at

<http://www.publications.parliament.uk/pa/ld200506/ldselect/ldeucom/33/33.pdf>

This chapter looks at how national parliaments use impact assessments from the Commission in the process of scrutinising EU legislation. Impact assessments are first and foremost an aid to political decision-making. The process of putting together an impact assessment involves gathering and presenting facts and information that can help in determining possible policy options. An impact assessment can point out the benefits and drawbacks of a proposal and help to ensure that the proposed legislation is necessary and not overly burdensome.

As such, impact assessments play a central role in the EU's better regulation agenda. The Czech Chamber of Deputies drew attention to the fact that the better regulation agenda is one of the key areas of the re-launched Lisbon Strategy. And, as the President of the Commission, Mr Barroso, pointed out to the European Parliament, "the first major Commission initiative to implement the revised Lisbon strategy was the March Communication on Better

Regulation for Growth and Jobs."²⁹ In this Communication, the Commission explained that

“The European Union’s better regulation policy aims to improve regulation, to better design regulation so as to increase the benefits for citizens, and to reinforce the respect and effectiveness of the rules, and to minimise economic costs—in line with the European Union’s proportionality and subsidiarity principles”

The Commission Communication explained the Commission’s belief in impact assessment: “The Commission’s commitment to integrated impact assessment is based on the principle of sustainable development and is designed to allow policy makers to make choices on the basis of careful analysis of the potential economic, social and environmental impacts of new legislation”.

On 15 June 2005 the Commission's published its revised guidelines impact assessment. The guidelines set out the procedural rules for and key analytical steps in impact assessment as well as explaining the purpose of the assessments and the effects they are intended to have. The Commission defines an impact assessment as “a set of logical steps which structure the preparation of policy proposals.”

As such, an impact assessment should be fully comprehensive and should consider the impact a piece of regulation will have on all aspects of Europe’s economic and social landscape. Impact assessments explore not only the potential economic impact of a proposal but also the effects it might have on society and the environment.

The German *Bundesrat* insisted that “particular importance should be given to examining alternatives to new legislative provisions when carrying out impact assessments. Within the context of impact assessments, consideration should be given to whether it would be possible to attain the goal pursued by draft EU legislation whilst avoiding or limiting the burden on the administration and businesses, or indeed whether it would be possible to entirely or partly scrap existing burdensome EU provisions in conjunction with the introduction of new draft legislation.” The UK House of Lords agreed that “the ‘do-nothing’ option and the achievement of aims through non-legislative means must always be considered in impact assessments”.

Impact assessments should help people to assess the whether the proposed legislation is necessary, in line with the principles of proportionality and subsidiarity, transparent, accessible and simple.³⁰ This chapter shows how the Commission's impact assessments are used by national parliaments.

²⁹ Speech made in a plenary session debate on the “Programme of the British Presidency”, 23 June 2005. A transcript of the debate is available in all official Community languages from:

<http://www2.europarl.eu.int/omk/sipade2?L=EN&OBJID=97602&MODE=SIP&NAV=X&LSTDOC=N&LEVEL=2> Mr Barroso's speech (in English) can be accessed here: http://europa.eu.int/comm/commission_barroso/president/speeches_en.htm

³⁰ These are the principles behind regulation agreed to by the Member States and the Commission and stem from the report of the Mandelkern Group of Member State experts on better regulation. This group was set up by Ministers of Public Administration, in November 2000, with the task of developing a coherent strategy to improve the European regulatory environment. Chaired by Dieudonne Mandelkern, a French government official, the Group produced a final report in November 2001 which was presented to the Laeken meeting of the European Council.

2.1 SCRUTINY OF IMPACT ASSESSMENTS

2.1.1 *Which national parliaments scrutinise the Commission's impact assessments?*

National parliaments of 15 Member States currently report using the Commission's impact assessments.

One or both chambers of the national parliaments of 10 Member States currently scrutinise impact assessments produced by the Commission. These are: the Belgian Chamber of Representatives, Cyprus, the Czech Chamber of Deputies, the Finnish Parliament, the French Senate, the German *Bundesrat*, the Irish Parliament, the Italian Chamber of Deputies, the Italian Senate, the Polish *Sejm*, and both Houses of the UK Parliament.

But this only tells part of the story. In addition, although the Commission's impact assessments are not scrutinised as such by the Czech Senate, the French *Assemblée nationale* or the Swedish Parliament, they are considered by those parliaments in their scrutiny process. Similarly, in the Danish Parliament, while the Commission's impact assessments are not scrutinised formally by the EU affairs committee, they are used by parliamentary staff. Also, although the Dutch Senate does not scrutinise the Commission's impact assessments, it will examine an assessment if it is "attached to a proposal that is subject to an in-depth study in the Senate". The Italian Senate also makes particular use of the "road maps" attached to the Commission's Annual Legislative and Work Programme, which for each item in the annex to the work programme provide information on initial impact assessment screening and the Commission's plans for further impact assessment work. The Commission's decision to include road maps with the work programme was also welcomed by the European Union Committee of the UK House of Lords and the European Scrutiny Committee of the House of Commons, which used them in its scrutiny of the work Programme.³¹

The amount of attention national parliaments give to the Commission's impact assessments in the scrutiny process varies. The Czech Chamber of Deputies sees them as an "obligatory" part of scrutinising EU legislation. And the Belgian Chamber of Representatives agrees that they are "essential" for national parliamentary scrutiny. However, less than half of the national parliaments currently scrutinise impact assessments produced by the Commission. But nevertheless, even those national parliaments that do not use the Commission's impact assessments systematically, such as the Hungarian Parliament, say that the assessments can help their scrutiny of EU legislation. The Latvian Parliament reported that although their EU affairs committee does not scrutinise the Commission's impact assessments, these assessments are of particular practical help to their sectoral committees, which are now involved in scrutinising EU affairs. The assessments are also used by sectoral committees in the Finnish and Swedish Parliament.

³¹ The roadmaps are available online (in English only) at:
http://europa.eu.int/comm/off/work_programme/20050128_clwp_roadmaps.pdf or
http://europa.eu.int/comm/atwork/programmes/index_en.htm
The Commons Committee's report is at:
<http://www.publications.parliament.uk/pa/cm200506/cmselect/cmeuleg/34-iii/34iii.pdf>

2.1.2 Do national parliaments have special procedures for scrutinising Commission impact assessments?

No. All the national parliaments that scrutinise the Commission's impact assessments do so using their standard scrutiny procedures.

2.1.3 Do national parliaments have special resources for scrutinising Commission impact assessments?

The answer to this question is almost universally no.

The only exceptions are the Finnish Parliament and the UK House of Lords.

In the Finnish Parliament, when sectoral committees scrutinise EU legislation, they hear from external experts; the committees also hear from these experts about the Commission's impact assessments.

In 2002 the House of Lords European Union Committee reviewed its scrutiny of EU legislation.³² One of the Committee's commitments in its consequent report was to ensure that every EU Committee report on EU legislation "takes into account an analysis of the cost and impact assessments, based on scrutiny of figures from the Government and the Commission when they are available and giving a clear statement when they are not" (paragraph 95). In line with recommendations from that review, the Committee can draw on additional resources (such as the appointment of expert specialist advisers from outside parliament) to help in this work as necessary.

2.1.4 Could the Commission help national parliaments to use impact assessments more in the scrutiny process?

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 send MEPs "one page summaries of impact assessments to enable them to get to grips with the material quickly and efficiently". If the Commission accepts this recommendation, and given that national parliaments generally do not use special resources for scrutinising impact assessments, it could be that such summaries of impact assessments would also be of use to national parliaments.

