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Second bi-annual Report:
Developments in European Union
Procedures and Practices
Relevant to Parliamentary Scrutiny

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Introduction

The Secretariat of the COSAC presents with this document its second bi-annual report.

The purpose of the report, as it was decided during the COSAC meeting in Rome in October 2003, 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 presented at the COSAC meeting in Dublin, in May 2004.

The main development in the past months has been the adoption of the Treaty for a European Constitution approved by the Intergovernmental Conference on 18 June 2004 and signed by the Heads of State or Government on 29 October 2004 on the basis of the work of the European Convention. This treaty, that still has to be ratified by the 25 Member States of the EU, will have substantial consequences for the European legislative procedures and involves also the national Parliaments. The *first chapter* of the report outlines the proposals from the Constitutional Treaty that have direct implications for national Parliaments.

In its *second chapter*, the report pays specific attention to the budgetary and financial provisions of the European Union. As the IGC made significant changes in the existing budgetary and financial provisions, the main elements of these changes will be explained in this chapter.

Transparency and traceability of documents are becoming elements of growing importance in the procedures of the EU. A large range of EU information is available on various databases for the politicians and their staff, as well as for the public in general. The new protocol on the role of national Parliaments in the Constitutional Treaty requires easy and timely access to documents and also possibilities for exchange of information. In the *third chapter*, a description of the available data bases and their content can be found.

In *chapter four* a short description is given on government practises when it comes to providing supplementary information concerning EU draft legislation to national Parliaments.

As the ratification procedures of the Constitutional Treaty are different in the various Member States, an overview of the latest developments is presented in the *fourth chapter* of the report. The information was based on the answers to the questionnaire that was sent to the national Parliaments on this subject.

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1. PROPOSALS HAVING DIRECT IMPLICATIONS FOR NATIONAL PARLIAMENTS

This chapter sets out the proposals in the Constitutional Treaty which have direct implications for national Parliaments and which have the objectives of both defining the role of and of strengthening the participation of national Parliaments in the European architecture. The presentation will among other things include the new so-called “early warning system” enabling national Parliaments to be directly involved in monitoring EU legislations’ compliance with the subsidiarity principle, but will also touch upon the improved transmission of documents to national Parliaments. There will furthermore be a brief description of the various new treaty revision procedures, which among other things directly involves national Parliaments in future treaty amendments through the convening of a Convention.

The proposals are presented under five headings:

- National Parliaments’ role in monitoring the principle of subsidiarity
- Transmission of EU documents to national Parliaments
- Waiting time for the Council
- Inter-parliamentary cooperation and COSAC
- Other constitutional articles having direct implications for national Parliaments.

1.1.1 Historical overview

Defining the role of national Parliaments in the European Union architecture has occupied IGCs over the past 12 years. References to the role of national Parliaments are found in the Treaties of Maastricht, Amsterdam and Nice.

A Declaration on national Parliaments in the Maastricht Treaty encouraged their greater involvement in the activities of the European Union. To achieve this, exchange of information between the European Parliament and national Parliaments were envisaged, through granting appropriate reciprocal facilities and regular meetings between members of Parliament interested in the same issues. Member State Governments would ensure that Parliaments received Commission proposals for legislation in good time.

Six years later, the Protocol on the role of national Parliaments in the European Union accompanying the Treaty of Amsterdam formalised the cooperation between European affairs committees in COSAC by enshrining it in the treaty. COSAC was among other things empowered to forward contributions to the EU institutions concerning their legislative work, in particular regarding issues related to the principle of subsidiarity, the area of freedom, security and justice and fundamental rights. At the same time was the range of Commission documents which were to be communicated to national Parliaments extended to include green and white papers and communications. A six-week waiting period was introduced between receipt of legislative proposals and their inclusion on Council agendas for decision.

The Treaty of Nice invited national Parliaments to participate in the debate on the future of Europe and included the role of national Parliaments as one of the four main issues to be addressed in the Future of Europe debate. This led to the specific reference to national Parliaments in the Laeken Declaration. It was against this

background that the Convention and the Intergovernmental Conference proposed to address the questions posed in Nice and Laeken.

1.2 THE ROLE OF NATIONAL PARLIAMENTS IN MONITORING THE PRINCIPLE OF SUBSIDIARITY

While subsidiarity is a principle in its own right, the process of improving its application has been closely associated with the expanding role of national Parliaments in the work of the Convention and confirmed in the Intergovernmental Conference. The Constitutional Treaty lays down that national Parliaments shall ensure compliance with the principle of subsidiarity¹. A new protocol on the “*Application of the Principles of Subsidiarity and Proportionality*” sets out how this should be done - via a new so-called “*early warning mechanism*”².

1.2.1 The early warning mechanism

The “*early warning mechanism*” empowers national Parliaments to demand that the Commission (or a group of Member States, European Parliament or other EU-bodies in cases where they have the right of initiative) “*reviews*” a draft legislative act, if *at least one third* of the national Parliaments within six weeks submit a *reasoned opinion* that states *that* a proposal does not comply with the subsidiarity principle. The threshold is fixed at *one quarter* of the national Parliaments if it’s a proposal within the area of freedom, security and justice. The requirement to review the proposal does not oblige the Commission to withdraw a proposal, but requires it to choose whether it wants to *amend, withdraw or maintain* the proposal.

Two votes to each Member State national Parliament

Each Member State national Parliament has two votes in the “early warning system”. In unicameral parliamentary systems two votes are at the disposal of the Parliaments, while Parliaments with a bicameral system shall allocate one vote to each of its chambers. This means that Parliaments or chambers representing at least 17 of 50 votes can initiate a review of a proposal.

The Commission and the other EU-institutions have no obligation to *review* the proposal if less than a third of the national Parliaments use their votes against a proposal, but must still “*take into account*” the opinion of the Parliaments.

Most national Parliaments are still quite far from having decided exactly how to fix their *internal organisation* with regard to participating in the early warning mechanism. However, European affairs committees appear to be getting a key role. Annex 1 of this report contains a table giving an indication of the models currently foreseen by each national Parliament.

1.2.2 Judicial Review

The protocol also contains provisions for a judicial control of the principle of subsidiarity. National Parliaments are not granted an independent right to bring cases before the European Court of Justice on subsidiarity issues. But Member States may bring a legislative act before the European Court of Justice *on behalf of their national Parliaments* on grounds of infringement of the subsidiarity principle.

¹ See article I-11, p.3 and article III-259.

² It should be noted that the early-warning mechanism for national parliaments applies only to subsidiarity and not proportionality and that, subsidiarity is only applicable to Union action which does not fall within its exclusive competence.

1.2.3 Annual Reporting

Finally the Commission will, as it is the case today, be obliged to submit an annual report on the application of the principle of subsidiarity to the European Parliament and the Council and, as something new, also to national Parliaments. The report will be sent to the Committee of the Regions and to the Economic and Social Committee, as pursuant to the current practise.

The principle of subsidiarity

Article I-11 and III-259 in the Constitutional Treaty/TEC art. 5 and protocol no. 30

The principle of subsidiarity is intended to ensure that decisions are taken as closely as possible to the citizen and that constant checks are made as to whether actions at Community level is justified given the possibilities available at national, regional or local level. Therefore, Union action should only occur at the European level if it is more effective than action at other levels.

The Treaty of Amsterdam developed the application of subsidiarity further when it introduced the systematic analysis of the impact of legislative proposals on the principle of subsidiarity. The Amsterdam Protocol is the foundation stone upon which the work of the Convention and Intergovernmental Conference is further developed and which now forms the basis of the new protocol in the Constitutional Treaty. However it should be noted that the new Protocol omits some detail from the Amsterdam Protocol, principally in terms of the criteria and procedures used by E.U. Institutions to ensure compliance with the principle of subsidiarity and proportionality.

TRANSMISSION OF EU DOCUMENTS

Access to EU documents is crucial for national Parliaments in their scrutiny.

The new protocol on "the role of national Parliaments" improves in many ways national Parliaments' access to EU documents. The protocol is to a large extent built upon the existing protocol on "*national Parliaments role in the EU*" (no 9), which already contains provisions providing for transmission of EU-documents to national Parliaments. But the new protocol requires both a *more comprehensive and quicker transmission of EU documents* than it is currently the case.

The protocol obliges the Commission and other EU-institutions to transmit important EU documents directly to national Parliament at the same time as they are forwarded to the European Parliament and the Council. In most cases it will be the European Commission that transmits the documents. However, the European Parliament will send its own draft acts and the Council will be obliged to transmit draft proposals from a group of Member States, the European Central Bank, the Court of Justice or the European Investment Bank, in cases where they possess the right of initiative within a particular policy field.

