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**A CONSTITUTION OR JUST
ANOTHER TREATY FOR
THE EU?**

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THE JEAN MONNET SEMINARS

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A CONSTITUTION OR JUST ANOTHER TREATY FOR THE EU?

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Background

The Treaty establishing a Constitution for Europe was accepted by 18 Member States (including Malta), but it was rejected in referenda in France and the Netherlands in 2005. However, the institutional framework agreed in the Treaty of Nice only provided for a European Union of 27 Member States, a figure achieved with the accession of Bulgaria and Romania in January 2007. Unless therefore the EU was to be frozen in its current format, a further Treaty was still needed, and in June 2007, a draft Reform Treaty was agreed by the European Council, with a revised text being published and agreed by the European Council in October 2007.

While structurally different from the Constitutional Treaty, the Reform Treaty follows many of its innovations. The fundamental difference is that while the Constitutional Treaty included all three “pillars” of the EU in a single Treaty (though Euratom would have remained separate), the Reform Treaty takes the form of amendments to the existing Treaties. However, the Reform Treaty will rename the EC Treaty the “Treaty on the Functioning of the Union”, the word “Community” will be replaced by the word “Union”, and the European Union will have a single legal personality. At the symbolic level, unlike the Constitutional Treaty, the Reform Treaty will have no provision mentioning a flag, an anthem or a motto (though we are already familiar with the first two of those). More substantially it will contain no express statement of the primacy of EU law - however, it will contain a

declaration recalling the existing case-law of the European Court of Justice on primacy, and it will also contain provisions clarifying the respective competences of the Union and of its Member States. On the subject of legislation, the Treaty establishing a Constitution for Europe would have introduced a new terminology distinguishing between legislative and non-legislative acts. The Reform Treaty will retain the existing terminology, but distinguish between acts adopted under a legislative procedure, delegated acts, and implementing acts.

As under the Treaty establishing a Constitution for Europe, the Union will be given express power to become a party to the European Convention on Human Rights. However, a distinguishing feature is that whereas the Treaty establishing a Constitution for Europe included the text of the Charter of Fundamental Rights as part of the Treaty, the Reform Treaty article on fundamental rights contains a reference to the Charter, declaring it to have the same legal value as the Treaty, but not setting out its text. However, there is a special Protocol on its justiciability in the UK and Poland, under which the Charter does not extend the ability of the ECJ or of UK or Polish courts to find that UK and Polish laws and practices are inconsistent with its terms. It is further declared that nothing in Title IV of the Charter (essentially concerned with social rights) creates justiciable rights in the UK or Poland except insofar as provided for in national law of UK/Poland. Furthermore, references to national laws and practices only apply to the extent that they are recognised in Polish or UK law - which begs the question of what happens to national laws and practices which have evolved into general principles of EU law. This leads on more generally to the question of differentiated integration under the Reform Treaty.

Far from being monolithic, the Treaty establishing a Constitution for Europe retained the existing opt-outs from EU policies and opt-ins to EU policies. The Reform Treaty takes the matter further: the Third Pillar provisions on police and judicial cooperation in criminal matters will be moved to the same part of the Treaty on the Functioning of the Union as the current title on asylum, immigration and visas, and will become subject to the same “opt-in” arrangements for the UK and Ireland - and indeed it is

envisaged that Denmark will be able to opt-in as well (currently the relevant provisions are simply not binding on Denmark). However the revised text of the relevant Protocol agreed in October 2007 also deals expressly with the consequences with regard to Third Pillar legislation currently binding on e.g. the UK. It envisages both substantive and institutional issues which might arise. Substantively, existing measures continue, but if they are later amended, and the UK does not participate in the amendment, the Council may determine that this non-participation makes application of the measure inoperable for other MS, and the original will no longer be binding on or applicable in the UK.

So far as institutional issues are concerned, the relevant Protocol to the Reform Treaty envisages a 5 year transition during which the existing 3rd pillar rules apply (i.e. a limited role for the Commission, and references to the ECJ only if the Member state concerned allows them). However, if a former 3rd pillar measure is amended during that period, the new rules apply (i.e. the normal institutional rules) - though the UK would only be affected if it opted-in to the amended measure. Six months before the end of the transitional period, UK may give notice that it does not accept normal powers of institutions with regard to “old” acts still binding on it. The result of this is that those acts will cease to apply to UK from end of transition - and Council (without the participation of the UK) will determine the consequences, including financial ones.