2.2 COMMENTS FROM NATIONAL PARLIAMENTS ON THE COMMISSION'S IMPACT ASSESSMENTS

2.2.1 Not all proposals have an impact assessment

The Polish *Sejm* pointed out that not all Commission proposals include an impact assessment. The Latvian Parliament said that the main issue was "the lack of impact assessments for a number of pieces of EU legislation." The Austrian Parliament added that it is "not transparent why some proposals contain impact assessments, some not."

³² The report, *Review of Scrutiny of European Legislation* (Session 02-03, 1st report, HL 15), is available on line at: <http://www.publications.parliament.uk/pa/ld200203/ldselect/ldcom/15/15.pdf>

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."³³ 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.

2.2.2 Access to the Commission's impact assessments

The German *Bundestag* reported that the Commission's impact assessments 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.

The "Copenhagen Parliamentary Guidelines: Guidelines for relations between governments and Parliaments on Community issues (instructive minimum standards)" may be relevant here. Adopted at the XXVIII COSAC in Brussels in January 2003 and published in the *Official Journal* on 2 July 2003 (2003/C 154/01), they include the following recommendation: "A Member country's government should ensure, in consultation with the Community's institutions, that the national Parliament receives all Community documents regarding legislation and other Community initiatives as soon as they become available."

Delegations may also wish to be aware that the page of the Commission's website entitled "Impact Assessment in Practice"³⁴ contains links to the English texts of impact assessments that the Commission completed in 2003, 2004 and so far in 2005.

The Danish Parliament provided a practical proposal for how the Commission could make its impact assessments easier to find: "The organisation and presentation of impact assessments should be improved, in order to ensure their accessibility. To this end, it is suggested that the European Commission creates a public database including all proposals in the annual legislative and work programme - with links to their specific impact assessments as well as any other relevant information. Such a system of linking the various impact assessments with the Commission's annual legislative and work programme will allow the national parliaments to begin a subsidiarity check at an early stage."

2.2.3 A language problem

The *Seimas* of the Republic of Lithuania reported that it did not scrutinise impact assessments produced by the Commission, because they were "not produced in the Lithuanian language. The *Seimas* receives impact assessments

³³ 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."

³⁴ http://europa.eu.int/comm/secretariat_general/impact/practice.htm

in English, therefore under domestic legislation the Committees of the Seimas can not deliberate them."

2.2.4 How accurate are the Commission's impact assessments?

The Parliament of Malta reported that the Commission's impact assessments "are valid as a starting point for discussion, however, they do not always reflect the realities of Malta, the smallest EU member, both in population and size."

Similarly, the European Scrutiny Committee in the UK House of Commons has occasionally found major difference between the impact assessments produced by the Commission and the UK Government.

2.2.5 How wide is the consultation on which they are based?

The Irish Houses of the *Oireachtas* drew attention to the fact that the Commission's impact assessments "tend to be centred around consultation with a limited number of organisations."

2.2.6 Suggestions from national parliaments for how the content of the Commission's impact assessments could be improved

The Polish *Sejm* criticised the Commission's impact assessments for being "insufficient", saying that they do not present the figures necessary "to calculate the real impact" of a proposal. The French Senate said that the impact assessments were useful in theory, but it agreed that their content is often "of limited use". It called on the Commission to present in a more precise manner in its impact assessments:

- 1) an analysis of the costs/benefits of the measure; and
- 2) the justification concerning the principle of subsidiarity.

The French *Assemblée nationale* reported that the quality of the Commission's impact assessments varied widely, noting that they were generally best in the environmental sector. The *Assemblée nationale* said that the assessments could be more precise, particularly on the financial impact of a Commission proposal. The French *Assemblée nationale* drew attention to the example of the Commission Proposal for a Council Regulation on standards for security features and biometrics in EU citizens' passports (COM(2004)0116 final). It explained that the lack of reliable statistics in some areas, such as Justice and Home Affairs, limited the usefulness of the Commission's assessments.

The Czech Chamber of Deputies proposed that "Draft European legislative acts should take account of the need for any burden, whether financial or administrative, falling upon the Union, national governments, regional or local authorities, economic operators and citizens, to be minimised and commensurate with the objective to be achieved (as proposed in the Protocol on the application of the principle of subsidiarity and proportionality annexed to the Treaty Establishing the Constitution for Europe)."

Similarly, the German *Bundesrat* said that impact assessments should "consider the economic, ecological and social impacts, whilst also providing information on the substance of the legislation, alternatives to legislation and the expected benefits, as well as direct and indirect financial and other burdens

on the public sector and/or the target group(s) affected by the provisions. A long-term cost-benefit analysis should be taken as the basis for comparing the anticipated advantages and disadvantages of draft EU legislation."

In response to such criticisms, on 15 June 2005 the Commission published its updated internal *Impact Assessments Guidelines* (SEC(2005) 791). The document and its annexes explain what Commission impact assessments should cover and provide step-by-step guidance to Commission staff for carrying out the impact assessments of major legislative and policy-defining initiatives set out in the Commission's annual work programme.³⁵

2.3 SCRUTINY OF SUBSIDIARITY

18 national parliaments or parliamentary chambers (from 14 Member States) scrutinise EU legislation for compliance with the principles of subsidiarity and proportionality.

These are 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."

³⁵ The Commission document and its annexes are available (in English) on line at: http://europa.eu.int/comm/secretariat_general/impact/key.htm

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

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

This could mean that national parliaments of 20 Member States will in due course be scrutinising whether EU legislation complies with the principles of subsidiarity and proportionality.

6 national parliaments or parliamentary chambers use the Commission's impact assessments to help them to scrutinise EU legislation for compliance with the principles of subsidiarity and proportionality. These are: the Czech Chamber of Deputies, the Czech Senate, Finland, Hungary, the UK House of Commons and the UK House of Lords.

In addition, the Belgian Chamber of Representatives said that impact assessments are "essential" for national parliamentary scrutiny, as they provide information on whether the proposed legislation is proportionate, which in turn helps for reaching a judgment on subsidiarity.

The German *Bundesrat* agreed that effective impact assessments are "of considerable importance for the "subsidiarity early warning system" envisaged in the Constitutional Treaty. Information from the EU on the advantages and drawbacks to be expected from planned legislation can support national parliaments' scrutiny of compliance with the subsidiarity and proportionality principles."

In Denmark, the Government has been obliged since January 2005 to send specific "subsidiarity notes" to the EU committee of the *Folketinget*. The Danish Government must produce the notes on all legislative proposals of greater importance no later than 14 days after the proposal is adopted by the Commission.³⁶

2.4 WHEN SHOULD THE COMMISSION UNDERTAKE AN IMPACT ASSESSMENT ON A PIECE OF LEGISLATION?

National parliaments had different ideas about the stage at which the Commission should undertake an impact assessment on an item of legislation, but a frequently recurring theme was that assessing the impact of legislation should be an ongoing process.

2.4.1 As early as possible?

The German *Bundesrat*, for example, said that an impact assessment should be prepared by the Commission at a "very early stage" of the legislative procedure and said the Länder should be involved at that early stage. The Austrian

³⁶ Members of the EU Affairs Committee of the Danish Parliament are also given access to all relevant documents from EU institutions concerning work in progress, as well as explanatory memorandums from the UK House of Commons and the Swedish *Riksdag*.

Parliament agreed that the Commission should undertake its impact assessments "as early as possible". This was also the position of the French *Assemblée nationale*, which added that a proposal's impact assessment should in all cases be ready before the proposal is adopted by the College of Commissioners.