For ease of reference the main types of documents to be provided to national Parliaments are:

Documents from the Commission:

- Consultation documents
- Annual Legislative Programme as well as any other instrument of legislative planning or policy that it submits to the European Parliament and to the Council of Ministers.
- Legislative proposals originating from the Commission

Documents from the Council

- Agendas for and the outcome of meetings of the Council of Ministers, including the minutes of meetings where the Council of Ministers is deliberating on legislative proposals (these are however no legislative documents),
- Legislative proposals originating from a group of Member States, the Court of Justice, the European Central Bank or the European Investment Bank

Documents from European Parliament

- Legislative proposals originating from the European Parliament

Documents from the Court of Auditors:

- Annual report of the Court of Auditors

1.3 WAITING TIMES

Time is crucial for national Parliaments when it comes to carrying out effective scrutiny.

The protocol on national Parliaments effectively extends the normal *waiting time* for the Council before it can adopt a piece of legislation. The protocol lays down, that “*six weeks shall elapse before the Council can place a draft legislative act on its provisional agenda for adoption*”. The protocol adds further to this that at least 10 days shall pass from the legislative act is put on the provisional agenda until the adoption by the Council. This extends in reality the waiting time from 6 weeks to 6 weeks + 10 days, as the existing protocol only requires a 6 weeks waiting time - from publication of a proposal until it can be placed on the Council’s *agenda* for adoption.

1.4 INTER-PARLIAMENTARY CO-OPERATION AND COSAC

Finally the protocol on national Parliament’s role confirms the importance of strengthening inter-parliamentary co-operation amongst the national Parliaments and between them and the European Parliament. Through mutual agreement the organisation and promotion of effective and regular inter-parliamentary co-operation within the European Union shall be established

COSAC may still, as it is the case today, submit any contribution it deems appropriate for the attention of the European Parliament, the Council of Ministers and the Commission. Contributions from COSAC shall in no way bind national Parliaments or prejudice their positions

The role and functions foreseen for COSAC have been extended into two new areas. Firstly, it was decided that COSAC for the future shall *promote the exchange of information and best practice between Member States’ Parliaments and the European Parliament*, including their *special committees*³.

Secondly, COSAC is encouraged to *organise inter-parliamentary conferences on specific topics*, in particular to debate matters of common foreign and security policy and of common security and defence policy.

1.5 OTHER CONSTITUTIONAL ARTICLES HAVING DIRECT IMPLICATIONS FOR NATIONAL PARLIAMENTS.

1.5.1 The area of Freedom, security and Justice.

The extension of the “community method” into new fields of the area of freedom security and justice is one of the main innovations in the Constitutional Treaty. This brings the Union closer to the citizen in very politically sensitive areas. It was therefore decided to provide specific roles for national Parliaments in monitoring developments in this policy area.

It is for instance set out that national Parliaments, together with the European Parliament, shall be involved in the *evaluation* of *Eurojust’s* activities and in the political monitoring of *Europol*⁴. The Constitutional Treaty here provides that the more precise arrangements for this are to be determined jointly by the European Parliament and the Council in a European law.

³ However, there is already in article 7.1 A of COSAC’s “Rules of procedure” a provision stating that the principal business on every draft agenda shall be derived from COSAC’s role as a body for exchanging information in particular on the practical aspects of parliamentary scrutiny.

⁴ See article III-273, p.1 and III-276, p.2.

The Constitutional Treaty also provides that national Parliaments shall be kept informed on Member States' implementation of the Unions policies within the area of freedom, security and justice⁵. In more practical terms this means that national Parliaments shall be informed of the “*content and results of a so-called evaluation mechanisms setup to onduct objective and impartial evaluation of the implementation of the Union policies in the area of freedom, security and justice*”.

Finally the national Parliaments and the European Parliament shall be kept informed of the proceedings of a special standing committee whose task it is to ensure that “*operational cooperation on internal security is promoted and strengthened within the Union*”⁶.

1.5.2 Treaty Revision Procedures

Ordinary Revision Procedure

The *procedure for revising* the Constitutional Treaty will be renewed in a number of ways compared to the current revision procedures⁷.

First of all it is proposed that Intergovernmental Conferences in the future shall be prepared by a *Convention* composed of representatives of national Parliaments together with representatives of the Heads of State or Governments, the European Parliament and the Commission, if so decided by a simple majority in the European Council and after consulting the European Parliament and the Commission⁸. The Convention shall *by consensus* adopt a recommendation to the IGC that by common accord determines the amendments to be made to the treaty.

The government of any Member State or the Commission may submit to the Council of Ministers' proposals for the amendment of the Constitutional Treaty. As something new also the European Parliament is proposed granted this right. *National Parliaments shall be notified* of any such proposals for amendments of the treaty

Eventual ratification would still be by all Member States in accordance with their respective constitutional requirements, as it is the case today.

Simplified Revision Procedure

Not all treaty amendments will however have to go through the above mentioned treaty revision procedure. The Constitutional Treaty also introduces a new simplified procedure for amending all provisions concerning the EU's *internal policies and actions*” (*Part III title III*) on the condition that the revision does not increase the competences of the Union⁹.

Internal policies and actions include policy fields such as the Internal Market, Economic and Monetary Policy, Policy in the area of Freedom, Security, and Justice. Similarly the provision applies to a range of ten other policies and finally to areas where the Union may take supporting, co-ordinating or complementary action.

The procedure enables the European Council to adopt a European decision amending this part of the treaty by unanimity after consulting the European Parliament, the Commission and the European Central Bank in the case of institutional changes in the monetary area.

⁵ Article I-42.2 lays down that national parliaments may participate in the evaluation mechanism set out in article III-260.

⁶ See article III-260.

⁷ See article IV-443. The current rules are found in TEU, art. 48.

⁸ The European Council may also with a simple majority decide not to convene a Convention, but must here obtain the consent of the European Parliament.

⁹ See article IV-445.

As with the ordinary revision procedure the amendments shall be ratified by Member States in accordance with their national constitutional requirements, but they can be done without convening a Convention or an IGC.

1.5.3 “Bridging clauses “(Passerelles)

The Constitutional Treaty also proposes two bridging *clauses* or so-called “*passerelles*” which simplifies certain changes to the treaty. These clauses enable the European Council by unanimity and with the consent of the European Parliament, but without convening a Convention or an IGC to:

- change the voting method of the Council
- put the European Parliament on equal footing with the Council in the legislative process

The first bridging clause empowers the European Council to authorise the Council to act by *qualified majority* in a given area or case within *Part III* of the Constitutional Treaty, where it is currently bound to act by unanimity. Similarly a second clause lays down that, where *Part III* provides for legislative acts to be adopted by the Council according to a “*special legislative procedure*”, the European Council may put the European Parliament on equal footing with the Council in the legislative process by introducing the “ordinary legislative procedure”¹⁰

The above mentioned changes do not require national ratification, but national Parliaments shall be informed and if a national Parliament makes known its opposition within six months the European decision shall not be adopted. In the absence of opposition the European Council may adopt the decision.

Similar specific provisions are proposed for the introduction of qualified majority in Part I of the Constitutional Treaty for EU’s *foreign and security policy* and EU’s *multi-annual and financial framework*. Like the bridging clauses provided for in Part III they authorise the European Council by unanimity to change decision-making procedures in the Council from unanimity to qualified majority¹¹.

1.5.4 Other provisions requiring notification to national Parliaments

Finally, the following articles provide for national Parliaments to be informed directly of the actions proposed:

Flexibility clause

The Commission shall draw the national Parliaments’ attention to all proposals under the so-called “flexibility clause”. The flexibility clause lays down that if action by the Union should prove necessary to attain one of the objectives set by the Constitutional Treaty within an area, where a specific legal base isn’t provided, the Council, acting unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament, may adopt the appropriate measures¹².

Acceding to the Union

The European Parliament and the national Parliaments shall also be notified if any European State addresses an application to the Council to become a member of the European Union¹³.

¹⁰ The two bridging clauses are provided for in article IV-444.

¹¹ See article I-40 and I-55 paragraph 4.

¹² See article I-18. The flexibility clause is found in article 308 TC in existing treaties..

¹³ See article I-58.

The accession agreements shall, as it is currently the case, be subject to ratification by each Member State in accordance with its respective constitutional requirements.

2 BUDGETARY AND FINANCIAL PROVISIONS OF THE EUROPEAN UNION

Despite several rounds of reforms of the *legislative procedures* of the European Union over the past decades, the *financial and budgetary provisions* in the EU treaties have practically remained unchanged for more than thirty years.

One of the tasks of the recent Intergovernmental Conference and the Convention was therefore to simplify these procedures to increase transparency. When it comes to the budgetary and financial provisions of the European Union significant changes have been proposed in the Constitutional Treaty. These proposed developments will be described below together with a brief account of the current budgetary and financial provisions of the EU.