Despite the more fanciful comparisons with the United States when the Treaty establishing a Constitution for Europe was negotiated, a fundamental difference from US (whose civil war not just about slavery but rather about whether States could secede) is that the EC/EU has always allowed withdrawal (e.g. Greenland), and the Reform Treaty retains the Treaty establishing a Constitution for Europe’s express provision on withdrawal from the Union - even if other Member States oppose it.

The rest of this paper is however concerned with the institutional aspects of the Reform Treaty. Taking an overview of the institutional aspects of the Reform Treaty, it may be suggested that in some ways the Reform Treaty will strengthen the position of the

smaller Member States, and also increase the role of national parliaments. This paper will examine the direct representation of Member States in the European Council and the Council of Ministers, what might be termed their indirect representation in the Commission (and, by way of contrast, the European Central Bank), and the direct representation of their citizens in the European Parliament and through national parliaments.

Direct Representation of Member States

- **European Council and Council of Ministers**

Like the Constitutional Treaty the Reform Treaty would provide for the European Council to have a President elected by his or her colleagues for a term of two-and-a-half years renewable once, and the EU High Representative for Foreign Affairs (who would also be a vice-President of the Commission) would “take part in its work”. Its decisions in principle are to be taken by consensus, so that in principle the views of Malta or Luxembourg count for as much as those of Germany, but a number of articles of the Treaty provide specifically for the European Council to act by qualified majority, and the same rules for qualified majorities apply as in the Council of Ministers, with the special proviso that the President and the President of the Commission are not allowed to vote - a reflection of the fact that in those situations the European Council will usually be acting as what is currently called the Council meeting in the composition of Heads of State and of Government.

At the level of the Council, like the Constitutional Treaty, the Reform Treaty would at last give express recognition to the different “formations” of the Council.

The Treaty text envisages:

- General Affairs Council
- Foreign Affairs Council chaired by EU Minister for Foreign Affairs
- Other configurations determined by the European Council

Except for the Foreign Affairs Council, the Presidency of these configurations would be held on rotation, as determined by the European Council. A Declaration on this annexed to the Treaty envisages that the Presidency of the Council, with the exception of the Foreign Affairs configuration, is to be held by pre-established groups of three Member States for a period of 18 months. The groups are to be made up on a basis of equal rotation among the Member States, “taking into account their diversity and geographical balance within the Union.” It is further envisaged that each member of the group should in turn chair for a six-month period all configurations of the Council, with the exception of the Foreign Affairs configuration, and that the other members of the group should assist the Chair in all its responsibilities on the basis of a common programme, although members of the team may decide alternative arrangements among themselves. This obviously represents a formalisation of the traditional “troika” between current, past, and future holders of the Presidency. Similarly, it is envisaged that the Committee of Permanent Representatives of the Governments of the Member States is to be chaired by a representative of the Member State chairing the General Affairs Council, but that the Political and Security Committee should be chaired by a representative of the Union Minister for Foreign Affairs. Furthermore, the chair of the preparatory bodies of the various Council configurations, with the exception of the Foreign Affairs configuration, is to fall to the member of the group chairing the relevant configuration, unless decided otherwise. It is also made clear in the Declaration that it is to be the role of the General Affairs Council to ensure consistency and continuity in the work of the different Council configurations in the framework of multiannual programmes in cooperation with the Commission.

However, a fundamental change is made in the decision-making process by providing that the Council should normally act by a qualified majority. Qualified majorities involve a system of weighted voting, approximately related to the size of the Member State. Under the system in use before the 2004 Accessions, the four biggest Member States, the United Kingdom, France, Germany and Italy, each had 10 votes, whereas at the other end of the scale, Luxembourg had two votes. Until the accession of Spain and

Portugal in 1986, the system was designed to ensure that no more than one big Member State could be out-voted, but that the big Member States could not by themselves out-vote the smaller Member States. However, from 1986 onwards, it became possible for two of the large Member States to be out-voted on a qualified majority vote; in other words, France and the United Kingdom, for example, could vote against a proposal and it could still become Community law. This trend continued following the Accession of Sweden, Austria and Finland (though it was still not possible for three big states to be outvoted). However, the Council Secretariat had calculated that if the previous trend in the development of qualified majorities continued unaltered, in a Community of 28 (including East European and Mediterranean countries) a group of States representing less than half of the total population could constitute a qualified majority.