2.4.2 Before the Commission drafts a legislative proposal?

The Czech Chamber of Deputies said that the Commission should undertake an impact assessment "before it drafts any proposal". And officials in the Czech Senate agreed that the Commission should undertake a "preliminary impact assessment" before drafting a legislative act. This was also the position of the Parliaments of Cyprus, Estonia, Hungary, Ireland, Luxembourg and of officials in the German *Bundestag*. None of these parliaments, however, said that this should be the end of the matter. The common position of these parliaments was that the Commission should do a first impact assessment before drafting its proposal and that this initial assessment should then be revised as the legislative proposal is revised. This was also the position of the Dutch Senate: "In order to avoid any bias in drafting a proposal, an impact assessment can best be undertaken before drafting a proposal. After the proposal had been adopted assessing the impact of legislation should be an on-going process."

2.4.3 After drafting and before adoption by the College of Commissioners?

The Latvian Parliament proposed that the preparation of an impact assessment "should not begin before the final version of that piece of legislation is tabled, lest unnecessary but time-consuming work be carried out - that is, work on parts of the legislation that may not be retained in its final form." Instead it suggested that an impact assessment should be undertaken "after drafting - when the legislation has jelled in its proposed final form - and before adoption by the College."

The UK House of Commons agreed that the production of a "full impact assessment" should take place "after drafting but before adoption by the College." However, the House of Commons, like the Czech Senate, distinguished between a full impact assessment and earlier work that could be done before a proposal was fully drafted, arguing that an assessment of subsidiarity and proportionality "should take place (and be justified) before an item appears in the Commission's Work programme." The Danish Parliament agreed that impact assessments should be done before a legislative proposal appears on the work programme.

The Polish *Sejm* said that the Commission should undertake an impact assessment on an item of legislation after drafting its proposal "and during the entire legislative process".

2.4.4 Impact assessments should be an ongoing process

In response to the question when impact assessments should be undertaken, national parliaments most frequently replied that assessing the impact of legislation should be an ongoing process. This was the position of the Belgian Chamber of Representatives, the Belgian Senate, the Czech Chamber of Deputies, officials in the Czech Senate, Finland, the French *Sénat*, officials in

the German *Bundestag*, Ireland, Lithuania, Malta, the Dutch Senate, the Polish *Sejm*, Portugal, and the UK House of Lords, which said that "impact assessments should be carried out by the proposer of legislation at an early stage and should be revised as legislation changes through the legislative process."

2.5 SHOULD IMPACT ASSESSMENTS BE REVISED AS EU LEGISLATION IS AMENDED?

23 of the 24 national parliaments or parliamentary chambers (representing 19 Member States) who responded to this question in the questionnaire answered it positively.

That is, the following parliaments consider that Commission impact assessments should be revised in the light of amendments to the Commission's proposal, in order to assess the impact of amendments and better reflect the amended proposal: Austria, the Belgian Chamber of Representatives, the Belgian Senate, Cyprus, the Czech Chamber of Deputies, the Czech Senate, Finland, the French *Assemblée nationale*, the French *Sénat*, Hungary, Ireland, the Italian Chamber of Deputies, Latvia, Lithuania, Luxembourg, Malta, the Dutch Senate, the Polish *Sejm*, Portugal, the Republic of Slovakia, the Slovenian National Assembly, the UK House of Commons and the UK House of Lords.

The Danish Parliament said that the Commission's initial impact assessment should not be revised as a matter of course as EU legislation is revised. But if during the legislative process the Commission issues a new proposal, then the new proposal should be accompanied by a new impact assessment.

2.5.1 *Should all amendments require an impact assessment?*

The UK House of Commons (like the French *Sénat*) pointed out that amendments can completely change the impact of a legislative proposal. The House of Commons therefore suggested that "impact assessments should be produced for all amendments which change a proposal's impact, whether the amendment was proposed by the Commission, Council or European Parliament. (This would be more manageable if there were rules preventing extension of the scope of legislation after publication by the Commission.)"

10 other national parliaments or parliamentary chambers qualified their positive answer to the original question in a similar way. The Austrian Parliament, the Czech Chamber of Deputies, the Czech Senate, the French *Assemblée nationale*, the Irish Parliament, the Lithuanian Parliament, the Parliament of the Republic of Slovakia, and the UK House of Lords said that impact assessments should be produced for all significant amendments to the Commission's proposal.

Similarly, the Danish Parliament said that requiring an impact assessment for all proposed amendments should be avoided unless it could be done "without delaying the legislative process." Likewise, the Latvian Parliament said that, although in theory it would appropriate to have impact assessments for all amendments, "the EU decision-making process should be consistent with practical needs, and hence not overly complex." It proposes that the need for an

impact assessment for amendments should be considered on a "case-by-case basis".

2.5.2 Who should revise the impact assessments?

The legislative institutions

The Dutch Senate was clear that it is "the responsibility of the European Parliament and the Council to assess the impact of their amendments and with that substantiate their amendments. These arguments should be included with their proposals for amendments."

The Austrian and Finnish Parliaments and the UK House of Lords agreed that "the author of the amendment" (*i.e.* the European Parliament or the Council) should be responsible for undertaking impact assessments for the amendments they produce.³⁷

The Commission

Other parliaments (including Hungary, Lithuania, the Republic of Slovakia, Slovenia) considered that the impact assessments remained that Commission's responsibility throughout the legislative process. The two Houses of the Belgian Parliament said that the Commission must remain responsible in order that the production of an impact assessment was a continual process. Coherence in the method of analysis could only be assured by a single institution (namely, the Commission) having responsibility for impact assessments.

The French *Assemblée nationale* said that it seemed neither desirable nor realistic to make the right of amendment of the Council and the European Parliament conditional upon them producing an impact assessment.

The Danish Parliament said that requiring the European Parliament and Council to produce impact assessments "might have an adverse effect on the legislative process", and so the Commission should take the responsibility.

2.6 SHOULD THE IMPACT OF EU LEGISLATION BE ASSESSED AFTER IMPLEMENTATION?

All the 20 national parliaments or parliamentary chambers (representing 17 Member States) who responded to this question in the questionnaire answered it positively.

That is, the following parliaments consider that EU legislation should be examined after implementation to assess its impact: Austria, the Belgian Chamber of Representatives, the Belgian Senate, the Czech Chamber of Deputies, the Czech Senate, Denmark, Finland, the French *Assemblée nationale*, the French *Sénat*, Ireland, the Italian Chamber of Deputies, Latvia, Lithuania, Luxembourg, Malta, the Dutch Senate, the Polish *Sejm*, Portugal, the Republic of Slovakia, and the UK House of Lords.

³⁷ The European Parliament has set aside a line in its budget for 2006 for producing its own impact assessments.

2.6.1 *Who should assess the impact of EU legislation after implementation?*

The Dutch Senate said that would be "advisable for the European Commission to examine the impact of important proposals and review the proposals in cooperation with the European Parliament and the Council."

The UK House of Lords thought that this task should be done "by the 'proposer' of the legislation (usually the Commission)."³⁸ The Czech Senate, the Lithuanian Parliament, the Luxembourg Parliament, and the Parliament of the Republic of Slovakia considered that the Commission should examine EU legislation after its implementation to assess its impact. The Slovakian Parliament added that the Commission should do this "based on the relevant documentation submitted by the Member States"

The French *Assemblée nationale*, the Maltese Parliament and the Portuguese Parliament agreed that it was a task that should be done "both at European and national level". The French *Sénat* and the two Houses of the Belgian Parliament had the same opinion, and thought that national parliaments should play a role. The Latvian Parliament also raised the possibility of national parliaments being involved in this process, but cautioned that this "would depend on the constitutional systems of each Member State."