The provisions are presented under the following headings:

- EU's own resources
- Multi-annual financial perspective
- Annual budget
- Implementation of EU budget and discharge

2.1 OWN RESOURCES

The European Union is mainly financed by resources made available by the Member States. These are known as “own resources”, because the European Union is legally entitled to these. The European Union acquired its own resources in 1970, when the original financial system based on national contribution was abolished and replaced by a new system of resources of its own¹⁴.

The level of the own resources is today fixed by the Council by a unanimous decision on the basis of a Commission proposal after approval by Member States in accordance with their constitutional requirements (normally approval by the national Parliaments)¹⁵. The European Parliament is consulted.

The own resources of the European Union:

The Unions resources were originally composed of the “traditional own resources” consisting of agricultural levies (1971 and 1975), custom duties (1971) and a resource based on value added tax (VAT(1977 and 1979)). In 1988 the Council introduced a fourth resource based on the “gross national product” of the Member States.

Presently the Unions own resources may not exceed 1,24% of the gross national income of EU-25.

With the Constitutional Treaty however this procedure will be simplified, so actions taken to *implement laws on own resources*, can be determined by an EU law adopted by the Council with a qualified majority after having obtained the consent of the European Parliament. Approval by national Parliaments will no longer be necessary. Determining or changing the ceiling of the own resources or introducing or abolishing

¹⁴ The Luxembourg budget Treaties of 1970 and 1975 gave the European Communities its own resources and made the Council and the European Parliament the two arms of the budgetary authority.

¹⁵ See Article 269 TEC.

categories of resources will still require a unanimous decision by the Council and subsequent approval by each national Parliament¹⁶.

2.2 MULTIANNUAL FINANCIAL PERSPECTIVE

After some years of tensions between the European Parliament and the Council during the 1980s over the annual EU budget, the two institutions agreed together with the Commission to improve the inter-institutional relations on the budget. This was done by jointly signing up to the first of up to now three inter-institutional agreements on “budgetary discipline and improvements of the budgetary procedure”. The so-called “Delors 1 Package” established in 1988 was the first *multi-annual financial perspective* which set out the main budgetary priorities of the EU-institutions for a longer period (5 years). This was done by laying down expenditure ceilings for the annual budget as a whole and for each of a number of major categories of Union expenditure. The latest financial perspective was set out in an *inter-institutional agreement* of 6 May 1999 laying down the perspective for the 2000-2006 period containing seven categories of expenditure. However the Commission has recently proposed to cut down to five main expenditure headings for the 2007-2013 period¹⁷

2.2.1 The current procedures for settling the multi-annual financial perspective

The EU treaties do not contain any provisions regarding the adoption of the multi-annual financial perspective. The financial perspective has up to now been set out in inter-institutional agreements (IIA) between the European Parliament, Council and the Commission on the basis of a decision by the European Council by common accord. The IIA of 6 May 1999 was thus agreed between the Parliament, Council and the Commission on the basis of decisions taken by the Berlin European Council in March 1999. According to the 1999 IIA any changes to the financial perspectives can only be passed jointly by the Parliament and the Council on a proposal from the Commission¹⁸. If the revision represents less than 0,03% of the EU GNI the Council shall take its decision with qualified majority, if it's above 0,03% it requires a unanimous decision. The Parliament takes its decision with a majority of its members representing at least 3/5 of the votes cast.

2.2.2 Multi-annual financial framework in the Constitutional Treaty

With the Constitutional Treaty the *financial perspective* is being incorporated into the structure of the treaty and made legally binding. It will be adopted by means of a European law by the Council taking decision with unanimity after having obtained the European Parliament's consent. The Convention's proposal to introduce qualified majority in the Council was thus rejected. However the heads of state or government did agree to include a so-called “*passerelle*” in the Constitutional Treaty allowing the European Council at a later stage (with unanimity) to authorise the Council to adopt the financial perspective by qualified majority¹⁹.

Finally it was agreed to use the term “*multi-annual financial framework*” instead of financial perspective.

¹⁶ See Article I-54 of the Constitutional Treaty.

¹⁷ See COM(2004)498, “Proposal for renewal of the inter-institutional agreement on budgetary discipline and improvement of the budgetary procedure”, 14 July 2004.

¹⁸ See IIA of 6 May 1999 paragraph 20 – OJ C172/1, 18 June 1999.

¹⁹ See I-55 paragraph 4.

2.3 ANNUAL BUDGET

The Council and the European Parliament have since the 1970s shared the power of the purse of the European Union. In two negotiation rounds in 1970 and 1975 their respective budgetary powers were laid down, giving the two institutions different prerogatives depending on whether expenditure was defined as “*compulsory*” or “*non-compulsory*”²⁰. While Council obtained the last word on all compulsory expenditure, Parliament had the final say on non-compulsory spending. This division of powers gave especially throughout the 70s and 80s, rise to numerous budgetary disputes between Parliament and the Council on what was to be defined as compulsory and non-compulsory expenditure respectively. The distinction between the two types of expenditure still exists, but the gap has been bridged over the last 30 years in a number of “inter-institutional arrangements” towards a more consensus oriented process, which seems to have found its way into the new budgetary provisions of the Constitutional Treaty.

2.3.1 The current annual budgetary procedure

The annual budgetary procedure is today initiated with the Commission’s submission of the so-called “*preliminary draft budget*”, where it attempts to take into account the different estimates of revenue and expenditure made by the Parliament, Council and the other EU institutions. But it is subsequently up to the Council to formally adopt a “*draft budget*”, which it forwards to the European Parliament by no later than 5 October. After a first reading in the European Parliament and yet another one in the Council, it is the European Parliament that adopts the budget at its second reading in December. The budget is finally signed by the president of the European Parliament. In the case of disagreements between Parliament and the Council in the course of the budgetary procedure, their respective possibilities to influence the different budget lines, depends as mentioned, on the nature of the expenditure. With regard to *compulsory expenditure* it is the Council that holds the power to fix the final amount, while the European Parliament may only propose amendments. Whereas as regards *non-compulsory expenditure*, the Parliament can itself amend the draft budget. Finally the European Parliament also possesses the power to veto the budget as a whole²¹.

2.3.2 A more consensus oriented process?

Despite the lack of formal procedural changes in the budgetary field over the years, the budgetary procedure has in reality become a more consensus oriented process facilitated by a large number of direct consultations between the institutions in either so-called *trialogues* or *conciliation meetings*.

Already prior to the Commissions submission of the “preliminary draft budget” the first triologue between delegations²² of the three institutions is organised in order to allow a first exchange of views on the priorities of the institutions for the budget. Similarly, trialogues are convened in advance of the Councils adoption of the draft budget, Parliaments 1st reading and Council’s 2nd reading. The parties also meet in a slightly broader composition in 2-3 “*conciliation meetings*”, where budget ministers representing the governments, a delegation from the Parliament plus the Commission convene to explain their respective positions and if possible reduce the number of points where there are disagreements.

²⁰ Compulsory expenditure is “expenditure necessarily resulting from the Treaty or acts adopted in accordance therewith”, whereas non-compulsory expenditure is expenditure where the EU enjoys a broader discretion as to the level of expenditure it undertakes. Twenty years ago 80% was compulsory expenditure, in 2003 only 42% was compulsory.

²¹ European Parliament has on two occasions rejected the overall budget: following the first and second direct elections in 1979 and 1984. In 1982 they furthermore rejected the supplementary budget that should finance the UK-rebate.

²² The triologue has a key function in the budgetary procedure bringing together the President of the Budget Council, the chairman of the European Parliament’s Budget Committee and the commissioner responsible for the budget.

2.3.3 New budgetary provisions in the Constitutional Treaty

The Constitutional Treaty simplifies the budgetary procedure in a number of ways, while it attempts to reinforce the dialogue between the EU budgetary authorities.

Firstly, it abolishes the existing distinction between compulsory and non-compulsory expenditure and thereby gives the Parliament and the Council the same rights on all types of expenditure. Secondly, the budgetary procedure is shortened by abolishing the 2nd readings of the Parliament and the Council. The Commission is furthermore given the formal right of initiative as it already holds it in the legislative field, which will allow it to amend the draft budget until the European Parliament has finalised its reading²³.

The Constitutional Treaty also attempts to facilitate the budgetary procedure by formalising some of the existing “practises” of organising *trialogues* and *conciliation meetings* to promote the dialogue between the institutions.

