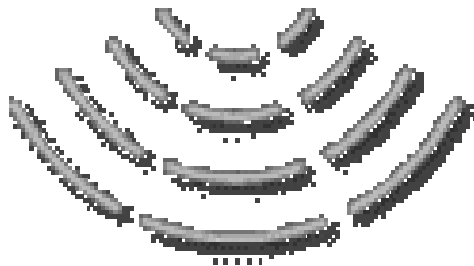


Andreas Maurer
Wolfgang Wessels (eds.)

National Parliaments on their Ways to Europe: Losers or Latecomers?



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Preface

This book is the result of the research project 'PARLIAM - The European Parliament and the National Parliaments after Amsterdam', commissioned by the Center for European Integration Studies (ZEI) at the University of Bonn.

The book could not have been carried out without the engagement of the contributors. Each of them have dealt for many years with the effects of the process of European integration in 'his' or 'her' particular member state. We discussed the analytical approach and preliminary results during a workshop at the Representation of North-Rhine Westphalia towards the European Union, Brussels, in June 2000 and tried to scrutinise the contributions along a common list of research variables.

Special thanks go to the director of the Center for European Integration Studies (ZEI), Professor Dr. Ludger Kühnhardt, who ensured the generous funding of the research project, linked the editors to the publisher and gave helpful advice.

We received constructive comments and criticism on earlier drafts of our contributions from the participants of the COSAC Working Group Meeting in Stockholm in April 2001 as well as from Katrin Auel, Arthur Benz, Richard Corbett, Andrew Duff, Elke Esders, Finn Skriver Frandsen, Susanne Hägele, Francis Jacobs, Christian Joerges, Morten Knudsen, Gérard Laprat, Dietmar Nickel, Friedbert Pflüger, Charles Reich, Michael Shackleton, Peter Schiffauer, Reimund Seidelmann, Christian Sterzing, Uwe Thaysen, Gaby Umbach, Amy Verdun, Helen Wallace and Norbert Wieczorek.

Last but not least we would like to express deep respect and many thanks to the responsible student researcher of this volume, Astrid Krekelberg, who helped us in establishing the necessary data-bases and edited the contributions of this volume.

Andreas Maurer

Wolfgang Wessels

Major Findings

The Treaty of Nice's Declaration No. 23 on the future of the European Union has regurgitated a fundamental issue of supranational policy-making: National parliaments and the European Parliament face a growing number of challenges which call their position as the directly legitimate and representative aggregates of the European Union's citizenry into question: They constantly have to adapt and adjust the possibilities and arrangements for parliamentary involvement in response to Community legislation and Union action. The major question of this volume is how national parliaments (re)-act in and adapt to a dynamic institutional and procedural set-up. How do parliamentary actors in *different* national and socio-political settings, and coined by different national traditions, 'acclimatise' to *common* challenges, constraints and opportunities for which they are mainly responsible themselves, since they have ratified the fundamental set-up of these institutional and procedural structures?

The last four Treaty reforms (The Single European Act of 1987, the Maastricht Treaty of 1993, the Amsterdam Treaty of 1999, and the Treaty of Nice of March 2001) marked significant efforts to strengthen parliamentary democracy in the European Union. However, there is still the question if these improvements provide new grounds for enhancing the legitimacy and the proximity of European governance to the citizens of the Union. The European Parliament is but one essential mean to democratise the European Union. In this book, we address the other side of the - parliamentary - coin: How do national parliaments contribute to EC/EU policy-making? Are they still the losers of integration, are they latecomers and slow adapters, or are they re-orienting institutional capacities in order to appear as national and/or multi-level players?

An international team of political scientists and lawyers explores the institutional and procedural development of both the EU and the member states' parliamentary level. Each contribution analyses the structural potential for parliamentary participation in EC/EU policy-making (the 'legal constitution'), the effective use of relevant provisions and constitutional rules (the 'living constitution'), and in particular the negotiation and ratification of the Amsterdam Treaty and the relevant debates in the national parliaments.

I. The Approach

It belongs to the conventional wisdom that national parliaments have increasingly lost in overall importance due to the evolution of the EU's political system. By passing consequent Treaty amendments and revisions they accepted a shift of competencies to the European level, which reduced their final say over major areas of traditional legislative powers and the political control over governments. But why have those national institu-

tions, which are seen as major cornerstones of their respective polities, eroded their own constitutional rights by ratifying the making of a supranational quasi-constitution in recurrent steps? How can we explain that these key actors seem to be weak in adapting to a political constellation which they created at least partially themselves, whereas other groups of actors like interest groups, NGO's and regional governments seem to be more successful in influencing the output of the EU system?

Our interest in the role of national parliaments exceeds immediate procedural arrangements of the EU. Given the growing salience of the EU system and its daily output, participation and involvement are vital issues for the overall weight and role of parliaments. The way parliaments are and will be involved or not is a significant indicator for the fundamental trends the national systems and the EU take. It is of major importance for the legitimacy of the constitutional set-ups of the EU member states and of the Union itself. Any reform of the participation of national parliament in EC/EU affairs will affect the capabilities of all political institutions on both levels to deal with the challenges of public policies. Whatever institutional arrangements will be taken it will tell us something about the future shape of the European polity in the broader sense.

In this regard, the findings of the country reports in this volume indicate 'realistic' lines for reform, underlying motives for different reform proposals and limits of furthering the role of national parliaments within the institutional framework of the EC/EU. In order to identify the challenges for the parliaments of the member states, we point at a set of fundamental trends of the Brussels arenas. We consider their evolution towards a fusion of actors, instruments and procedures according to the following indicators:

- the dynamic evolution of new and refined treaty provisions - an ever increasing set of communitarised frameworks for joint policy-making;
- the subsequent widening of the functional scope of the EU - a sectoral differentiation of an increasing variety of policy fields involving more and more national actors;
- the creation of new institutions by subsequent treaty amendments - institutional differentiation, which increases the number of interaction styles and modes of governance;
- the set-up and cross-institutional combination of different kinds of procedures - procedural differentiation, which causes a growing complexity of the EU's multi-level system;
- the increase in scope and density of legal obligations - the doubling of the *acquis communautaire* from the early 1980's to 1998 indicates both the rise of the para-constitutional set-up as well as the 'invasion' of the legal space of member states.

II. Findings

1. From Slow Adapters to National Players?

The Maastricht Treaty's Declaration No. 13 and the Amsterdam Treaty's Protocol on the role of the national parliaments in the European Union generated some added powers for national parliaments within the framework of their national constitutions. The two documents contain some key indicators for measuring and comparing the participation of national parliaments in the EU. Accordingly, our research design focused on the following indicators:

- the institutionalisation of parliamentary structures, instruments and procedures for dealing with EU policy-making at the national level,
- the substantial scope of parliamentary control resulting from the extent of documents forwarded to parliaments by their governments,
- the basic orientation and methods of national parliaments with regard to the organisation of filtering documents within the parliamentary bodies,
- the timing and management of parliamentary scrutiny, and
- the potential and real impact of parliamentary scrutiny on the government's room of manoeuvre within the EU Council of Ministers.

Following this research design, the empirical studies in this volume explore the post-Maastricht changes with regard to parliamentary participation established in the 'legal constitution' of the member states and with regard to their impact on the real patterns of involvement in the 'living constitution' of political life.

The results point at a considerable legal constitutionalisation and institutional adaptation, and at a modest impact with regard to the real patterns of participation.

National parliamentarians wish to get involved in the EU policy-cycle. To facilitate the digestion of incoming EC/EU draft acts, they have created specific bodies, which are entitled to sift documents, to elaborate reports and to prepare resolutions for the plenary. The activity of these EC/EU Committees varies not only according to the amount of documents forwarded by the respective governments, but also depending on the general orientation of their work and the intra-parliamentary focus on committee and plenary meetings. EU Committees in Denmark, Finland, Austria, Ireland and the UK House of Commons deal with incoming EC/EU documentation as *the* Committee-in-charge of the whole scrutiny process. Other EU Committees (D, NL, S, I) are simply regarded as the first - sifting - institution within parliament in order to facilitate the further consideration of the relevant documents within specialised Standing Committees. The EU Committees in these countries specialise themselves on some - 'horizontal' - European issues like Intergovernmental Conferences, Enlargement and other themes of the EU's long-term agenda, whereas the first group of EU Committees-in-charge need to digest

each incoming EU dossier on behalf of their parliament. Necessarily, they meet more frequently than EU Committees of the second group.

The basic orientation of parliaments in EU affairs also differs with regard to the - ideally constructed - nature of the scrutiny process. Hence, the parliaments of Denmark, Austria, Sweden, and France focus their EU-related activity on the formulation and issuing of voting instructions for their respective government members in the Council of Ministers. These parliaments build on an ideal bipolar legislature-government scenario. Other parliaments follow a more open and consensual (NL, D, SF), or deliberately supportive (IR, I, B, LUX, P, E, GR) approach vis-à-vis their governments. Their rationale is to ensure that interested parliamentarians can track the EU policy-cycles according to the constitutional rules.

Finally, the consideration of the different steps in the EU policy cycle also generates different time constraints for parliamentarians and their EU Committees. If parliaments anticipate EC/EU legislation at the rather early stages of the EU policy-cycles, their scrutiny process starts earlier and the involved committees meet more frequently. If parliaments adopt a more reactive stand by focusing on already adopted EU legislation, their timing and management of EU scrutiny processes is less intensive and frequent.

The country reports in this volume reveal that the overall majority of national parliaments have been slow and retarding adapters. The empirical studies indicate that the real patterns of access and influence were below the potential participation offered by the EU's and the national 'legal constitutions': Only the Maastricht Treaty generated a revision of participation rights in the majority of parliaments. The Amsterdam Treaty and its Protocol on the role of national parliaments in the European Union did not engender a similar effect. Overall, we identify some real patterns for our model types:

The Danish case of the mandating procedure remains a unique archetype of a parliament, which is able to formulate its own political assumptions about the daily EU business effectively. The parliaments of Finland, Austria and Sweden followed this line, although their scrutiny systems are less binding for their governments. These parliaments certainly fulfil the criteria of strong policy-making and 'national players'.

The EU-related policy-making strength of the parliaments of Germany and the Netherlands is similar to the first group. However, the consensual policy-making style and the - still existing - pro-European consensus among the political parties in these countries prevents parliamentarians from a systematic confrontation with their governments. They thus perform as potential or latent 'national players'.

The French and the UK Parliament are both cases of modest policy-making legislatures, who wish to act the games of the 'national players'. Both parliaments are able to comment on incoming EC/EU information and to voice their opinions by reports, resolutions and the so-called parliamentary scrutiny reserves. But they are not able to change a governmental draft reaction to EC/EU input effectively.

The remaining parliaments (IR, B, LUX, I, E, P, GR) can be categorised as 'slow adapting' parliaments, which are not willing or able to affect their government's stance in EU negotiations.

Overall, the effective use of parliamentary provisions with regard to the participation in EU affairs have not converged into one uniform model. Moreover, the ongoing interparliamentary screening in view of 'best practices' is not pursued on a systematic level. Thus, it is extremely difficult to make any serious and valid statements on who is more or less successful, and blue prints for an optimal model are risky. Best practices should always be carefully evaluated in terms of the respective constitutional, institutional and political features as well as to the characteristics of the EU's fusion dynamics. This insight might also be considered by the parliaments of the incoming - new - member states.

2. Slow Adapters on their Ways towards Multi-Level Players?

Since the beginning of the European construction national parliamentarians were offered opportunity structures to get access to the EC/EU institutions. Though several and different procedures were tested over the last 40 years, none of them has led to a sufficiently intensive and efficient working network: The 1990's Conference of parliaments (Assizes) in Rome remained a one-event 'institution'. Instead, the 1999 convention to draft the charter for fundamental rights was generally assessed as a more successful link between parliamentarians of several levels. Other activities of national parliaments and the European Parliament - like COSAC, the regular meetings of their Speakers and joint sessions of specialised committees - seem to attract greater interest and participation.

The Conference of Speakers and Presidents of parliaments in the European Union faces a problem of representativity. The Conference also suffers from having very limited powers in substantive and political questions. It is hardly a suitable vehicle for the efficient assertion of the joint interests of national parliaments and the European Parliament.

Also COSAC has not developed into a real institution for 'multi-level-scrutiny'. The emphasis of COSAC still concentrates on general political topics and some kind of an introspection with regard to the roles of national parliaments in the EC/EU system. The conference thus continues to face major problems with the exchange of practical information on specific policy areas in addition to discussing general issues: Firstly, the MP's are members of the 'horizontal' EC/EU affairs committees, i.e. committees that consider general policy matters. Secondly, the EC/EU affairs committees differ significantly as regards their importance and function in the overall work process in the various parliaments, as do their powers compared with those of the specialised committees. Finally, the composition of COSAC is not representative; COSAC delegates do not systematically speak in the name of their parliaments. If we look at the daily EC/EU business of national parliaments and the EP, i.e. the control of or the participation in

policy-making, the two COSAC sessions per year do neither really affect the day-to-day work of national parliaments nor that of the EP. COSAC facilitates informal exchange, but the overall majority of parliaments oppose any further institutionalisation.

The involvement of the national parliaments' standing specialised committees represents another instrument of - a more policy-oriented - interparliamentary co-operation. The EP took numerous initiatives in the context of the establishment and implementation of the EU's annual legislative programme. Compared with COSAC and the Conference of Speakers, these types of informal co-operation are geared to specific areas of public policies rather than institutional questions. Hence, more than a half of the joint committee meetings are organised by only six of the EP's Committees dealing with socio-economic and monetary issues.

Joint committee meetings certainly represent a more practical implementation strategy for reducing the democratic deficit and making Community legislation more effective. Compared with COSAC and the Conference of Speakers, informal co-operation is more closely geared to the preparation and implementation of the EC/EU's daily business.

3. Reconsidering the Tension between the Parliament-Government Logics and the EU's Fusion Dynamics

If we take our initial paradox regarding on the one hand the self-made losses of parliaments and the demands for parliamentary involvement on the other, the record of the slow adapters and reluctant multi-level players needs further explanation. We offer a reflection based on the issue of role attributions normally given to national parliaments as major *actors* by themselves. Hence, the demand for participation of *the* parliament as such does presuppose that parliaments are more than an arena but an autonomous institution in its own right. But if we take the 'real' parliamentary evolution over the last two centuries seriously, then the slow and weak adaptation of national parliaments in EC/EU affairs is not just the product of benign neglect of governments or mismanagement of the involved MP's, but the unavoidable consequence of the fundamental trends in our parliamentary systems: The parliamentary majorities feel represented by their government of the day - and not by some of their delegates to COSAC or even by some of their party members in the EP. Accordingly, parliamentary scrutiny is a matter of participation and getting or remaining involved without developing a systematic and structural anti-governmental stance.

To turn the argument around: Given the increased importance of EC/EU affairs any stronger and direct participation of national parliaments on the EU level would affect the basic way national governments and parliaments function in general. A stronger - more direct and less delegated - involvement of national parliaments would thus erode traditional patterns of policy-making in our polities - for better or for worse. Such a causal link between the virtues of the political system in general and EU activities in specific could be derived from the empirical studies in our work: The more a national

system belongs to the category of a close unity between majority party and government the less its parliament is directly and independently engaged both on the EU as on the national level. Our assessment that many parliaments are slow adapters or weak performers is thus a depending variable on the roles which national systems implicitly attribute to their parliaments. A second fundamental reason is based on the EU's own fusion dynamics: Institutional and procedural differentiation, the continuous trend of merging public policy instruments and actors at the European, national and sub-national levels of governance urges each actor to generate effective and efficient means for participation and influence.

Unless national parliaments turn into efficient multi-level players they remain structurally handicapped to become competitive. Both factors - the parliament-government logics and the EU's fusion dynamics - create an antagonist environment for national parliaments and reinforce a significant tension between the aim to participate in EU policy-making and the realities of the EU's multi-level and multi-actor nature!

III. Strategies and Future Options

1. National Parliaments beyond Nice - More Access or Illusions?

The role of national parliaments in the European architecture is one of the main themes of the Declaration No. 23 of the Treaty of Nice on the future of the European Union. The actual - 2001 - post-Nice reflection on the role of national parliaments concentrates on two options: The creation of another parliamentary chamber at the EU level, and the organisation of interparliamentary exchanges at a larger scale than the already existing regimes of COSAC and committee meetings.

A 'new' European Parliament?: The most spectacular proposal aims at the 're-creation' of a 'European Parliament' as a bicameral body - one of which would be composed by elected national parliamentarians. The second chamber would then be composed either by directly-elected senators from the member states (US Senate model), or by delegated 'senators-MEP's' from each member state with weighted voting rights (German Bundesrat model). We argue against this model, because its realisation would result in a new Brussels-based institution not directly and uniformly elected by the citizens (like the actual EP), and not indirectly elected (like the Council). Instead, the actual legitimacy of the directly elected European Parliament would be replaced by a body, whose legitimacy would be rooted in a purely national oriented selection procedure, where the electorate should choose candidates on an entirely national dimension. Even if the competences of the Senate were confined to the Second and Third Pillars, the institutional architecture of Europe would be further complicated. Ultimately this would not be the answer to the frustrations and tensions currently felt by the national parliaments.

A Permanent Conference of Parliaments?: The suggestion to create a ‘permanent conference of parliaments or a congress’ also raises a number of questions which should be dealt with in greater depth. We also argue against this model, because it would render the EU's decision-making procedures more complicated. The addition of other bodies whose members represent similar interests in more than one EC/EU body does not help to organise the Union more transparent. Any institutionalised form of interparliamentary ‘Assizes’ would delay institutional relations and procedures, increase their intricacy and, possibly develop a momentum of their own, leading to conflicts between national and European parliamentarians to the benefit of the institutional position of the Commission and Council. Yet, we think that interparliamentary congresses could be organised when EC/EU legal acts require ratification and the approval by national parliaments. Such kind of conferences could be held for the purposes of a larger parliamentary deliberation before the ratification procedures begin in the national parliaments and - if required by the Treaty - the European Parliament takes its decisions.

A Chamber of Subsidiarity? Also this option faces some serious difficulties: If this Chamber of national parliamentarians should examine Commission proposals to check that they are within the EU's field of competence, this would be too soon in the overall decision-making process. Questions about ‘invasive legislation’ are about the final outcome of legislation, rather than the initial proposal. If the chamber should intervene at the end of the EU's legislative process, it would be invited to voice a ‘second guess’ to the position adopted by the ministers in the Council, each of whom enjoys the confidence of a majority in his/her national Parliament. Accordingly, the Chamber of Subsidiarity would simply endorse the ministers’ actions, or there would be a European level repetition of national political conflicts.

A Joint Body to control CFSP and ESDP Policies? Another concept is that a new chamber could be charged with scrutiny of Second Pillar matters only, taking over the ‘competencies’ from the WEU assembly regarding security matters. If we look at the real business of national parliaments in these areas, we must note that the overall majority does not take decisions regarding foreign policy and security. Instead, they question, debate and scrutinise the decisions of their governments. Consequently, a new interparliamentary body restricted to these issues would be open to the charge of being an expensive ‘talking shop’, since CFSP and ESDP matters will in any case continue to be debated in the national parliaments and in the European Parliament.

A Convention on the Future of the European Union? Another option considers the role of national parliaments with regard to the further development of the EU's para-constitutional nature and the very process towards the IGC in 2004. One needs to take into account the fact that the task of this Convention would be different from that of drawing up the Charter of Fundamental Rights. Moreover Article 48 TEU necessitates a ‘traditional’ conference of representatives of the governments of the member states in order to adopt a definitive revision of the existing EC/EU Treaties. In this context, the Convention could be seen as a move towards assigning to the national parliaments and

the European Parliament a specific kind of joint 'para-constituent authority' - a task to be shared with the national governments. This development would mark a new chapter in the role of parliaments in European integration following the fusion dynamics.

2. A New Challenge: Building Links between Multi-Level Scrutiny and the Citizens

In such a perspective, it might not be wrong to call upon national parliaments to strengthen their role as multi-level players in the European Union, to strengthen COSAC according its own proposals and to invite national parliaments to open 'their' offices in the EP buildings. However, the right attribution of roles and functions must be made: The fusion trend points at a typical merging of powers and responsibilities, which is also valid for shaping the 'interparliamentary sphere' or European governance. In this context, 'joint parliamentary bodies' for sectoral issues might take up the heritage of the already existing network of joint parliamentary committee meetings. This renewed network could parallel the Council of Ministers in its various formats; the former WEU assembly and the EP's Committee for Foreign Affairs might mutate into a specific case. COSAC would remain the main locus for interparliamentary co-operation with regard to institutional issues. Finally, a para-constitutional assembly might generate the parliamentary backbone of the Union's further evolution with regard to Treaty developments.

The realisation of such a multi-dimensional web of interparliamentary contacts might help to reduce the democratic deficit in institutional - parliamentary - terms. Nevertheless, one should bear in mind that institutional mechanics are not self-evident for the 'end-users' - the Union's citizens - of public policy outcomes. Evidently, it remains in the hands of the actors involved to offer appropriate means for the participation of the European Union's Demoi in shaping the conditions for their way of living. The greater involvement of national parliaments in the EU's policy-cycles may help to render governments more accountable for what they decide in the Council of Ministers and its subordinated working mechanisms. However, the simple formalisation of COSAC or any other joint body incorporating MEP's and MP's within the realm of a new Treaty or constitution also renders the EU more complex and less understandable. A future Convention on the future of the EU as well as the 2004 Treaty reform should therefore also deliberate appropriate ways for a more coherent and clear-cut organisation of interest representation and mediation in an enlarged European Union. More parliamentarisation does not automatically increase the legitimacy of its political system.

National Parliaments in the European Architecture: From Latecomers' Adaptation towards Permanent Institutional Change?¹

Andreas Maurer

I. European Integration: A Challenge for Parliamentary Democracy

Does the European Union erode parliamentary democracy? The question needs to be addressed by focussing on two facets of European integration: The very nature of the European Union as a multi-level system of governance, and - as a consequence - the opportunities and challenges for shaping a specific kind of parliamentary governance within the Union's institutional design and its dynamics. Taking the concept of multi-level and multi-actor governance seriously urges us to consider both the European Parliament and the national parliaments as two 'echelons' of legislatures, which try to fill the parliamentary gap in EC/EU governance.

This chapter of the book deals with the democratic deficit of European integration in so far as the European Parliament and the national parliaments are concerned. First, I will present the study's puzzle: By ratifying para-constitutional treaty amendments, parliaments affect themselves. Do para-constitutional revisions like the Treaty of Amsterdam matter - and in how far do they matter - for the set-up and the functioning of parliamentary involvement on the national level of EU governance? How can we grasp the process European integration and the loss of original legislative powers of national parliaments? I will look at the academic debate on how to conceptualise the institutional facets of the EU's democratic deficit. We then move on to identify the main streams of the analysis. The major question of this volume is how national parliaments (re)-act in and adapt to a dynamic institutional and procedural set up. How do parliamentary actors in *different* national and socio-political settings, and coined by different national traditions, adapt to *common* challenges, constraints and opportunities for which they are mainly responsible themselves, since they have ratified the fundamental set-up of these opportunity structures?

1 I would like to thank Wolfgang Wessels, Astrid Krekelberg, the participants of the PARLIAM project's 2000 workshop, the delegates of the COSAC 2001 working group meeting and the participants of the Sejm Conference on the future of national parliaments for their comments on earlier drafts of the paper. Special thanks go to Hans Hegeland, Ana Fraga, Gérard Laprat, David Martin, Dietmar Nickel, Tapio Raunio, Reimund Seidelmann, and Amy Verdun for their support, critics and comments.

The interest into the role of national parliaments exceeds immediate procedural arrangements of the EU. Given the growing salience of the EU system and its daily output, participation and involvement are vital issues for the overall weight and role of parliaments. The degree of parliamentary involvement is a significant indicator for the fundamental trends of the national systems and of the EU system. It is of major importance for both the legitimacy of the constitutional set-ups of the EU member states as of the Union itself. It will affect the capabilities of all political institutions on both levels to deal with the challenges of public policies. Whatever institutional arrangements will be taken it will tell us something about the future shape of the European polity in the broader sense.

2. The Conventional Wisdom: Self-Mutilation by Parliaments?

The European Union is increasingly considered as a central arena for transnational cooperation and supranational problem-solving. Its institutions regulate policies with a wide range of policy instruments and differentiated procedures on an ever wider scope of policy fields.