2.6.2 *Should the impact of all EU legislation be assessed after impact?*

The Danish Parliament thought that assessing the impact of EU legislation after its implementation would provide the Commission with the opportunity "to ensure that the existing *acquis communautaire* continues to respect the principles of subsidiarity and proportionality."

The Polish *Sejm* was in favour of such an assessment but was concerned that the exercise would be "very complicated and expensive." The Latvian Parliament was concerned by the resources that would be required for assessing the impact of all EU legislation. It suggested that "only specific or sensitive area should be analysed." The Austrian Parliament suggested that the principle could be limited to "legal acts with major impact on a big amount of people or interest groups". The Dutch Senate and the Slovakian Parliament agreed that it should only be done with "important proposals".

2.6.3 *How should this exercise be managed?*

The Austrian Parliament mentioned that in Austria "several laws oblige the government to evaluate the legal act and report about it to parliament". It proposed that the assessment should take place 2-5 years after a piece of legislation had been implemented. The UK House of Lords recommended that such assessment "be carried out for the first time not more than one year after the entry into force of the legislation in question" and urged the Commission "to stand by its pledge to adopt a common European methodology for the measurement of administrative burdens", acknowledging that a pilot phase was underway.

³⁸ Under the 2nd and 3rd pillars Member States can propose legislation.

The Irish Parliament agreed that there should be "a planned, built-in post implementation assessment point for significant legislative proposals." Likewise, the Dutch Senate suggested that legislative proposals should contain "a review-clause" which would state "when the review should take place."

The Portuguese Parliament stressed the need for "agreed guidelines" for the competent authorities, and the Polish *Sejm* emphasised that it would be "necessary to specify the list of document categories to be examined."

2.7 SHOULD A NEW INDEPENDENT ADVISORY BODY BE CREATED TO PRODUCE IMPACT ASSESSMENTS?

An argument has been put forward for the creation of a new independent advisory body to advise the EU institutions on reducing the administrative burden of legislation on businesses and citizens (perhaps along the lines of Actal in the Netherlands³⁹ or the Better Regulation Task Force in the UK⁴⁰). Such a body could take over from the Commission the task of producing impact assessments.

Most national parliaments did not express an opinion of this issue. However, the Belgian Senate thought that idea was an "interesting" one, and wanted to know who would run this organisation and how they would arrive at their opinions. The Irish Parliament said it would be useful to hear the views of other national parliaments on this issue, and wanted to know more about Actal in the Netherlands and the Better Regulation Task Force in the UK. Officials in the Czech Senate thought that a specialized body could be a "viable option", and the Dutch Senate considered "at first glance" that it might be a "positive proposal".

The French *Assemblée nationale*, the French *Sénat*, the Latvian Parliament and the German *Bundesrat* were resistant to creating new institutions. And the UK House of Lords rejected the proposal, "fearing that it would lead to a duplication of resources and add another layer of unnecessary bureaucracy."

Instead of a new body, the Czech Chamber of Deputies proposed that "a network of legal and other experts at the EU and national levels" should be established to assist the Commission.

³⁹ <http://www.actal.nl/>

⁴⁰ <http://www.brtf.gov.uk/>

Table2: Overview of how the Commission's Impact Assessments contribute to the scrutiny process in national parliaments

National Parliament	Scrutiny of Commission impact assessments?	Using standard procedures?	Using special resources?	Scrutiny of subsidiarity and proportionality?	Using Commission impact assessments?	Should IAs be revised as EU legislation is amended?	Should impact of EU legislation be assessed after implementation?
Austria	No	-	-	Yes	No	Yes	Yes
Belgium - Chamber	Yes	Yes	No	No	-	Yes	Yes
Belgium - Senate	No	-	-	No	-	Yes	Yes
Cyprus	Yes	Yes	No	No	-	Yes	-
Czech Republic - Chamber of Deputies	Yes	Yes	No	Yes	Yes	Yes	Yes
Czech Republic - Senate	No ⁴¹	Yes	No	Yes	Yes	Yes	Yes
Denmark	No ⁴²	-	No	Yes	No	No, unless there's a new proposal	Yes
Estonia	No	-	-	Yes	No	-	-
Finland	Yes	Yes	Yes	Yes	Yes	Yes	Yes
France - <i>Assemblée Nationale</i>	No ⁴³	-	-	Yes	No	Yes	Yes
France - <i>Sénat</i>	Yes	Yes	No	Yes, but not systematically	No	Yes	Yes
Germany - Bundestag	Not usually	-	No	Not systematically	-	-	-
Germany - Bundesrat	Yes	Yes	No	Yes	No	-	-
Greece	No	-	-	No	-	-	-
Hungary	No	-	-	Yes, occasionally	Yes	Yes	-
Ireland	Yes	Yes	No	Yes	No	Yes	Yes
Italy - Chamber of Deputies	Yes	Yes	No	Yes, when scrutinising the Annual Work Programme	No	Yes	Yes
Italy - Senate	Yes ⁴⁴	Yes	No	Yes, when scrutinising the Annual Work Programme	No	-	-
Latvia	No	-	-	Not currently ⁴⁵	-	Yes	Yes
Lithuania	No	-	-	Yes	No	Yes	Yes
Luxembourg	No	-	-	No, not yet	-	Yes	Yes
Malta	No	-	-	Yes	No	Yes	Yes
Netherlands - House of Representatives	No	-	-	Yes	No	-	-
Netherlands - Senate	No, not normally ⁴⁶	-	-	Yes	No	Yes	Yes

⁴¹ The Commission's impact assessments are not scrutinised as such by the Czech Senate, but they are included in the documentation used in the scrutiny process, though they do not undergo any special procedure.

⁴² In the Danish Parliament, while the Commission's impact assessments are not scrutinised formally by the EU affairs committee, they are used by parliamentary staff.

⁴³ Although impact assessments are not subject to specific scrutiny in the French *Assemblée Nationale*, the Parliament does take account of them in its scrutiny of EU legislation.

⁴⁴ The Italian Senate makes particular use of the road maps attached to the Commission's Annual Work Programme, which for each item in the annex to the work programme provide information on initial impact assessment screening and the Commission's plans for further impact assessment work.

⁴⁵ The Latvian Parliament is working on establishing a mechanism for scrutinising subsidiarity.

⁴⁶ However, the Dutch Senate will examine the Commission's impact assessment if it is "attached to a proposal that is subject to an in-depth study in the Senate".

National Parliament	Scrutiny of Commission impact assessments?	Using standard procedures?	Using special resources?	Scrutiny of subsidiarity and proportionality?	Using Commission impact assessments?	Should IAs be revised as EU legislation is amended?	Should impact of EU legislation be assessed after implementation?
Poland - Sejm	Yes	Yes	No	No, not yet	-	Yes	Yes
Poland - Senate	No	-	-	Not yet	-	-	-
Portugal	?	-	-	Yes	-	Yes	Yes
Republic of Slovakia	No	-	-	No, but it is expected in the future	-	Yes	Yes
Slovenia - National Assembly	No	-	-	No	-	Yes	-
Slovenia - National Council	No	-	-	No	-	-	-
Spain	No	-	-	No, not yet ⁴⁷	-	-	-
Sweden	Yes	Yes	No	No, not specifically	-	-	-
United Kingdom - House of Commons	Yes	Yes	No	Yes	Yes	Yes	-
United Kingdom - House of Lords	Yes	Yes	Yes	Yes	Yes	Yes	Yes

⁴⁷ The Joint Commission on EU Affairs of the Spanish Parliament intends to create a working group to analyse the parliamentary implications of the subsidiarity control as established in the Protocol attached to the Constitutional Treaty.