While the problem was recognised but left unresolved at Amsterdam, the solution adopted in the Treaty of Nice and followed in the 2003 and 2005 Acts of Accession involved reweighting in favour of larger Member States and the imposition of a population requirement. At present under art.205 of the EC Treaty as amended by the 2003 and 2005 Acts of Accession, a qualified majority requires 255 out of 345 weighted votes:

Germany	29
United Kingdom	29
France	29
Italy	29
Spain	27
Poland	27
Romania	14
Netherlands	13
Greece	12
Czech Republic	12
Belgium	12
Hungary	12
Portugal	12
Sweden	10
Austria	10

Bulgaria	10
Slovakia	7
Denmark	7
Finland	7
Ireland	7
Lithuania	7
Latvia	4
Slovenia	4
Estonia	4
Cyprus	4
Luxembourg	4
Malta	3

However, the real change was that under a new art.205(4), the 255 votes must be cast by Member States representing at least 62% of the total population of the EU - and in effect a fundamental difference has already been brought about by the accession of Romania and Bulgaria rather than by the Reform Treaty. Between the 2004 and 2007 accessions, any three of the four biggest Member States had a large enough population to form a blocking minority on the basis of the figures set out in Council Decision 2004/701 amending the Council's Rules of Procedure (OJ 2004 L319/15), so it remained the case that two of the biggest Member States could be outvoted, but not three of them. On the figures in the decision, the threshold for a qualified majority was 284,331,400 out of a total population of 458,599,000, making the blocking minority any figure higher than 174,267,600. The aggregate populations of any three of the four biggest member States easily surpassed this, ranging from 179,224,400 (France, UK and Italy) to 203,867,900 (Germany, France and UK). However, following the 2007 accessions, using the figures in Council Decision 2007/4 (OJ 2007 L1/9), a qualified majority represents 305,586,300 out of a total population of 492,881,200, so that a blocking minority requires a population of more than 187,294,900. Three of the four biggest States can achieve this figure if Germany is included, but France + UK + Italy is only 182,058,000, so for the first time three big States can be outvoted.

The Reform Treaty would take this process a small step further. With effect from 1 November 2014, with transitional arrangements until 31 March 2017, a qualified majority would require the votes of 55% of the members of Council (so that Malta's vote would count as much as Germany's), comprising at least 15 members representing 65% of the EU's population. At first sight this population requirement might seem to raise the threshold for a qualified majority, there would also be a requirement that a blocking minority must include at least 4 Council members; otherwise a qualified majority will be deemed to have been obtained. This means that while any three of the four biggest Member States would have a large enough population to form a blocking minority, they would need a fourth State, even Malta or Luxembourg, to vote with them to prevent a qualified majority being attained. It will therefore at last be possible for any three of the biggest four Member States, even if one of them is Germany, to be outvoted.

A similar pattern would be followed in areas in which not all Member States participate: in the context of enhanced cooperation and Economic and Monetary Union a qualified majority would be the votes of 55% of the participant Member States, comprising at least 65% of their combined population, and a blocking minority would be the minimum number representing more than 35% of the population of the participating States, plus one member. This represents a change from the previous pattern, particularly in the area of Economic and Monetary Union: while the current qualified majority represents nearly 74% of the weighted votes, in those areas where it was anticipated under the Maastricht Treaty that Community activity might involve less than all the Members of the Community, notably under the Social Protocol¹ and eventually under the third stage of Economic and Monetary Union², a qualified majority was reduced to two-thirds of the available votes. This model was not followed in the Treaty of Amsterdam: in the Title on free movement of persons, asylum and immigration, in

¹ Art.2.

² EC Treaty art.122(5).

which the United Kingdom, Ireland and Denmark do not in principle participate, a qualified majority is defined as “the same proportion of the weighted votes of the members of the Council concerned as laid down in Article 205(2)”, and the same formula is used in the provisions on Closer Cooperation and Flexibility. However, the Amsterdam Treaty did not amend the EMU provisions introduced at Maastricht, nor did the Nice Treaty, so that for the participants in EMU a qualified majority remains two-thirds of the available votes. The question then arises as to whether this would be with or without the population requirement, a matter not envisaged in the texts. This depends on whether art.122(5) should be construed as a derogation from the whole of art.205 or simply as a derogation from the voting figures in art.205. From its wording, it may be suggested that art.122(5) appears to be a derogation from art.205 as such, so it is at least arguable that the current population requirement would not apply in this context. The entry into force of the Reform Treaty would clearly remove this anomaly.