When discussing the role of national parliaments in the EU, it belongs to the conventional wisdoms that national parliaments have increasingly lost in overall importance due to the evolution of this political system.¹ This assessment starts from one fundamental question which has been put forward since the beginning of the European integration process and has since then re-emerged in certain intervals during the 'constitutional debates' on the *finalité européenne*: Why have those national institutions, which are seen as major cornerstones of their respective polities, weakened their own constitutional rights by ratifying in recurrent steps the making of a supranational quasi-constitution? How can they regain some of their lost powers?

The argument needs some further consideration. Irrespective of the specific constitutional prerogatives in each member state the dominant conventional doctrine is clear and similar: Parliaments are regarded as the highest representative bodies of their polities, they are the core institutions for legitimising political power. Legislative and constitutional powers are therefore natural and vital prerogatives of parliamentarians. The degree of parliamentary sovereignty might differ among the member states. However, everywhere in Europe these bodies are considered as symbols and shapers of national history and identity.²

1 See for an overview: Maurer, Andreas: *Parlamentarische Demokratie in der Europäischen Union. Der Beitrag des Europäischen Parlaments und der Parlamente der EU-Mitgliedstaaten zur Reduzierung des Demokratiedefizits*, Giessen, Univ.Diss. 2001, pp. 10-29, 196-211; Wessels, Wolfgang: *Die Öffnung des Staates. Modelle und Wirklichkeit grenzüberschreitender Verwaltungspraxis 1960-1995*, Opladen 2000, pp. 337-340.

2 See Von Beyme, Klaus: *Die parlamentarischen Regierungssysteme in Europa*, München 1970; Norton, Philip (ed.): *Parliaments in Western Europe*, London 1990; Copeland, Gary/Patterson, Samuel

However, national parliaments are seen to lose legal rights and - perhaps even more - de facto powers vis-à-vis governments and administrations since the first treaties of the European Communities. By passing consequent treaty amendments and revisions they accepted a shift of competencies to the European level, which reduced their final say over major areas of traditional legislative powers and the political control over governments.¹

As such an assessment is neither new² nor really disputed it is surprising that national parliaments are quite often identified as passive, self-indulging victims of an erosion process they promote and/or support themselves. Though national parliaments - over the last two decades - were given four times the opportunity to upgrade their powers in the 'legal constitution' of the EU³, the steps they took to regain or just to keep their traditional positions look rather minimal.

If we observe such a self-restriction our academic curiosity becomes clear: How can we explain that these key actors seem to be weak in adapting to a political constellation which they at least partially created themselves, whereas other groups of actors like interest groups⁴, NGO's and regional governments⁵ seem to be more successful in influencing the output of the EU system?⁶

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- C. (eds.): *Parliaments in the Modern World. Changing Institutions*, Ann Arbor 1994; Döring, Herbert (ed.): *Parliaments and Majority Rule in Western Europe*, Frankfurt a.M. 1994.
- 1 See Schweitzer, Carl-Christoph: *Die nationalen Parlamente in der Gemeinschaft - ihr schwindender Einfluß in Bonn und Westminster auf die Europagesetzgebung*, Bonn 1978; Kamann, Hans-Georg: *Die Mitwirkung der Parlamente der Mitgliedstaaten an der europäischen Gesetzgebung. Nationalparlamentarische Beeinflussung und Kontrolle der Regierungsvertreter im Rat der Europäischen Union im Spannungsfeld von Demokratie und Funktionsfähigkeit des gemeinschaftlichen Entscheidungsverfahrens*, Frankfurt a.M., 1997; Herman, Valentine/Schendelen, Rinus van (eds.): *The European Parliament and the National Parliaments*, Westmead 1979; Coombes, David: *Die Parlamente im EG-System*, Bonn: Europa Union Verlag 1980.
 - 2 See Bryce, James: 'The Decline of Legislatures', in: Norton, Philip (ed.): *Legislatures*, Oxford (1921) 1990, pp. 47-61; Jann, Werner: *Parlamente und Gesetzgebung. Akteure und Ressourcen der parlamentarischen Gesetzgebung im internationalen Vergleich (Habilitationsschrift)*, Speyer 1989, p. 130; Lösche, Peter: 'Stichwort 'parlamentarische Regierungssysteme'', in: Holtmann, Everhard/Brinkmann, Heinz Ulrich/Pehle, Heinrich (eds.): *Politik-Lexikon*, München 1994, p. 422; Döring, Herbert: 'Parlamentarische Kontrolle in Westeuropa. Strukturen, Probleme und Perspektiven', in: *Aus Politik und Zeitgeschichte*, No. B 27/1996, p. 42.
 - 3 Olsen, Johan P.: *Organising European Institutions of Governance. A Prelude to an Institutional Account of Political Integration*, Arena Working Papers WP 00/2, Oslo 2000.
 - 4 Kohler-Koch, Beate: *Die Gestaltungsmacht organisierter Interessen*, in: Jachtenfuchs, Markus/ Kohler-Koch, Beate (eds.): *Europäische Integration*, Opladen 1996, pp. 193-222; Kohler-Koch, Beate: *Organized Interests in European Integration: The Evolution of a New Type of Governance?*, in: Wallace, Helen/ Young, Alasdair R. (eds.): *Participation and Policy-Making in the European Union*, Oxford 1997, pp. 42-68;
 - 5 Le Galès, Patrick: 'Conclusion - government and governance of regions: structural weakness and new mobilisations', in: Le Galès, Patrick/ Lequesne, Christian (eds.): *Regions in Europe*, London, New York 1998, pp. 239-267; Loughlin, John: *Representing Regions in Europe: The Committee of the Regions in*: Jeffery, Charlie (eds.): *Regional and Federal Studies, Special Issue, The Regional Dimension of the European Union, Towards a Third Level in Europe?*, London 1996, pp. 147-165.
 - 6 Wessels, Wolfgang: 'An Ever Closer Fusion? A Dynamic Macropolitical View on Integration Processes', in: *Journal of Common Market Studies*, No. 2/1997, pp. 267-299.

3. *Getting Out of the Trap: A Renewed and Intensified Debate*

Given the gap between the orthodox parliamentary doctrine and the conventional analysis which identifies parliaments as losers of the integration process, it is not surprising that the role of national parliaments in the EU system has been revived in the last years.¹ Formally it has been put again on the agenda of the post- Nice process on the future of the Union.² Thus it will be a subject of the next Intergovernmental Conference leading to a new Treaty reform or even a constitution.³ In this regard, the findings of the country reports in this volume might indicate 'realistic' lines for reform, underlying motives for different reform proposals and limits of strengthening the role of national parliaments within the institutional framework of the EC/EU.

In the cosmos of political visions and programmes on the future of the EU many political contributions have suggested new and additional ways of involving national parliamentarians.⁴ A key term is coming up: Several protagonists of the debate on the EU's future reflect on some kind of a bicameral system in which national parliaments play a major role at least for certain EU issues. Those inputs into the debate seem to open a new phase of discussing the role of national parliaments in the EU construction.

A more traditional line of argumentation has been to call national parliaments to steer their unilateral scrutiny powers in EC/EU affairs vis-à-vis their governments. During the last ten years, this claim gained ground. Two Declarations appended to the Maastricht Treaty and one Protocol annexed to the Amsterdam Treaty are the outcome of these attempts.¹

The Declarations and the Protocol allow new arrangements for national parliaments in order to ensure a better access to EU information, a better timing with regard to parliament-government interaction in the course of EU decision-making, and - with COSAC -

1 For a detailed analysis on 'state of the art' in research on national parliaments, see Maurer, 2001, op.cit., pp. 10-15.

2 See Declaration No. 23 on the future of the Union to be included in the Final Act of the Conference.

3 See for the debate: Joerges, Christian/Mény, Yves/Weiler, Joseph (eds.): *What Kind of Constitution for What Kind of polity? Responses to Joschka Fischer*, Florence 2000. See also the 'TEPSA Europe Forum' on the post-Nice process in: *The International Spectator*, No. 1/2001, pp. 13-59.

4 See Delors, Jacques: 'Où va l'Union européenne ?' Exposé dans le cadre du cycle des conférences aux USA, mars 2001; Fischer, Joschka: 'De la Confédération à la fédération - réflexion sur la finalité de l'intégration européenne', université de Humboldt, Berlin, 12 mai 2000; Jospin, Lionel: Discours sur 'l'avenir de l'Europe élargie', Paris, centre d'accueil de la presse étrangère, Maison radio France, 28 mai 2001; Juncker, Jean-Claude: 'Mes convictions pour l'Europe' intervention, à titre personnel, à la maison du grand-duché de Luxembourg, Bruxelles, 15 mai 2001; Kok, Wim, Discours prononcé à l'université de Nyenrode, 28 mars 2001; Lipponen, Pavo, Discours 'l'avenir de l'Union européenne après Nice', Florence, 9 avril 2001; Prodi, Romano: 'Pour une Europe forte, dotée d'un grand projet et de moyens d'actions', discours prononcé à l'Institut des Sciences Politiques, Paris, 29 mai 2001; Johannes Rau, Plaidoyer pour une Constitution européenne, discours prononcé devant le PE, le 4 avril 2001; SPD, Projet de résolution sur l'Union européenne publié le 30 avril 2001 en vue du congrès du SPD en novembre; Verhofstadt, Guy, Discours 'la présidence belge de l'Union européenne: lignes de force et défis', Bruxelles, 29 mai 2001.

a permanent forum for national parliaments and the European Parliament to exchange and express views on EU integration vis-à-vis the Brussels/Strasbourg based institutions.

The Amsterdam Treaty's Protocol on the role of national parliaments in the European Union (PNP)² provides any formal role for national parliaments in the EU decision-making cycle. The parliaments are not placed into the legal constitution of the EU. Instead, the PNP concedes that the transfer of information from the European to the national level, must be improved. The Protocol recalls that unilateral scrutiny by national parliaments of their own government in relation to the activities of the EU should remain a matter for the particular constitutional organisation and practice of each member state. The PNP was shaped by national parliaments and the European Parliament within the framework of COSAC. In the EP's resolution on the relations between the European Parliament and national parliaments³ of June 1997, MEP's suggested a treaty amendment similar to the content of the PNP. The 'introductory considerations' recapitulate the EP's and the majority of national parliaments' general view on the relationship between two kinds and levels of parliaments: First, the EP and national parliaments play distinctive and complementary roles in securing and strengthening democracy in the Union. The resolution affirmed that the former has the role of controlling the actions of the other EU institutions and bodies while the latter should control their own national governments acting in their EU capacity. Second, the resolution argued that the case for interparliamentary co-operation between the European and national parliaments should not further complicate the institutional structure of the European Union.⁴ These two preconditions construct a widely shared 'set of common beliefs' among MEP's and MP's. However, since the negotiations on the Maastricht Treaty, several attempts made by British, French and Danish governmental and parliamentary actors shaped a debate on the inclusion of national parliaments in the EU's institutional and procedural set-up. The debate culminated in the Amsterdam PNP. The Protocol should be understood as another peak in the debate about adequate parliamentary participation in European integration. It thus serves as a starting point for the empirical research on the national systems level. As the post-Nice process on the future of the European Union clearly indicates, this debate has not stopped and we might witness another upsurge with regard to the next IGC in 2004.

1 See the documentation by Astrid Krekelberg in this volume, document Nos. 1.1, 1.2 and 2.

2 See the documentation by Astrid Krekelberg in this volume, document No. 2.

3 See European Parliament, Report on the relations between the European Parliament and national parliaments, Doc. No. A4-0179/97, 22 May 1997.

4 See Attina, Fulvio: 'Strategies for Democratising Multi-State Systems and the European Union', in: Current Politics and Economics of Europe, No. 2/2001, pp. 227-243.

3. On the Political Relevance: The Nice Declaration on the Future of the European Union

The role of national parliaments in the European architecture is one of the main themes of the post-Nice reflection process on the future of the European Union. The respective Nice declaration did directly address the national parliaments.¹

Hence, one could have also imagined a broader theme such as the role of parliaments or of parliamentary democracy in an enlarged Union. The reason for the focus on one level of the EU's system is to be found in the debate during the "printemps constitutionnel"² of 2000: Joschka Fischer, Jacques Chirac and Tony Blair³ refreshed a debate⁴ which started during the Maastricht IGC on how to link national legislatures into a continuous process of compounded⁵ problem-solving beyond the nation-state. These speeches did not directly affect the rolling agenda of the Nice negotiations. But they certainly provided a shadow under which member states' governments deliberated and decided on how and when to deal with an issue, which will again affect the entry of new member states and relatively 'young democracies'. Hence, EU enlargement is certainly not only about the votes of each country in the Council of Ministers and the seats in the European Parliament. The enlargement towards an 'EU XXL' of 27 members also addresses a more general issue: The question of how to organise the democratic aggregation, representation and mediation of interests, wishes, concerns, and fears within the EU system of governance.

1 See the documentation by Astrid Krekelberg in this volume, document No. 3.

2 Maurer Andreas/Franck, Christian: 'Reforming the institutional set-up of the Union', in: Maurer, Andreas (ed.): Europe's political priorities report, Brussels 2000, pp. 39-49.

3 See Fischer, Joschka: 'Vom Staatenbund zur Föderation - Gedanken über die Finalität der europäischen Integration', in: Integration, No. 3/2000, pp. 149-156; Chirac, Jacques: 'Notre Europe', Speech before the German Bundestag, 27 June 2000, <http://www.elysee.fr>; Blair, Tony, Speech at the House of Commons, 11 December 2000, <http://www.fco.gov.uk/news/newstext.asp?4489>.

4 See Joerges, Christian/Mény, Yves/Weiler, Joseph (eds.): What Kind of Constitution for What Kind of polity? Responses to Joschka Fischer, Florence 2000; Marhold, Hartmut (ed.): Die neue Europa-debatte. Leitbilder für das Europa der Zukunft, Bonn 2001; Schwarze, Jürgen (ed.): The Birth of a European Constitutional Order, Baden-Baden 2001.

5 On the concept of the EU as a model of compounded policy-making, see: Benz, Arthur/Esslinger, Thomas: 'Compounded Representation in EU Multi-Level Governance', and: Auel, Katrin/Benz, Arthur: 'Strength and Weakness of Parliaments in EU Multi-Level Governance - Accountability in a Compounded Representative Democracy', both contributions in: Auel, Katrin/Benz, Arthur/Esslinger, Thomas: Democratic Governance in the EU. The Case of Regional Policy, polis, No. 48/2000, Fernuniversität Hagen.

II. Parliaments in the Multi-level Game: The Analytical and Theoretical Framework

1. On the Analytical Approach: A Closer Look at the Multi-level Game

I adopt the definition of multi-level governance¹ as the pattern of interactions and decisions by which actors from several and distinct arenas² allocate values³ through joint problem-solving and taking of collective decisions which are supposed to be binding on governments and other actors.⁴ In this perspective, the EU polity is seen as a “post-sovereign, polycentric, and incongruent” arrangement of authority which supersedes the limits of the nation-state.⁵ Assuming a non-hierarchical decision-making process, the EU’s Brussels/Strasbourg arenas do matter but only as one realm of collective decision-making and implementation. European multi-level governance thus contributes to a “decrease in the unilateral steering by government”⁶, and an increase in the self-governance of various actors and arenas.

Multi-level - as federal - systems use different means to regulate inter-institutional relations, to give legitimacy to their institutions and to make democratic decisions. Certain instruments like elections and inter-governmental procedures work only on the condition that non-institutional and collective political actors - like governments and administrations, parliaments, political groups, political parties and intermediary actors - cooperate well within an open net of cross-level interaction arenas. Hence, the Council of Ministers and its politico-administrative substructure are evident examples for a multiple - Proteus-like⁷ - body, which is able to change its institutional faces and procedural tools according to a flexible and growing set of policy-making levels and demands.

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- 1 Jachtenfuchs, Markus: ‘Theoretical Perspectives on European Governance’, in: *European Law Journal*, No. 2/1995, pp. 115-133; Jachtenfuchs, Markus/Kohler-Koch, Beate: ‘Regieren im dynamischen Mehrebenensystem’, in: Jachtenfuchs, Markus/Kohler-Koch, Beate (eds.): *Europäische Integration*, Opladen 1996, pp. 15-46.
 - 2 Wallace, Wallace: ‘Institutions, Process and Analytical Approaches’, in: Helen Wallace/William Wallace (eds.), 2000, op. cit., p. 73.
 - 3 See Easton, David: *The Political System*, New York, 1953), pp. 129-134.
 - 4 See Wessels, 1997, op.cit., p. 269.
 - 5 Philippe C. Schmitter: ‘If the Nation-State Were to Whither Away in Europe, What Might Replace it?’, in: Sverker Gustavsson/Leif Lewin (eds.), *The Future of the Nation State*, Stockholm 1996, p. 136.
 - 6 See Kohler-Koch, Beate: ‘Catching up with change: the transformation of governance in the European Union’, in: *Journal of European Public Policy*, No. 9/1996, p. 371; on the issue of policy networks see also Heinelt, Hubert and Smith, Randall (eds.): *Policy Networks and European Structural Funds*, Aldershot 1996, Kassim, Hussein: ‘Policy Networks, Networks and European Union Policy Making: A sceptical View’, in: *West European Politics* No. 4/1994, pp. 85-101.
 - 7 Proteus was the son of Poseidon, god of the sea, or his attendant and the keeper of his seals. Proteus knew all things past, present, and future but was able to change his shape at will to avoid the necessity of prophesying. For a more modern interpretation see Resnick, Philip: *The Mask of Proteus: Canadian Reflections on the State*, McGill Queens University Press 1997.

Members of the Council intervene across the trans-European policy spectrum according to the actual needs of the EC/EU's running agenda and the constitutional procedures of the policy cycle.

It is common ground that the decisions on the EU level are prepared, made, implemented and controlled by actors which work on both the EU as on the national level.¹ To exclude one arena from observation reduces our analytical capacities for explaining and evaluating this policy-cycle. Especially in the case of national parliaments it is telling to describe their activities and impacts in both set-ups. For a closer look it is useful to locate actors of this 'game' for power on both levels.

Figure 1: Ideal Types for Actors in a Two-Level Game

		Participation in the National Arena	
		Strong	Weak
Participation in the Brussels / Strasbourg Arena	Strong	Multi-level players <i>With highest performance on both levels</i> (1)	European players <i>with high performance on the EU level</i> (2)
	Weak	National players <i>with relatively high performance on the national level</i> (3)	Slow adapters <i>with lowest performance at both levels</i> (4)

I use this matrix in order to locate the empirical findings of the country reports within four model cases. These models are in some way heuristic and ideal archetypes. However, to classify parliaments and parliamentarians within the context of the EU's multi-level nature, these focussed models might prove helpful. Forms of participation are related to the formal provisions of national constitutions and the EU treaty. However,

1 Maurer, Andreas/Wessels, Wolfgang: 'The EU matters: Structuring Self-made Offers and Demands', in: Wessels, Wolfgang/Maurer, Andreas/Mittag, Jürgen (eds): Fifteen into One? The European Union and its Member States (Manchester: MUP, forthcoming); Maurer, Andreas/Wessels, Wolfgang: 'Europeanisation in and of the EU system: Trends, Offers and Constraints', in: Kohler-Koch, Beate (ed.), Linking EU and national governance, Oxford 2002, forthcoming.

beyond the “legal constitution”¹ we need to explore the real patterns of how actors use the EU’s “opportunity structures”² and develop additional or even competing channels of influence. Especially in view of research results which stress the informal and non-hierarchical nature of policy networks³ a closer look at this part of the policy-cycle is highly relevant.

More concretely we aim at identifying forms of participation and involvement with regard to actors’ access and influence in the EU policy-cycle. We look at each level separately but also analyse how far actors are able to link their position on one level with that of the other level.

‘Multi-level players’ (square 1) are therefore taken as the most performing ones, since they are able to work across the levels of the EU and the member states. Taking the logic of multi-level governance seriously means that actors need to allot personal and financial resources to different levels and loci of interaction (such as the Council’s Working groups, COREPER etc.). Adaptation to the EU’s evolution is translated into effective re-orientations of policy instruments and resources. Multi-level players are able to instrumentalise the access on one level for increasing their influence on the other level. Their investments allow to mobilise a virtuous circle of involvement.

‘European players’ (square 2) could be defined as bodies, which are primarily located in and focused on the Brussels/Strasbourg arenas. Given a rather low rate of direct access to the national arenas of EU governance they are not as competitive as the ‘Multi-level players’. They adapt to the EU’s system by revising and focusing their instruments vis-à-vis the other EU actors at this level without explicitly considering the roles of national or sub-national actors. Hence, if we turn our view to the European Parliament, we must acknowledge that the potential realm of its activity is restricted: As a ‘European player’, the EP’s parliamentary groups, committees and the plenary meet in one virtual room - the Brussels/Strasbourg arena. Unlike the members of the Council, MEP’s are not called to permanently reorient their actor-addressee relationship from one context to another. Whether they perform as ‘constituency-representatives’ at home, as ‘co-legislators’ in the conciliation committee of the co-decision procedure, or as ‘international communicators’ within one of the EP’s interparliamentary delegations, their role-attribution re-

1 Olson, 2000, op.cit.

2 See for this approach especially Scharpf, Fritz W.: *Games Real Actors Play, Actor-Centered Institutionalism in Policy Research*, Oxford: Boulder 1997; Bulmer, Simon: ‘The Governance of the European Union, A New Institutional Approach’, in: *Journal of Public Policy*, No. 4/1994, pp. 351-380; Knill, Christoph/Lehmkuhl, Dirk: ‘How Europe matters. Different Mechanisms of Europeanization’, in: *European Integration online Papers (EioP)* Vol. 7/1999.

3 Kohler-Koch, Beate: ‘The Evolution and Transformation of European Governance’, in: Kohler-Koch, Beate/ Eising, Rainer (eds.), *The Transformation of Governance in the European Union*, London/New York 1999, pp. 14-35; Héritier, Adrienne: ‘Policy-Netzwerkanalysen als Untersuchungsinstrument im europäischen Kontext: Folgerungen aus einer empirischen Studie regulativer Politik’, in: Héritier, Adrienne (ed.): *Policy-Analyse. Kritik und Neuorientierung*, Politische Vierteljahresschrift, Sonderheft 24, Opladen 1993, pp. 432-450.

mains the same: They represent the aggregated interests of the peoples of the European Union.

A 'National player' (square 3) would be a body with efficient and effective 'arms' to voice its interests within the national arenas at hand. Adaptation would be focused at the national level without considering the possibility of shifting or pooling the existing resources in relation to the EU level. Within the EU policy cycle these actors are present during the preparation and implementation phases, but not in the crucial arenas of EU joint decision-making. In this regard, the role-attribution of national parliamentarians seems to be similar to that of MEP's: They are elected in one - a national - context; re-election is a matter of success and failure at one - the national - level of policy-making. Like the EP - and unlike the members of the Council's structure - their main locus of interaction and focus of attention is 'one-dimensional'.

The 'Slow adapter' (square 4) would then be considered as a body with the same - national - orientation. But it would differ from the National player in that the - national - adaptation to new EU contexts remains low. This actor is not capable to keep the status quo ante of its prerogatives at the domestic - EU-linked - level. In a vicious cycle, the losers of multi-level games suffer from a continuous fall in influence. A low investment in resources leads to a decreasing rate of participation.

2. On the Theoretical Approach: Assuming a Fusion Process

A widely shared analytical scheme for grasping changes of political systems within the realm of the European Union concentrates on the process of 'Europeanisation' by which governmental, parliamentary and non-governmental actors shift their attention to the Brussels arena, involve their resources and invest 'time':¹ The key assumption of 'Europeanisation' is that EU policy-making triggers institutional adaptation in the member states, alters domestic rules and the inter-institutional distribution of means for complying with the requirements for an effective participation in European governance. 'Europeanisation' as a key variable for measuring the dynamic nature of European integration then means "the incremental process of reorienting the shape of politics to the degree that EC/EU political and economic dynamics become integral parts of the organisational logic of national politics and policy-making".² Taking up this approach, any analysis on

1 See Wessels, Wolfgang: 'The Growth and Differentiation of Multi-Level-Networks: A corporatist Mega-Bureaucracy or an Open City?', in: Wallace Helen/Young, Alasdair A. Young (eds.): Participation and policy-making in the European Union, Oxford 1997, p. 36. For a discussion on the facets of the term, see: Risse, Thomas/Green Cowles, Maria/Caporaso, James: 'Europeanization and Domestic Change: Introduction', in: Green Cowles, Maria/Caporaso, James/Risse, Thomas (eds.): Transforming Europe. Europeanization and Domestic Change, Ithaca/London 2001, pp. 1-20.