3 Raising European Awareness

The Contribution adopted by the XXXIII COSAC (17-18 May 2005, Luxembourg) asked the COSAC secretariat *"to report on the progress made in national parliaments with regard to the declaration on national parliaments to raise national European awareness, so as to inform any debate on this matter in a future plenary"*.

The UK Presidency asked for this information to be presented as a chapter of the biannual report to be presented to the XXXIV COSAC in October 2005 in London.

3.1 ORIGINS OF THE IDEA

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 issue was debated at the XXXII COSAC in the Hague in November 2004. The contribution adopted by COSAC at that conference called for the Conference of Speakers of European Union Parliaments to put *"forward a proposal, in consultation with the European Parliament, on the specific week in which all the national parliaments will hold a debate on the annual legislative and work programme of the European Commission"*.

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 asked Denmark – as the incoming “presidency” of the Conference – to *"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"*.

3.2 WHAT NEXT? THE DANISH PRESIDENCY OF THE CONFERENCE OF SPEAKERS

The Danish Parliament has already begun the consultation phase of its work. On 12 July 2005 it sent a short questionnaire to all the national parliaments in order to try and find an appropriate timeframe for the implementation of the declaration.

After analysing the responses it has received from national parliaments, and considering the information in this chapter of the COSAC biannual report, the Danish Parliament will consult the “troika” of the Speakers Conference on 12 October 2005. The Danish Parliament will then send a suggestion to all national parliaments proposing when the project should begin, with a view to initiating the first “debate” prior to the next meeting of the Speakers Conference in June 2006. In addition, Denmark will prepare a report to the June 2006 Conference on the experience with the implementation of the declaration.

Table3: Initiatives in the national parliaments and in the European Parliament related to the declaration

Member State	Initiatives related to the declaration
Austria - Nationalrat	Adopted changes in its rules of procedures that make it possible to hold own meetings on the working programme of each Council presidency as well as on working programmes of the Council, Commission or European Parliament.
Austria - Bundesrat	No information
Belgium - Chamber and Senate	On 1 March 2005 the Chamber and the Senate each organised a public hearing on the Annual Legislative and Work programme of the EC in the framework of meetings of the Federal Advisory Committee on European Affairs and the Committee on the external affairs. The debates included the exchange of views with the Permanent Representative of Belgium to the EU. Belgian MEPs can participate at the public hearings. Information reports of these meetings are drawn up and published as a parliamentary document (and are available on the Houses' websites).
Cyprus	No information
Czech Republic - Chamber of Deputies	No information
Czech Republic - Senate	On 6 April 2005 there was a debate on the Annual Legislative and Work Programme of the EC in the Senate's Committee on EU Affairs. The hearing included debate on the Strategic objectives 2005-2009. The government's representatives presented the priorities of the Czech Republic for the upcoming year and its position on expected important legislative proposals.
Denmark	The Danish Parliament is making consultations to find an appropriate timeframe for the implementation of the declaration and will report to the Speakers Conference in June 2006.
Estonia	No information
Finland	The Finnish parliament was expected to decide about its programme of the debates after the summer recess. A discussion on the Commission's Work Programme could be organised at the same time as in other national parliaments. However, this would be impossible for Finland in January, since Parliament will break for Christmas and only return to business at the beginning of February.
France - National Assembly	No information on specific initiatives in the National Assembly, and no debate related to the declaration has yet

and Senate	taken place in the plenary of the Senate. The French Government is responsible for determining the agenda for plenary sessions of the two chambers.
Germany - Bundestag	No information
Germany - Bundesrat	The declaration has been discussed in the committee for Questions of the European Union of the <i>Bundesrat</i> . The committee stressed the idea that the Programme could be discussed in the committee on a political level with regard to the Early warning System, particularly to identify proposals of high priority in order to follow those ones more closely than others.
Greece	No information
Hungary	No information
Ireland - Houses of Oireachtas	The Oireachtas has not made specific arrangements with regard to the declaration. However, the proposal was considered by the Joint Committee on European Affairs and was forwarded to each national Parliamentary Party. The Speaker of the Lower House made a contribution to the 2005 Speakers Conference in support of measures to promote debate in plenary in national parliaments of European issues. The EU Constitution was discussed in the Senate, and Irish MEPs could participate in the debate. This was a new initiative, as MEPs do not normally have right of attendance.
Italy - Chamber of Deputies and Senate	No information
Latvia	No official proposals or decisions on this subject in the parliament. In general, discussions on EU matters at the plenary meetings are organised regularly with the participation of the Prime Minister or authorised Member of the Government. In May 2005 the European Affairs Committee held a meeting with Commissioner Piebalgs (from Latvia), who introduced the Annual Legislative and Work programme of the EC.
Lithuania	The Committee on European Affairs has so far organised two European weeks (30 April - 9 May 2004) and (1 May - 9 May, extended until 3 June). The specialised parliamentary committees organised public debates (e.g. on the Financial perspectives 2007-2013) with the presence of government, NGOs, experts, MEPs and general public.
Luxembourg	No debate related to the declaration has yet taken place.
Malta	No information
Netherlands - House of Representatives and Senate	The Committee on European Co-operation Organisations of the Dutch Senate is preparing a debate at the end of 2005 with the Dutch Government on the Annual Legislative and Working programme of the EC. The Joint committee on the application of the subsidiarity mechanism of the Senate and the House of Representatives has advised holding a joint plenary debate on the Annual Legislative and Working programme.
Poland - Sejm and Senate	No debate related to the declaration has yet taken place. It is expected that such initiatives will be put forward in the next term after the October 2005 elections
Portugal	No information

Republic of Slovakia	No information
Slovenia - National Assembly	<p>On 7 February 2005 the National Assembly, under the auspices of the Committee on EU Affairs, organised a debate on the Annual Legislative and Work Programme of the EC in the presence of Commissioner Potocnik and the chairmen of all the standing committees.</p> <p>Between 10 and 13 May 2005 the National Assembly organised a European week - three days of round tables, dedicated, for example, to the Constitutional Treaty, the Lisbon Strategy and Structural Policy, followed by a resume and a joint debate with Slovenian MEPs.</p> <p>On 8 July 2005 the Committee on EU Affairs organised a debate on the state of play in the EU with the presence of Slovenian MEPs, chairmen of the standing committees and members of the Committee on EU affairs.</p>
Slovenia - National Council	No information
Spain -Congress and Senate	No information
Sweden	On 18 March 2005 the parliament held for the first time a debate on the Annual Legislative and Work Programme of the EC. Such a debate is planned every year, preferably by the end of the year or in January. However, no formal decision has been taken yet.
United Kingdom - House of Commons	<p>The Speaker has observed that implementation of the proposal raises significant practical problems for the House of Commons. In large part this is because the UK Government, rather than the Speaker, is responsible for determining and proposing the future agenda of the plenary sessions of the House.</p> <p>The European Scrutiny Committee published a report on the Commission's Work Programme for 2005 on 1 April 2005.</p> <p>On 20 July 2005 the Committee published a report on the Commission's Annual Policy Strategy for 2006.</p>
United Kingdom - House of Lords	<p>Implementation of the declaration for plenary sessions in the House of Lords raises similar practical problems as in the Commons.</p> <p>The European Union Committee scrutinises the Commission's Work Programme every year, and this year started the practice of taking evidence on the programme from those outside parliament.</p>
European Parliament	In order to reinforce the parliamentary dimension of the EU, the European Parliament organised in the course of 2005 three Joint Parliamentary Meetings (Lisbon Strategy, Financial Perspectives, Economic Governance), chaired by the president of the EP and co-chaired by the president of the national parliament, representing the parliament of the EU Presidency, the MEP's, the MP's, the Members of the Commission and the Council's representatives. In addition, the European Parliament organised several Joint Committee Meetings on the initiative of the individual parliamentary committees of the EP which invited national colleagues from their corresponding committees.