However, after the entry into force of the new voting rules in 2014, and in a revised form from 2017, a modified form of the “Ioannina compromise” would continue under a Declaration annexed to the Reform Treaty. It provides that from 2014, if members of the Council, representing at least three quarters of the population or at least three quarters of the number of Member States necessary to constitute a blocking minority indicate their opposition to the Council adopting an act by a qualified majority, “the Council shall discuss the issue.” In the course of these discussions, the Council is to do all in its power to reach, within a reasonable time and without prejudicing obligatory time limits laid down by Union law, a satisfactory solution to address concerns raised by those members, and the President of the Council, with the assistance of the Commission, would be empowered “to undertake any initiative necessary to facilitate a wider basis of agreement in the Council”. After 2017, the objectors need only constitute 55% of the population or 55% of the number of Member States necessary to constitute a blocking minority.

Indirect Representation of Member States

- **Commission**

While, under art.213 of the EC Treaty, the members of the Commission must neither seek nor take instructions from any government or from any other body, only nationals of Member States may be members of the Commission, and under the text in force until just after the 2004 Accessions, the Commission had to include at least one national of each of the Member States, but could not include more than two members having the nationality of the same State. Following the 1995 Accessions, there were 20 Commissioners, two from each of the big countries (which for this purpose included Spain) and one from each of the other Member States, though the second paragraph of art.213 provided that the number of members of the Commission could be altered by the Council, acting unanimously. One of the matters long discussed in political circles was whether the number of Commissioners should be reduced to one per State, and there had been ideas floated of grouping some of the smaller countries together to have a rotating Commissioner between them, which essentially is the system used for selecting Advocates-General before the Court (other than those who come from the four biggest countries). This debate puts clearly into focus the question whether the Commission should be regarded as a representative body or simply in terms of its operational needs.

The Treaty of Amsterdam did not directly respond to any of these proposals, but its Protocol on the institutions with the prospect of enlargement of the European Union linked the size of the Commission to the weighting of votes in the Council. Under this Protocol, at the date of entry into force of the first enlargement of the Union the Commission was to comprise one national of each of the Member States, provided that, by that date, the weighting of the votes in the Council had been modified, in a manner acceptable to all Member States, notably compensating those Member States which gave up the possibility of nominating a second member of the Commission. Here, therefore, the Commission was clearly

treated as part of the representative equation and not as a body whose composition was determined according to its operational needs.

This was reflected in the Nice Protocol on Enlargement, and the 2003 Act of Accession, art.45(2)(c) of which provided that from November 2004 (the same date as the change in voting weights in the Council) a new Commission comprising one national of each of the Member States should take up its duties. However, it was further provided in the Protocol that when the Union consists of 27 Member States, Article 213(1) of the EC Treaty should be revised again and that the number of Members of the Commission should be less than the number of Member States. The Reform Treaty is more specific on this matter. Under the Reform Treaty, the Commission appointed between its entry into force and 31 October 2014 would comprise one member from each State (including the High Representative for Foreign Affairs), continuing the current situation, and subsequent Commissions would then have members (including its President and the High Representative for Foreign Affairs) corresponding to two-thirds of the number of Member States, “unless the European Council, acting unanimously, decides to alter this figure”. They would be selected on a basis of “equal rotation” between Member States under a system to be established unanimously by the European Council on the basis that members will be chosen from nationals of Member States on a basis of a system of strictly equal rotation between the Member States, reflecting the demographic and geographical range of all the Member States of the Union.

This may be contrasted with the solution adopted already in the context of the European Central Bank. Its Executive Board has and would continue under the Reform Treaty to have only six Members, who would be appointed by the European Council by qualified majority. All the governors of participating national central banks sit on its Governing Council, but under Council Decision 2003/223 (OJ 2003 L83/66), complex voting procedures are triggered when the number of governors exceeds 15 and when it exceeds 22. The governors are to be divided into groups according to defined financial criteria, and voting rights (totalling

only 15, but weighted towards the group with the highest financial ranking) are to be allocated to those groups, with those within each group having their votes for equal amounts of time.