In case of disagreements between the Parliament and the Council after their first readings, a meeting of a conciliation committee is immediately convened to try to reconcile their positions. In case no agreement is reached within 21 days, a new draft budget shall be submitted by the Commission. If the Conciliation Committee reaches agreement, the Parliament and the Council have 14 days to approve the joint text. Also the trialogues are formalized in the Constitutional Treaty²⁴. Thus the Constitutional Treaty anticipates regular meetings between the presidents of the institutions with the purpose of promoting “consultation and reconciliation of the institutions positions to facilitate the implementation of the provisions of this chapter”.

Current budgetary procedure /TEC article 272	Proposed budgetary procedure in Constitutional Treaty/article III-404
<ul style="list-style-type: none"> Establishment of the <i>preliminary draft budget</i> by the Commission and transmission to the Parliament and Council not later than <i>15 June</i>. First reading by Council where it establishes the <i>draft budget</i> before <i>31 July</i>. First reading by European Parliament conducted in <i>October</i> Second reading by Council conducted during <i>third week of November</i> Second reading and adoption by Parliament of budget in <i>December</i>. 	<ul style="list-style-type: none"> The Commission submits the <i>draft budget</i> to the Parliament and Council not later than <i>1 September</i>. <i>Council</i> adopts its position not later than <i>1 October</i>. <i>European Parliament</i> adopts its position within <i>42 days</i>. Adoption of budget if agreement between Parliament and Council. A <i>Conciliation Committee</i> is immediately convened if Parliament adopts amendments. Conciliation Committee has <i>42 days</i> to reach agreement on joint text. The Parliament adopts final text within <i>14 days</i>.

2.4 IMPLEMENTATION OF BUDGET AND DISCHARGE

While it is the prerogative of the European Parliament and the Council to adopt the EU-budget, it is the responsibility of the European Commission to implement it²⁵. But Member States shall co-operate with the Commission in doing so. A large part of the budget such as agricultural expenditure is in fact fully or partly administrated by Member States authorities. According to some figures as much as 80% of the EU’s €100bn annual budget is administrated by Member States. However the Commission also implements certain parts of the EU budget directly either through its departments

²³ The Commission can amend its proposals until the time where the conciliation committee is convened.

²⁴ See Article III-414.

²⁵ See article 274 TEC.

or by outsourcing the administration to external bodies. The execution of the budget is governed by the so-called “financial regulation”, which lays down the more detailed rules for the implementation of the budget²⁶.

It is the prerogative of the European Parliament to approve the Commissions annual implementation of the budget – or *to give the Commission discharge*, as it is called in treaty language²⁷. However the Parliament’s approval must be given on the basis of a recommendation from the Council adopted with a qualified majority²⁸. The discharge procedure is commenced in November when the Court of Auditors presents its annual report for the preceding year. The Council presents its recommendations in March, while the procedure is concluded when the European Parliament decides to approve the Commissions implementation of the budget. This normally happens in April. If Parliament is dissatisfied with the Commission’s management Parliament may postpone its vote until October.

The Parliament and the Council are assisted by the European Court of Auditors, which carries out an external and independent audit of all EU revenue and expenditure. The Court of Auditors draws up an annual report on all activities financed from the EU budget²⁹ plus a number of special reports covering specific areas of management. Finally the Court issues a formal “statement of assurance” as to the liability of the accounts and the legality and regularity of the underlying transactions.

2.4.1 New provisions for implementation of budget

The Constitutional Treaty does not change the present system for implementation of the EU budget significantly. It is still the Commissions responsibility to implement the budget and the Parliament’s prerogative to grant discharge. But the Constitutional Treaty proposes a new wording, which is designed to take better into account that implementation of the budget is a shared responsibility, where Member States need to be involved more. The Constitutional Treaty therefore states: “The Commission shall implement the budget *in co-operation with the Member States*”.

Finally there is also an attempt to involve national Parliaments in the process of auditing the management of the budget in their respective Member States, by obliging the Court of Auditors to forward its annual report on the EU-budget to national Parliament at the same time as it is sent to the European Parliament and the Council³⁰. The European Parliament has previously encouraged national Parliaments to co-operate on scrutiny of the implementation of the budget in the Member States, which was endorsed by the XXXI COSAC in Dublin in May 2004.

26 See Council regulation No 1605/2002 of 25 June 2002, OJ L248/1.

27 Between 1970 and 1975 it was a shared responsibility between Council and Parliament to give discharge. Before 1970 it was an exclusive Council competence.

28 European Parliament refused to give discharge in 1984 for the financial year 1982 and in December 1998 when Parliaments voted down a proposal to grant the Commission discharge for the 1996 financial year.

29 See “Report on the activities financed from the budget, together with the institutions’ replies” (2002), OJ C286, 28 November 2003.

30 See “Protocol on the role of Member States’ national parliaments in the European Union, article 7.

3 TRANSPARENCY AND TRACEABILITY

3.1 EU-DATABASES AVAILABLE TO THE PUBLIC, WHICH CAN HELP TRACING THE LEGISLATIVE DECISIONS TAKEN BY EU INSTITUTIONS: EUR-LEX, PRELEX, OEIL AND THE COUNCIL'S PUBLIC 'REGISTER OF DOCUMENTS

3.1.1 The EU databases

The following chapter aims at describing the possibilities the national Parliaments have to trace relevant legislative and non-legislative EU-documents at different stages of the legislative procedure. This is done by describing the structure and the concrete offer of the most important official databases of the European Union, cited in the title.

One of the main goals of the European institutions has always been to allow public access to legal documents. By providing this access, the European institutions simply follow the concept of openness and responds to a basic principle of democracy: informing the citizens and communicating with them. Providing public access to the EU-databases follows this concept and allows the citizen and the national Parliaments to trace relevant documentation.

3.1.2 Historical overview of legal databases³¹

For the first time in European integration history, the Treaty of Maastricht³² implemented a *legal base* for this policy of information and transparency. Soon afterwards the legal base was followed by the adoption of a code of conduct by the Commission and the Council³³. The principle of openness was enshrined in Article 1 of the Treaty on the European Union. Article 255 of the Treaty establishing the European Community laid down that "any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to European Parliament, Council and Commission documents".³⁴ Regulation 1049/2001³⁵ of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents complied with this provision in the Treaty, laying down in particular that these three institutions should provide access to their documents via an electronic register.

However, the development of EU databases started long before. The Commission already created the first legal database called *Comunitatis europeae lex* (Celex) in the early 1970s. The first version of Celex, that only existed in French, became operational in 1971 and was used by the Commission services, i.e. only for internal use. *All succeeding legal databases of the EC/EU were based upon this database.*

Celex was improved continuously. So, in 1980, the Commission offered public access to Celex. Multilingual implementation began in 1983 with the launch of the English version of Celex. In order to assure the broadest accessibility to the public, Celex was

³¹ Office for Official Publications of the European Communities, Celex reference manual, URL: http://www.europa.eu.int/Celex/hm/doc/en/referencemanual_en.pdf

³² Treaty of Maastricht, Declaration on the right of access to information, URL: http://europa.eu.int/eur-lex/en/treaties/dat/EU_treaty.html#0101000037

³³ Code of Conduct concerning public access to Council and Commission Documents, Official Journal, L340, 31.12.1993, p.0043-0044.

³⁴ http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!Celexdoc!prod!CELEXnumdoc&lg=en&numdoc=12002E255&odel=lex

³⁵ Official Journal of the European Communities, L145/43, 31st May 2001.

made available in all official EU-languages step-by-step. In accordance with the Maastricht Treaty, the management of Celex has been transferred to the Office for Official Publications of the EC, and in 1997, the database was launched on the web. The latest milestone in transparency and traceability was reached on 1 July 2004, when the use of the Celex database following the text of regulation 1049/2001 of the European Parliament became free of charge. In October 2004 *a merger between Eur-Lex and Celex* takes place.

3.1.3 Languages of the EU-databases

The EU-databases are available in all 20 official languages, except the Legislative Observatory (Oeil) that is provided in English and French. Since July 2003, the institutions began providing the secondary legislation in the languages of the acceding countries to the EU. This collection is not yet complete and texts are uploaded into the databases as made available by the legal services of the Council and the Commission.³⁶

The documents published in the Official Journal and the European Court Reports are available in the official languages acknowledged at the time of their publication. Given the fact that the official languages during the founding years of the Communities were Dutch, French, German and Italian, these languages therefore have the widest and the longest historical coverage in the databases. For other languages the coverage coincides with the duration of the membership of the related Member State; when other Member States later joined, the legislation in force at the time of accession as well as selections of jurisprudence of the Court of Justice has been translated in the new languages.³⁷

3.2 ABOUT THE NEW EUR-LEX

In late 2002, the Office for Official Publications started work on the merging of the EUR-Lex site and the Celex database. This task will be completed shortly (scheduled end of October 2004), but a beta version is already accessible via the URL: <http://europa.eu.int/lex/lex/en/index.htm>

The new site will be accessible free of charge. Both, the old EUR-Lex and Celex versions are still accessible to the public. The new site is managed by the Office for Official Publications which acts in the name of all European institutions. The institutions participate regularly in the development of the database through different committees and working parties. A working party of the Council, in which representatives of the Member States also take part, is regularly informed about the management and the development of the database. The currently available site is a preliminary version of the future single access to European Union law in all official languages. The merged site offers access to more than a million EU legal documents through searching or browsing options, including the daily editions of the Official Journal of the European Union. Regarding the fact that the site is preliminary, it does not yet offer full coverage and is still undergoing development.³⁸

Compared to the older versions of EUR-Lex and Celex, the multilingualism management has been totally revised. The new site allows switching immediately from one language to another by one click. In future, the user will be able to define a linguistic profile and to choose alternative languages in which documents not available in the preferred language will appear. The simultaneous visualisation of two linguistic versions of the same document has been improved.