4 Transparency in the Council

UK Presidency position

The European Scrutiny Committee in the House of Commons strongly supported the provisions in the Constitutional Treaty for legislative meetings of the Council to be held in public. The Committee also said:

"It would be valuable to have a treaty requirement that the Council meet in public when legislating, but provision in a treaty is not necessary for the Council to do so; it could simply change its standing orders. We believe that doing so in advance of the Treaty being ratified would demonstrate more than anything else could that Member State Governments are serious about increasing the transparency of the EU's proceedings and 'reconnecting' citizens and EU institutions. We recommend that the Government should press for public meetings to be broadcast and webcast and for there to be an official transcript. It should also press for the Council to start meeting in public when legislating in advance of the Treaty being ratified."

The Committee's reasons for calling for the Council to legislate in public were as follows:

"We are confident that legislating in public will have highly beneficial effects by making the Council more visible and its proceedings more transparent, and also, for our purposes, strengthening scrutiny by national parliaments and the accountability of Ministers."

The EU Committee of the House of Lords has also consistently advocated greater openness in the Council since 1995, urging that "legislative proceedings at all stages be in public," with a transcript made available. Like the European Scrutiny Committee in the House of Commons, the EU Committee in the House of Lords has noted that this move to greater openness in the Council would "facilitate faster scrutiny by national parliaments."

Openness and transparency have been an issue for the EU, and in particular the Council of Ministers, for more than a decade. Declaration No. 17 annexed to the Maastricht Treaty (agreed in 1992) asked the Commission to submit to the Council, no later than 1993, a report on how to improve public access to EU documents and information. The Danish 'no' vote and the narrow French 'yes' in referenda on the Maastricht Treaty, in June and September 1992, forced transparency further up the European agenda and resulted in a number of political initiatives designed to bring the EU closer to citizens. Both the 'Birmingham declaration' of 16 October 1992⁴⁸ and the conclusions of the Edinburgh European Council of 12 December 1992⁴⁹ promoted openness and

⁴⁸ Available in English, French and German at:
http://www.europarl.eu.int/summits/birmingham/default_en.htm

⁴⁹ Available in English, French and German at:
http://www.europarl.eu.int/summits/edinburgh/default_en.htm

transparency. The Edinburgh conclusions proposed measures aimed at improving access to the work of the Council, some which remain central elements of the Council's transparency policy today, notably *open debates* and *publication of voting results*.

Since 1992, these policies have obtained a more formal status. 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.⁵⁰ 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. This principle was picked up by the Constitutional Treaty, which stated that the Council should "meet in public when it deliberates and votes on a draft legislative act".⁵¹

This chapter focused on developments in the *practice* of the Council in these two areas of transparency. A short summary of the procedures is provided for background information, although no major procedural changes have taken place in this regard since the 1st biannual report (presented to the XXXI COSAC in Dublin in May 2004).

4.1 PUBLIC DEBATES IN THE COUNCIL

As a general rule, Council meetings are 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. Following the Seville European Council, Council meetings should be open to the public when the Council is acting within the co-decision procedure during the *initial phase* and the *final phase* of the legislative process.

4.1.1 In the initial phase of co-decision

Deliberations of the Council must be open to the public when the Commission presents its "most important legislative proposals" to be adopted in accordance with the co-decision procedure, and "the ensuing debate in the Council" shall also be open to the public. At the beginning of each six-month Presidency, the General Affairs and External Relations Council, on a recommendation from the Member State holding the Presidency, must adopt a list of Commission proposals to be so deliberated in public [Article 8(1)(a)].

The General Affairs and External Relations Council is also obliged to hold "a public policy debate every year on the Council's annual operational programme and, if appropriate, on the Commission's annual work programme." [Article 8(2)]

In addition, the Council shall hold "at least one public debate" on "important new legislative proposals" which are to be adopted in accordance with a procedure other than the co-decision procedure [Article 8(3)].

4.1.2 In the final phase of co-decision

"The vote on legislative acts shall be open to the public, as well as the final Council deliberations leading to that vote and the explanations of vote

⁵⁰ TEC, article 207(3).

⁵¹ Article 1-24 of the Treaty establishing a Constitution for Europe.

accompanying it." [Article 8(1)(b)] This means that deliberations in Council are public when codecision proposals are formally adopted as 'A' items and for the final debate on the Council's common position and on a 'B' item leading to a "political agreement" on the final act.

Martin Bauer, a member of the Council legal service, explains that "In practice, the adoption of acts as 'A' items and explanations of votes relating thereto in an open debate adds nothing to transparency, since this information is public anyway and, by definition, there is no debate on 'A' items. However, opening up final debates on acts in the context of the codecision procedure as 'B' items amounts to a more radical change."⁵²

There is no such requirement for debates on proposals dealt with under legislative procedures other than the codecision procedure, such as the consultation procedure.

Those Council deliberations that may be open to the public are restricted to proposals dealt with in the Council and not its preparatory bodies such as Coreper or Council working groups.

4.2 STATISTICS

4.2.1 *In the initial phase of co-decision*

As regards the number of public deliberations held in the Council on legislative proposals in "*the initial phase*", figures have varied from Presidency to Presidency.

When it comes to *planned public deliberations* on the Commission's "most important legislative proposals" to be adopted in accordance with the *co-decision procedure*, figures have varied from 13 during the Italian Presidency in the autumn of 2003, to 2 during the Luxembourg Presidency in spring 2005.

According to information from the Council secretariat, the number of public deliberations actually held may differ from the number of *planned* public deliberations. But figures for the number of public deliberations actually held were not available from the Council secretariat.

Number of planned public deliberations in the Council on the Commission's most important legislative proposals from to be adopted under co-decision - in accordance with Article 8(1)(a)

Year	Number of planned public deliberations
2002 - autumn	14
2003 – spring	5
2003 – autumn	13
2004 - spring	4
2004 – autumn	7
2005 – Spring	2
2005 - autumn	8

Source: The Council General Secretariat

⁵² *The Council of the European Union*, Martin Westlake and David Galloway (eds), (John Harper Publishing, 3rd edition, 2004), p.373.

In addition to the open deliberations held on “important proposals” to be adopted under co-decision, come a number of public debates held on legislative proposals to be adopted in accordance with other procedures or on other important EU initiatives. Also here statistics show that figures have varied significantly from Presidency to Presidency.

Number of planned open deliberations on legislative proposals adopted in accordance with other procedures - in accordance with Article 8(3)

Year	Number of planned open deliberations
2002 - autumn	5
2003 – spring	?
2003 – autumn	2
2004 - spring	12
2004 – autumn	12
2005 – Spring	2
2005 - autumn	7

Source: The Council General Secretariat

4.2.2 In the final phase of co-decision

When it comes to the number of public deliberations held in the Council in “*the final phase*” of the co-decision procure, all such debates must be held in public. No statistics on the number of such public deliberations were available from the Council General Secretariat. But according to Martin Bauer of the Council legal service, in 2003 “there were public debates in 47 Council meetings, in which a total of 123 'A' items [i.e. votes] and 47 'B' items (all of them relating to legislative acts) [i.e. debates leading to political agreements] were dealt with.”⁵³

4.3 PUBLIC VOTING RESULTS

As mentioned in the section 4.1, all formal votes in the Council on legislative acts adopted in accordance with the co-decision procure must take place in public.