2 See Ladrech, Robert: Problems and prospects for party politics at the European level. The case of socialist transnational party development, Paper presented to the 4th Biennial ECSA Conference, 11.-14. May 1995, p. 68.

the EU member states involvement in European policy-making should not only screen the governmental but also the parliamentary structures and procedures of institutional adaptation.¹

In line with some conventional arguments about self-inflicted losses of competencies by national parliaments we observe that the representatives of member states as ‘masters of the Treaty’² have transferred parts of their powers to the EU level, allocated policy instruments to EU institutions and extended the scope of the EU policy domains in all pillars. To give some quantitative indications they have increased the policy empowerments of the EC from 86 (in the EEC Treaty of 1958) to 254 in the Nice version of the Union Treaty. EU institutions have doubled the legislation in force - the *acquis communautaire*, from the early eighties to the late nineties thus ‘invading’ to an increasing degree the national legal space.³ The overall evolution of the EU system can thus be described as a process of fusion⁴ by which national and European actors increasingly merge policy instruments and use them by an ever growing set of differentiated institutional arrangements and procedures.⁵ Accordingly, we assume that not only the European Parliament, but also national parliaments must constantly adjust and (re-)orientate the possibilities and arrangements for parliamentary activity in response to an ever in-

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- 1 See e.g. Pappas, Spyros A. (ed.): *National Administrative Procedures for the Preparation and Implementation of Community Decisions*, Maastricht, EIPA 1995; Hanf, Kenneth/Soetendorp, Ben: ‘Small States and the Europeanization of Public Policy’, in: Hanf/Soetendorp (eds.): *Adapting to European Integration, Small States and the EU*, London: Longman 1997; Mény, Yves/Muller, Pierre/Quermonne, Jean-Louis (eds.): *Adjusting to Europe. The impact of the EU on national institutions and policies*, London: Routledge 1996; Olsen, Johan P.: ‘Europeanization and Nation-State Dynamics’, in: Gustavsson, Sverker/Lewin, Leif (eds.): *The Future of the Nation-State*, Stockholm 1996; Ladrech, Robert: ‘Europeanization of Domestic Politics and Institutions. The case of France’, in: *Journal of Common Market Studies*, No. 1/1994; Goetz, Klaus: ‘National Governance and European Integration. Intergovernmental Relations in Germany’, in: *Journal of Common Market Studies*, No. 1/1995; Wessels, Wolfgang: ‘Institutions of the EU System: models of explanation’, in: Rometsch, Dietrich/Wessels, Wolfgang (eds.): *The European Union and member states*, Manchester, MUP 1996; Carter, Caitríona/Scott, Andrew: ‘Legitimacy and Governance beyond the European Nation State: Conceptualizing Governance in the European Union’, in: *European Law Review*, No. 4/1998, pp. 437-445; Knill, Christoph/Lehmkuhl, Dirk: ‘How Europe matters. Different Mechanisms of Europeanization’, in: *European Integration online Papers (EioP) Vol. 37* 1999; Maurer, Andreas/Wessels, Wolfgang: ‘The EU matters: Structuring self-made offers and demands’, in: Wessels, Wolfgang/Maurer, Andreas/Mittag, Jürgen (eds.): *Fifteen into One? The European Union and its member states*, Manchester, MUP 2001.
 - 2 *Bundesverfassungsgericht: „Urteil über die Verfassungsbeschwerden gegen den Vertrag von Maastricht, Judgement of Oct. 12, 1993”*, in: Oppenheimer, Andrew (ed.): *The Relationship between European Community Law and National Law: The Cases*, Cambridge: Cambridge University Press 1993.
 - 3 *Ibid.*
 - 4 Wessels, 1997 op.cit., pp. 267-299; Wessels, Wolfgang : ‘The Growth and Differentiation of Multi-Level Networks: A corporatist Mega-Bureaucracy or an Open City?’, in: Wallace, Helen /Young, Alasdair R. (eds.), *Participation and Policy-Making in the European Union*, Oxford 1997, pp. 17-41; Wessels, Wolfgang: *Die Öffnung des Staates. Modelle und Wirklichkeit grenzüberschreitender Verwaltungspraxis 1960-1995*, Opladen 2000; Wessels, Wolfgang: ‘Nice results. The Millenium IGC in the EU’s evolution’, in: *Journal of Common Market Studies*, No. 2/2001.
 - 5 Wessels, 1996: 58; See also Raunio 1999: 182-184.

creasing challenge - to new European Community legislation and other activities related to the European Union.

In view of the analytical framework this theoretical concept identifies significant trends towards the emergence and dominance of multi-level players. The strong position of the Council as a multi-level player is the product of fundamental features of the integration process. A 'one-level player only' is less competitive than those actors which are able to pool and link resources from both levels to mutually reinforce their access and influence. The fusion process and its institutional-procedural translation devices urge actors to look for an optimal mix of investments in terms of attention, time and personal on both levels, and for adequate links between levels and arenas.

3. Consequences for National Parliaments: From Losers to Latecomers?

If we follow the logic of the fusion process, we would expect a strong centripetal dynamic, which also affects national parliaments with some time delays. In this respect, we supposed to witness a process of de-parliamentarisation on both the EU and the national levels of policy-making, which might be followed by a re-parliamentarisation in the later stages of the EU's integration process. Confronted with the risk of the vicious cycle of losing access and influence, we expect the parliamentary late-comers to move towards the position of a national player, and then - in a second step - or even in parallel towards the position of a multi-level player.

If the fusion process is supposed to characterise the fundamental trend in the evolution of the EU system, then the loss of 'real' - i.e. direct and unlimited - participation of national parliaments in the EU's law-making policy cycles is a logical consequence, which is likely to continue unless parliamentarians decide to make an investment to become real multi-level players.

Hence, the increasing scope of EU activities and the differentiation of institutional and procedural outlines affects and undermines the traditional legislative function of national parliaments.¹ The functions of national parliaments in the EC/EU decision-making process are reduced to three major tasks: ensuring the accountability of governments with regard to their activity in European affairs, ratifying EU Treaty amendments, and implementing EC/EU legislation.²

1 Seider, Rainer: Die Zusammenarbeit von deutschen Mitgliedern des EP und des Deutschen Bundestages und ihr Beitrag zum Abbau des parlamentarischen Demokratiedefizits in der EG, Frankfurt/Bern/New York/Paris 1990.

2 Herman/van Schendelen, 1979, op.cit., p. 268; Coombes, 1980, op.cit. p. 138; Steffani, 1995, op.cit., pp. 46-47.

Since empirical findings point at the establishment and the dominant role of transnational core networks of ministers and high civil servants¹ we need to discuss even more, where parliaments and parliamentarians come into the game.

III. The Structure of De-nationalized Governance in Europe

1. The Dynamics of the EU's Political System

The European Union brings together democratic nation-states. The structures, procedures and institutions vary and EU membership does not simply lead to a uniform model of western post-war society and state structures. Lijphart still distinguishes different forms of democracy between the EU members using a set of indicators on the executives-parties as well as on the federal-unity dimension.² And even if he models a binary distinction between 'majority'- and 'consensus'-democracies, the very fact that these two are understood as ideal archetypes underlines that variations exist between each group of states under consideration. Hence, each state designs its constitutional system according to different histories, political cultures and basic beliefs about the roles of institutions in organising the society. Models of democracy do not necessarily match with the 'living constitution' of the states under review. Each EU democracy might build on some kind of institutional checks and balances according to an ideal division of competencies and powers. But institutions do not simply behave according to an assigned model: As 'actor' a parliament has the assigned mission to legislate and to control the Government. However, in Western democracies parliaments function rather as 'arenas' for political battles between government and opposition. The simple dichotomy between the executive and the legislative branches of political systems does not exist in reality.

The EU's states share a number of structural features. One of the key elements of European democratic systems is that directly elected parliaments represent the citizens, aggregate and publicise their views, fears and opinions and act on their behalf. Whether post-1945 West-European and post-1989 East-European political systems are based on the general frames of parliamentary, presidential or semi-presidential democracy, they all have a common basis: Democracy is mainly understood as representative democracy, where a (s)elected part of the citizenry acts for a given period of time within a parlia-

1 Wessels, 2000, op.cit.; Bach, Maurizio: 'Eine leise Revolution durch Verwaltungsverfahren. Bürokratische Integrationsprozesse in der Europäischen Gemeinschaft', in: Zeitschrift für Soziologie, No. 1/1992, pp. 16-30; Bach, Maurizio: 'Ist die europäische Einigung irreversibel? Integrationspolitik als Institutionenbildung in der Europäischen Union', in: Nedelmann, Birgitte (ed.): Politische Institutionen im Wandel, Opladen 1995, pp. 368-391.

2 See Lijphart, Arend: *Patterns of Democracy. Government Forms and Performance in Thirty-Six Countries*, New Haven/London: Yale University Press 1999.

mentary assembly to participate in policy-making and authority-building by a - constitution-based - set of instruments.

To a greater extent than any other international organisation, the EU has crossed the boundary from horizontal and single issue based, interstate co-operation to both horizontal and vertical policy-making in a dynamic multi-level structure, in which member states are but one level of an emerging polity.¹ In so far, one can conceive the EU as a dynamic system, which exercises quasi-governmental power without being based on a single government but on various - unstable or fluid - kinds of government structures and governance procedures. Of course, the process of European integration does not feature the establishment of government structures, which are designed according to a master plan of successful or as a lesson of unsuccessful national constitutions. In the contrary, the main idea of and driving force behind European integration was and still is the continuous search for problem-solving capacities in specific policy areas without explicitly considering the mode of appropriate government structures. In this perspective, the EU may be regarded as some kind of a regulatory regime² or a “special purpose organisation”,³ which is less dependent on its parliamentary democracy than on efficiently oriented policies - authorized in the name of and for the people(s). This “output-legitimacy” of the Union then “depends on its capacity to achieve the citizen’s goals and solve their problems effectively and efficiently: The higher this capacity, the more legitimate the system”.⁴ However, the EU’s development does not only feature an increasing and dynamic quest for effective policy production, but also an ongoing and collective search for efficient, transparent and democratic ‘frames’, which enable policy outcomes to be interpreted as legitimate.

The very nature of the European Union’s structure is process, not constitutional finality. A more intensive look at the EU development from the early 1950’s onwards reveals an ongoing process of institutional, procedural and functional differentiation,⁵ which has not yet reached its final stage and may not do so in the near future. The nature of the EU is characterised by a continuing extension of its responsibilities and authorities, which have enlarged the total range of policy areas Community-wide. Simultaneously, more and more competencies have been partly transferred from the exclusive national level to

1 See Jachtenfuchs, Markus: ‘Democracy and Governance in the European Union’, in: Follesdal, Andreas/Koslowski, Peter (eds.): *Democracy and the European Union*, Berlin/New York/Tokyo 1998, pp. 37-64.

2 See Majone, Giandomenico: ‘The Rise of the Regulatory State in Europe’. *West European Politics*, No. 3/1994, pp. 78-102; Majone, Giandomenico: ‘European regulatory state?’, in: Richardson, Jeremy (ed.): *European Union. Power and Policy-Making*, London: Routledge 1996, pp. 263-277.

3 Dehousse, Renaud: *European Institutional Architecture after Amsterdam: Parliamentary System or Regulatory Structure?* RSC No. 98/11, EUI Working papers, Florence 1998.

4 Schimmelpfennig, Frank: ‘Legitimate Rule in the European Union. The Academic Debate’, *Tübinger Arbeitspapiere zur Internationalen Politik und Friedensforschung* No. 27, Tübingen 1996.

5 Wessels, Wolfgang: ‘The Modern West European State and the European Union: Democratic Erosion or a New Kind of polity?’ in: Andersen/Eliassen, 1996 op.cit.

a supranational one. Even if the majority of EC/EU competencies does not just provide an exclusive set of 'to do's' for its institutions, the growing shift of policy-making opportunities from an exclusive national to a non-exclusive EU level mirrors the dynamism of a polyarchic system. To successfully reconcile the management of growing responsibilities with the demands for real and functional participation of the political actors involved, new institutions have been established and the already existing institutional framework has been altered.¹

The procedural and functional differentiation becomes visible by looking at some key aspects of the Union's structure: We observe that the total number of Treaty articles dealing with specific competencies and decision-making rules - the *enumerative empowerments* - in an increasing amount of specific policy fields has considerably grown from 86 (EEC Treaty 1957) to 254 (Treaty of Nice 2001) cases.

Further illustrations of the broad functional scope are being given by the expansion of the number of Commission DG's (from 9 in 1958 to 24 in 1999) and of autonomous executive agencies (from two in 1975 to 11 in 1998)², the agendas of the European Parliament, its committees at its plenary sessions and the presidency conclusions published after each session of the European Council.³ The respective composition of the sectoral Council formats (from 4 in 1958 to 23 in 1998)⁴ as well as the extension of the administrative substructure of the Council indicate that governmental actors have become more and more involved in using 'their' Brussels network extensively and intensively.⁵ Moreover, the heads of state and government have learned to instrumentalise the European Council for pre-legislative activities: Hence, the number of 'demands' issued by the European Council to the European Commission has increased from 33 requests in 1995 to 83 in 2000.⁶

The overall complexity of the EU's polycentric and polyarchic system is a result of the huge number of its duties, legislative processes and implementation procedures and, at times, the unfathomable nature of the procedures and the roles of the actors involved. Apart from five principle procedures - 'Simple procedure' without any European Parliament involvement, Consultation, Co-operation, Assent, Co-decision -, the Treaties and other inter-institutional agreements offer further decision-making courses depending on the voting rules of the Council and the participation of other institutions like the

1 See *ibid.* and Wessels, Wolfgang: 'An Ever Closer Fusion? A Dynamic Macropolitical View on Integration Processes', in: *Journal of Common Market Studies*, No. 2/1997.

2 See Kreher, Alexander (ed.): *The EC agencies between Community institutions and constituents: autonomy, control and accountability*, conference report, Florence: European University Institute 1998.

3 See e.g. the Presidency conclusions of the Cologne (June 1999) and Helsinki (December 1999) summits: <http://ue.eu.int>.

4 See Westlake, Martin: *The Council of the European Union*, London: Cartermill 1995, pp. 164-167.

5 See Wessels, 2000, *op.cit.*, pp. 195-260.

6 See Milkoreit, Manjana, Study for the White Paper on European Governance: Some quantitative aspects on the activity of the European Commission 1995-2000, Brussels, 15 May 2001, p. 26.

Committee of the Regions, the Economic and Social Committee, or the European Central Bank.

Table 1: Decision-Making Modes in the Council and the EP after the Entry into Force of the Treaty of Nice (+/- 2002)

Participation of the EP	Unanimity		QMV		Simple Majority		Specific Majorities > QMV		Sum	
		%		%		%		%		%
Consultation	38 EC	18,0	29 EC	13,74	2 EC	0,95	2 EC	0,95	71 EC	33,65
	4 EU	9,30	1 EU	2,32	1 EU	2,32	1 EU	2,32	7 EU	16,28
Co-operation	0	0	4 EC	1,89	0	0	0	0	4 EC	1,89
Co-decision	4 EC	1,89	41 EC	19,43	0	0	0	0	45 EC	21,33
Assent	6 EC	2,84	4 EC	1,89	0	0	0 EC	0 EC	10 EC	4,74
	1 EU	2,32					5 EU	11,63	6 EU	13,95
Information	0	0	9 EC	4,26	0	0	1 EC	0,47	10 EC	4,74
							3 EU	6,97	3 EU	6,98
No participation	20 EC	9,47	41 EC	19,43	5 EC	2,37	7 EC	3,32	71 EC	33,65
	9 EU	20,93	8 EU	18,6	4 EU	9,30	6 EU	13,95	27 EU	62,79
Sum	68 EC	32,23	128 EC	60,66	7 EC	3,32	8 EC	3,79	211 EC	
	14 EU	32,56	9 EU	20,93	5 EU	11,63	15 EU	34,88	43 EU	

Calculation based on the final version of the Treaty ; OJEC, C 80/1, 10 March 2001.

The structure of the Union becomes visible in this variety of procedures and institutions. Decision-making methods differ both across the areas of application and across the institutions and bodies involved.¹ The Maastricht Treaty introduced new institutions (Committee of the Regions, the European Monetary Institute which has been transformed into a European Central Bank with the beginning of the third phase to the EMU). This development - repeated in the Amsterdam Treaty² by the creation of new institutions (Employment Committee, Mr./Mrs. CFSP, Policy Planning and Early Warning Unit), and in the Treaty of Nice by the 'recreation' of EUROJUST and the creation of a specific committee dealing with social security issues - is an expression of the dynamic of growth and differentiation of European integration.

Of course, new institutions, rules and procedures are not established in order to inflate the institutional structure of the EU even further. They are deemed to be necessary in order to deal with new monetary or social policy demands and duties of the Union, or to give the EU a single voice or interface for dealing e.g. with third countries and organisa-

- 1 For example, the EC Treaty chapter on EMU contains nine different decision-making procedures: assent of Parliament and unanimity of the Council: two times; co-operation procedure: four times; consultation of Parliament and unanimity of the Council: seven times; consultation of Parliament and qualified majority voting of the Council: seven times; information of Parliament and qualified majority voting of the Council: six times; information of Parliament and unanimity of the Council: two times; unanimity in the Council without any participation of Parliament: three times; qualified majority voting in the Council without the Parliament's participation: nine times; two thirds majority of weighted votes of the Council without the Parliament's participation: once.
- 2 Dehousse, Franklin/Vandamme, Jacques/Le Hardy de Beaulieu, Louis (eds.): Union européenne: quels défis pour l'an 2000?, Bruxelles, PIE 1998; Télo, Mario/Magnette, Paul (eds): De Maastricht à Amsterdam. L'Europe et son nouveau traité, Bruxelles, Editions Complexe 1998; Westlake, Martin

tions. With regard to the Committee of the Regions they are also needed to generate an institutional feedback for the regional and local level of governance.

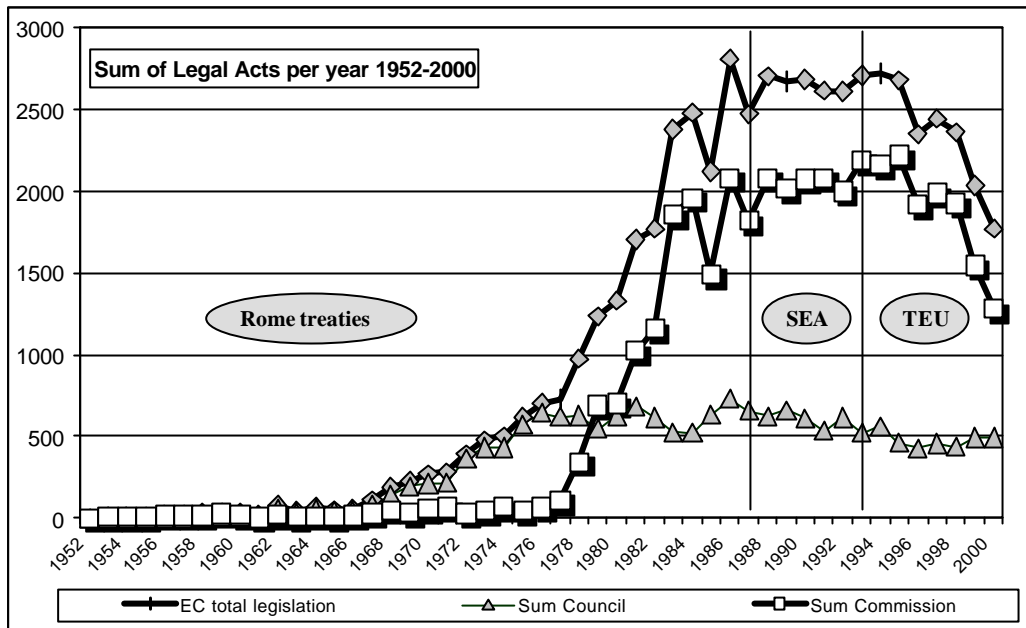
Institutions - “formal or informal procedures, routines, norms and conventions embedded in the organizational structure of the polity or political economy”¹ - do not operate in a political vacuum but in a closely connected system of power distribution in which the architects of the Treaty have implemented them. “Institutions constrain and refract politics, but they are never the only cause of outcomes.”² Whenever new institutions gain specific tasks, they do not use them in isolation but in a framework of already established rules and bodies of political power. Concomitantly this process of institutional growth automatically attains a higher degree of complexity. This is obvious for the actors involved in this decision-making process, but for the citizens of the EU, it is not.

In how far does the EU’s institutional structure affect policy outcomes? If we just take a look at the overall production of legal acts, we observe that the day-to-day output of EC/EU decision-making - taking various forms of regulations and directives towards legislative program decisions and non-binding recommendations - has evolved over the last decades towards 56.610 in December 2000 (Graph 1).

(ed.): L’Union Européenne au-déla d’Amsterdam. Nouveaux concepts d’intégration européenne, Bruxelles: PIE 1998.

- 1 Hall, Peter A./Taylor, Rosemary C.R.: ‘Political Science and the Three New Institutionalisms’, in: *Political Studies*, No. 5/1996, p. 938.
- 2 Thelen, Kathleen/Steinmo, Sven: ‘Historical institutionalism in comparative politics’, in: Steinmo, Sven/Thelen, Kathleen /Longstreth, Frank (eds.): *Structuring politics. Historical institutionalism in comparative analysis*, Cambridge 1992, p. 13.

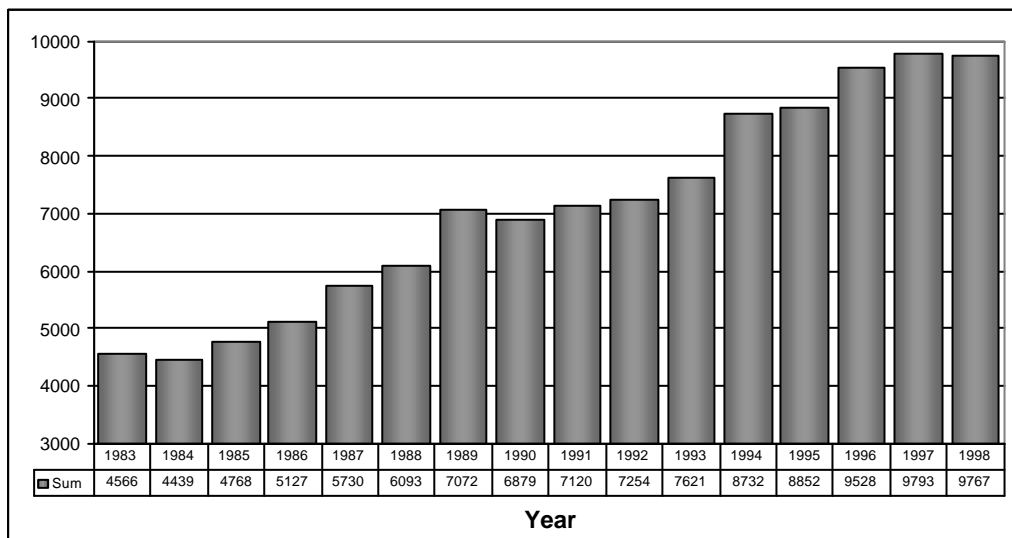
Graph 1: Legal Output of EU Institutions 1952-2000



Source: For 1952-1998 own calculation with CELEX data base. Data on 1999-2000 were provided by the European Commission's Secretariat General. Sums represent every legal event as counted by CELEX. Apart from 'real' secondary legislation, CELEX also refers to executive acts either by the Commission or the Council. Note that from November 1993 onwards, Council legislation also comprises legislative acts by the European Parliament and the Council (co-decision procedure).

A high amount of these decisions is set for relatively short time-periods or regularly replaced by new legislation.

Graph 2: European Legislation in Force 1983-1998



Source: Directory of Community Legislation in Force, Luxembourg, 1984-1999 (December issues). See Maurer/Wessels 2001.

However, during the last decade, the *acquis communautaire* - the legislation in force at a given moment - more than doubled from 4.566 in 1983 towards 9.767 legal acts in 1998. In other terms, the EU member states have exploited the incentives created by themselves in the treaties and their policy provisions. In turn, the EC/EU increasingly entered into the legal space of the member states.