³⁶ Newsletter 1-2004, http://europa.eu.int/eur-lex/en/news/20040116_01.html#en_2

³⁷ Frequently asked questions, <http://europa.eu.int/lex/lex/en/tools/faq.htm>

³⁸ Newsletter EUR-Lex, <http://europa.eu.int/lex/lex/en/editorial/newsletter.htm>

3.2.1 What can be found?

- The Official Journal of the European Union.

This section, providing access to all documents published in the Official Journal (OJ), is published daily in 20 languages and is split into the L series (legislation) and the C series (information, preparatory acts and notices). Some of the documents of the C series are exclusively published electronically. The supplement to the OJ (calls for tenders) is published in the TED database. By entering the date and the publication reference, it also allows direct access to a particular issue of the Official Journal. Lastly, there is the possibility of consulting the complete issues of the Official Journal made available online since 1998. The texts published in the Official Journal, including texts prior to 1998, can also be accessed using the search functions that the site provides.

- The Treaties section

It supplies the user with information about the primary law of the Union. The section is divided into three categories; *the founding Treaties* (original versions and later updates); *the Accession Treaties* of the five enlargements; *the amending Treaties* plus a few other essential documents such as the Constitutional Treaty.

- International Agreements

This section is not ready yet.

- Legislation in force

Concerning the scope of documentation, it was felt that the directory should not exclusively include current Community legislation as such but also other instruments reflecting the activities of the European Union (EU, ECSC, EEC, EC and EURATOM) such as policy instruments and decisions taken in individual cases of more general interest. Therefore, the directory copes with:

- binding secondary legislation such as regulations, decisions, ECSC general decisions and recommendations, EEC/EC/Euratom directives under the Treaties establishing the European Union and the European Communities, with the exception of day-to-day administrative acts
- agreements and conventions concluded by the Communities in connection with their external relations
- supplementary legislation, in particular decisions of representatives of the Governments of the Member States meeting within the Council
- certain non-binding acts considered by the institutions to be important³⁹

- Preparatory Law

This section is not ready yet, but the old database provided documents corresponding to the various stages of the legislative or budgetary process. They are:

- Commission legislative proposals, such as published in the COM and SEC (not all) series and/or the C series of the Official Journal
- Council common positions
- legislative and budgetary resolutions and the initiatives of the European Parliament
- opinions of the Economic and Social Committee and of the Committee of the Regions
- opinions and reports of the Court of Auditors
- opinions of the European Central Bank
- various preparatory documents specific to the European Coal and Steel Community

³⁹ <http://europa.eu.int/lex/lex/en/legis/avis.htm>

If the user wants to know more about the whole *legislative procedure* for a specific act, he can find a description of the procedure in PreLex or in Ceil of the European Parliament.⁴⁰

- Case-law

This section is not ready yet, but the old Eur-Lex section included:

- decisions of the Court of Justice of the European Communities
- decisions of the Court of First Instance
- opinions of the Court of Justice
- opinions of the Advocates General⁴¹

- Parliamentary Questions

- written questions (worded with a request for a written answer published in the OJ),
- oral questions (raised during sessions and published in the Debates of the European Parliament),
- questions at question time (time set aside during each Parliamentary session and published in the OJ).⁴²

3.2.2 Search functions

Search possibilities are available by word, date, author, classification in the directory of legislation, Eurovoc keyword thesaurus, the natural number of a document, its codified Celex number, type of document (sections described above), domain or by publication reference.

Each search result comprises the document itself but also additional information such as the number of the legislative act, followed by the full title, its bibliographical reference (Official Journal of the European Union, the date of publication and the page number) and, if applicable, references to amending acts with the publication reference between brackets.

The user can choose between different options to present the search results. The system offers the option to sort documents by chapter of the directory of the legislation or by type of document. By default, the sorting is in chronological order with more recent documents appearing first. It is also possible to display additional data like dates, indexation or the availability of documents in different languages and formats.

3.2.3 Remarks

The site provides links to the Budget of the European Union and the institution's registers (European Parliament's, Commission's and Council's register of documents). In the 'About EU-Law' section, one can also find a joint practical guide of the European Parliament, the Council and the Commission for the persons involved in the drafting of legislation within the community institutions. The point 'Process and Players' in the same section still is under construction.

⁴⁰ <http://europa.eu.int/eur-lex/en/information/about.html>

⁴¹ idem

⁴² idem

3.3 DATABASES DEALING WITH THE LEGISLATIVE PROCEDURE: PRELEX AND THE LEGISLATIVE OBSERVATORY

3.3.1 Complementarity of the two databases

The PreLex (Commission) and the Legislative Observatory (European Parliament) share the same starting point; they mean to give an overview of the legislative procedure, using different approaches: PreLex focuses on the deployment of the procedure and the documents whereas the Legislative Observatory sheds light on information concerning the parliamentary process of the procedure file listing all the documents and key events relating to a given procedure and the players involved at each stage. Thus, the two databases are complementary but not redundant.

3.3.2 About PreLex

Citizens can reach the PreLex website via the following URL: <http://europa.eu.int/prelex/apcnet.cfm?CL=en#>

PreLex is a free of charge database containing information on inter-institutional⁴³ procedures provided by the secretariat-general of the Commission. It allows following the proposals of the Commission throughout the different stages of the decision-making process between the Commission and the other institutions by informing on the stage of the procedure, the decisions of the institutions, the responsible service, the persons involved and references of documents. It is therefore possible to monitor the works of the various institutions involved (European Parliament, Council, ESC, Committee of the Regions, European central Bank, Court of Justice, etc.).⁴⁴

In short, one can say that PreLex follows all official documents concerning draft legislation (Proposals, Recommendations, Communications) transmitted by the Commission to the legislator (the Council - the Parliament) as well as to other institutions and bodies. Prelex does not contain any information about the legislative work before 1976. Although part of the information is not necessarily saved in the PreLex database itself, it is accessible via dynamic links.

3.3.3 What can be found?

PreLex provides detailed information on all procedures opened by official documents (legislative proposals, recommendations, communications etc.) transmitted by the Commission to the legislator (Council - Parliament) and to other institutions and bodies. The procedural files contain a list displaying the titles of the relevant documents. The document itself groups information about the actual state of the art of the legislative proposal and contains detailed information such as date of adoption by the Commission, date of transmission to the Council, opinion of the EP, Council conclusions plus other characteristics like fields of activity, legal basis, procedures and type of file. Since 2001, all PreLex documents are displayed with their Celex number. The search results also inform about the persons in charge of the procedure during the decision-making process, Members of Parliament, Commissioners, the responsible services, a Directorate-General or a Parliamentary Committee.

The PreLex website gives a link to the Commission's secretariat-general home page, where the citizen can find the latest news, updated daily. A first section provides news

⁴³ involving more than one institution

⁴⁴ PreLex manual, <http://europa.eu.int/prelex/apcnet.cfm?CL=en#>

about key issues, whereas a second section presents a link to the latest edition of the 'Europa' newsletter.⁴⁵

3.3.4 Search functions

Depending on the complexity of the query, it is possible to use three different search screens (standard, advanced, monitoring the decision-making process) to enter the criteria described above. The *standard search* engine only allows a search by words, series, year, number, and by events, activities of the institutions or a specific time period. The added value of the *advanced search* version consists in additional search possibilities such as fields of activity, names and roles of bodies, legal basis, type of file and the possibility to connect several search items.

The section '*Monitoring of the decision-making process*' enables the user to conduct pre-defined searches and introduce different criteria. Eleven search criteria can be entered. It among other things allows the user to find files in which an event has happened since a given date, files transmitted to Council or to Parliament from a specific date on, to retrieve the files detailing decisions of the last Council session or to find the conciliation procedures under way.