“(a) As from the date on which the number of governors exceeds 15 and until it reaches 22, the governors shall be allocated to two groups, according to a ranking of the size of the share of their national central bank’s Member State in the aggregate gross domestic product at market prices and in the total aggregated balance sheet of the monetary financial institutions of the Member States whose currency is the euro. The shares in the aggregate gross domestic product at market prices and in the total aggregated balance sheet of the monetary financial institutions shall be assigned weights of 5/6 and 1/6, respectively. The first group shall be composed of five governors and the second group of the remaining governors. The frequency of voting rights of the governors allocated to the first group shall not be lower than the frequency of voting rights of those of the second group. Subject to the previous sentence, the first group shall be assigned four voting rights and the second group eleven voting rights;

(b) as from the date on which the number of governors reaches 22, the governors shall be allocated to three groups according to a ranking based on the criteria laid down in (a). The first group shall be composed of five governors and shall be assigned four voting rights. The second group shall be composed of half of the total number of governors, with any fraction rounded up to the nearest integer, and shall be assigned eight voting rights. The third group shall be composed of the remaining governors and shall be assigned three voting rights;”

While this preserves the representative nature of the Governing Council, but at the price of limiting voting rights, it may be suggested that the Executive Board, with its limited but fully participatory membership, offers a better analogy for the future development of the Commission.

Direct and Indirect Representation of Citizens

- **European Parliament**

Since 1979, the European Parliament has been elected directly by the citizens of the Community, albeit not by uniform methods. The seats are nevertheless allocated to each Member State in a way which is not directly proportionate to population but which gives the bigger Member States more seats than the smaller ones. Until German reunification, the range went from 6 seats for Luxembourg to 81 each for Germany, France, the UK and Italy. However, following the reunification of Germany, it was agreed to recognise the demographic consequences at least to some extent: the number of seats for Germany was raised to 99 (an increase of 18 seats), but the seats for the other three big states were raised by six each to 87, making a total of 18 additional seats between those States. The consequence overall therefore was to increase the relative representation of the big Member States as compared to the smaller ones, but also to ensure that the increase for Germany was balanced by an increase for the other big States, thus showing that the balancing of political weight was as important as (if not more important than) the representation of additional population. Be that as it may, this did suggest that a possible way forward with regard to new small states would be not to eliminate their representation but to increase the representation of the bigger Member States.

The Treaty of Amsterdam did not in itself change the composition of the European Parliament, but it set a limit on its future expansion, by amending art.189 of the EC Treaty to provide that “the number of Members of the European Parliament shall not exceed seven hundred.” This limit has however proved to be very short-lived. The Treaty of Nice amended art.189 again to raise the limit to 732, which could be exceeded on a transitional basis following new accessions under art.2 of the Protocol on Enlargement, and the Reform Treaty would raise it again to 750.

By virtue of art.11 of the 2003 Act of Accession, the provisions relating to the European Parliament took effect from the start of the

2004-2009 term, so that the Parliament elected in the summer of 2004 took part in the appointment of the first Commission governed by the new rules, which took office on 22 November 2004, later than the planned date of 1 November 2004 owing to the Parliament's success in obtaining changes to the list of nominees put forward by the Council. It is provided in art.9 of the 2005 Act of Accession that the number of representatives elected in each Member State is as follows:

Germany	99
United Kingdom	78
France	78
Italy	78
Spain	54
Poland	54
Romania	33
Netherlands	27
Greece	24
Czech Republic	24
Belgium	24
Hungary	24
Portugal	24
Sweden	19
Austria	18
Bulgaria	17
Slovakia	14
Denmark	14
Finland	14
Ireland	13
Lithuania	13
Latvia	9
Slovenia	7
Estonia	6
Cyprus	6
Luxembourg	6
Malta	5

The practical result is that there has been a reduction of representation for most pre-2004 Member States except Germany

and Luxembourg. Currently Malta has only 5 MEPs under art.9 of the Act of Accession 2005, the smallest number of any Member State - less even than Luxembourg. However, under the Reform Treaty, as under the Constitutional Treaty, it is stated as a general principle that representation is to be “degressively proportional” with a minimum of six members per Member State (art.I-20(2)) and no more than 96 from one Member State (total up to 750). This would increase the number of MEPs from Malta, and illustrates clearly that while big States have more MEPs than small ones, small ones are proportionately better represented, so as to allow for an effective political choice in even the smallest Member State.