2. *The Democratic Deficit Revisited*

2.1. *A European Demos: Prerequisite or Outcome of European Integration?*

The EU system takes binding decisions, which influence the citizens' ways of living and constrains their individual freedom. As to the theme of our book, the EU system affects national legislatures and the linkage between the citizens and the governing bodies of the member states. Overall, the EU's institutional design faces a multitude of questions as to how representative this system of multi-level governance is, in which way its quasi-executive branches - the Council and the Commission - are accountable to the citizens via a directly legitimated body and how democratic the decision-making procedures between the Union's legislative authorities are. Of course, arguing about parliaments and their potential to provide the European '*Demos*' - functionally, nationally or ideologically different realms of identity and interest formation, mediation and communication - a set of representative voices in the Union's policy cycle does not mean that de-nationalised, supra-national parliamentarism is the only way of bridging the gap between the citizens and the Union. One can easily assume that even after the Nice Treaty has come to force,¹ many scholars and practitioners of European integration will continue to argue that focusing on the 'input' structures of the Union is only one of several ways how governance "beyond the state"² might gain legitimacy.

In this respect, one could also imagine a 'renaissance' of the German Constitutional Court's 1993 Maastricht ruling, which led to a general critique of the EU's parliamentary model. The basic assumption of the Court and later on its protagonist commentators was that a polity presupposes a *demos* in ethno-national or ethno-cultural terms (the "Volk" instead of the "Gesellschaft" or "Gemeinschaft"). Thus, without a single Euro-

1 See on the debate regarding the Nice IGC: Lehne, Stefan: 'Institutionenreform 2000', in: *Integration*, No. 4/1999, pp. 221-230; Kohler-Koch, Beate: 'Regieren in der Europäischen Union. Auf der Suche nach demokratischer Legitimität', in: *Aus Politik und Zeitgeschichte*, No. B 6/2000, pp. 30-38; Best, Edward/Gray, Mark/Stubb, Alexander (eds.): *Rethinking the European Union. IGC 2000 and Beyond, Maastricht 2000*; the special edition of the journal 'Integration' on Nice, No. 2/2001, Wesels, Wolfgang: 'Nice results. The IGC in the EU's evolution', in: *Journal of Common Market Studies*, No. 2/2001; Ludlow, Peter: 'The European Council at Nice: Neither Triumph nor Disaster', in: CEPS (ed.), *A View from Brussels*, No. 10/2001; Whyte, Nicholas: 'The Final Shape of the Union: Taking the Nice Treaty to its logic conclusion', in: CEPS Commentary, 25 January 2001.

2 Jachtenfuchs, Markus/Kohler-Koch, Beate: 'Regieren im dynamischen Mehrebenensystem', in: Jachtenfuchs, Markus/Kohler-Koch, Beate (eds.): *Europäische Integration*, Opladen 1996.

pean people sharing heritage, language, culture and ethnic background, and without a European public space of communication that could shape the wills and opinion of the population, no European statehood could be founded. For those who adopt this view,¹ it is apparent to simply deny the pre-constitutional conditions for further integration and therefore to conclude that in the absence of a single European *demos* there cannot be 'real' democracy at the European level.²

Assume that a socio-political entity, which is willing to produce democratic forms of governance, can not simply dictate structural prerequisites and pre-constitutional elements of the future polity. One could then develop these arguments further to conclude that any attempt of institutional and procedural reform is unreasonable unless the different European *Demoi* are not identifying themselves as part of an emerging European *Demos*. Consequently, if one adopts this perspective, the European Parliament remains an artefact of elitist integration and cannot be considered as a "Vollparlament" (a fully fledged parliament).³ Strengthening the European Parliament by means of institutional and procedural reforms would not lead to any kind of a democratic system. Instead, one should concentrate on the legitimising function of national assemblies, which in turn would then get substantial participation powers back from the European Parliament.

Against this line of analysis, I argue that the EU's story is not only about territory and identity or - in the language of the German Constitutional Court, about culture, shared heritage, language and ethnic belonging. Accordingly I assume that any kind of a supra- or even super-national governance structure without a directly elected parliamentary backbone beyond the one-dimensional structure of national assemblies would pervert the Union into a technocratic regime⁴ or executive oligarchy. This would mean a system

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- 1 Kielmansegg, Peter Graf: 'Integration und Demokratie', in: Jachtenfuchs/Kohler-Koch, Beate, 1996, op.cit., pp. 47-72; Grimm, Dieter: 'Mit einer Aufwertung des Europa-Parlaments ist es nicht getan - Das Demokratiedefizit der EG hat strukturelle Ursachen', in: Jahrbuch zur Staats- und Verwaltungswissenschaft 1992/93, Baden-Baden 1993, pp. 13-18; Grimm, Dieter: 'Does Europe need a constitution?', in: European Law Journal, No. 3/1995, pp. 282-302.
 - 2 For critical views on these interpretations see Weiler, Joseph: 'After Maastricht: Community Legitimacy in Post-1992 Europe', in: Adams, W.J. (ed.): Singular Europe: Economy and polity of the European Community after 1992, Ann Arbor: University of Michigan Press 1992, pp.11-41; Weiler, Joseph: 'Legitimacy and Democracy of Union Governance', in: Pijpers, Alfred/Edwards, Geoffrey (eds.): The Politics of European Treaty Reform. The 1996 Intergovernmental Conference and Beyond. London: Pinter 1996; Weiler, Joseph/Halter, Ulrich/Mayer, F.: 'European Democracy and Its Critique'. West European Politics, No.4/1995, pp. 24-33. Craig, Paul: 'Democracy and Rulemaking within the EC: An Empirical and Normative Assessment'. European Law Journal No. 3/1997, pp. 105-130; Craig, Paul: 'The Nature of the Community: Integration, Democracy and Legitimacy', in: Craig, Paul/De Búrca, Crainne (eds.): The Evolution of EU Law, Oxford: University Press 1999.
 - 3 See Lübke, Hermann: Abschied vom Superstaat. Die Vereinigten Staaten von Europa wird es nicht geben, Berlin: Siedler 1994, p. 147; Schröder, Meinhard: 'Das Bundesverfassungsgericht als Hüter des Staates im Prozeß der europäischen Integration', in: Deutsches Verwaltungsblatt, No. 6/1994, p. 318.
 - 4 See Majone, Giandomenico: 'The Rise of the Regulatory State in Europe'. West European Politics, No. 3/1994, pp. 78-102; Majone, Giandomenico: 'European regulatory state?', in: Richardson, Jeremy (ed.): European Union. Power and Policy-Making, London: Routledge 1996, pp. 263-277.

apt to allocate values and able to deliver common goods, but not subject to any kind of continuous control and never able to guarantee that the ways decisions are taken respect general norms with regard to the rule of law. Therefore, I conceive the ‘parliamentarisation’ of the Union’s decision-making system through both the European and the national parliaments as only one tool, but an essential and necessary one, for building a legitimate European order. The missing ‘*demos*’ is then not a prerequisite, but an ideal product of successful integration and institutional design. In this respect, I refer to Habermas’ analysis on the relationship between institution building and citizenship formation. He argues that “the ethical-political self-understanding of citizens in a democratic community must not be taken as a historical-cultural *a priori* that makes democratic will-formation possible, but rather as the flowing contents of a circulatory process that is generated through the legal institutionalisation of citizens’ communication. This is precisely how national identities were formed in modern Europe. Therefore it is to be expected that the political institutions to be created by a European constitution would have an inducing effect.”¹ In other terms, the “*demos* is constructed via democratic ‘praxis’. [...] Instead of ‘no EU democracy without a European *demos*’, we have ‘no European *demos* without EU democracy’”.² Taking this perspective seriously, I consider the very process of European integration as an ongoing search for opportunity structures, which allow the institutions of the EU’s multi-level system to combine several demands for democracy-building beyond, but still with the nation state. Whether this process leads to the self-identification and further stabilisation of various ‘*demoi*’ or of one single European ‘*demos*’ remains an open question.

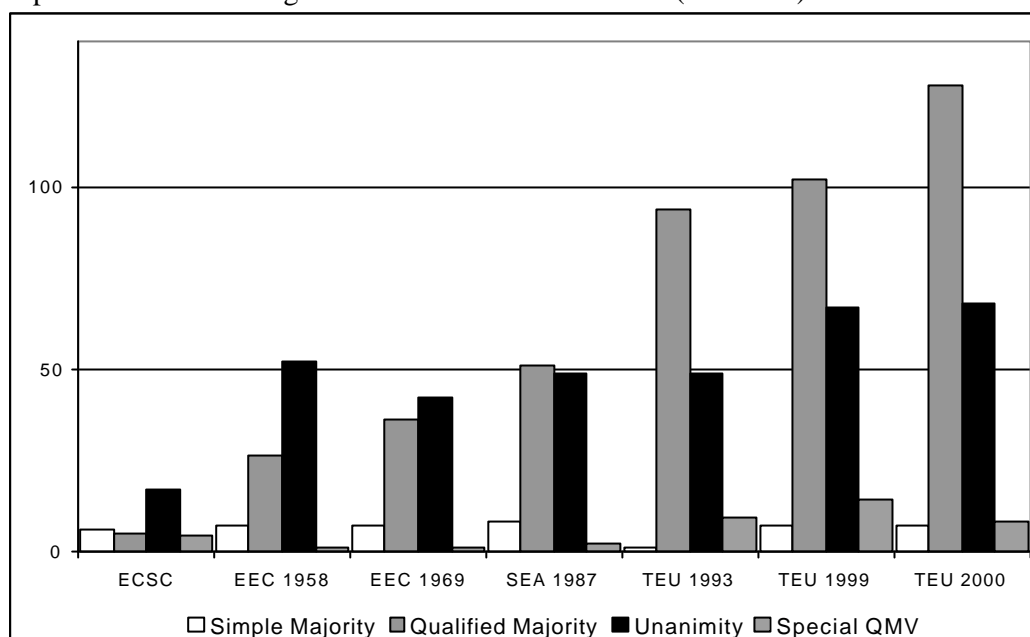
2.2. Majority-Voting in the Council of Ministers: Consequences for National Parliaments

The EU provides an increasing set of procedures for majoritarian decision-making. Graph 3 shows the absolute proportion of the Council’s internal decision-making modalities between 1952 and 1999. It is obvious that the total number of rules providing for unanimity and qualified majority voting (QMV) has considerably increased over time.

1 Habermas, Jürgen: ‘Comment on Grimm’, in: *European Law Journal*, No. 3/1995, pp. 306-307.

2 Hix, Simon: ‘The study of the EU II: the ‘new governance’ agenda and its rival’, in: *Journal of European Public Policy*, No. 1/1998, pp. 38-65.

Graph 3: Decision-Making Modi in the Council 1952-2001 (ECT area) in Absolute Numbers



Own calculation; Source: Original ECSC, EEC, EC and EU Treaties (by time of their entry into force; for 2001: The Treaty of Nice).

However, the organisation of consensus remains an important means of taking decisions even in areas where majority voting is possible according to the Treaties.¹ The rather small share of ‘real voting’ indicates this underlying “culture of consensus”² of the Council and its component members. Used as a ‘sword of Damocles’,³ majority rules facilitate concessions and the common search for consensual decisions. Therefore, one could conceive the EU according to the consociation theory first developed by Lijphart,¹ which emphasises the importance of non-majority mechanisms of decision-making in polities that experience a number of important cleavages, and yet are able to produce common policies and institutions.

1 See Devuyst, Youri: ‘Treaty reform in the European Union: the Amsterdam process’, *Journal of European Public Policy*, No. 4/1998, pp. 615-631; Taylor, Paul: ‘Prospects for the European Union’, in: Stavridis Stelios/Mossialos Elias/Morgan Roger/Machin Howard (eds): *New Challenges to the European Union: Policies and Policy-making*. Aldershot: Dartmouth 1997, pp. 13-41.

2 See Simon Hix: 1999, op.cit., p. 73.

3 See for this kind of Council policy-making ‘in the shadow of the majority vote’ Scharpf, Fritz W.: *Games Real Actors Play, Actor-Centered Institutionalism in: Policy Research*, (Boulder: Westview Press 1997), pp. 191-193.

3. *The Process of De- and Re-Parliamentarisation in the EU*

In this chapter, the alliteration of the ‘democratic deficit’² focuses mainly on the roles and functions of institutions which are designed to represent the different interests of the citizens and to establish different forms of linkage in and for a given polity. I refer to a definition of democracy within the original framework of EU governance: the “institutionalisation of a set of procedures for the control of governance which guarantees the participation of those who are governed in the adoption of collectively binding decisions”.³ This definition does not automatically induce democracy to be synonymous with parliamentary involvement. At least theoretically, there are many ways of securing the participation of the citizenry in governing a given polity. But if we turn to the evolution of the EU over the last decades, we observe a clear trend: the search for establishing some kind of representative governance structures, in which institutions aggregate participation needs and try to fulfil their general function as arenas for making binding decisions, and for structuring the relationship between individuals in various units of the polity and economy.⁴

On that basis, I focus my analysis on the ‘democratic deficit’ as a gap between the institution-linked powers transferred to the EU level on the one hand and the control of the EP and the national parliaments of them on the other hand: It is clear that legislative competencies have constantly been shifted from a national parliamentary level towards the Council of Ministers without immediately including the European Parliament as an equal partner in the EC/EU legislative process at the same time.⁵

1 See Lijphart, 1999, op.cit.

2 Hänsch, Klaus: ‘Europäische Integration und parlamentarische Demokratie’, in: Europa-Archiv, No. 7/1986; Reich, Charles: ‘Qu’est-ce que...le déficit démocratique?’, in: *Révue du Marché Commun*, No. 343/1991; Williams, Shirley: ‘Sovereignty and Accountability in the European Community’, in: Keohane, Robert/Hoffmann, Stanley (eds.): *The New European Community*, Boulder (Westview Press) 1991, pp. 155-176; Neunreither, Karlheinz: ‘The democratic deficit of the European Union: Towards closer co-operation between the European Parliament and the national Parliaments’, in: *Government and Opposition*, No. 3/1994; Pliakos, Asteris: ‘L’Union européenne et le Parlement européen - y a-t-il vraiment un déficit démocratique?’, in: *Révue du droit public et de la science politique et France et à l’Étranger*, No. 3/1995; Birkinshaw, Patrick/Ashiagbor, Diamond: ‘National participation in Community affairs: Democracy, the UK Parliament and the EU’, in: *Common Market Law Review*, No. 33/1996; Follesdal, Andreas: ‘Democracy and the European Union: Challenges’, in: Follesdal, Andreas/Koslowski, Peter (eds.): *Democracy and the European Union*, Berlin/New York/Tokyo: Springer 1998, pp. 1-10.

3 Jachtenfuchs, 1998, op.cit., p. 47.

4 Hall, Peter: *Governing the Economy: The Politics of State Intervention in Britain and France*, New York 1986.

5 For the original definition of the democratic deficit see the so-called Vedel-report of the European Commission 1972, p. 4; and the Toussaint report by Michel Toussaint, PE DOC A 2276/87 of 1 February 1988.

In this sense, the lack of control of governments on the national and of the Council of Ministers on the European level originates a “double democratic deficit”.¹

Of course, those scholars and political actors stressing that national sovereignty resists European integration would argue that decision-making in the EU rests primarily upon the member states and the Council of Ministers and, since Maastricht and Amsterdam, upon the European Council. Thus they would ascribe only a minor role to the European Parliament. However, since Maastricht the real distribution of powers goes far beyond this simple conceptualisation of the Union. Hence, the cumulative process of functional, special-purpose or single-policy oriented integration affects the institutional design and the decision-making process between institutions on European and national - and to a growing extent even sub-national - levels of governance. Accordingly, the process of multi-actor and multi-level co-operation and integration leads to an ongoing “fusion” of national and Community instruments where major actors of the EU member states try to achieve an increase in the effectiveness of preparing, taking and implementing decisions through and with European institutions.² Subsequent ‘constitutionalisations’ of this process - the SEA, the Maastricht, Amsterdam and Nice versions of the TEU - created new opportunities for an original kind of parliamentary democracy in the EC/EU, but they left considerable gaps in parliamentary involvement and control in many policy areas which directly affect the way of living of the Union’s citizens.

Developments after the conclusion of the Maastricht Treaty have led to a loss of public support and made the project of integration more contested than ever within the member states: The post-Maastricht discourse on democracy and democratic governance in the Union seems to have weakened the legitimacy of the Union.³ Moreover, the decline in turnout of European elections indicates that the parliamentarization of the EU’s institutional terrain does not automatically lead to a higher profile of the European Parliament.

4. Characteristics of a Problematic Democracy

The partial or complete transfer of national competencies towards the EC/EU implies an immediate loss of the national parliaments’ legislative powers towards the Council of Ministers, the European Commission and - to a lower degree and at a later stage -, towards the European Parliament. Only after the introduction of the so-called co-operation procedure and the co-decision procedure, the European Parliament gained important rights in the field of EC legislation. But still after Maastricht, Amsterdam and Nice, the

1 See Lodge, Juliet: ‘The European Parliament’, in: Andersen, Svein S./Eliassen, Kjell (eds.): *The European Union. How democratic is it?*, London 1996, pp. 190-191; Laprat, Gérard: ‘Reforme des Traités: Le Risque du double déficit démocratique’, in: *Revue du Marché Commun*, No. 351/1991, p. 721.

2 See Wessels, 1996, op.cit.

3 See Telò, Mario: ‘Démocratie internationale et démocratie supranationale’, in: Telò, Mario (ed.): *Démocratie et Construction Européenne*, Brussels: Editions de l’Université de Bruxelles 1995, p. 18.

transfer of national parliamentary powers to the European level has not entailed a complete and direct transfer of these originally legislative powers to the European Parliament.

As regards the national level of policy-making in EC/EU politics, this loss of legislative powers in the upstream process of policy-making may be compensated by an increase in the national parliament's control function vis-à-vis their governments.¹ Hence, since the German Bundesrat's decision of 1957 to create a special EC affairs committee, national parliaments established institutions, general norms and procedures in order to scrutinise their governments in the EC decision-making process more effectively. Nevertheless, the degree of parliamentary scrutiny might vary a lot. Given different concepts and meanings of 'control', 'participation', and 'scrutiny', it ranges from simple ex-post information rules to mandatory procedures.² Although some parliaments are provided with a high and comprehensive amount of EC documents, they do not necessarily influence their governments' stance in the Council of Ministers: Their effective impact on the formation of national views did not only depend on the amount and type of documents, but also on the timing, institutional capacities and personal resources available to deliberate efficiently and effectively on a given document.

5. Bringing National Parliaments Back into the Process: Institutional Reform from Maastricht to Amsterdam

In view of the ratification of the Treaty on European Union (TEU) and the referenda held in Denmark, Ireland and France, the results of the Maastricht IGC in some cases led to extensive constitutional reforms amending the role of national parliaments in European Union affairs.³ These changes occurred in a situation when public opinion in Europe became more critical vis-à-vis the integration process and its achievements. National parliaments faced problems which cast more and more doubts on their institu-

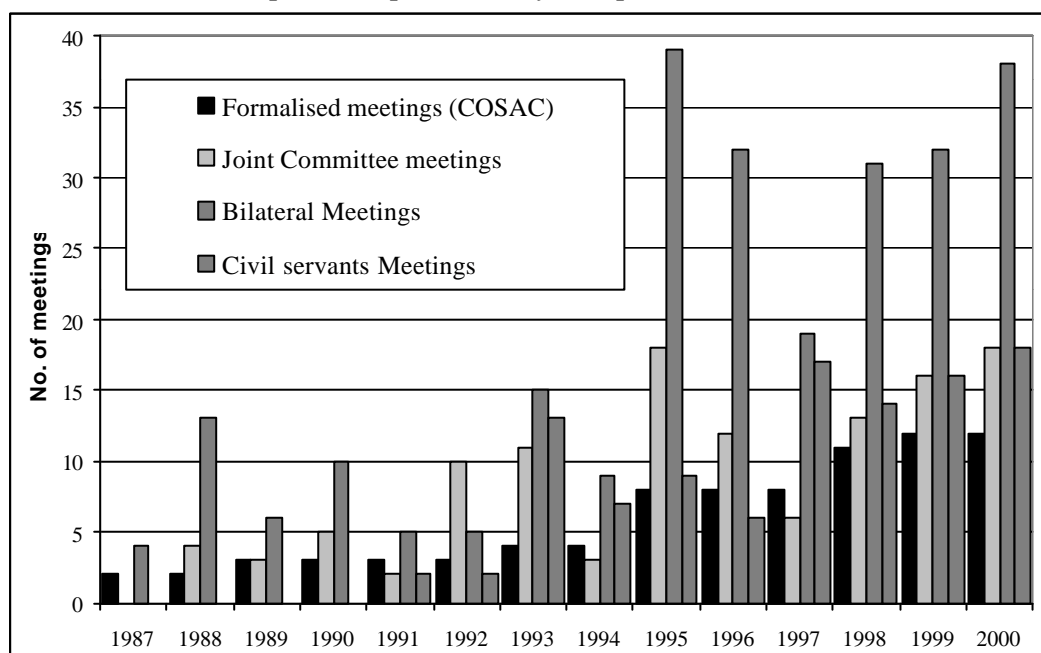
1 Schüttemeyer, Suzanne: 'Funktionsverluste des Bundestages durch die europäische Integration?', in: *Zeitschrift für Parlamentsfragen*, No. 2/1979, p. 261.

2 See the contribution by Andreas Maurer and Wolfgang Wessels in this volume. For earlier findings, see Laprat, Gérard: 'Parliamentary Scrutiny of Community Legislation: An Evolving Idea', in: Laurson, Finn/Pappas, Spyros (eds.): *The Changing Role of Parliaments in the European Union*, Maastricht: European Institute of Public Administration 1995, pp. 4-10; Norton, Philip (ed.): *National Parliaments and the European Union*, Special Issue of *The Journal of Legislative Studies*, No. 3/1995.

3 See the chapters on the constitutional provisions in the contributions by the authors of the country studies in this volume. For earlier findings, see also: Masclet, Jean-Claude/Maus, Didier (eds.): *Les Constitutions nationales à l'épreuve de l'Europe*, Paris, 1993; Battis, Ulrich/Tsatsos, Dimitris/ Stefanou, Dimitris (eds.): *Europäische Integration und nationales Verfassungsrecht*, Baden-Baden, 1995; De Berranger, Thibaut: *Constitutions nationales et construction communautaire*, Paris 1995; Duina, Francesco G./Hall, John A.: *Harmonizing Europe: Nation-States within the Common Market*, New York 1999; Hanf, Kenneth/Soetendorp Ben (eds.): *Adapting to European integration. Small States and the European Union*, London 1998; Ismayr, Wolfgang (ed.): *Die Politischen Systeme Westeuropas*, Second Edition, Opladen 1999.

tional position and procedural function. This was a new development, since national parliaments were not actually granted a significant role when the Treaty of Rome was signed in 1957. Following proposals expressed by the United Kingdom and France, the Maastricht Treaty included a declaration on the role of national parliaments in the EU.¹ Accordingly, the governments were asked to ensure “that national parliaments receive Commission proposals for legislation in good time for information or possible examination”. This declaration constituted a discretionary provision without any binding legal effect but a welcomed source for further political debate and conflict between governments and parliaments. Moreover, the declaration was used for intensified debates between national parliaments and the European Parliament on the effectiveness of different parliamentary levels in EU affairs. As graph 4 shows, the Maastricht Treaty’s declaration provided a fresh momentum for restructuring interparliamentary co-operation on the level of committees and civil servants.

Graph 4: Interparliamentary Co-operation 1987-2000



Source: Maurer, Andreas: *Parlamentarische Demokratie in Europa*, Gießen 2001; calculation on the basis of the internal databases of the EP’s Directorate for relations with national parliaments.

1 See the documentation by Astrid Krekelberg in this volume, document No. 1.1. See also Corbett, Richard, *The Treaty of Maastricht*, London 1993, pp. 61-62; Maurer, Andreas: ‘Demokratie in der Europäischen Union nach Amsterdam’, in: *Internationale Politik und Gesellschaft*, No. 4/1997, pp. 425-442.

6. *The Amsterdam IGC Process in Retro-Perspective*

The 1996/1997 Intergovernmental Conference (IGC) on the revision of the Treaty on the European Union attracted greater attention, interest and expectations in the national parliaments of the EU member states than any of the revisions and extensions of the Treaties establishing the EC's carried out hitherto. This was closely tied to the question of what institutional role the European Parliament and the national parliaments should play in the Union.