In addition, all votes that lead to the adoption of legislative acts – no matter what procedure they are adopted in accordance with – shall be made public. This covers not just the final vote on a legislative proposal, but also votes on “common positions” of the Council, votes taken in the Conciliation Committee or when the Council establishes a “convention” within the area of police and judicial co-operation in criminal matters (i.e. under title VI of the Maastricht Treaty). The results of votes and explanations of votes are published in press releases from Council meetings or in the “monthly summary of Council acts”, which are available on the Council's website.⁵⁴

⁵³ *ibid.*

⁵⁴ The information on voting in the Council and explanations of vote are available on: http://ue.eu.int/cms3_fo/showPage.asp?id=551&lang=en

Votes in the Council on matters of foreign policy or in certain cases related to cooperation in police and criminal justice matters are not published, unless "by a unanimous Council or Coreper decision taken at the request of one of their members." [Article 9(2)(a)]

It should be noted that formal voting in the Council takes place only very rarely. The main practice in the Council is to adopt proposals by consensus.

4.3.1 Statistics

According to information from the Council secretariat, in 2004, 124 out of 158 legislative acts were finally adopted with a qualified majority *without any votes against or abstentions*. That is 34 legislative acts were finally adopted when there were votes against or abstentions. In 24 of these cases there were Member States voting against, while 10 proposals involved abstentions. This means that 84.8 % of all legislative acts in 2004 were adopted without any Member State voting against.

The table below gives an overview of the outcome of published votes in the Council for the period 2000-04.

4.4 NEW MOVES TOWARDS OPENNESS IN THE COUNCIL

4.4.1 The Constitutional Treaty

The Treaty establishing a Constitution for Europe contains provisions for the Council meeting in public. Article I-46(3) of the Treaty provides that "Decisions shall be taken as openly and as closely to the citizen as possible." Article I-50(1) adds that "in order to promote good governance and ensure the participation of civil society, the Union institutions, bodies, offices and agencies shall conduct their work as openly as possible." Article I-24(6) specifically covers the Council and provides that:

"The Council shall meet in public when it deliberates and votes on a draft legislative act. To this end, each Council meeting shall be divided into two parts, dealing respectively with deliberations on Union legislative acts and non-legislative activities."

Article I-50(2) reiterates that the Council shall meet in public "when considering and voting on a draft legislative act".

The Constitutional Treaty also contained (in Article I-34) a definition of what constitutes a "legislative act", which could have helped in interpreting the Articles quoted here.⁵⁵

⁵⁵ The House of Commons report quoted in the box at the beginning of this chapter was *Aspects of the EU's Constitutional Treaty* (14th report of Session 04-05, HC 38-xiv-I, published 6 April 2005), pp.21-25. The House of Lords reports referred to were: *The Future of Europe: Constitutional Treaty—Articles 33–37 (The Democratic Life of the Union)* (22nd Report of Session 2002-03, HL 106) paragraphs 16-20, p.11; *Review of Scrutiny of European Legislation* (1st Report of Session 2002-03, HL 15), p.15; *The Convention on the Future of Europe* (30th Report of Session 2001-02, HL 163), paragraphs 73-75, pp.16-17; *A Second Parliamentary Chamber for Europe: an unreal solution to some real problems* (7th Report of Session 2001–2002, HL 48), paragraphs 62–63; *Public Access to EU Documents* (16th Report of Session 1999-2000, HL 102); and *1996 Inter-Governmental Conference* (21st Report of Session 1994–95), paragraph 232.

4.4.2 The UK Presidency of the Council

On 6 June 2005 the UK Foreign Secretary, Jack Straw, confirmed to the House of Commons that it does not require a change in the Treaties for the Council to meet in public when debating legislation.⁵⁶ It can 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.

On 23 June 2005 the UK Prime Minister, Tony Blair, addressed the European Parliament. In his speech he said that there "is a strong case" for greater transparency in relation to the Council legislating, and he agreed that this was something that should be considered under the UK Presidency of the Council during the second half of 2005.

4.4.3 Pressure from MEPs

On 6 September 2005 the leaders of the 5 UK delegations in the European Parliament asked the UK Presidency to initiate the necessary reform to ensure that the Council meets in public when debating new legislation. They tabled a written declaration in the European Parliament calling on the Council to change its rules of procedure accordingly. The proposed declaration requires a majority of MEPs to be adopted by the Parliament (that is, it needs to be signed by 367 of the 732 MEPs). It has so far been signed by 80 MEPs.

⁵⁶ HC Deb., Col. 1004.

**Votes against and abstentions per Member State
on legislative acts in the final vote in the Council**

	Votes against 2000	Abstain 2000	Votes against 2001	Abstain 2001	Votes against 2002	Abstain 2002	Votes against 2003	Abstain 2003	Votes against 2004	Abstain 2004
Austria	2	0	1	4	1	0	5	2	4	4
Belgium	1	5	2	1	0	1	0	3	5	5
Cyprus	-	-	-	-	-	-	-	-	0	0
Czech Republic	-	-	-	-	-	-	-	-	0	0
Denmark	3	2	3	1	2	4	6	2	5	0
Estonia	-	-	-	-	-	-	-	-	0	1
Finland	1	1	1	0	2	2	1	0	1	0
France	1	0	3	3	0	6	3	1	1	1
Germany	4	0	3	5	2	3	5	2	2	5
Greece	3	0	1	0	2	0	2	1	0	3
Hungary	-	-	-	-	-	-	-	-	0	0
Ireland	0	0	1	0	0	0	3	1	2	0
Italy	1	2	2	3	2	0	3	2	2	3
Latvia	-	-	-	-	-	-	-	-	0	1
Lithuania	-	-	-	-	-	-	-	-	2	1
Luxembourg	0	0	0	2	1	1	3	1	4	2
Malta	-	-	-	-	-	-	-	-	0	0
Netherlands	2	1	1	1	5	1	0	1	2	0
Poland	-	-	-	-	-	-	-	-	0	2
Portugal	0	0	0	1	1	3	6	0	2	0
Republic of Slovakia	-	-	-	-	-	-	-	-	0	0
Slovenia	-	-	-	-	-	-	-	-	0	0
Spain	0	0	3	2	1	1	5	2	3	4
Sweden	2	0	4	0	6	5	5	3	3	2
United Kingdom	2	1	2	2	1	4	4	5	1	3

5 Co-Decision: First and Second Reading agreements

The Maastricht Treaty introduced the co-decision procedure, which puts the European Parliament and Council on an equal footing in the legislative process in those policy fields where the procedure applies. The scope of the procedure and the European Parliament's role as co-legislator has been increased significantly since the Maastricht Treaty came into force in 1993: the Amsterdam Treaty introduced co-decision in 23 new areas; and the Nice Treaty provides that a further five Treaty articles are covered by co-decision.

In addition, the Amsterdam Treaty simplified the co-decision procedure by introducing the possibility of bringing the legislative process to an end at first reading. This provision has since been used increasingly by the two legislative institutions of the EU. In 2004, 39 % of all legislative acts adopted under the co-decision procedure were agreed at first reading. 46 % were agreed at second reading; and 15 % ended up in conciliation.

5.1 MORE DIRECT CONTACTS BETWEEN THE EU INSTITUTIONS

One important explanation for the increase in the amount of legislation that is agreed at first reading is that direct contacts between the European Parliament and the Council are established throughout the legislative process - until 1999 such contacts were practically non-existent until the conciliation process. The main trigger for extending such contacts from the conciliation phase to first and second readings was the "joint declaration" between the European Parliament, Council and the Commission in May 1999. The declaration encourages "appropriate contacts" with the aim of "bringing the legislative procedure to a conclusion as quickly as possible". In particular, it was designed with the view that the practice of direct contacts between the institutions *"should be extended to cover all stages of the co-decision procedure [...] so that wherever possible acts can be adopted at first reading."*⁵⁷

Today, co-decision appears to have become a consensus-oriented process, where the two legislative institutions begin bargaining and conciliation from day one. The practice of organising informal meetings throughout first and second readings has facilitated agreements between the Parliament and the Council earlier than they would otherwise have been able to. These meetings are normally referred to as "trialogues" - because they bring together representatives of the Parliament, Council (Presidency) and the Commission - but sometimes only representatives of the Parliament and the Council Presidency participate.