3.3.5 Remarks

Under the section 'Description of the database' the PreLex provides a good manual where the less experienced user can learn how to use the database. This section is not yet available in the official languages of the new Member States.

A Prelex document is also displayed with a link to Oeil, the Legislative Observatory of the Parliament. Both databases are complementary, but they use a different approach.

3.4 THE LEGISLATIVE OBSERVATORY (OEIL)

3.4.1 About the Legislative Observatory

The Legislative Observatory is an administrative, forecasting, information and research tool. Originally, this database, which focuses on the follow-up of procedures, has been developed in the context of the 'legislative backbone' set up by the Secretariat of the European Parliament in April 1993. It is updated daily. Its main purpose is to give an overview of the legislative procedures, that is to say it collects procedure files on the basis of various documents, events, key players and other information. However, it is not intended to be a document index, nor a gateway for accessing the full text of the documents, even if this option is available. In fact, Oeil allows the citizen to follow up and monitor the Communities decision-making process step by step, find out immediately what stage a proposal has reached and make forecasts for the stages to come. A **new version** of the Legislative Observatory will soon be available.

3.4.2 What can be found?

Oeil contains information on all legislative procedures, irrespective of when they began, as well as the procedures concluded since the beginning of the fourth legislative term in July 1994. The Observatory also gives the user the possibility to monitor the work of the European Parliament and look ahead to future stages, involving parliamentary committees and plenary sessions. The database contains information on all inter-institutional procedures (co-decision, consultation, assent),

⁴⁵ David Reisenzein, Offizielle Rechtsdatenbanken der EG/EU, doctoral thesis, Leopold-Franzens-University, Innsbruck, 2002

budgetary and discharge procedures, procedures relating to the Rules of Procedure, appointments, non-legislative consultations (in particular on strategic Commission documents - White and Green Papers, communications, etc.), own-initiative reports of Parliament, expected procedures in the context of the Commission's annual working program, and resolutions on topical and urgent subjects adopted by the Parliament.⁴⁶ The Observatory also has a section reserved to forecast the agenda of the next sessions of the European Parliament in Brussels or Strasbourg.

The procedure files are extremely detailed, and include a link to the full text, the key data concerning the procedure, as well as provisional information and deadlines; in addition, users will find résumés of the main stages based on the relevant documents (COM, SEC, EP documents, etc), together with summaries of the main events in the history of the procedure (activities of the Commission, the Council and Parliament).

Each procedure file includes all the documents and events related to it and all the actors involved at each stage. Each procedural file provides information about *three main stages*: *the pre-legislative stage*, possibly in the form of a preparatory note supplying the context of the procedure; *the progress of the procedure*, from the initial proposal or vote in committee to the final act or opinion; *the legislative follow-up*, including a general evaluation of the procedure, the problems and the outcome.⁴⁷

The new version of the Legislative Observatory will include a news section reporting on the latest events on European Parliament's activities (next session, all procedures for which a report has been tabled between two Strasbourg sessions, new procedures introduced the same day, etc.) Another way to be informed is to enter a personal profile to the Observatory tracking service, where it is possible to mark its own preferences for the procedure(s) you want to be notified of.

3.4.3 Search function

There are three different search functions; via *the topical subject page*, *the simple search* and the *advanced search*. The 'Topical subjects' are divided into 6 different categories such as enlargement, budget and employment. The simple search includes five categories (words, reference, agent in procedure, subject country, stage reached in procedure) of search devices containing different criteria. Finally, an advanced search, where the different search criteria can be combined, is also available.

3.4.4 Remarks

There are only two languages for the Legislative Observatory: French and English. Hence, as there are links to the full text in Eur-Lex, some documents can be displayed in other languages.

3.5 THE COUNCIL'S PUBLIC REGISTER OF DOCUMENTS

3.5.1 About the Council's Public Register of documents

The Council's 'Public Register of Documents' is accessible via the URL: <http://register.consilium.eu.int/default.htm>

The Council has decided on 19 March 1998 to create a register intended to contain all documents released to the public containing the titles, dates and the document number. The Public Register of documents comes with a multilingual tool, accessible via internet enabling the citizen to identify Council documents. The register entered into service on 1 January 1999.

⁴⁶ <http://www.wdb.europarl.ep.ec/dors/oeil/en/inter0.htm>

⁴⁷ idem

On 6 December 1999, the Council decided that the public register should also include the document numbers of classified documents, even if the full text is not displayed. Thus, there is no information about the subject of a classified document, if the disclosure of such information is likely to harm other interests. The regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents, amended by the Council decision 2004/338/EC, clearly defines to what kind of documents and under what circumstances the Council must give access to its documents.

3.5.2 What can be found?

In addition to the documents the Council must provide, in accordance with regulation 1049/2001, a register containing a monthly updated activity summary of the Council prepared by its General Secretariat. This summary lists legislative as well as non-legislative acts⁴⁸ including results and explanations of the voting, together with statements for the minutes, whenever the Council acts in its legislative capacity.⁴⁹

The Council minutes are available from 1999 on. They summarise the decisions taken and occasionally the content of the discussions during the Council meetings. The minutes normally contain an indication of the documents submitted to the Council, decisions taken or conclusions reached by the Council and statements made by the Council and those whose entry has been requested by a member of the Council or the Commission.

Moreover, the Council decided to post a number of timetables and agendas on the site. This section provides the press agenda; the work programme for the current half year, in particular meetings at Ministerial level and those of the Permanent Representatives Committee (COREPER) and the Special Committee on Agriculture (SCA), the Article 36 Committee and other preparatory bodies as well as the timetable of the meetings to be held at the headquarters of the Council of the European Union. Usually, the agenda is available a few days before the meeting.

3.5.3 Search functions

The user has access to *four* different search functions. The *simple search* engine has only few search criteria like words in title, words in text, subject matter and date of meeting. Compared to the simple search, the *advanced search* offers additional search functions such as document number, inter-institutional file, document date, archive date. The user can also specify the display of the search results by document language, rows per page, maximum rows per page and other sorting criteria. Another possibility to search documents is given under the section *latest documents references* that proposes a list of all the latest documents, whereas the section *latest public documents* gives a list of the latest official documents in full text treated by the Council.

3.5.4 Remarks

For those documents that are not available in full text, the citizen is given the possibility to submit a request to get access to them. This can be done under the section 'submit a request for access to Council documents'. The public may have the right to access to Council documents subject to the conditions laid down in regulation 1049/2001 and the specific provisions regarding public access to Council documents

⁴⁸ The Council acts in its capacity as legislator when it adopts, on the basis of the relevant provisions of the Treaties, legally binding standards in or for Member States by means of regulations, directives, framework decisions or decisions. Internal measures, administrative or budgetary acts, acts concerning inter-institutional or international relations and non-binding acts such as conclusions, recommendations or resolutions are not regarded as legislative acts.

⁴⁹ Third report on the implementation of Council Decision 93/731 on access to Council documents, 13275/00

in Annex II to the Council's Rules of Procedure, as amended by Council Decision 2004/338/EC of 22 March 2004.

4 Documents from Governments to National Parliaments concerning EU draft legislation (explanatory memoranda).

4.1 INTRODUCTION

In addition to the transmission of EU legislative proposals, many Member State Governments provide supplementary information to the National parliaments in the form of either written documentation or via more informal channels. One widespread way of doing this is to submit so-called explanatory memoranda to the responsible committees of the parliaments prior to their dealing with the Commission proposals.

Where the 1st biannual report of COSAC of May 2004 provided a snapshot of some trends in the national Parliaments when it comes to Government's transmission of documents to the parliaments, this report attempts to give a more comprehensive overview of current practises of submitting "explanatory memoranda" to the National parliaments. The systems differ from Member State to Member State. The attached table summarises the latest information provided by national parliaments and takes into account the responses from a questionnaire circulated prior to COSAC's XXXIInd meeting in November 2004.

The questionnaire tries to shed some light on the way Governments provide written information to their Parliaments about EU draft legislation. Contacts in National parliaments have therefore been asked whether:

- their Governments provide explanatory memoranda on EU draft legislation to the Parliament?
- there are any requirements to the explanatory memoranda in terms of specific information that must be provided by the Government? If yes, what are requirements?
- there are any deadlines for delivering the explanatory memoranda?