6.1. National Political Parties' Attitudes: Polarisation as a Background Factor?

The 'devolution' of the 'permissive consensus' in public opinion goes hand in hand with a differentiation of party positions concerning the institutional and procedural design of the EC/EU system. As mass aggregators, political parties are slow adapters to new political circumstances.¹ If we compare the evolution of party positions with regard to European integration between 1986/1988 (SEA period) and 1995/1998 (Amsterdam period), we identify a certain polarisation of parties with regard to the positioning on the institutional structure of the EU. During the SEA-period institutional reflections were based on rather general questions: Should the European Community move to some kind of a Political Union? Should the EP and the European Commission be granted with new powers and/or more influence vis-à-vis the Council and the Member States? Should unanimity be replaced by qualified majority decisions? Positions favouring the European Parliament as *the* EU's democratic backbone were put forward in the majority of the founding member states and in the countries of the Southern Enlargement. On the other hand, most of the parties in France, the UK, and Denmark defended a more inter-governmental approach, according to which national parliaments should have a greater say in European decision-making.

1 See Schmidt, Manfred G.: 'When parties matter: A review of the possibilities and limits of partisan influence on public policy', in: *European Journal of Political Research*, No. 2/1996, pp. 155-183; Müller, Manfred: 'Political parties in parliamentary democracies: Making delegation and accountability work', in: *European Journal of Political Research*, No. 3/2000, pp. 309-333; .

Table 2: Party Orientations with Regard to the EU's Institutional System: Roles of Parliaments

SEA period 1986/1988														
	B	DK	D	GR	E	F	IR	IT	LUX	NL	UK			
TCS	PSC		SPD, CDU, FDP					DC, PCI						
EP+	CVP, PSC, PS	Venstre	SPD, CDU, FDP,	PASOK, ND	PSOE, AP, PDP, CDS, PNV, CIU	PS, MRG, PRS, CDS	PD	DC, PCI, PSI, PRI, PSDI, PR	PSC/- CSV, LSAP	PvdA, VVD, D66	LD			
EP-		SD	Greens								CON			
NP+		SD, KF				RPR, UDF				SGP				
Amsterdam period 1995/1998														
	B	DK	D	GR	E	F	IR	IT	LUX	NL	A	SF	S	UK
TCS	PS		CDU, FDP, SPD, B90/G	PASOK, ND	CIU, EA, ERC, PA, UV, HB		FG, PD	PPI		GL, D 66	SPÖ, LIF		KDS	LD
EP+	PSC, PS, CVP	SD	CDU, SPD, B90/G, FDP	PASOK, ND	PSOE, CIU, EA,	PS, FD, MRG	PD, LP	PPI, PDS, PRI	LSAP, PCS/- CSV, DP	PvdA, CDA, D 66, GL	ÖVP, SPÖ, Grüne, LIF	SSP	SD, FPL, KDS	LP, LD
EP-		SF												
NP+	PSC	SD, KF, SF, Venstre	SPD, B90/G		PSOE, PP	RPR, UDF, FD, PS		PRC	PCS/- CSV, LSAP, DP	SGP/ RPF/ GPV, VVD, D 66	ÖVP, FPÖ	SSP, KK, VF	SD, M, MP, KDS	CON, LP, SNP
CNP						RPR, UDF			DP				MP	

Legend: Construction of a EU bicameral system with EP and Council of Ministers (TCS); Strengthening of the EP (EP+); Against a strengthened role of the EP (EP-); More control powers to national parliaments: (NP+); In favour of a Chamber of NP: (CNP). Source: Maurer 1998, pp. 329-337.

Since the beginning of the Maastricht IGC, parties started to differentiate their profiles with regard to the institutional design of European integration. The pro-supranational stance was still defended by those parties, which were in the boat before. Additionally, the French Socialists now also asked for a rather unconditional strengthening of the EP. The Austrian SPÖ, ÖVP and the LIF, the Finnish SSP, and parts of the Swedish SD, FPL and KDS, and the British Labour Party shifted towards a more positive view of supranational institutions. Interestingly, smaller opposition parties also started to favour the EP. Especially the Greens, which in the first period belonged to a camp of general Euro-scepticism, started to focus on the EP, because they realised their influence - through the rapporteur-based legislative work of the EP - in policy-making. However, the post-Maastricht period is also marked by a growing group of parties that reflect institutional-procedural elements for 'compensating' the assumed strength of supranational institutions: Hence, all parties except the Greek and Irish asked for a stronger role of national parliaments in order to control European policy at the national level. Parties in the UK, France and Denmark substantiated their critical opinions on the EP by underlining the missing linkage between the EU citizenry and the EP and the validity of national legislatures for legitimising EC/EU lawmaking. On the other hand, parties in Germany, Austria, and the Benelux countries intensified their discourse in favour of the EP while underlining that national parliaments should strengthen their positions unilaterally, i.e. via constitutional reforms in the member states.

Summing up, the vast majority of national parties still support to a large degree the European integration process. Political parties of governing majorities ground their European policies basically on a broad pro-integration attitude. Changes in government had only limited impacts on the basic perceptions of European policies of the member states and on the structure for running the EU machinery. Thus, the growing degree of public mistrust did affect the elite driven machinery only to a limited extent. New formations of government have led in no case to a completely new formulation of the 'national strategy' on the EU construction.¹ Apart from France and the UK, both governmental and opposition parties approve the integration process sharing an overall consensus. However, we witness a small number of parties opposing further integration and - more important - in some cases an increasing internal party factionalism on the strategy towards European integration. The Maastricht Treaty and the negotiations on the Amsterdam Treaty thus induced some kind of a pro- versus anti-European 'cleavage' in national party systems. The salience of the EU and critical voices have led to an additional dividing line between (UK, F) or within parties (F, S and DK). However, the

1 See also van der Eijk, Cees/Franklin, Mark: 'European Community Politics and Electoral Representation: evidence from the 1989 European Election Study', in: *European Journal of Political Research*, No. 19/1991, pp. 111-123; Andeweg, Rudy: 'The Reshaping of National Party Systems', in: *West European Politics, Special Issue on: The Crisis of Representation in Europe*, No. 3/1995, pp. 58-78.

strict distinction between 'left' or 'right' oriented parties is not availing.¹ Only far right (D, A, DK, S, F) and left wing parties (DK, S), or religious parties (NL) as well as conservative parties (UK, I) favour a re-nationalisation in particular policy fields in combination with a strengthened role for national parliaments.²

6.2. Concepts and Proposals with regard to the Amsterdam Treaty

What was Amsterdam about in terms of parliamentary democracy? Comparing relevant documents produced during the IGC process,³ the proposals made under the headings of 'democratisation' and 'parliamentarisation' can be classified as follows:

The first option was based on the assumption that the European Parliament performs as the general feedback of EU citizens in European governance. Assuming the European Parliament to perform as the main parliamentary European player (see square 2 in Figure 1) in EU policy-making, this option focused on its legislative roles without considering national parliaments. Accordingly, key actors in the IGC concentrated on democratisation by reforming the decision-making procedures through an extension of the areas covered by the co-decision procedure. The strategies to be employed were:

- A systematic conjunction of the different types of decision-making procedures and the institutions to be involved on the one hand and the nature of the different legal acts at the EC/EU's disposal on the other. This approach would have suggested some kind of a hierarchy of norms like it might be derived from the legal definition of the Council acting as legislator.⁴ During the negotiations, the Com-

1 See Hix, Simon: 'The emerging EC party system? The European party federations in the intergovernmental conferences', in: *Politics*, No. 2/1993, pp. 38-49; Hix, Simon: 'The transnational party federations', in: Gaffney, John (ed.): *Political Parties in the European Union*, London 1996, pp. 308-331; Niedermayer, Oskar: *Europäische Parteien? Zur grenzüberschreitenden Interaktion politischer Parteien im Rahmen der Europäischen Gemeinschaft*, Frankfurt am Main/New York 1983; Ladrech, Robert: *Europeanisation and Political Parties: Towards a Framework of Analysis*, *Queen's Papers on Europeanisation*, No. 2/2001.

2 See Maurer, Andreas: 'Der Wandel europapolitischer Grundorientierungen nationaler Parteien in der Europäischen Union', in: Jopp, Mathias/Maurer, Andreas/Schneider, Heinrich (eds.): *Europapolitische Grundverständnisse im Wandel, Analysen und Konsequenzen für die politische Bildung*, Bonn 1998, pp. 301-364.

3 See Jopp, Mathias/Maurer, Andreas/Schmuck, Otto (eds.): *Die Europäische Union nach Amsterdam. Analysen und Stellungnahmen zum neuen EU-Vertrag*, Bonn 1998; Jörg/Wessels, Wolfgang (eds.): *The European Union after the Treaty of Amsterdam*, London: Continuum 2001; McDonagh, Bobby: *Original Sin in a Brave New World, An Account of the Negotiation of the Treaty of Amsterdam*. Dublin, Institute of European Affairs 1998; Moravcsik, Andrew/Nicolai dis, Kalypso: 'Federal Ideals and Constitutional Realities in the Treaty of Amsterdam', in: *Journal of Common Market Studies*, Annual Review, Vol. 36/1/1998, pp. 13-38; Moravcsik, Andrew/Nicolaidis, Kalypso: 'Explaining the Treaty of Amsterdam. Interests, Influence, Institutions', in: *Journal of Common Market Studies*, No. 1/1999, pp. 59-85; Pollack, Mark A.: 'Delegation, Agency and Agenda Setting in the Treaty of Amsterdam', in: *European Integration online Papers EIoP* Vol. 3/1999 No. 6.

4 See Rules of Procedure of the Council of Ministers, Annex, OJ L304/7 of 10th December 1993. Originally, the joint declaration of the then German and Italian Foreign Affairs Ministers Kinkel and

mission published a comprehensive report on the method of extending the coverage of co-decision based on the definition of EC legislation.¹

- A systematic association of decision-making mechanisms in the Council of Ministers and decision-making procedures between the Council and the European Parliament. Protagonists of this approach suggested the introduction of co-decision in all cases where the Council decides by qualified majority.²
- The simple transfer of the existing co-operation procedures into co-decision procedures.³
- A policy oriented and single (national) interest guided re-ordering of decision-making procedures. Protagonists of such an approach regarded the European Parliament as a potential coalition partner in order to enforce or to block decisions in specific policy areas.⁴

The second strategy for the democratization of EC/EU decision-making procedures was discussed with regard to the roles of the national parliaments. These proposals assumed that national parliaments could move from their position of a 'Slow adapter' (square 4 in Figure 1) to a position of a 'National player' (square 3 in Figure 1).

Agnelli were strongly in favour of classifying the decision-making system of the Union according to this approach.

- 1 See Europäische Kommission, Bericht gemäß Artikel 189 Absatz 8 des EGVs: Anwendungsbereich der Mitentscheidung, Europäische Kommission, Dok. SEC(96)1225 final, 3 July 1996. The European Parliament, in its Bourlanges/De Giovanni report of 7th November 1996, largely welcomed this approach but suggested a more coherent way of separating 'legislative' from 'non-legislative' acts. The main variable for identifying an area as subject to co-decision was the legal nature of legislation, its scope and its implications. However, apart from Germany, Greece and Italy, the member states delegations did not develop further this approach.
- 2 Consequently, the success of this strategy largely depended on the reform of the Council's own decision-making regime. The fact that after Maastricht the Council still had to decide unanimously in 57 ECT cases in the field of the EC's binding secondary legislation seemed to be characteristic for the incapability of acting as one Union of fifteen member states. The unanimity requirement in the Council of Ministers serves as a serious obstacle to efficient policy-making. The refusal strategy of the British government in the 'BSE/mad-cow disease conflict' in the preliminary stage of the Florence European Council highlighted this problem to a remarkable extent. However, negotiations on the reform of the Council's voting mechanisms and on the extension of the areas governed by the Damocles-sword of majority voting were not successful. Since no compromise could be found between the larger and the smaller member states, the IGC postponed the whole issue of adjusting these representative aspects of institutional reform to the next enlargement round.
- 3 Right from the beginning of the preparatory 'reflection' phase on the IGC, Austria, Belgium, Germany, Italy, Luxembourg, the Netherlands and Portugal argued strongly in favour of deleting the co-operation procedure and its replacement by the co-decision procedure. During the negotiations between the member states delegations, this approach attracted the highest degree of sympathy. However, since an early agreement could be found not to reopen the Treaty provisions on EMU, it was likely that four co-operation procedures would be retained.
- 4 Given their general attitude of reforming the procedural set-up of the Union on a case-by-case basis, the governments of Finland, Ireland, Portugal and Sweden preferred this approach. Especially Sweden, where a majority of the political parties in government were reluctant vis-à-vis a general strengthening of the European Parliament, linked its 'parliamentarisation'-suggestions to proposals on the improvement of policy areas such as environmental and social affairs.

During the IGC negotiations, the national delegations of France¹, the United Kingdom² and Denmark³ tabled concrete proposals calling for a strengthened role of national parliaments in the EC/EU decision-making process. The proposals varied between

- those who opted for the introduction of direct participatory or control powers for national parliaments within the legal framework of the EC/EU. These options tempted to provide national parliaments with key opportunities to perform as 'Multi-level players' (square 1 in Figure 1);
- the introduction of a provision within the EC/EU Treaty framework guaranteeing national parliaments some unilateral control mechanisms vis-à-vis their respective governments, and
- the formal upgrading of existing multilateral scrutiny regimes bringing together members from both the European Parliament and the national parliaments.⁴

In addition to these 'official' proposals, several ideas had been suggested by parliamentary actors to institutionalize the roles of national parliaments in the European policy process.

The former President of the French National Assembly, Séguin, proposed the establishment of a *second chamber*.⁵ In this body, national parliaments would play the role of a lower chamber and the European Parliament that of an upper chamber. Sir Leon Brittan's proposal for the establishment of a *Council of National Parliaments* was similarly designed to directly involve national parliaments in the Community decision-making process. This Council of National Parliaments was supposed to discuss the Commis-

1 See France: 'Pour une implication renforcée des parlements nationaux dans la construction européenne', 5 June 1996. A more concrete proposal for an amended Protocol on the application of the principle of subsidiarity was presented on 26 November 1996: France: 'Principle of subsidiarity', CONF/3990/96. A new Article 6 of the Protocol institutionalised COSAC as the body to 'be consulted on each Presidency's broad guidelines and on the Commission's work programme. It shall submit its opinion to the Council, the European Parliament and the Commission.' Finally, the French delegation proposal on the reform of the Third Pillar also made reference to the role of national parliaments in the subject area. See France: 'Third Pillar', CONF/3824/97, 19 February 1997.

2 See United Kingdom proposal on the role of National Parliaments in the European Union, CONF/3961/96, October 1996. As to the draft protocol on the role of national parliaments, the UK delegation submitted some amendments on 11 April 1997. See United Kingdom: 'National Parliaments', CONF/3871/97, 11 April 1997.

3 See Denmark: Memorandum on the fight against fraud, Consumer Protection, Subsidiarity and National Parliaments, 1 November 1996. The official proposals were submitted on 13 November 1996: Denmark: 'Subsidiarity and national parliaments', CONF/3982/96. The paper suggested to include a new article into the TEU, which would then mandate the EP, the Commission and the Council for a joint agreement on the 'conditions governing information, involvement and Co-operation in respect of national parliaments.' In addition, the Danish delegation proposed a declaration on national parliaments in the Final act of the IGC, which would encourage the EU institutions to conclude the joint agreement before 31 December 1998.

4 For an overview about the different approaches see the Presidency Introductory Note on the role of national parliaments in the EU's legislative process, CONF/3902/96, 9 September 1996, and the Presidency Suggested Approach with regard to the subject matter: CONF/3948/96, 15 October 1996.

5 See Le Figaro, 7 December 1994.

sion's draft legislative program and directives at first reading stage.¹ In a report submitted by the French Senator Guèna (RPR), the Senate's Delegation for European Union Affairs also proposed the creation of a *Second chamber of national parliaments* for the European Union's CFSP and justice and home affairs policies. The report moreover advocated that this chamber should have an overall competence in the areas of the own resources system in the Community budget, the enlargement of the Union, the association agreements and the monitoring of compliance with the subsidiarity principle.² In its report adopted on 7 February 1995, the French National Assembly's Delegation for the European Union advocated a stronger role for national parliaments by involving them collectively in the EC's decision-making process prior to any final decision by the Council.³ Therefore, the report proposed to set up an *Interparliamentary committee* comprising a small but equal number of representatives of each national parliament. The committee should hold monthly meetings to vote for or against given texts, without having the power to amend them. Its sphere of competence was proposed to cover major decisions facing the European Union - revision of the Treaties, international agreements, enlargement, budgetary affairs as well as home and legal affairs - together with monetary and defense matters. In addition, the interparliamentary committee should scrutinize EC draft legislation with regard to the subsidiarity principle.

The position of the French Parliament changed slightly after the Madrid COSAC meeting of 7 and 8 November 1995. Dropping the idea of a *Second chamber* and amending that of an *Inter-parliamentary* committee, the Parliament now proposed to institutionalize COSAC by giving it, in particular, the possibility of stating a position, in a consultative capacity, on EC projects that are the subject of an exception from subsidiarity raised either by a national parliament or by the Committee of the Regions. Finally, the constitutional reform adopted by the French Congress (Assembly and Senate) in July 1995 does not include any of the proposals which had been put forward to strengthen parliamentary scrutiny of EC/EU legislation. However, the report of the French National Assembly's Delegation for European Union Affairs also called for the direct participation of the national parliaments in the decision-making process before the Council takes its decisions. The setting up of an interparliamentary committee composed of a limited, equal number of representatives of each Member State was aimed to ensure this direct involvement of national parliaments within the institutional realm of the Union.

1 See Sir Leon Brittan: *Europe: The Europe We Need*, London: Hamish Hamilton 1994, p. 227.

2 See Sénat, *Rapport d'information fait au nom de la délégation du Sénat pour l'Union européenne sur la réforme de 1996 des institutions de l'Union européenne*, Tome II: Annexes, par Yves Guèna, 15 février 1995.

3 See Assemblée nationale, *Rapport d'information déposé par la délégation de l'Assemblée nationale pour l'Union européenne, sur les réformes institutionnelles de l'Union européenne*, 8 Février 1995, par Nicole Catala et Nicole Ameline.

According to the report, this committee was designed to approve or oppose certain texts at monthly meetings of limited duration without being able to amend them.¹

The other national parliaments were at least critical if not negative in their attitude towards the creation of a separate body for national parliaments. Their argument held that the introduction alongside the EC/EU bodies of an institution representing - in theory and by derivation from Community law - the same, or broadly the same, interests as the Council would threaten not only the European Parliament's institutional position but also the institutional balance required by the EC Treaty and the whole institutional structure of the Community.² Given the strong reluctance of the majority of the member states' parliaments and governments as well as of the EU institutions, the concept of institutionalizing COSAC seemed unlikely to perpetuate interparliamentary co-operation. The mainstream argument against such an increased role held that the further institutionalization of COSAC would have had the contradictory effect of distorting the democratic foundations for the legitimization of parliamentary control and law-making activities in the Community.

In turn, proposals to strengthen the unilateral supervisory powers of national parliaments vis-à-vis their governments flourished in all EU member states. The Danish Folketing advocated an increase in influence of the national parliaments' European affairs committees: In concrete terms, the Folketing suggested to appoint an official to represent each parliament in Brussels, and to establish closer but informal co-operation within COSAC as well as closer multilateral co-operation between equivalent parliamentary committees in all the parliaments of the Union.³ The Danish Government put forward further proposals: the incorporation of a specific reference to the role of national parliaments in the TEU, and the provision of an opportunity for national parliaments to deliver an opinion during the preliminary legislative phase on Commission proposals before they are officially submitted to the other EU institutions.

The German Bundestag called for a stronger role of the European Parliament and the national parliaments in intergovernmental activities, but strongly opposed any kind of formalization of COSAC. The Finnish Parliament pointed out that national parliaments should have access to Commission proposals and to the documents of Commission preparatory working parties. The Finnish Government underlined the necessity of making co-operation between the European Parliament and national parliaments more efficient

1 Ibid., pp. 98-100.

2 For an overview on the positions of all national parliaments see European Parliament, DG II/Division for relations with the Parliaments of the member states: Stage reached in discussions within the national parliaments on the IGC in 1996, Brussels, 8 December 1995. See also: Assemblée nationale (30.3.1995): Rapport d'information déposé par la délégation de l'Assemblée nationale pour l'Union européenne sur la XIIe COSAC, tenue à Paris les 27 et 28 février 1995, par Robert Pandraud.

3 Ibid.; and European Parliament, DG II/Task Force IGC 1996/1997: Briefing on the role of national parliaments, Briefing No 6, Luxembourg, March 1996.

within the existing framework of declaration No. 13 of the TEU. For the Luxembourg Government, MEP Charles Goerens wrote an extensive report on strengthening the unilateral control functions of national parliaments. He believed that with respect to parliamentary scrutiny of Community affairs a kind of 'charter' should be considered to guarantee "minimum obligations which all governments would be likely to accept vis-à-vis their parliaments".¹ In his view, the best method would be to incorporate the "minimum obligations of governments vis-à-vis the national parliaments" in the EU Treaty's corpus and "to strengthen the Community institutions' obligations - already set out in the Treaty - vis-à-vis the European Parliament."² He therefore proposed more extensive powers of scrutiny, specified in the Treaties, for the national parliaments in respect of their government's action. The United Kingdom took a view similar to that of Denmark. The White Paper on the Government's approach to the IGC of 12 March 1995, stressed that the Maastricht Declaration No. 13 should become legally binding through integrating it into the Treaty. In addition, a minimum period for national parliaments should be introduced in order to scrutinize Community documents and draft legislation.

The European Parliament's Committee on Institutional Affairs authorized Anne-Marie Neyts-Uyttebroeck for a report on the relations between the European Parliament and the national parliaments. This report synthesized a broad range of activities of the EP in order to voice the demands of both national parliaments and of the EP vis-à-vis the IGC. Hence, during the course of 1995-1996, the two EP observers at the IGC, Elisabeth Guigou and Elmar Brok, as well as the EP's President, Klaus Hänsch, held several bilateral meetings with delegations of each national parliament. Moreover, the EP's Committee on Institutional affairs organized two specific hearings with all EU affairs committees. The Neyts-Uyttebroeck draft report was debated at 17 occasions in the Committee, which invited all national parliaments to participate actively in these meetings.

The EP's draft report needs to be considered as its direct reaction to the Dublin COSAC meeting of 16 October 1996, which for the first time adopted conclusions on the reinforcement of Declaration No. 13 of the TEU. Hence, the COSAC delegations unanimously agreed to propose a minimum period of at least four weeks for the examination of EC and EU documents before the Council's meetings.³ The EP tried to cope with this initiative by formulating a comprehensive contribution on the subject matter for the Amsterdam IGC. By adopting the report on 12 June 1997, the EP identified general problems of parliamentary scrutiny in a number of specific areas: CFSP, CJHA, EMU,

1 See Goerens, Charles: Die Rolle der Parlamente in der Europäischen Union von Morgen. Bericht für Ministerpräsident Jean-Claude Juncker, Luxembourg 1996.

2 Ibid.

3 See XV. COSAC, Dublin, 15-16 October 1996, Conclusions, <http://www.cosac.org>. For the overall minutes of the meeting, see Houses of the Oireachtas: Report on the XVth COSAC meeting, Ireland, 15/16 October 1996, Dublin 1996.

agricultural policy, international trade agreements and amendments to the Treaties. It also considered that the advent of “enhanced co-operation” between certain member states would create new problems with regard to an effective parliamentary oversight. Given the COSAC’s own demands for a strengthened role of national parliaments, the EP considered that minimum time limits should be imposed for the examination of EU legislative documents. It also suggested to resolve various practical problems such as the proposed four-week notice for legislative and non-legislative documents, the definition of what should be qualified as ‘legislative’, the conditions governing urgent demands and the assurance of maximum openness in relation to conciliation undertaken under the co-decision procedure. Finally, the EP called for an increased co-operation between the parliaments of the European Union and the European Parliament at various levels, especially within the framework of joint meetings of national parliamentary committees and the committees of the European Parliament with responsibilities in the same area, bilateral committee meetings and meetings between rapporteurs and representatives of the corresponding political groups.