It may also be observed in the context of the Parliament that a revised form of codecision would become the “ordinary legislative procedure”. The essential feature of codecision is that it requires the Council and the Parliament to reach agreement in order to adopt the measures at issue, and that neither institution can override the rejection of a proposal by the other.

National Parliaments

In many respects the Reform Treaty, following the pattern set in the Constitutional Treaty, provides greater opportunities for national parliaments to play an active role in the EU context. They are given a formalized role in the context of subsidiarity, being empowered to ensure compliance with the principle of subsidiarity in accordance with the procedure set out in the revised text of the Protocol on Subsidiarity and Proportionality. The Reform Treaty amends this Protocol, which was originally introduced by the Treaty of Amsterdam, so as to require the Commission to forward its draft legislative acts and its amended drafts to national Parliaments at the same time as to the Union legislator. It also requires the European Parliament to forward its draft legislative acts and its amended drafts to national Parliaments, and it states that the Council must forward draft legislative acts originating from a group of Member States, the Court of Justice, the European Central Bank or the European Investment Bank (and amended drafts) to national Parliaments. Furthermore, upon adoption, legislative resolutions of the European Parliament and positions of

the Council must be forwarded by them to national Parliaments. It will however be for each national Parliament or each chamber of a national Parliament to consult, where appropriate, regional parliaments with legislative powers.

Under art.6 of the Protocol, any national Parliament or any chamber of a national Parliament may, within eight weeks from the date of transmission of a draft legislative act, send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why it considers that the draft in question does not comply with the principle of subsidiarity. It would be for the President of the Council, if the draft legislative act originates from a group of Member States, or another EU institution or body, to forward the opinion to the governments of those Member States or to the EU institution or body concerned. The European Parliament, the Council and the Commission, and, where appropriate, the group of Member States, or other EU institutions and bodies if the draft legislative act originates from them, are then required “take account” of the reasoned opinions issued by national Parliaments or by a chamber of a national Parliament.

It is further provided in art.7 that where reasoned opinions on a draft European legislative act’s non-compliance with the principle of subsidiarity represent at least one third of all the votes allocated to the national Parliaments, “the draft must be reviewed”. In calculating such a vote, each national Parliament would have two votes, shared out on the basis of the national Parliamentary system. In the case of a bicameral Parliamentary system, each of the two chambers would have one vote. This threshold would be a reduced to a quarter of the allocated votes in the case of a draft legislative act submitted on the basis of art. 68 of the Treaty on the functioning of the Union in the area of freedom, security and justice. After carrying out such a review, the Commission or, where appropriate, the group of Member States, the European Parliament, the Court of Justice, the European Central Bank or the European Investment Bank, if the draft legislative act originates from them, may decide to maintain, amend or withdraw the draft, but reasons must be given for this decision.

National Parliaments are also given a right of action before the European Court. Art.8 declares that the Court of Justice of the European Union shall have jurisdiction in actions on grounds of infringement of the principle of subsidiarity by a legislative act, brought in accordance with the rules laid down in art.230 of the Treaty on the Functioning of the Union (which governs actions for annulment) by Member States, or notified by them in accordance with their legal order on behalf of their national Parliament or a chamber of it. Similarly, the Committee of the Regions would also be empowered to bring such actions against legislative acts for the adoption of which the Treaty provides that it be consulted.

The national parliaments are also expressly involved in the revised text of the current art.308 of the EC Treaty. It provides that if action by the Union should prove necessary, within the framework of the policies defined in the Treaties, to attain one of the objectives set out in the Treaties, and the Treaties have not provided the necessary powers, the Council of Ministers, acting unanimously on a proposal from the European Commission and after obtaining the consent of the European Parliament, may adopt the appropriate measures. However, a new art.308(2) then adds that using the procedure for monitoring the subsidiarity principle, the Commission must draw Member States' national Parliaments' attention to proposals based on this provision.