Table 1: Documents concerning EU draft legislation

Country	Explanatory Memoranda	Requirements	Deadlines
Austria	No, but it is planned that explanatory memoranda have to be provided for points on the agenda of the EU-affairs committees.	Not decided yet	Not decided yet
Belgium	No	No	No
Cyprus	Not decided yet	Not decided yet	Not decided yet
Czech Republic	Yes	1) Position of the Government 2) Impact on the national legislation 3) Impact on state budget (if any)	10 days
Denmark	Yes	1) Description of the subject matter 2) Legal base and procedure for adoption 3) Opinions from European Parliament and the Commission 4) Impact on national legislation 5) Impact on public finances and administration 6) Impact on economy 7) If relevant, impact on employment, SME, equality, environment, health and consumer protection 8) Compliance with the principle of subsidiarity and proportionality 9) Hearing responses received from interest groups	4 weeks
Estonia	Yes	1) Short summary of the draft 2) Legal base and procedure of adoption 3) Timetable of the proceedings 4) Position of Government 5) Impact on national legislation 6) Impact on economy	Government has to deliver the memoranda with the draft bill " <i>as soon as possible</i> " after having received it. In practice, Government is expected to submit the document in 4-5 weeks, except when sufficient analysis is not possible in that time.
Finland	Yes	1) Introduction to the proposal 2) Description of the subject matter 3) Position of government 4) Impact on national legislation 5) Impact on economy 6) The Government's proposed plan of action	Constitution, section 96: " <i>without delay</i> ". In practice, memoranda must be available in good time before national positions need to be divulged in the Council's working groups.
France	No	No	No
Germany	Yes. According to the law of 12 March 1993, the federal Government shall inform the Bundestag comprehensively and as quickly as possible of all initiatives within the framework of the European Union which could be of interest to the Federal Republic of Germany.	1) Description of the subject matter 2) Legal base and procedure for adoption 3) Timetable for adoption 4) Position of Government 5) Opinions of the European Parliament, the Commission and the Member States 6) Course of the deliberations Before taking a decision on European Union legislation, the Federal Government shall give the <i>Bundestag</i> an opportunity to state <i>its opinion</i> . The Federal Government shall use the opinion as a basis for its negotiations.	The period within which the opinion is to be stated shall be such that the Bundestag has sufficient opportunity to consider the item concerned. The Government has to deliver all its explanatory memoranda <i>as soon as possible</i> . A deadline is not legally provided.
Greece	Not decided yet	Not decided yet	

Country	Explanatory Memoranda	Requirements	Deadlines
Hungary	Yes	<ol style="list-style-type: none"> 1) Summary of contents 2) Legal base and procedure of adoption 3) Timetable of adoption 4) Position of Government 5) Objectives to be achieved and their reasons 6) Presentation of possible legislative tasks <p>The Parliament can also ask for an <i>extended version</i> that includes: Impact on economy, budget, and social affairs; Indication of the legislation applicable in Hungary and in the EU on the subject of the draft of the EU; Opinion of EU-institutions and Member States.</p>	<i>No specific deadline</i> , however the Government shall send its proposed position to the Parliament at a date enabling the consultation in merit considering the EU agenda for decision-making.
Ireland	Yes	<ol style="list-style-type: none"> 1) Description of the subject matter to be laid before each House of the Oireachtas 2) Implications of the proposed measures 3) Other information considered by the Government to be appropriate 	The text of the measure together with an information note is circulated to the Oireachtas <i>within four weeks</i> after formal reception.
Italy	Under discussion. A law has passed the Chamber and is actually examined by the Senate. Art. 3 paragraph 7 of this law foresees explanatory memoranda.	<ol style="list-style-type: none"> 1) Description of the subject matter with commentaries 2) Impact on national legislation 3) Impact on economy 4) Impact on public administration and on citizens 5) State of the art of the negotiations at Community level 	Not decided yet
Latvia	Yes. The ministries are obliged to prepare a so-called early position concerning EU draft legislation. This early positions must not be forwarded to the Parliament, however, the EAC has an access to the Government's documentation database.	<ol style="list-style-type: none"> 1) Position of Government 2) Opinion of other EU-Member States 3) Opinion of the EU-institutions 4) Impact on budget 5) Current legislation 6) State of the art the document 7) Consultations with other public authorities 8) Consultations with NGO's 	According to current legislation, only prior to the EU Council of Ministers' meetings and the European Council meetings the national positions have to be submitted to the European Affairs Committee for adopting at the EAC meeting.
Lithuania	Yes	<ol style="list-style-type: none"> 1) Legal base and procedure for adoption 2) Position of Government and the process of its consideration 3) Positions of other EU-Member States 4) Impact assessment 5) Current legislation on this topic 6) Compliance with the principle of subsidiarity 7) Proposals concerning the amendment of national legal acts 8) Additional information 	The general rule is that an institution responsible for the preparation of a position concerning EU draft legislation submits to the Seimas an explanatory memorandum right after its preparation, but not later than 3 days prior to the debate on the position at the institutions of the European Union. If the legal act is qualified very relevant or relevant to Lithuania, an explanatory memorandum with filled-in subparagraphs 1, 5, 8 is submitted to the Seimas within 15 working days from the receipt of the proposal.
Luxembourg	Yes	No	No deadlines provided
Malta	Yes	<ol style="list-style-type: none"> 1) Summary of the proposal 2) Legal base 3) Impact on national legislation 4) Impact on social affairs 5) Political implications 	3 weeks
Netherlands	Yes	<ol style="list-style-type: none"> 1) Introduction of the proposal; 2) Legal base and procedure for adoption 3) Timetable for adoption; 4) Position of Government; 5) Impact on national legislation; 6) Impact on developing countries; 7) Compliance with the principle of subsidiarity and proportionality; 8) Decisionmakingproces and role European Parliament; 9) Possible set-up of comitology-committee; 10) Financial implications for the Community and the Netherlands and administrative consequences 	Within 6 weeks o the document being deposited
Poland	Yes. The act of 11 March 2004 on determines the cooperation between the Council of Ministers, the Sejm and the Senate stipulates that the Council of Ministers shall append a statement of reasons	<ol style="list-style-type: none"> 1) Legal base and procedure for adoption 2) Impact on national legislation 3) Impact on economy 4) Impact on social affairs 5) Financial implication 	The deadline for appending the statement of reasons is "no later than the 14th day following the day of receipt of the [legislative] proposals [of the European Union]".

Country	Explanatory Memoranda	Requirements	Deadlines
Portugal	No	No	No
Slovakia	So far, the Government is not obliged to do so, but after the adoption of relevant legislation (Rules of Procedures of the National Council of the Slovak Republic) it will have to provide the so-called preliminary position of the Slovak Republic on EU draft legislation.	<ol style="list-style-type: none"> 1) Description of the subject matter 2) Legal base and procedure for adoption 3) Timetable for adoption 4) Impact on legislation 5) Impact on economy 6) Impact on social affairs 7) Impact on environment 8) Compliance with the principle of subsidiarity 	The preliminary position of the Slovak Republic on EU draft legislation shall be provided within three weeks after its receipt from the Commission.
Slovenia	Yes. The National Assembly shall participate in the formulation of positions of the Republic of Slovenia in relation to the EU affairs that fall under its jurisdiction in accordance with the Constitution (Art.3.a) and the Law on relation parliament-Government in EU matters.	<ol style="list-style-type: none"> 1) Legal basis and procedure for adoption 2) Timetable for adoption 3) Impact on budget 4) Impact on economy 5) Impact on public administration 6) Impact on the environment 7) Basic solutions and objectives of the draft act 8) Necessity of amending the current regulations <p>The Government may amend and supplement the subject matter of the assessment of the impacts and implications and of the draft positions of the Republic of Slovenia.</p>	The Government shall forward the explanatory memoranda together with the draft positions of the Republic of Slovenia including an assessment of the impacts and implications for the Republic of Slovenia as soon as it has adopted such, but no later than within five weeks from reception date.
Spain	Yes	No	Law 8/1998 stipulates that draft legislation must be forwarded in order to allow the Commission enough time for information and examination. The Government's rapport must be transmitted in the shortest delays.
Sweden	Yes	<ol style="list-style-type: none"> 1) Summary of the proposal 2) Legal basis and procedure for adoption 3) Position of Member states and the EU-institutions 4) Position of Government 5) Impact on national legislation 6) Positions of Swedish authorities and organisations 7) Current legislation and regulations 7) Technical terms 	The deadline for delivering to Parliament is within five weeks from the date when the Commission's proposal has been delivered to the Council in Swedish.
United Kingdom	Yes	<ol style="list-style-type: none"> 1) Description of the subject matter 2) Legal and procedural issues, including legal basis, procedure for adoption, impact on national law; application to the EEA 3) Timetable for adoption 4) Position of the Government and its view of the document's policy implications 5) Impact assessment 6) Financial implications for the Community and the UK 7) Compliance with the principle of subsidiarity 8) Ministerial responsibility 9) Any Government consultation 	Within ten working days of the document being deposited. (Deposit should be within two working days of the English text of a document becoming available.) Extra time is sometimes allowed if there is a long enough period before the document is expected to be agreed.
European Parliament	Yes	No legal provision seems to make this practice mandatory, which, however, fully corresponds to the principle enshrined in Article 253 TEC according to which all legal acts adopted by the Union's institutions shall state the reasons on which they are based. Moreover, in the course of the legislative procedure under Article 251 TEC, the Council is bound to inform Parliament fully of the reasons which led it to adopt its common position and the Commission is bound to inform the European Parliament fully of its position. The President of the European Parliament is monitoring the respect of this obligation prior to the announcement of any common position to the plenary session	No
Bulgaria	Yes	No	No

5 Ratification of the Constitutional Treaty in EU-25

The Constitutional Treaty, approved at the European Council in Brussels on the 18 June 2004 and signed by Heads of State or Government in Rome on 29 October 2004, is going to be ratified by the 25 Member States in the course of the next two years. The ratification of the Constitutional treaty will involve a greater recourse to citizen opinion by referenda than ever before.