6.3. The Protocol on the Role of National Parliaments

The negotiations on these proposals lead to the insertion of the “Protocol on the role of National Parliaments in the European Union” (PNP) into the Amsterdam Treaty.¹

The PNP addresses both the issues of the scope of information for parliaments, the timing of parliamentary scrutiny, and the institutional provisions for locking interparliamentary co-operation into the inter-institutional framework of the EU. Following the proposal of the governments of France, the United Kingdom and Denmark, the Dublin COSAC as well as the EP’s report on the subject matter, the PNP holds the following:

Firstly, national parliaments shall receive all pre-legislative Commission documents such as green and white papers or communications. These documents shall promptly be forwarded to national parliaments. However, the Protocol does not answer the question whether the governments of the member states, the European Commission or any other European institution will provide the parliaments with these documents. Instead, it simply stipulates each Member State may ensure that its own parliament receives the proposals ‘as appropriate’. Thus the PNP does not oblige the governments to send all legislative proposals to their parliaments, or if this duty should be ‘scapegoated’ to another body. Secondly, the PNP implicitly excludes several types of documents of the general provision from the transmission of legislative proposals to national parliaments: all documents falling under the second pillar of Common Foreign and Security Policy (CFSP), all documents concerning the entry into enhanced co-operation, all documents prepared by member states for the European Council, and all documents falling under

1 See the documentation by Astrid Krekelberg in this volume, document No. 2.

the procedure of the 'Protocol on the integration of the Schengen acquis into the framework of the European Union'.

The PNP also includes a commitment on the management of how parliaments are to be informed about the EU's rolling agenda. At first, the Commission shall ensure that any legislative proposal is 'made available in good time'. Then, a six week period between issuing a "legislative proposal or a measure to be adopted under Title VI" (Police and Judicial Cooperation in Criminal Matters) TEU and its discussion or adoption by the Council has to elapse. These two provisions are geared to allow the governments to inform their parliaments about the proposal and leave time for discussion. However, the protocol does not constrain the governments to really use the time provided by the Community institutions for informing their parliaments. Thus, it is up to the parliaments and their governments to negotiate on the content and the procedures to be applied for the implementation of the PNP.

Besides the provisions on the improvement of unilateral parliamentary scrutiny mechanisms, the PNP also recognized COSAC as a contribution to a more effective participation of national parliaments in EC and EU Affairs. The PNP specified three areas for deliberation within the COSAC framework: COSAC may examine "any legislative proposal or initiative in relation to the establishment of an area of freedom, security and justice", "legislative activities of the Union, notably in relation to the application of the principle of subsidiarity" and "questions regarding fundamental rights". Thus, the PNP directly leads to the question whether COSAC may become the appropriate body for these issues. The fact that the PNP's Chapter II focuses on the area of freedom, security and justice and on the fundamental rights policies reflects the political and legal sensibility of these issues in the EU member states. If we add this specification to the consultative role of the EP in the relevant policy area, we observe the introduction of a certain kind of 'three-level-scrutiny-mechanism': Firstly, the EP is to monitor the European level of decision-making in the First and the Third Pillar. Secondly, provided that they organize their scrutiny mechanisms effectively, the national parliaments may unilaterally monitor their governments on matters falling under this policy area. Thirdly, COSAC is enabled to deliberate these issues between the EP and the national parliaments.

There are at least three shortcomings with regard to the implementation of the PNP: First, the PNP does not improve the lack of parliamentary control with regard to the CFSP/ESDP pillar. The European Union's Foreign and Security policy may not be simply conceived as a 'domaine réservé' of the Council and its administrative substructure. Democratic control of these policy fields is completely excluded. Secondly, neither the EP nor the national parliaments or COSAC can monitor the process of transferring the 'Schengen acquis' into the EC/EU area. If this lack of democratic control may be reduced due to further negotiations on both the European and the national level, a third structural problem will certainly not be resolved in the next years: COSAC Delegations are constituted by MP's of the Committees responsible for handling EC/EU affairs and

not of the Committees on civil liberties, justice and/or home affairs. Therefore, it is hardly conceivable how MP's who mainly deal with horizontal EU issues will be apt to deliberate effectively on matters falling under the area of freedom, security and justice. COSAC's problems are of a structural nature. The focus of the second part of the PNP on COSAC indicates the limits of institutionalising a mutation of national parliaments into 'multi-level players': Parliaments might be able to use more informal instruments of multi-level parliamentary interaction (such as joint and bilateral meetings between specialised standing committees of national parliaments and the EP). Given the structural shortcomings of COSAC, at which aspects of specific policy areas are discussed to only a limited extent, the involvement of the national parliaments' specialized committees represents a more flexible option for the achievement of interparliamentary co-operation. Moreover, these informal modes of interparliamentary co-operation might generate some multi-level features within the relevant bodies of the national parliaments.

IV. Conceptualising Parliamentary Involvement in EC/EU Affairs

1. Towards a Scheme for Measuring Parliamentary Participation in EC/EU Affairs

In view of these structural problems, this book addresses the question of how national parliaments adapt to the EU's multi-level and multi-actor system of governance. In analysing the degree of parliamentary involvement within the framework of European decisionmaking, I resort to the theoretical model of European integration as an ongoing process of institutional as well as procedural and functional differentiation.¹ I assume that this process affects institutions on both European and national (and subnational) level of governance. According to this model, the process of co-operation and integration leads to a 'fusion' of national and Community institutions, instruments and policy devices. Actors of different policy-making levels try increase their effectiveness with regard to the preparation, making and implementation of decisions through and with European institutions while keeping a major say by "a broad and intensive participation".² Accordingly, I suppose that not only the European Parliament, but also national parliaments adjust and calibrate the possibilities and arrangements for parliamentary activity in response to EC legislation and other activities related to the European Union.

1 Wessels, Wolfgang: 'Wird das Europäische Parlament zum Parlament? Ein dynamischer Funktionsansatz', in: Randelzhofer et.al. (eds.): Gedächtnisschrift für Eberhard Grabitz, Beck, München 1995; Wessels, 1996, op.cit.; Wessels 1997, op.cit.

2 Wessels, 1996, op.cit., p. 58; see also Raunio, Tapio: 'Always One Step Behind? National Legislatures and the European Union', in: Government and Opposition, No. 2/1999, pp. 182-184.

The increasing scope of EU activities affects and undermines the traditional legislative function of national parliaments.¹ European legislation through the Council of Ministers and the establishment of a directly elected European Parliament reduced the function of national parliaments in the EC decision-making process to three major tasks: making ministers accountable for their activity in European affairs and ratifying fundamental amendments to the Treaties, the approval of legal acts in the Community and (since Maastricht) in the Union framework.² Provided national parliaments are understood as the “national authorities” to which Article 249 ECT leaves the choice of form and methods in order to achieve the results of a EC directive, national parliaments have a growing role in the transposition of Community secondary legislation.

Moreover, with the Maastricht Treaty, national parliaments were granted new approval rights in the field of CJHA: Conventions and the so-called “passarelle”-clause in ex-Article K.9 were subject to ratification in the member states. However, the task of ratification and approval is a very restricted one, because it only leaves to parliaments the choice to say ‘yes’ or ‘no’ without being able to influence the content of the act in question. But given the fact that the majority of EU decisions subject to approval by national parliaments are matters of prolonged intergovernmental negotiations whose outcomes are taken by unanimity, members of parliaments may influence their governments prior to the final decision on the EU level. This should be possible if they get the draft texts at an early stage and if parliamentary scrutiny is of political if not of legal importance for the relationship between parliaments and governments.

I start from an observation on empirically grounded attempts to establish frameworks for understanding and assessing the role of national parliaments in the European Community. These frameworks focus on the effects of institutional and procedural innovations introduced through major steps in European integration. In this context, much attention has been paid not only to the effects of the shift of competences from the national level of governance towards the EC level (and later, since 1993, towards the European Union), but also to the effects of introducing qualified majority voting for decisions in the Council of Ministers instead of unanimity. This innovation “limited even further the scope for indirect influence by national parliaments”³ because since Maastricht member states can be overruled by a decision of about 71% of the weighted

1 Seider, Rainer: Die Zusammenarbeit von deutschen Mitgliedern des EP und des Deutschen Bundestages und ihr Beitrag zum Abbau des parlamentarischen Demokratiedefizits in der EG, Lang, Frankfurt/Bern/New York/Paris 1990.

2 See Herman, Valentine/Schendelen, Rinus van (eds.): The European Parliament and the National Parliaments, Westmead 1979, p. 268; Coombes, David, Die Parlamente im EG-System, Bonn: Europa Union Verlag 1980, p. 138; Steffani, Winfried: ‘Das Demokratie-Dilemma der EU. Die Rolle der Parlamente nach dem Urteil des Bundesverfassungsgerichts vom 12. Oktober 1993’, in: Steffani, Winfried/Thaysen, Uwe (eds.): Demokratie in Europa: Zur Rolle der Parlamente, Zeitschrift für Parlamentsfragen, Sonderband 1/1995, Opladen 1995, pp. 46-47.

3 Norton, 1995, op.cit., p. 6.

votes in the Council.¹ Thus, even in cases where parliaments may affect the position of their government in the Council of Ministers effectively (e.g. through the adoption of binding mandates), qualified majority voting generates a decrease of the capacity for national parliaments to influence the outcome of European decision-making.² Moreover, until 1994, the Council was not compelled to publish the results of qualified majority voting.³ Consequently, parliaments did not have the opportunity to verify how their government's representative negotiated and voted in the Council. Accordingly, it could be argued that unanimity instead of majority-voting would lead to a higher degree of parliamentary participation if not influence because each Member Government is responsible for the Council decisions and, "as such, accountable for them to its national parliament."⁴

As we have already noticed, the Maastricht Treaty led to a limited range of new provisions affecting the possibilities of national parliaments for monitoring their governments' activity in EC/EU affairs. According to Declaration No. 13 of the Maastricht TEU version, the governments of the member states agreed that "it is important to encourage greater involvement of national parliaments in the activities of the European Union".⁵ In this context, they committed themselves to "ensure, inter alia, that national parliaments receive Commission proposals for legislation in good time for information or possible examination". During the Maastricht ratification process, a number of governments provided their parliaments with some communication, information and consultation mechanisms. In the course of these constitutional reforms, national parliaments amended their rules of procedure. Overall, the post-Maastricht period can be characterised as a fresh attempt by major actors to calibrate institutional provisions for guaranteeing parliamentary back-up in EU policy-making.

However, institutional adjustments with regard to the structure and the exercise of parliamentary scrutiny constitute no guarantee for effective and efficient monitoring of national representatives in the Council of Ministers and its substructures. In order to identify and explain variations in the participation of national parliaments in EU policy-

1 As Pimentel puts it: 'Le contrôle danois est également un moyen de responsabilisation, surtout depuis la généralisation du vote à la majorité qualifiée: la menace de voir le Danemark mis en minorité à Bruxelles permet d'éviter utilement les tentations maximalistes'. See Pimentel, Carlos-Miguel: 'Le contrôle des parlements nationaux peut-il pallier le déficit démocratique communautaire?', in: *Revue Internationale de Politique Comparée*, No. 2-3/1995, pp. 561-575. See also: Schüttemeyer, 1979, *op.cit.*, p. 268; Marquand, David: 'Parliamentary accountability and the European Community', in: *Journal of Common Market Studies*, No. 3/1981, p. 226; Hänsch, 1986, *op.cit.*, p. 197; Saider 1990, *op.cit.*, p. 88.

2 See Birkinshaw/Ashiagbor, 1996, *op.cit.*, pp. 503 and 526.

3 See Code of Conduct on public access to the minutes and statements in the minutes of the Council acting as legislator, General Secretariat of the Council, Doc. No SN 3604/1/95 REV 1, Brussels 2 October 1995.

4 Marquand, 1981, *op.cit.*, p. 226.

5 See the documentation by Astrid Krekelberg in this volume, document No. 1.1.

making,¹ we also need to take some basic indicators into account. Political systems differ with regard to the established relationships between government and parliament, party systems and the ideological spectrum mirrored by parties and other societal groups. One has to take a look at the internal organisation of parliaments, as well as at the roles, functions, styles of parliamentary democracy in the different national settings. In addition, we should look at the relationships between standing committees, special or select committees, the plenary and cross-party working groups. Their impact on the potential behaviour of individual members, political groups and parliamentary committees must then be taken into consideration, too. Country differences might be significant: the types of executive-legislative relations and the subsequent differences in type and structure of parliamentarism vary between floor-centered 'talking parliaments' and committee-centered 'working parliaments'.² Pahre identifies three necessary conditions for strong parliamentary oversight: "there must be a significant portion of the public, and at least one party represented in parliament, that prefers the status quo to further integration. Second, a country must have frequent minority governments. Third, there must be some party that would rather enjoy a policy veto through an oversight committee than join a majority government."³

With regard to European integration, specific factors have to be considered: public opinion on European integration in general, on democracy and the loci of democratic legitimisation of policy-making, on institutions and the distribution of institutional roles, on the functional scope of EC/EU politics and the allocation of powers differs widely between the EU member states.⁴ Public opinion may generate political traction between political parties. However, these 'pushed' demands for debating 'Europe' do not automatically determine specific forms of parliamentary scrutiny: political systems which favour polarisation in parliament would necessarily produce other forms of scrutiny than systems which are largely characterised by a consensual mode of party politics.

1 See the contribution by Ana Fraga in this volume; Pahre, Robert: 'Endogenous Domestic Institutions in Two-Level Games and Parliamentary Oversight of the European Union', in: *Journal of Conflict Resolution*, No. 1/1997, pp. 147-174; Bergman, Torbjorn: 'National parliaments and EU Affairs Committees: notes on empirical variation and competing explanations', *Journal of European Public Policy*, No. 3/1997, pp. 373-87; Raunio, Tapio/Wiberg, Matti: 'Does Support lead to Ignorance? National Parliaments and the Legitimacy of EU Governance', in: *Acta Politica*, No. 2/2000, pp. 146-169; Raunio, Tapio/Wiberg, Matti: 'Parliaments' Adaptation to the European Union', in: Esaiasson, Peter/Heidar, Knut, (eds.): *Beyond Westminster and Congress: The Nordic Experience*, Columbus 2000, pp. 344-364.

2 See Lijphart, 1999, op.cit.

3 Pahre, 1997, op.cit., pp. 165-166. See also Bergman, 1997, op.cit.

4 See on these factors especially Norton, Philip (ed): *Parliaments in Western Europe*, Portland 1990; Olson, David M., *Democratic Legislative Institutions. A comparative View*, London 1994; Blondel, Jean, *Comparative Government*, Hertfordshire 1995; Blondel, Jean/Sinnot, Richard/Svensson, Palle (eds.): *People and Parliament in the European Union*, Oxford 1998; Katz, Richard S./Wessels, Bernhard (eds.): *The European Parliament, the National Parliaments and European Integration*, Oxford 1999; Lijphart, Arend: *Patterns of Democracy. Government Forms and Performance in Thirty-Six Countries*, New Haven/London 1999.

Moreover, the salience of EU integration as a source for political conflict varies across the EU member states. Consequently, we need to analyse the relationship between the contentious orientation of parliamentary involvement in EU politics and the traditional working styles of parliaments in national politics.

Finally, we also have to look at the MP's own evaluations of the EU system and the roles they wish to fulfil. In this context, Katz' 1996 survey shows that the majority of MP's think that national parliamentary scrutiny of EU decision-making is too weak and should be strengthened.¹ Those who were satisfied with the way democracy works in their own country were also more comfortable with parliamentary involvement in EU matters. Finally, the average of MP's thought that the EP should have more influence in EU policy-making than national legislatures. Only the Swedish MP's ranked the two institutions in the opposite order. How did these self-perceptions evolve over time? Did the revision of the Treaties have any impact on the attitudes of parliaments? The country studies will provide evidence to answer these questions.

Apart from these underlying factors, I refer to the criteria originally proposed by Laprat² and Scoffoni.³

Figure 2: A Scheme for Measuring Parliamentary Participation in EC/EU Affairs

Raw Categories of Parliaments	Scrutiny Variables		
	Scope	Timing and Management	Impact
Weak parliaments	Rather low	Reactive and Accidental	None
Modest policy influencing parliaments able to modify or to reject government proposals	Low - High	Reactive but Formalised	Low
Strong policy-making parliaments able to substitute government proposals	High	Anticipative, Proactive and Institutionalised	High

1 See Katz, Richard S.: 'Representation, the Locus of Democratic Legitimation and the Role of the National Parliaments in the European Union', in: Katz/Wessels, 1999, op.cit., pp. 21-44.

2 See Laprat, Gérard: 'Reforme des Traités: Le Risque du double déficit démocratique', in: Revue du Marché Commun, No. 351/1991, pp. 710-721. Laprat, Gérard: 'Parliamentary Scrutiny of Community Legislation: An Evolving Idea', in: Laursen/Pappas, 1995, op.cit.

3 See Scoffoni, Guy: 'Les relations entre le Parlement européen et les parlements nationaux et le renforcement de la légitimité démocratique de la Communauté', in: Cahiers de Droit Européen, No. 1-2/1992, pp. 22-41; see also Maurer, Andreas: Les implications du Traité de Maastricht sur la coopération interparlementaire - le cas du Parlement européen et du Parlement français, Editions Interuniversitaires, Bruxelles 1996.

According to their framework for analysis, the efficiency and effectiveness of parliamentary scrutiny in European affairs should be evaluated by addressing the following three criteria:¹

A. The scope of parliamentary control which firstly results from the extent of documents forwarded to parliaments by their governments: to what extent do national parliaments receive draft proposals of legislative acts and other acts, i.e. white and green papers, recommendations, declarations, documents produced by COREPER, the Council working groups, the European Parliament and its committees? The scope of parliamentary scrutiny concerns not only the type and number of documents, which governments transmit to their legislatures. Hence the methods national systems incorporate of organising an efficient and functionally oriented sift of documents vary and induce different degrees of the scope of available information at different stages and in different parliamentary bodies. The general orientation of ideas associated with a parliament's control function as well as the financial, personal and managerial resources of a parliament may cause the exclusion of various types of EC/EU documents (legislative draft proposals, Commission's white papers or communications, draft proposals related to the Second and Third Pillars of the TEU etc.) from the subsequent phases of the scrutiny process: How do national parliaments select and sift documents forwarded by their respective executives?

The Maastricht Treaty contained amendments to the Treaties establishing the (supra-national) EC on the one hand and provisions for the foundation of two intergovernmental areas within the realm of the European Union (Titles V and VI) on the other. Given that until Maastricht, national provisions on the scope of parliamentary scrutiny focused on the participation of parliaments in the fields of EC legislation, the introduction of two new policy fields in a separate international treaty may have led to a legal restriction of the potential scope of parliamentary involvement. Thus, our third question is: to what extent do parliaments supervise governmental action in matters regarding the Common Foreign and Security Policy, Co-operation in Justice and Home Affairs and European Monetary Union? Do national parliaments consider 'new' forms of governance such as the open method for co-ordination in Economic and Employment policies?

B. The timing and management of parliamentary scrutiny: effective scrutiny presupposes that parliaments receive draft proposals for EC/EU legislation in good time and that they have enough time for examining it. Timing and management of parliamentary scrutiny varies according to its implications on the Government's European policy. Timing as a criterion to measure the effectiveness of parliamentary scrutiny in the framework of EC/EU affairs therefore depends on the constitutional and legal provisions concerning the transmission of relevant documents to parliaments. In this

1 See Laprat, 1995, *op.cit.*, pp. 4-8.

context, some rules governing the parliamentary monitoring process for handling European affairs may oblige the governments to transmit the relevant documents at the 'earliest possible date', 'in advance on the preparation of meetings of the Council of Ministers' or within a certain time limit such as 'after receipt of a document by the Government'.

The timing of scrutiny may also vary according to the internal management of European Affairs on the governmental and the parliamentary level and depending on the implications of parliamentary scrutiny powers for the Government's European policy. If ministers are bound by decisions of their parliament, governments are politically obliged to forward the relevant documents within a certain period of time allowing national parliaments an examination before the meeting of the Council of Ministers. Finally, the timing of parliamentary scrutiny also varies according to the frequency of meetings of the legislative actors involved. In this regard, parliaments are required to adapt their own organisation of meetings to the rolling agenda of the EU institutions. National officials work closely together in preparing decisions of the Council in approximately 350 working groups under the Council and the Committee of Permanent Representatives.¹ These interaction patterns involve many sectors and levels of the national administration hierarchy. The working groups have a significant impact on the decision-making arena. Around 90 per cent of EC legislation is 'pre-cooked' at this stage.² Furthermore, the Brussels-based infrastructure is surrounded by consultative and advisory committees - almost private, i.e. non-governmental and sectoral specialists providing expertise for both phases of decision-preparation and -implementation. As a mirror of the EC/EU's external policy activities, one can also find joint committees bringing together administrations from the EU institutions, the member states and third parties. The potential influence of committees differs largely according to the phase and the policy sector. The involvement of national civil servants in the EU policy-cycles is not just a 'watch-dog exercise'. Both for the Commission and the national institutions the "engrenage"-like³ interlocking of actors is an important component for a calculable joint management of the policy-making process. If any major element is to be made responsible for the criticised bureaucratisa-

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- 1 The German Presidency of the Council January-June 1999 listed 351 operating working groups.
 - 2 See Van der Knaap, Peter: 'Government by Committee Legal Typology, Quantitative Assessment and Institutional Repercussions of Committees in the European Union', in: Pedler, Robert/Schäfer, Günther (eds.): *Shaping European Law and Policy: The Role of Committees and Comitology in the Political Process*, Maastricht 1996, pp. 83-116, here p. 114. The Council itself notes that some two thirds of its rolling agenda is closed by COREPER, out of which 70 % are agreed at the working groups level. See Rat der EG, *Der Rat der EG*, Luxembourg 1990, p. 22; see also Wessels 2000, *op.cit.*, pp. 228-229.
 - 3 See Sasse, Christoph/Poullet, Edouard/Coombes, David/Deprez, Gérard: *Decision-Making in the European Community*, New York, London, Praeger, 1977.

tion¹ in 'Brussels', it is this quite intrinsic network of multi-level administrative interpenetration. Assuming that this bureaucracy is not just an accidental product of personal mismanagement, national parliaments are confronted with an ever-growing realm of policy-making infrastructures, which is less open to parliamentary oversight than bodies bringing together politicians. If governments, administrations and intermediary groups such as industrial lobbies optimise their multi-level games, how do national parliaments react? At which stage of the EU's arenas' decision-making process do parliaments start the monitoring process vis-à-vis their governments? Are the necessary procedures established for monitoring the Government's policy constrained by time limits?

C. The impact of parliamentary scrutiny on the Government's room of manoeuvre differs in every parliament of the EU. We can roughly distinguish between formal and informal arrangements between parliament and government, between procedures aimed at substantially influencing the position of the Government in the Council and those simply aimed at tactically delimiting the relative independence of governmental representatives' actions in the Council. The impact may differ between those parliaments that are able to mandate their government's representative before a Council decision takes place and those without any formal means for influencing their government's standpoint in the Council. In between these two extremes we might find parliaments that are able to express their views on a certain proposal, however still dependant on whether governments incorporate them or not. Apart from the mandate, several parliaments may refer to the so-called "parliamentary scrutiny reserve" mechanism. In close relation to the criterion of the impact of parliamentary scrutiny, the basic interests and ideas behind parliamentary involvement in European decision-making also need to be addressed. Moreover, one should not forget that a given, at first sight quite impressive set of parliamentary scrutiny rights may be instrumentalised by their respective governments to block Council decisions. Hence, only the well-known Danish mandatory procedure works in close connection with the fact of minority governments. Therefore, the criterion of the impact of parliamentary scrutiny should also include the issue of the level and of the minimum number of deputies required for effective parliamentary intervention.

At first glance, criterion 'A' presupposes the other two criteria: if parliaments do not get any information about relevant activities in European affairs, possible findings and conclusions on timing, time limits and the impact of parliamentary scrutiny are irrelevant.

1 See Peters, Guy: 'Bureaucratic Politics and the Institutions of the European Community', in: Sbragia, Alberta (ed.): *Euro-Politics: Institutions and Policymaking in the 'New' European Community* Washington: Brookings, 1992, pp. 75-122; Wessels, Wolfgang: 'The Growth and Differentiation of Multi-Level Networks: A Corporatist Mega-Bureaucracy or an Open City?', in: Wallace, Helen/Young, Alasdair R. (eds.): *Participation and Policy-Making in the European Union*, Oxford: Oxford University Press, 1997, pp. 17-41.

However, if parliaments are legally provided with a right to engage themselves in gathering and treating information independently from what they get from their governments, their parliamentary scrutiny mechanisms may be more effective.