Similarly, the Protocol on the Role of National Parliaments, originally annexed to the Treaty of Amsterdam, has been considerably reinforced. In the version annexed to the Reform Treaty, not only must Commission consultation documents (green and white papers and communications) be forwarded directly by the Commission to national Parliaments upon publication, but the Commission must also forward the annual legislative programme as well as any other instrument of legislative planning or policy to national Parliaments, at the same time as to the European Parliament and the Council. It would also be required that draft legislative acts sent to the European Parliament and to the Council must be forwarded to national Parliaments; 'draft legislative acts' are defined as proposals from the Commission, initiatives from a group of Member States, initiatives from the European Parliament,

requests from the Court of Justice, recommendations from the European Central Bank and requests from the European Investment Bank for the adoption of a legislative act. More specifically, it is required that draft legislative acts originating from the Commission must be forwarded to national Parliaments directly by the Commission, at the same time as to the European Parliament and the Council. Draft legislative acts originating from the European Parliament are to be forwarded to national Parliaments directly by the European Parliament, and draft legislative acts originating from a group of Member States, the Court of Justice, the European Central Bank or the European Investment Bank are to be forwarded to national Parliaments by the Council.

Art.3 of the Protocol then provides that National Parliaments may send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion on whether a draft European legislative act complies with the principle of subsidiarity, in accordance with the procedure laid down in the Protocol on the application of the principles of subsidiarity and proportionality mentioned above. If the draft legislative act originated from a group of Member States, the President of the Council would have to forward the reasoned opinion or opinions to the governments of those Member States, and if it originated from the Court of Justice, the European Central Bank or the European Investment Bank, the President of the Council would have to forward the reasoned opinion or opinions to the institution or body concerned.

Expanding the timescale of the original text, art.4 would require that an eight week period should elapse between a draft legislative act being made available to national Parliaments in the official languages of the Union and the date when it is placed on a provisional agenda for the Council for its adoption or for adoption of a position under a legislative procedure. Exceptions would however be possible in cases of urgency, the reasons for which would have to be stated in the act or position of the Council. The Protocol would expressly lay down that save in urgent cases for which due reasons have been given, no agreement may be reached on a draft legislative act during those eight weeks. Furthermore, save in urgent cases for which due reasons have been given, a ten

day period would have to elapse between the placing of a draft legislative act on the provisional agenda for the Council and the adoption of a position. Under art.5, the agendas for and the outcome of meetings of the Council, including the minutes of meetings where the Council was deliberating on draft legislative acts, would have to be forwarded directly to national Parliaments, at the same time as to Member States' governments.

There is however a direct link to what is termed the simplified revision procedure in art.6 of the Protocol, which provides that when the European Council intends to make use of the simplified revision procedure, national Parliaments must be informed of the initiative of the European Council at least six months before any decision is adopted. The simplified revision procedure would introduce a general power for the European Council, acting unanimously, to adopt a decision allowing the Council to move from acting by unanimity where it would still be required in a specific area to qualified majority voting in that area, without amending the Treaty, though it would still have to be approved by the Member States in accordance with their respective constitutional requirements. However, any initiative taken by the European Council on this basis must be notified to the national Parliaments of the Member States, and if a national Parliament made known its opposition within six months of the date of such notification, the European decision could not be adopted. It would only be in the absence of opposition that the European Council could adopt the decision. It may be observed that in this context no distinction is made between the parliament of e.g. Germany and the parliament of e.g. Malta or Luxembourg.

Finally, arts.9 and 10 of the Protocol take inter-Parliamentary cooperation beyond the previous version. It is provided that the European Parliament and national Parliaments shall together determine the organisation and promotion of effective and regular interparliamentary cooperation within the Union. Furthermore, what is renamed a "Conference of Parliamentary Committees for Union Affairs" may submit any contribution it deems appropriate for the attention of the European Parliament, the Council and the Commission. That conference may in addition promote the

exchange of information and best practice between national Parliaments and the European Parliament, including their special committees. It may also organize interparliamentary conferences on specific topics, in particular to debate matters of common foreign and security policy, including common security and defence policy. However, contributions from the conference would not bind national Parliaments and would not prejudge their positions.

Conclusion

While many of these changes might appear to involve matters of technical detail, it may be suggested that far from introducing a federal superstate, the institutional changes which would result from the entry into force of the Reform Treaty tend to realign the balance in favour of national parliaments and small states, while beginning to take account of operational requirements in the context of non-representative bodies such as the Commission.