These informal tripartite meetings were originally created for negotiations on the budget and were then used in order to prepare agreements at the meetings

⁵⁷ Joint Declaration of the European Parliament, Council and the Commission of 4 May 1999 on the application of the new co-decision procedure (Article 251 of the Treaty establishing the European Community), OJ C 148 28.5.1999, p.1.

of the Conciliation committees. But since 1999 they have been used as an early “conciliation mechanism”. Recently this trend of reaching agreements through trialogues has increased.

5.2 FIRST AND SECOND READING AGREEMENTS

The high percentage of dossiers concluded at first and second readings in 2004 (85%) was to a considerable extent facilitated by agreements made in trialogues. In particular, the possibility of avoiding conciliation meetings (which involve a lot of time and resources) has encouraged the two institutions to seek early agreements on legislation. The fact that the European Parliament only needs to approve amendments with a simple majority during its first reading rather than by an absolute majority during its second reading may also encourage early approval.

Table 1: Co-decision 1994-2005

	Total co-decisions	Dossiers concluded at 1 st reading	Dossiers concluded at 2 nd reading	Dossiers concluded at 3 rd reading
1994-99 (annual average)	30	-	18 (60%)	12 (40%)
1999-2000	65	13 (20%)	35 (54%)	17 (26%)
2000-2001	66	19 (29%)	27 (41%)	20 (30%)
2001-2002	73	19 (26%)	37 (51%)	17 (23%)
2002-2003	87	23 (27%)	49 (56%)	15 (17%)
2003-2004	105	41 (39%)	48 (46%)	16 (15%)
2004-2005	??	??	??	??

Source: The European Parliament's "Activity report 1 May 1999 to 30 April 2004" on the co-decision procedure.

Around 80 first and second agreements were reached in the last three plenary sessions before enlargement at which legislative texts were considered. This figure may be thought untypically high, because it was “in the run-up to the 2004 elections when there was an understandable wish to complete as many issues as possible before both enlargement (with a set of 10 new actors as well as new languages) and the lengthy legislative break caused by the elections.”⁵⁸ But more recent figures provided by the Danish Parliament’s office in Brussels confirm that an increasing proportion of co-decision legislation is being concluded during first and second readings, and particularly during first readings. Furthermore, these figures show that trialogues play a very significant role in preparing first and second reading agreements.

In the first 8 months of 2005, 42 legislative co-decision dossiers were concluded at first or second reading. Six dossiers were not concluded at first or second reading but will go to a conciliation committee and be concluded (successfully or unsuccessfully) at the third reading stage⁵⁹. That is, 24 out of

⁵⁸ Corbett, Jacobs and Shackleton, *The European Parliament* (6th edition, John Harper Publishing, 2005), p.220.

⁵⁹ In addition to the 48 dossiers covered in the table above, 19 further dossiers in the first eight months of 2005 were not agreed at first reading (because the Council disagreed with the European Parliament's amendments to the Commission's proposal) and so will proceed to a second reading. These dossiers have

48 proposals were adopted at first reading (50%). 18 co-decision proposals were concluded at second reading (37%). (17 of these 18 proposals were adopted, and, for the first time, a proposal fell at second reading.)⁶⁰

In 21 of the 24 dossiers adopted at first reading (87.5%), a political agreement had been reached in a trialogue before the plenary session in the European Parliament. And 16 of the 17 dossiers adopted at second reading (94%) were preceded by a political agreement in a trialogue meeting.

Table 2: Proposals under co-decision in the period from 1 January 2005 to 8 September 2005.

Dossiers concluded at 1st reading		Dossiers concluded at 2nd reading			Dossiers to be concluded at 3rd reading
Adopted without a trialogue	Adopted with prior political agreement in a trialogue	EP approved Council's common position without amendment	Adopted with prior political agreement in a trialogue	EP rejected the Council's common position	Council disagreed with EP amendments > conciliation committee
3	21	1	16	1	6

Source: The Danish National Parliament Office in Brussels.

Agreements reached in trialogues are informal and not legally binding on either the European Parliament or Council; the Parliament and Council still have to formally adopt what is proposed. In practice, this means that where the content of an informal agreement deviates from the Commission's original proposal, the Commission proposal will be adjusted via amendments adopted by the European Parliament. These amendments will then be approved by the Council. But significant political deals may be struck in these "informal agreements".

Some of the dossiers on which agreements are reached in trialogues during first reading are purely technical proposals. Other trialogues may concern more sensitive proposals, and in many cases can involve agreement on a high number of amendments to be tabled to the Commission's original proposal. One example is the proposal on the rules on public access to documents of the EU institutions (2001) that was agreed in trialogues during first reading, despite a significant number of amendments to the commission proposal. Annex II of this report shows other proposals where a large number of European Parliament amendments had previously been agreed to in a trialogue. Another example was the directive on "harmonised River Traffic Information Services on inland waterways". On 23 February 2004 the European Parliament adopted its first reading with 66 amendments to the Commission's proposal, all of which were then adopted by the Council on 27 June. Similarly, and on the same day, the European Parliament adopted its first reading on the directive on the "recognition of seafarers' certificates" with 32 amendments to the

not been included in the table because it is not yet known whether they will be concluded at second or at third reading.

⁶⁰ During the second reading on the Software Patents Directive, the European Parliament rejected (by an absolute majority) the Common Position that the Council had adopted at first reading, so the act could not be adopted. This was the first time that this had ever happened.

Commission proposal. All 32 amendments were then approved by the Council - again on 27 June.

5.3 GUIDELINES FOR FIRST AND SECOND READING AGREEMENTS

The practice of reaching informal political agreements in trialogues during first and second readings has improved the efficiency of the co-decision procedure, with fewer proposals requiring the resource-intensive conciliation committee that is involved at third reading. But critics inside the European Parliament have pointed out certain potential problems with the practice.

There is no inter-institutional agreement to say when trialogue meetings should take place, how they should be conducted or on what basis agreements can be reached in these meetings. In October 2004, the European Parliament's Conference of Committee Chairmen agreed a set of guidelines for best practices within the Parliament for handling such agreements. But similar guidelines are not currently available from the Council. According to the European Parliament's guidelines, negotiations in trialogues should "usually" not take place until the competent committee has adopted its first or second reading amendments – to ensure that there is a "mandate on the basis of which the committee's representative can negotiate with Council and Commission". In most cases, the Council Presidency bases its negotiations on a mandate from Coreper, but it is not clear whether this mandate can only be given once national parliaments have completed their scrutiny processes (including adopting mandates to governments where this is required). According to Corbett, Jacobs and Shackleton (op.cit., p.220), a practice has evolved whereby "tripartite meetings are now taking place [...] even before the European Parliament's rapporteur or the Council Presidency have any kind of formal mandate." However, this practice cannot be confirmed because the EU institutions are not obliged to provide timely information about the planned dates of such meetings.

To improve the transparency of trialogue meetings, the European Parliament's guidelines encourage the Council Presidency to submit a letter to the committee chairman "confirming the agreement in principle, and annexing the text". But there is no obligation for the Council to produce such a letter; and the letters are not published.

These practices could change if the European Parliament, Council and the Commission were to revise the 1999 Joint Declaration on the application of the co-decision procedure.