The criteria for measuring effective and efficient parliamentary control in European affairs lead us to the problem of classifying national parliaments according to the application of scrutiny powers in the policy processes. One model that has been devised for this purpose derives from earlier studies by Mezey¹ and has subsequently been modified by Norton.² Both authors developed frameworks for classifying legislatures in various countries. They are based on two basic indicators: the *policy-making strength* and the *support for the legislature*. Mezey defined the policy-making strength as “the constraint that the legislature is capable of placing on the policy-making activities of the executive”.³ On the basis of the first criterion (policy-making strength), Mezey distinguished between three categories of parliaments:

- parliaments possessing strong policy-making power based on the veto power and the possibilities of making modifications or of finding compromises in the course of the policy process,
- parliaments with modest policy-making power characterised by the right to modify (but not to reject) policy proposals and
- parliaments having little or no policy-making power and thus not being able to modify or reject proposals issued by the executive.

Norton's work concentrated on the first two categories. He underlines the fact that the having a right to reject policy proposals does not automatically entail a real i.e. proactive policy-making power of parliaments.⁴ Accordingly, the category of parliaments possessing strong policy-making power should encompass “policy-making” legislatures that can modify, reject or substitute policies of their own, while the category of parliaments with modest policy-making power should only include “policy influencing” legislatures capable to modify and to reject but not to substitute policy proposals.⁵ The difference between these two categories lies in the qualification of parliaments as legislative bodies which are able to generate their own sets of proposals that may substitute

1 See Mezey, Michael L.: *Comparative Legislatures*, Durham, N.C. 1979, pp. 21-44.

2 See Norton, Philip: ‘Parliament and Policy in Britain: The House of Commons as a Policy Influencer’, in: *Teaching Politics*, No. 2/1984, pp. 198-221.

3 Mezey, Michael: ‘Classifying Legislatures’, in: *Comparative Legislatures*, 1979. Since we focus only on the role parliaments play in the European decision-making process, we neglect Mezey’s second criteria which is oriented towards the general profile of legislatures.

4 In ‘Comparative Legislatures’, Mezey acknowledged the missing of the combination ‘parliaments possessing the power to reject but not to modify’. For him, it was ‘inconceivable that a legislature could have the power to reject proposed legislation but not have the power to modify it’. Mezey, 1979, p. 43 Footnote 1.

5 Norton 1990, op.cit., p. 5 and 1984, op.cit., p. 201.

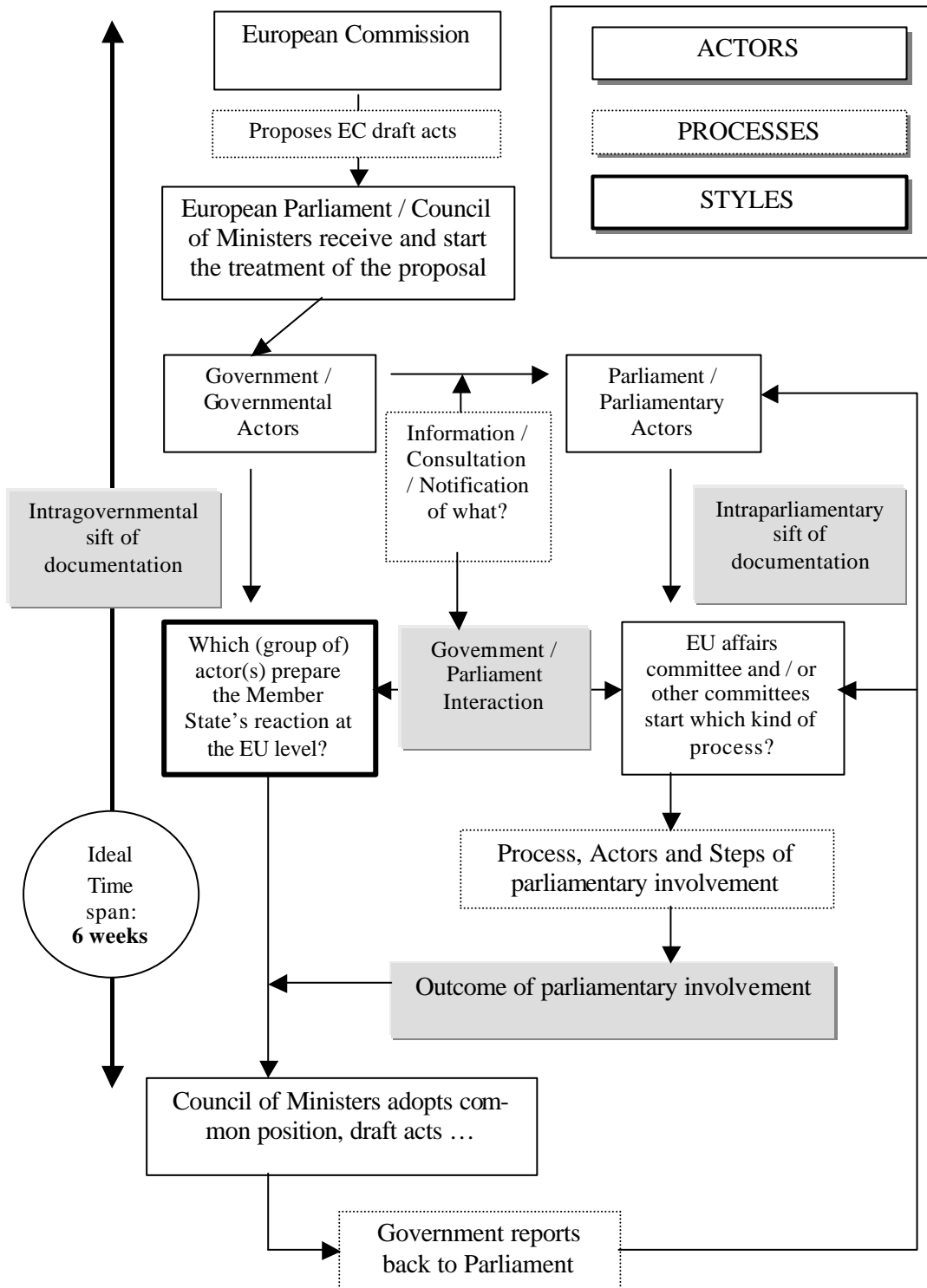
the original government position.¹ In this context, our substantial criteria of ‘scope’, ‘timing’ and ‘impact’ of parliamentary scrutiny serve as the main variables. They form the basis for a classification of parliaments in one of the three aforementioned categories of “strong policy-making parliaments”, “modest policy-influencing parliaments” and “weak parliaments” possessing neither a policymaking nor a policy-influencing power.

2. The Focus on Institutions and Institutional Adaptation

The starting point of the country-by-country analysis on parliamentary activities in European affairs is an institutional one. I assume institutional change in the national parliaments according to the revision of the TEU, i.e. the general opportunity structures of national and European actors. Treaty amendments attempt to address institutional and procedural weaknesses identified during the implementation of previous adjustments to the rules of the EU’s institutional design. Treaty revisions are thus endemic parts of a process; they are not only independent variables affecting the nature and the evolution of the participating systems but also become dependent variables themselves. Institutions and procedures - “formal rules, compliance procedures, and standard operating practices that structure the relationship between individuals in various units of the polity and economy”² - are creations and creators at the same time. In this regard, one specific feature should be addressed: In ratifying treaty amendments, national parliaments challenge their political systems and their own powers. Any consideration about the capacity of parliaments to cope with EC/EU policies needs to take the Treaties as serious as national constitutions and the underlying factors of parliamentary involvement in politics. Thus, the question whether national parliaments introduce new methods, rules and/or institutions in order to scrutinise EC/EU policy is of crucial importance: As the European Union constitutes an organisational machinery in process, parliaments may alter their scrutiny methods according to new developments of the institutional and procedural framework of the European Union. Therefore the country studies in this book concentrate on the evolution and real performance of EU affairs committees with regard to the EU system. We thus take the Amsterdam PNP as a heuristic model for understanding the ‘real’ impact of Treaty and institutional change in the member states.

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- 1 The question would be: Are parliaments able to substitute policy against the original government proposals on the so-called ‘common positions’ for the Council of Ministers?
 - 2 Hall, Peter: *Governing the Economy: The Politics of State Intervention in Britain and France*, Cambridge 1986, p. 19. David R. North offers a similar definition. Institutions are ‘the rules of the game in a society or, more formally [...] the humanly devised constraints that shape human interaction’. See: North, David R., *Institutions, Institutional Change and Economic Performance*, Cambridge 1990, p. 3. See also: March, James G./Olsen, Johan P., *Rediscovering Institutions: The Organisational Basis of Politics*, New York 1989, p. 167.

Figure 3: The Ideal Process of Parliamentary Scrutiny in EC/EU Affairs



Special thanks to Tapio Raunio for the concept of this model.

V. *What to Expect?*

Assessing the overall development of the EU from the Rome Treaties until Amsterdam with regard to its institutional and procedural democratisation leads to an ambiguous picture. On the one hand, the EP's potential of influence on the preparation, adoption, implementation and control of binding legislative acts has been considerably strengthened in the sphere of the EC. In this perspective, the Amsterdam Treaty marked a significant effort to strengthen the accountability of the executive with regard to the Commission. Moreover, the EP's involvement in Justice and Home Affairs has been relatively increased. On the other hand, the fact that unanimity in the Council and consultation of the European Parliament still dominates the matters of justice and home affairs falling under Title VI TEU and under Title IV ECT reflects that a majority of member states are rather reserved concerning a wider recourse to genuinely supranational means of decision-making in these sensitive but - to the population living inside the Union - important spheres.

The Amsterdam Treaty marked another step forward in the EU development from an economic problem-solving arena to an original polity. However, the institutional and procedural arrangements of the EU remained complex, fragmented and opaque. Amsterdam provided new and important offers for strengthening parliamentary democracy in the Union. The process of "EU-parliamentarisation" is impressive in its continuity. Since the SEA, the EP has developed considerably - both with regard to the formal revisions as well as to the implementation of the subsequent Treaty reforms - from a rather "decorative"¹ to a truly co-legislative and co-elective institution. However, there remains the question if these improvements provide new grounds for enhancing the legitimacy and the proximity of European governance to the citizens of the Union. The European Parliament is but one essential mean to democratise the European Union. In this book, we address the other side of the - parliamentary - coin: How do national parliaments contribute to EC/EU policy-making? Are they still the losers of integration, are there latecomers and slow adapters, or do we witness a process of re-orienting institutional capacities in order to perform as national and/or multi-level players?

Empirical evidence about the real use of the EU system at the Brussels level points at an non-linear relation between the para-constitutional developments and the exploitation of treaties.² We witness a dynamic process of treaty modification and change brought to the institutional and procedural set-up of the Union - a regular pattern of remodelling

1 Wallace, Helen: 'Politics and Policy in the EU: The challenge of governance', in: Wallace, Helen/Wallace, William (eds.): *Policy-Making in the European Union*, 3rd edition, Oxford 1996, p. 63.

2 See Maurer/Wessels, 2001, op.cit.

institutions, procedures and competencies.¹ A closer look also indicates that new treaty provisions have been used across the board. The increasing role of the European Parliament confirms the expectation of a dual legitimacy of European decision-making and the execution of sectoral authority in the name of the citizenry. The creation of COSAC in 1989 and its formal recognition by the Amsterdam Treaty, the instalment of national parliament liaison officers within the buildings of the European Parliament and the amplification of meetings between corresponding committees of both the national parliaments and the European Parliament indicate a possible trend towards an embryonic kind of multi-level parliamentarism.

We thus need to explore whether the EU induce needs for parliamentary adaptation and further institutional calibration on the national level? Do new or modified policy areas, altered instruments and reformed institutions mobilise the national actors and lead to a specific adaptation? In the following chapters we will scrutinise the roles and behaviour of national parliaments. Given the features and the dynamics of the EC/EU evolution, we expect to find generally discernible trends in the ways how parliaments react and adapt to the challenges of the EC/EU. We are curious in how we will witness convergent patterns and variation.

1 In the words of the Report of Richard von Weizsäcker, Jean-Luc Dehaene and David Simon to the European Commission on 'the institutional implications of enlargement': 'The present (1999) situation is typical: the treaty of Amsterdam entered into force on May 1st, and, on June 4th, the Cologne European Council called for a new intergovernmental conference". See this report of 18th October 1999, p. 12.

The Federal Parliament of Belgium: Between Wishes, Rules and Practice

Claire Vandevivere

1. Introduction: Political Culture and Societal Background

1. Belgian Interests and Views in EU Affairs

Belgium had convincing reasons to get fully committed to European integration. After the compulsory neutrality commanded by the European powers from 1830 until 1914 and the unsuccessful neutrality policy decided in 1936, Belgium saw in Atlantic and European multilateralism a better way to guarantee peace and exert more influence on international affairs. Moreover, Belgium's economic interests, as a little economic entity, also headed in the direction of European integration. Although at the beginning there was a slight tension between the concept of sovereignty and the European Community, the idea that what is good for Europe is good for Belgium was largely accepted in the national political arena. This is why Belgium has always defended the idea of a federal Europe.

Political parties in general are in favour of a federal Europe but are more critical on its actual developments. The EU should be more democratic, more social and more efficient. That is the reason why the Green party has voted against the Treaty of Amsterdam and the federal Parliament has adopted a resolution to back up the Belgian Government in its proposal for institutional reforms. Social-Christians, Socialists and Liberals voted in favour of the Treaty of Amsterdam, the Green party against it. Volksunie (People Union), a party for Flemish autonomy, and the Vlaams Blok, separatist and extreme-right, voted against it as well.

Public opinion has moved in the same way. From a general permissive consensus the attitude of the population has become more fragmented depending on policy issues. Two major events have put Europe on the agenda: the bankruptcy of the Clabecq forges and the closing of the Renault-Vilvorde firm. Europe became the scapegoat for strengthening the - perceived - underdeveloped social policy. The Maastricht criteria have been perceived as synonym of restrictions but have nevertheless been accepted. However, from 1980 to 1996, people who thought that belonging to the Union is a good thing have become a minority according to Eurobarometer.

2. The Institutional Framework - The Nature of Federalism and Decentralisation

The major Belgian institutional feature that influences Belgian European policy is its federal structure completed after the Treaty of Maastricht. The specificity of Belgian federalism lies in the coexistence of two different kinds of constituent units: regions and communities. There are three regions¹ created essentially as a response to aspirations of socio-economic autonomy and there are also three communities predicted by aspirations of cultural autonomy.²

Those constituent units have been more and more involved in the EC decision-making process, at the beginning with regard to the preparation of EC decisions, and since the Maastricht Treaty, with regard even to decision-making resulting from the change of article 146 ECT. The EC Council is no more strictly formed by members of the national Government, but it is composed of representatives of each member state at 'ministerial level', entitled to make decisions for the Government of that member state. This framework explains why regional and Community parliamentary assemblies are also involved in European Community affairs, though to a lesser extent than the federal assemblies, which we will focus on.³

Despite the constitutional feature that entitles the king to manage international relations, the nature and the growing scope of European law required a closer parliamentary association to European affairs. The parliamentary assemblies, mainly the federal Parliament and to a lesser extent the regional and Community Councils, have consequently striven to strengthen their control over European integration.

For example, since April 1985, within the Chamber of Representatives, there has been an Advisory Committee on European Questions. In March 1990 the Senate set up in its turn an Advisory Committee on European Questions. The two Committees have operated an ad hoc fusion to become the Federal Advisory Committee on European Questions. It is composed of ten deputies, ten senators and ten Belgian members of the European Parliament. The main tasks of this Committee are to inform the Parliament on Community Affairs and to control Government actions at the European level as regards to the preparation and the implementation of Community law. Reports and non-binding recommendations follow.

Some federated Councils have set up similar Committees but their members do not meet very often, leaving the place for traditional parliamentary scrutiny and a minimal role in transposition of EC directives.

1 The Walloon Region, the Flemish Region and the Brussels-Capital Region.

2 The French Community, the Flemish Community and the German Community.

3 To have a global view on the role of regional or Community Councils in European affairs, see C. Vandevivere: 'Le rôle des assemblées parlementaires', in: *La participation de la Belgique à l'élaboration et à la mise en œuvre du droit européen. Aspects organisationnels et procéduraux* (Y. Lejeune, ed.), Brussels: Bruylant 1999, pp. 289-346.

These initiatives accurately reflect the reactions of most national parliaments in the face of what is called the 'European Democratic Deficit'. They have had however only little influence on the Belgian Administration.

Legal provisions have been adopted since the last Belgian State reform in 1993, the year when the Maastricht treaty entered into force. Article 168.6 of the Constitution provides that

“the Chambers shall be informed of any revisions to the treaties instituting the European Communities, or to the treaties and acts amending or supplementing them, as of the moment that the negotiations concerned are opened. They shall be fully aware of the draft Treaty before its signature.”

Article 16.2 of the Special Act on Institutional Reforms gives the regional and Community Councils the same prerogative.

For secondary law, the Special Act on Institutional Reforms comprises also a section dealing with the “[i]nformation of the Chambers and the Councils on the proposals for acts with a normative character of the Commission of the European Communities”. Article 92quater provides that

“as soon as they are sent to the Council of the European Communities, the proposals for regulations or directives and, if necessary, other acts with a normative character of the Commission of the European Communities are communicated to the federal legislative Chambers and to the regional or Community Councils, depending on the subject matter.”

The attempt to control to some extent those proposals is a very sporadic practice in the Councils. However, there is a specific procedure in the federal Parliament. Indeed the Federal Advisory Committee on European Questions regularly examines the weekly list of European Commission's proposals and chooses proposals that should be dealt with as a priority for scrutiny.

Those efforts to exert this control in the preparatory phase of the EU's policy cycle come from the understanding that Belgian deputies had lost control on European Affairs even with regard to the implementation of European rules. Most of the implementation acts are carried out by executive orders and laws for transposition and do not give rise to important changes.

II. The Practice and Evaluation of Parliamentary Scrutiny in EC/EU Affairs

1. The Nature of Parliamentary Scrutiny

The nature of parliamentary scrutiny is very well summarised in a text by the Secretariat of the Federal Advisory Committee on European Questions: Accordingly, the very task of parliamentary scrutiny is to

“développer une procédure parlementaire permettant de remédier [...] au déficit démocratique européen. [...] Les parlements nationaux ont donc un rôle à jouer en ce qui concerne

le contrôle ex ante de la prise de décision au niveau européen, même s'ils ne peuvent jamais exercer leur contrôle que sur leur propre gouvernement, c'est-à-dire sur un seul des quinze membres que compte le Conseil des ministres européens.”

On the other hand, the task is not to

“lier le Gouvernement belge par un mandat de négociations ou d'imposer une ‘réserve parlementaire’ qui l'empêcherait de prendre position au sein du Conseil avant que le Parlement n'ait eu l'occasion de se prononcer.”¹

The alleged democratic deficit from the Belgian parliamentary point of view is the following: The transfer of competencies from member states to the European Union has not been on a par with the transfer of parliamentary control to the European Parliament (EP). National parliamentary intervention is therefore necessary to compensate the deficit but not in the way of taking direct action in the European decision-making process. Whether this intervention should be secondary and temporarily or permanent is still an unanswered question in Belgium. Except for Constitutional affairs, some parliamentary circles argue that the federal Parliament should not intervene anymore once the EP is an equal partner to the Council regarding legislative powers.

There is no way however to instruct the Government for negotiations and impose a ‘parliamentary reserve’ - like in Denmark - that would prevent the Government from taking a position within the Council before the federal Parliament gives its opinion.

Besides, Belgian MP's have understood progressively and in parallel to the transfer of competencies that there was only one way to influence the decision-making process: getting involved in the making of the European law. Parliamentary intervention should be consequently re-oriented from implementation to preparation of Community policies. This could only be possible through the control of Belgian Government's action in the Council of the European Union.

This control takes place in different places at the federal level. First of all, any member of parliament (MP) can formulate written or oral questions on European matters in the commissions or in the plenary session. Although only the Chamber of Representatives executes political control vis-à-vis the Government since the Constitutional reform of 1993, those questions hardly endanger the existence of the Government. The latter informs and listens to the Parliament, takes notice of the claims but is not subject to imperative agency when negotiating.

The federal Advisory Committee on European questions is commissioned to stimulate and foster parliamentary control on European decision-making, upwards and downwards . It keeps an overview on European affairs and takes initiatives that permanent commissions do not have time or the reflex to take. It gives advisory opinions, carries out initiative reports and adopts resolutions transmitted to the plenary session. The

1 ‘Examen des propositions d'actes normatifs et d'autres documents de la Commission européenne’, Senate, Brussels, 4 April 2000.

meetings take place once or twice a month. The Committee is backed up by a Secretariat related to the Chamber and the Senate that comprises two full-time and one half-time official.

The Advisory Committee focuses its work on:

- Co-ordination of European dimension in the Parliament
- European institutional affairs,
- important European debates (enlargement, European Councils), and
- general documents (annual legislative program, green or white papers, communications of the Commission).¹

Permanent commissions focus their activities on legislative work by elaborating, amending and voting bills that are afterwards transmitted to the plenary session for adoption. It is their duty to undertake legislative work to transpose directives. The Government generally initiates those bills. As De Croo notes, permanent commissions are competent for technical and specific politics implemented by the European Union. Different resolutions of the Parliament recommended pro-active participation of the commissions, though without significant success, as we will see hereafter.

The relations between the Parliament and the Federal Administration are rather limited, at least compared to countries like the United Kingdom where officials carry out reports on European affairs for Westminster. This is due to the administrative culture of discretion. Belgian Administration considers that it is the minister's duty to answer and be accountable in front of the Parliament. The administration is not involved in politics.

One of the important features in Belgium about the scrutiny of European affairs is the participation of Belgian Euro-deputies in the Advisory Committee. At the beginning of the European integration process, those Euro-deputies were keen on attending Belgian parliamentary meetings to have a say. Nowadays they rarely participate since they have the right of co-decision at the European level.

1 De Croo, Herré/Hans, Federal Advisory Committee on European Questions: 'Note d'information sur l' 'Examen des propositions d'actes normatifs et d'autres documents de la Commission européenne', February 2000: 'Force est de constater qu'il est devenu impossible pour le Comité d'avis d'examiner chaque document de la Commission ou de contrôler chaque domaine de la politique de l'UE. Il a plutôt un rôle de coordination et il se limitera donc aux aspects institutionnels (la Conférence intergouvernementale), aux grands débats européens (l'élargissement, les Conseils européens) et aux documents qui revêtent un caractère général (programme législatif annuel, livres verts, livres blancs, communications de la Commission). Dans cet ordre d'idées, les documents techniques et les politiques spécifiques mises en œuvre par l'UE relèvent de la compétence des commissions permanentes.'

2. The Scope of Parliamentary Scrutiny

2.1 Parliamentary Intervention during Intergovernmental Conferences

MP's have their say in the elaboration of European primary law. With the new Article 168 of the Constitution, participation of the Chambers is divided in two phases: before and after signing a Treaty. However, under the leadership of the Advisory Committee, the Parliament had not waited for the reform to get involved and informed by the Government.

In the first phase, the Parliament gets 'informed' as soon as negotiations start. This phase goes beyond information: it is the beginning of an exchange of views between Parliament and Government for the time of the whole Intergovernmental Conference. An exchange of views, written and oral questions, hearings, memoranda, resolutions, and recommendations are the means that describe the role of the Parliament: information and communication of its opinion. The unique parliamentary 'weapon' should be tabling a motion of censure in the Chamber of the Representatives.

An exchange of views with the Government - the Prime Minister, the Minister for Foreign Affairs or a representative - may start during the preparatory phase, as it was the case with the Westendorp Group for the Treaty of Amsterdam. Those meetings find their climax just before and after the meeting of the European Council where all the topics of the agenda are discussed. It is normally part of the functions of the Advisory Committee to organise those meetings, most of the time with the participation of the commissions concerned with the agenda - like the Commission for International Relations or the Commission for Economic affairs - in the Chamber of Representatives and the Senate.

Hearings may be organised, as it was to a large degree the case for the Treaty of Amsterdam that had a rather open agenda, contrary to the IGC 2000. A memorandum is supposed to guide the action of the Government in the course of the negotiations. Recommendations and resolutions are more concise but have a political scope as well. There is no question of any agency, any obligation or constraint. Deputies can also ask short formal questions, written or oral during the plenary session or more detailed ones concerning specific matters. For Amsterdam, the Government for instance had to answer in detail about questions on the equality of men and women, the social dimension and closer co-operation.

The role of the Parliament just before the signature of a Treaty is even less limited as the text is not supposed to change anymore. Communications of transitional texts of the Presidency on the contrary are more useful to the deputies.