Lithuanian parliament as the first Member States Parliament ratified the Constitutional Treaty on 11 November 2004. Currently 9 Member States have announced that they plan to organise referenda about the Constitutional Treaty. However, only Spain and Luxembourg has announced the date of the referendum which will be on 20 February 2005 for Spain and 10 July 2005 for Luxembourg. The remaining referenda will take place in the course of 2005 and 2006.

The table below is giving an overview of the foreseen ratification procedures of EU-25 for the Constitutional Treaty.

Table 2: Outlook for ratification procedures in EU-25⁵⁰

Country	Plan to organise referendum?	Parliamentary approval
Austria	Not likely. For the time being there are no indications that the National Council will ask for a referendum.	Most likely approval by Parliament in 2005, maybe already in first half of the year.
Belgium	Not yet decided. The Prime Minister, Guy Verhofstadt has stated that he wants to ratify the Constitutional Treaty by May 2005.	
Cyprus	No	Approval by Parliament, but no decision taken on timetable for ratification.
Czech Republic	Yes. The new government declares in its "programme" its intention to prepare an ad hoc draft act allowing a referendum on the Constitutional Treaty. Referendum expected to be held in Spring 2006.	
Denmark	Yes. Announced by the Prime Minister on 1 January 2004 in his New Years speech. Referendum will most likely take place in 2005, but precise date is still unknown.	
Estonia	Not likely.	Most likely approval by Parliament. Government decided on 2 September to propose that the Riigikogu should ratify the constitutional treaty. The decision by the Riigikogu is expected at the beginning of 2005.
Finland	No.	Government bill approximately September 2005; parliamentary approval early Spring 2006. Formal ratification immediately thereafter (unless constitution process delayed by other Member States)
France	Yes. The referendum should take place during the second half of 2005 (announced by President Chirac on 14 July).	

⁵⁰ The data in the table is based on replies to a questionnaire, which was distributed to contacts in the national Parliaments by the COSAC secretariat in September 2004.

Germany	Not likely. The German constitution does not provide for organising a referendum.	Ratification procedure expected to be finished at the earliest spring 2005.
Greece	No	Most likely approval by Parliament as announced on 23 June by Iannis Valynakis, Secretary of State.
Hungary	Not likely	Most likely approval by Parliament in 2005.
Ireland	Yes	Not yet decided
Italy	No	The Chamber and the Senate will initiate the ratification procedure after the signing of the treaty.
Latvia	Not likely	Most likely ratification in Saeima by mid-2005.
Lithuania	No	Lithuania ratified in Parliament on 11 November 2004.
Luxembourg	Yes. The referendum will take place on 10 July 2005.	
Malta	No	Most likely approval by Parliament by mid-2005
Netherlands	Yes, Spring 2005	
Poland	Yes. The Polish Foreign Minister, Włodzimierz Cimoszewicz, said on 21 June 2004, that it would be normal to hold a referendum on the Constitutional Treaty together with the presidential elections, which are due to take place in the autumn 2005. But date is not yet decided.	
Portugal	Yes. The government has announced that it would like to hold the referendum on 10 April 2005. However this still needs to be finally decided and agreed to by the Constitutional Court.	
Slovakia	Not likely. Agreement has been reached among the political party leaders (excluding 1 party of the coalition government) that it not necessary to organise a referendum.	Most likely approval by Parliament. Timetable not yet decided.
Slovenia	Not likely	Most likely approval by Parliament during 2005-2006
Spain	Yes. Referendum will take place on 20 February 2005. Referendum was announced by Prime Minister Zapatero on 23 June 2004)	
Sweden	No	The government plans to submit a draft bill in September 2005. Most likely approval by Parliament in December 2005.
United Kingdom	Yes. The Prime Minister Blair in a statement made formal announcement of the referendum to the House of Commons on 20 April 2004. Date not yet decided.	

ANNEX I:

Foreseen models for the Early Warning Mechanism in national Parliaments ⁵¹

Table 3:

Member State - Chamber	Not yet decided	Committee(s) foreseen to be entrusted with the task of monitoring the compliance with the subsidiarity principle	Body foreseen to be responsible for adoption of the formal reasoned opinion	Foreseen coordination of views in case of two chamber systems?
1. Austria - <i>Nationalrat</i> - <i>Bundesrat</i>		European Affairs Committee European Affairs Committee	European Affairs Committee European Affairs Committee	Not yet decided Not yet decided
2. Belgium - <i>Chamber</i> - <i>Senate</i>	X	Not yet decided	Not yet decided	Not yet decided
3. Cyprus		European Affairs/Plenary	European affairs Committee/Sector Committee	Unicameral
4. Czech Republic - <i>Chamber</i> - <i>Senate</i>		European affairs committee European affairs Committee/Foreign affairs Committee.	Plenary Plenary	No No
5. Denmark		European Affairs Committee/Sector Committees	European affairs Committee	Unicameral
6. Estonia	X	Not yet decided	Not yet decided	Unicameral
7. Finland		European affairs Committee/Sector Committees	European affairs Committee	Unicameral
8. France - <i>Chamber</i> - <i>Senate</i>	X X	Not yet decided Not yet decided	Not yet decided Not yet decided	Not yet decided Not yet decided
9. Germany - <i>Bundestag</i> - <i>Bundesrat</i>	X	Not yet decided Plenary/European Affairs Committee/sector committees/other	Not yet decided Plenary/Other	Not yet decided Not yet decided
10. Greece	X	Not yet decided	Not yet decided	Unicameral
11. Hungary		European affairs Committee	Plenary	Unicameral
12. Ireland - <i>Dáil</i> - <i>Senate</i>	X X	Not yet decided Not yet decided	Not yet decided Not yet decided	Not yet decided Not yet decided
13. Italy				

⁵¹ The table is based on replies given by contacts in national parliaments of EU-25 to a questionnaire, which was distributed prior to the XXXII COSAC.

- Chamber	X	Not yet decided	Not yet decided	Not yet decided
-Senate	X	Not yet decided	Not yet decided	Not yet decided
14. Latvia	X	European Affairs Committee/Sector Committees	European Affairs Committee	Unicameral
15. Lithuania		European affairs Committee	Plenary	Unicameral
16. Luxembourg	X	Not yet decided	Not yet decided	Unicameral
17. Malta		Foreign and European Affairs Committee	Not yet decided	Unicameral
18. Poland				
- Sejm	X	Not yet decided	Not yet decided	Not yet decided
-Senate	X	Not yet decided	Not yet decided	Not yet decided
19. Portugal	X	European Affairs Committee/sector committees	European Affairs Committee/Plenary	Unicameral
20. Netherlands	x	Newly to be installed Joint Committee of Senate and HoR	Plenary of both chambers	Yes in the Joint Committee on subsidiarity
- Chamber				
- Senate				
21. Slovakia	X	European Affairs Committee	Not yet decided	Unicameral
22. Slovenia				
- National Assembly		European affairs Committee/Sector committee	European affairs Committee	No, but representatives of the National Council is invited to attend meetings of the European Affairs Committee to present and explain opinions adopted or issued.
- National Council		Commission for International Relations and European Affairs	Commission for International Relations and European Affairs	
23. Spain				
- Congress	X	Not yet decided	Not yet decided	Not yet decided
- Senate	X	Not yet decided	Not yet decided	Not yet decided
24. Sweden	X	Not yet decided	Not yet decided	Unicameral
25. United Kingdom				
-House of Commons	X	European scrutiny Committee proposes a system whereby the ECS would draw up a reasoned opinion.	European scrutiny Committee proposes that the reasoned opinion should be endorsed by the House	Not yet decided
- House of Lords	X	The European Committee may recommend that it is charged with the task, but that would be for the House to decide.	Not yet decided	Not yet decided