The second phase starts after the signature of a draft Treaty. The assent of the federal Parliament is given by a law. As mentioned in the introduction, the regional and community councils have to do the same with a legislative decree as their competencies are touched by the European Treaties and their reforms. It is a key moment within this

process similar to a great debate during which each political party exposes its position about the reform and the European integration in general. The Parliament is confronted with a dilemma: it has to adopt or reject the entire Treaty. Rejecting the Treaty means also rejecting any progress but adopting it means the approval of unsatisfactory provisions as well.

The real scope of the consent lies more in the threat (though very unlikely) of non-consent that the Government has to take into account. For sensitive matters, the Belgian Government knows how far it can go and makes compromises. This is the case (in Belgium) for subsidiarity (important for the regions and communities), the use of languages (very important for the Flemish Community), culture, asylum rights.

2.2 Parliamentary Scrutiny on EC Secondary Law

Following Article 92quater of the Special Act on Institutional Reforms and the Maastricht Treaty, the Advisory Committee has between 1996 and 1999 experienced a new procedure to scrutinise “proposals for acts with a normative character of the (European) Commission”. The Committee monthly selects draft proposals, which the European Commission has transmitted to the Council and the European Parliament. The criteria for selection are the political, economic or social impacts and the significance of the draft proposal for Belgium. Selection by political parties is dealt with in priority. In practice, two to three topics can be chosen. Parliamentary assistants often take the initiative. After the selection, the Secretariat (under the responsibility of a deputy) began to elaborate a technical sheet for each selected document. It included information on the content of the document and possible consequences for Belgium. There was then a discussion in the Advisory Committee to decide the work to be undertaken for each document. The Committee had different possibilities related to the relevance of the matter: the procedure could either be brought to an end or subject to later scrutiny,

- the dossier could be dealt by a permanent commission (which have hardly ever taken time to study the matter because they are overloaded),
- a report on the subject could be elaborated by collecting information and organising hearings and could lead to a resolution.

From January 1996 to April 1999, 136 documents have been selected from a total of around 2000 incoming drafts from the European Commission. The following list classifies the issues of all of them.

Table 3: Issues of Technical Sheets in the Belgian Parliament¹

Period	Number of technical Sheets	No further inquiry	Latter scrutiny	Transmission to a permanent commission	Request for information to the Government	Initiative report
Jan - June 96	9	4	1	1	2	1
July - Sept 96	9	4	-	2	2	1
Oct - Nov 96	6	3	1	2	-	-
Dec. 96	7	4	-	1	1	1
Jan 97	6	3	-	3	-	-
Feb - March 97	14	7	-	7	-	-
April - May 97	8	1	1	4	-	2
June - July 97	7	5	-	1	-	1
Aug - Sept 97	7	1	-	6	-	-
Oct - Nov 97	8	3	-	5	-	-
Dec 97- Jan 98	10	3	-	6	-	1
Feb - March 98	10	3	-	7	-	-
April - May 98	9	4	-	4	1	-
June 98	8	3	-	5	-	-
July - Sept 98	10	4	-	5	-	1
Oct - Dec 98	8	3	-	5	-	-
Total	136	55	3	64	6	8

Given the lack of interest of deputies and senators in intensive scrutiny of EC/EU proposals, the procedure had become 'administrative'. Hence Permanent Committees have never used the important work of the Advisory Committee. Most of the time, no further scrutiny was considered as relevant. The technical sheets collected in a parliamentary document were a source of information for all the deputies anyway who could use them for 'classic' control through questions and interpellations.

When the work of the Advisory Committee led to a resolution - like it was the case with the directive on chocolate² - the Government took notice but was not obliged to follow the parliamentary guidelines.

Some adaptation of the scrutiny procedure consequently entered into force in the year 2000.³

As far as implementation of European law is concerned, the federal Parliament has two functions: it acts as the lawgiver and as the body controlling the Government. Most of the measures to transpose directives do not require important legislative participation of

1 Source : 'Tableau récapitulatif du nombre de fiches techniques établies suite à l'examen des propositions d'actes normatifs et d'autres documents de la Commission européenne par le Comité d'avis fédéral chargé des questions européennes'. Information given by the Secretariat of the Comité d'avis fédéral chargé des questions européennes, Chambre des représentants et Sénat de Belgique.

2 Rapport de Nelis Van Liedekerke concernant la proposition de directive de la Commission européenne relative aux produits dérivés de cacao et de chocolat, Document parlementaire, Chambre des représentants, session 1997-1998, n° 1581/1. The Parliament supported in its resolution the position of the Government that defended Belgium chocolate.

3 See infra, part IV : 'Federal Parliament and federated Councils after Amsterdam'.

the Parliament. The room of manoeuvre for amending a text is narrow. Directives are usually precise and the initiative for implementation comes from the Government.

The control is exercised in different ways. First, there is the duty of the Government to present an annual report on the implementation of the European Treaties to the Parliament. Since 1958, the Government has complied five times with that duty despite regular demands from deputies. In September 2000, the Minister for Foreign Affairs committed himself to present the annual report.

The Parliament itself can also carry out reports on the implementation of European law - especially on delay in Belgium -, problems and procedures, implementation on specific areas (like the internal market). Resolutions addressed to the Government can follow without any constraint however. Annual reports of the European Commission, quarterly reports from the Ministry for Foreign Affairs and media coverage on European issues are occasions to call upon the Government. Eventually, control is also carried out by classical parliamentary techniques like written and oral questions either on specific issues or on the general delay of transposition in Belgium.

3. Evaluation: A Limited Control

In order to get an idea of the work carried out by the Advisory Committee from the 1993-1994 legislative year to the 1996-1997 one, there were:

- eight reports on COSAC activities,
- one report on the implementation of Community law and another on implementation of Schengen Agreement,
- three reports and one memorandum on 1996 IGC,
- seven reports on the examination of European Commission's proposals,
- one report on children's rights in the European Union,
- one report on the partnership between the European Union and Mediterranean countries, and
- one report on the control of financial flows between the EU and Belgium.

Most of these reports were followed by resolutions addressed to the Government.

However, if the parliamentary work is important and positively appreciated by the Advisory Committee, the results are rather tiny. Parliament exerts a punctual control but it is not able to follow in a systematic way the whole European decision-making process.¹

1 That is the reason why the new procedure for the control of European legislative emphasises the importance of the examination of the agenda of the Council of the Union: La nouvelle procédure initiée en janvier 2000 'ne concerne qu'un premier contrôle à la source. Il est également important d'assurer le contrôle parlementaire tout au long du processus décisionnel et dans la phase d'exécution. Dès lors, l'ordre du jour de chaque Conseil des ministres de l'Union européenne est diffusé à tous les membres du Comité d'avis et les présidents de commissions reçoivent l'ordre du jour des Conseils qui les concernent' : (Senate, Document, 4th April 2000, op.cit.).

Many factors contribute to this situation: the relative consensus on European affairs in Belgium, the already loaded agenda of deputies regarding internal affairs, the lack of “European reflex”, the complexity of European legislation, the feeling of lacking power on European matters and the weak electoral feedback on European affairs.

As a conclusion, one could say that the Parliament exerts a limited function of control. This is a general evolution in the Belgian political system and for European questions in particular. Belgian Parliament and legislative Councils are not part of the European decision-making process and do not want to be part of it. There is no imperative agency or mandate to assign to the Government. The MP’s can only try to influence and control their Government which again is only one among fifteen. As far as implementation of European legislation is concerned, it is very difficult to examine the added value of parliamentary work but it is often the occasion for deputies to get aware of European matters and ask questions after the opinion of the Conseil d’Etat.¹

III. The Belgian Parliament and the Negotiation of the Amsterdam Treaty

In its memorandum for the 1996 IGC addressed to the federal Parliament², the Government stated that more democratic legitimacy was directly linked to the increase of the role of the European Parliament. The Government did not share the opinion of other partners that “legitimacy lies in the national parliaments, in the Council of Ministers or in the European Council”³. According to the Belgian Government the work of the EP should be improved in different ways:

- simplification and limitation of the procedures: co-decision, consultation and assent,
- generalisation of co-decision to all the cases subject to qualified majority in the Council of Ministers,
- elimination of unanimity where co-decision exists,
- the assent procedure that has been multiplied with Maastricht should be avoided (in legislative matters) because it is inadequate. Approval of the revision of the European Treaties is an exception.

Besides,

1 The opinion of the Conseil d’État is sought when the signing of the introductory order requires no further formality or consultation. The laws on the Conseil d’État (co-ordinated on 12 January 1973) do not provide for any special system for consulting this body on the bills for the transposition of directives.

2 Note de politique du Gouvernement au Parlement concernant la Conférence intergouvernementale de 1996, Document parlementaire, Chambre des représentants, session 1995-1996, No. 146/1 and Senate, No. 129/1.

3 Ibid., p. 24.

“the Government estimates that one should carefully examine if one should not apply the principle of generalised co-decision to budgetary procedure, replacing the distinction between obligatory and non-obligatory expenditures(...) The role of the EP in the definition of guidelines concerning the economic activity has to be examined.”¹

Those examples show how far the Government fosters the EP. It is much more cautious about the role of national parliaments. In its memorandum, the Government wished to hear the opinion of the Parliament regarding the reinforcement of national parliaments. It only made a few statements:

- National parliaments already exert some influence in the European decision-making process, among others by the control of their respective ministers within the Council. The Advisory Committee is mentioned as an example to be followed in other states,
- the renunciation of sovereignty concerns parliaments as well as governments and do not ipso facto lead to a deficit neither to bad control,
- an increased association of national parliaments is a question of internal organisation in each member state and not a question of supplementary structures at the European level.

To conclude, the memorandum mentioned that the Government would ensure that democratic control via the EP would be reinforced, which was the best way to fight the democratic deficit.

Given the general point of view of the Federal Parliament's majority on the democratic deficit,² one can understand the objectives of the provisions on national parliaments and the European Parliament in the memorandum on the 1996 IGC of the federal Parliament.³ As a guideline, the memorandum explained that the way of working of the European Union was still characterised by a democratic deficit on two levels:

- the functioning of the European institutions themselves,
- the relations between the EU on the one hand, and the member states and their populations on the other hand.

Democracy therefore had to be improved. There were no antinomy positions between the Government and the Parliament but different sensitivities and accents. In the preparatory work of the federal Parliament to adopt its own memorandum, the parliamentary report¹ gave interesting nuances and information on the discussion among MP's on the role of national parliaments. The report mentioned indeed that the Advisory Committee wished the role of the national parliaments to be recognised but nevertheless not

1 Ibid., p. 25.

2 See supra, part II, 'The nature of parliamentary scrutiny'.

3 Mémorandum sur la conférence intergouvernementale de 1996, Document parlementaire, Sénat, session 1995-1996, No. 140/10 and Document parlementaire, Chambre des représentants, session 1995-1996, No. 190/5.

in the Treaty. This role would be strictly limited to activity of national ministers within the Council. A direct participation via representation within the institutional framework of the EU in a second Chamber was not proposed.

In general, the Committee refused to make any proposal that would endanger the position of the EP. Note that the amendment on the designation of a certain number of members of the European Parliament (MEP's) by national parliaments or the participation of MP's to national Delegations within the Council, as well as the amendment on the entitlement for national parliaments to a right of initiative in European legislative matters to protest against projects of European regulation that should be contrary to vital interests or subsidiarity had been refused.

In its memorandum, the Parliament explained that national parliaments were the holders of national sovereignty and should therefore be recognised. The intervention of national parliaments in the legislative procedure had however to be limited to the communication to its Government of its position on proposals discussed in the Council. If a second Chamber was not desirable, "contacts between the EP and national parliaments should continue to be developed according to existing modalities as the COSAC"².

Moreover the Parliament suggested to democratise the European decision-making process by:

- co-decision to all legislative matters including justice and home affairs,
- elimination of unanimity where co-decision exists,
- assent of the EP extended to the revision of Treaties as well as all international conventions,
- better control of the EP in Common Foreign and Security Policy,
- simplification of budgetary procedure,
- extended right of legislative initiative,
- extended role in the hearings of Commissioners.

The memorandum of the Parliament advocated the acknowledgment of competencies of the national parliaments, "especially of their function of control of national ministers within the European Councils of Ministers, among other intergovernmental aspects". The ratio under this statement was that those matters do not benefit from the EP's effective control.

Concerning Common Foreign and Security Policy (CFSP), the EP should acquire a right of control "without endangering however the efficiency of the monitored policy"³. Strengthening of CFSP induced also that the EP, in collaboration with the national par-

1 Rapport complémentaire fait au nom de la délégation du Sénat au sein du Comité d'avis fédéral chargé de questions européennes par M. Hatry, Document parlementaire, Sénat, session 1995-1996, No. 140/3.

2 Mémorandum sur la conférence intergouvernementale de 1996, op.cit., p. 13.

3 Ibid. p. 10.

liaments, could exercise a democratic control on the decisions of the European Council and the functioning of the European defence structure.

In the memorandum of the Government, the role of the EP was only mentioned, contrary to the European Commission. In fact, parliamentary assemblies were totally absent of the executive memorandum in the height pages dedicated to external relations and defence.¹ Concerning the Third Pillar, the Parliament advocated co-decision to all legislative matters including justice and home affairs. In its memorandum adopted by the Senate² (which was slightly different from the final memorandum adopted by the Chamber of Representatives), there were more detailed provisions on the subject matter. According to the memorandum, EC-like procedures should be the rule. The EP had to obtain co-decision. According to the Parliament the lack of transparency and complexity that characterise both the elaboration and the content of the Third Pillar increase the existing democratic deficit. Moreover, the absence of systematic information of national parliaments on discussions under way at the European level could constitute one of the causes of current paralysis of European integration in the Third Pillar. Regular information of the Belgian Parliament on all the debates in progress in European institutions, via an institutional reform, like the system of «réserve parlementaire» applied among others in the Netherlands and in France. The agenda of the meetings at the European level and related documents had to be transmitted on time to the Belgian Government, which in turn gave the information to the Parliament without delay.

The Senate's memorandum explained afterwards that it was not clear enough how current European co-operation in justice and home affairs took place and to what results it led. There was no system of access to texts elaborated within the framework of the Third Pillar.

After many questions on the way of working of the Third Pillar, the Senate declared that transfer of competencies on the subject had to be carried out very cautiously because "justice (was) an essential part of a democratic legal state"³. Any transfer of competencies in this matter had to be linked to the respect of the Rule of Law and to the implementation of a serious democratic control, which had to be both political and juridical. In addition, the Senate formulated proposals for better ex-ante control: "to ameliorate political control, it (was) necessary that the Parliament (was) more closely associated to the preparation of European decision"⁴. More concretely, before each European Summit dealing with justice and home affairs, a previous debate had to be organised, with the view of a likely report. More generally, governments should care for giving to the na-

1 Note de politique du gouvernement au Parlement concernant la Conférence intergouvernementale de 1996, op.cit., pp. 16-23: 'Une Union dotée d'une seule voix et d'un poids décisif dans le monde' and 'une politique de défense européenne commune'.

2 Mémorandum sur la conférence intergouvernementale de 1996, Senate, op.cit., pp. 10-13.

3 Ibid.

4 Ibid.

tional parliament enough information on questions debated in the European arena and they should report on the matter.

Faithful to its political guidelines, the Senate expressed its views that the EP should also have a control complementary to the one exercised by the national parliaments. Moreover, both sides of parliaments should establish co-operation and exchanges of information.

Did the Senate forget that a procedure of scrutiny was established when consenting to the Schengen Agreement? Hence, the Government was already supposed to carry out information duties vis-à-vis the Parliament. Those provisions have not been carried out successfully. Negligence of the Government was one part of the reason. Parliament could have been more proactive as well. The question is: Is it useful to add provisions for the control of the Parliament if current ones are not properly applied yet?

In the part of its IGC memorandum dedicated to “a Union of Law and Security”¹, the Belgian Government did not leave a single word on national parliaments, while advocating Community methods and the role of the EP: “All the possibilities to apply Community method have to be used.”² It was in particular the case for matters linked to Community competencies, namely asylum and visas’ policies (linked to the free circulation of persons), customs co-operation and fight against drugs (linked to the free circulation of goods).

More efficient methods inspired with the Community methods should be applied to the left-overs (of the third pillar) which meant among others “intensifying the role of the EP (certainly when the Council took decisions of a legislative nature and/or adopts decisions by qualified majority)”.

As we noted before, there is a general consensus in Belgium on a pro-European position except for the extremist right-wing party Vlaams Blok and the party for more Flemish autonomy, Volskunie.

Vlaams Blok is a racist party advocating a “Flemish Nation”. The European Union is seen as an undemocratic, illegitimate and centralist power. The Europe of Nations is their objective. They pay much attention to the power of the Flemish Community and the Flemish Council in the European Union. The Committee of the Regions is consequently more essential than COSAC for instance. During the debate in the Chamber of Representatives about the IGC memorandum of the Government³, Mr. Lowie, member of the Vlaams Blok, was very critical. He explained that the Advisory Committee for European questions was a purely consultative organ that did not play any role in the European decision-making process. National parliaments were powerless as well as

1 Note de politique du gouvernement au Parlement concernant la Conférence intergouvernementale de 1996, op.cit., pp. 15-16.

2 Ibid., p.15.

3 Analytical Report, Chambre des représentants, session 1995-1996, No. 45, 26th March 1996, pp. 1031-1052.

members of the Advisory Committee. Europe had to respect the identity of all its citizens, the genuine principle of subsidiarity and sovereignty. Flanders had to be fully integrated in the EU within a confederate framework. Volksunie is less extremist, more legalist, but nevertheless points out the necessary accentuated power for national parliaments (especially regional and Community Councils in Belgium) in the European Union that should not tie nations. Although regions and communities have acquired a decisive role in European affairs in federal Belgium, the centralist evolution of the European Union is bothering. During the same debate, Mr. Borginon, member of Volksunie, pointed out that there was no democratic control. The European Commission did not justify itself in front of the EP, he explained. It was a “politburo”¹. This situation could not go on like this, he said. The European Council deliberated secretly. The EP did not have the “Government-making power”². Volksunie would like a Commission politically accountable. The party, according to him, was also in favour of two real parliamentary Chambers: the EP and the Committee of the Regions.

IV. The Federal Parliament and the Federated Councils after Amsterdam

Many MP’s did not expect much for national parliaments and COSAC. The report of the Advisory Committee³ devoted to the appreciation of Amsterdam paid surprisingly not very much on those institutional aspects. It mentioned that the involvement of national parliaments was already present in a Maastricht declaration. The Amsterdam Protocol just specified information modalities for national parliaments but left again to the member states total Constitutional liberty to implement the provisions. There was no judgment in this declaration of the report but just a remark in total conformity with Belgian Parliament’s vision. The report reminded that the federal Parliament was testing a procedure to examine proposals coming from the Commission and that an evaluation would have to be done. It ended its paragraph with a question: “Do we pay enough attention to European affairs?”⁴ The report seemed to express more preoccupations of the internal procedure to control European legislation than new likely possibilities offered by Amsterdam to deepen it. This was not a coincidence, as we will see.

The report emphasised the more direct role of COSAC thanks to the Amsterdam Treaty in matters that touched closely the citizens and that did not enough benefit from a democratic control: liberty, security and justice, “matters that (had) a direct incidence on

1 Ibid., p. 1038.

2 Ibid.

3 Document parlementaire, Chambre des représentants, session 1997-1998, No. 1573/1 and Senate, No. 1001/1.

4 Ibid., p. 45.

rights and duties of individuals, questions related to fundamental rights”¹. The EP had indeed not recovered all the powers lost by national parliaments, the report explained.

In the part of the report especially devoted to institutions - and not citizens - national parliaments were not even mentioned. Instead, democracy, the report said, had been improved thanks to the EP, among others: “The EP is confirmed in its function of the legitimate representative of European citizens and sees its legislative role appreciably reinforced.”² Further in the report: “against all odds”, the EP was surprisingly the winner in the IGC. Although it did not have general co-decision powers, the procedure had been extended to existing matters or new ones; that would allow the EP to make citizens’ voice heard, citizens that it more largely represents.

1. No Immediate Interest in the New Role Given by Amsterdam to COSAC

Belgian federalist views about European integration and debates in the Parliament during the 1996 IGC explain and show clearly that there was no real demand on important increase of powers for COSAC (see above). Accordingly, the Parliament did not take the initiative in making any proposal in that matter. For instance, new matters like a new IGC before enlargement or the work of the Convention to establish a Charter of fundamental rights attracted much more attention.

The composition of the Belgian Delegation of COSAC has always been based on proportional representation of the political forces in the Parliament. This proportion is consequently the same in the Advisory Committee. At each COSAC, there is a political balance considering the last Belgian COSAC Delegations. If the composition has changed, it derives from the results of the Belgian elections in 1999 and not from the Amsterdam Treaty. The French-speaking Greens for instance, at the opposite of Social-Christian, had made a major political breakthrough. The French-speaking Social-Christian party had to give up its full membership in the Advisory Committee to the French-speaking Greens that had previously an observatory status.

As a general rule indeed, the Belgian Parliament did not wait for European provisions in Maastricht and Amsterdam to start closer parliamentary scrutiny. The examination of parliamentary documents shows clearly that matter of facts.

The question of the democratic deficit is not a new one.³ Hence, the institution of the Advisory Committee for European questions in the Chamber of Representatives in 1985 could be considered as a corner stone. The deficit question has continued however to preoccupy MP’s as regards the implementation of European legislation but also, as regards the ex-ante process (see introduction). In 1990 the Chamber initiated a bill relat-

1 Ibid., p. 45.

2 Ibid., p. 4.

3 For a historic evaluation based on parliamentary documents and activities, see Vandevivere 1997, op.cit., pp. 291-299.

ing to the implementation and execution of European Community Law in the domestic legal order.¹ Besides executive duties in the implementation phase, the bill required that the Government had to inform the Parliament of all proposals for acts with a normative character of the Commission of the European Communities.

This proposal has been “telescoped” by the fourth Belgian state reform in 1993. According to Article 92quater of the Special Act for Institutional Reforms:

“ [...] the proposals for regulations or directives and [...] other acts with a normative character of the Commission of the European Communities are communicated to the federal legislative Chambers and to the regional or Community Councils [...].”²

Those provisions are inspired by the above mentioned bill and coincide with the Declaration annexed to the European Union Treaty on the role of the national parliaments in the EU.

In parallel to those processes, on 9 July 1993 the Chamber of Representatives voted a resolution relative to a reinforcement of the control of the national parliaments on the European process of decision-making.³ The rapporteur of the resolution explained⁴ that Declaration N° 13 did not bring anything new concerning the transmission of legislative proposals of the Commission; the Parliament got those proposals from the Official Journal of the European Communities! The second corner stone of deputies’ attempts to control ex-ante European Law lied in point 9 of the resolution: it should be examined

“in which conditions and with what (financial and staff) means it would be possible to carry out a systematic analysis of the proposals for acts with a normative character of the European Communities.”

The 1993 resolution has appeared to be the starting block for the ex-ante parliamentary scrutiny of European legislation⁵. In the regular reports on European legislation, three legal references were systematically mentioned:

- The Belgian Special Act of 5 May 1993 on international relations,
- the Parliament resolution on 9 July 1993 relative to the control of national parliaments,
- the Declaration No.13 of the Maastricht Treaty.

The experiment of ex-ante control was foreseen for the legislature starting in 1995. An evaluation was undertaken in 1999, independently of the Amsterdam Treaty that entered into force the same year. However, in the Parliament document explaining the new ver-

1 Document parlementaire, Chambre des représentants, session 1989-1990, No. 1230/1.

2 See introduction.

3 Document parlementaire, Chambre des représentants, session 1992-1993, No. 1032/1.

4 Document parlementaire, Chambre des représentants, session 1992-1993, No. 1032/2.

5 See supra, part II: The way and scope of parliamentary scrutiny.

sion of control¹, declaration No. 13 was replaced by the Amsterdam Treaty Protocol on the role of the national parliaments.

The entering into force of the Maastricht and the Amsterdam Treaty coincided with the implementation of the two reforms of the Belgian parliamentary scrutiny on European affairs. However, we can just point out that European provisions on the role of national parliaments back and legitimate Belgian initiatives that are already in the pipeline.

In the new scrutiny version carried out in 2000, it was officially confirmed that it belongs to the three officials from the Secretariat (Chamber and Senate) of the Advisory Committee to choose and elaborate “information sheets”. As it is described in an internal parliamentary document², they make proposals for further parliamentary work for each topic. Fewer topics are to be chosen (three instead of five) but the selection is carried out twice a month on the basis of the documents published by the Commission during former weeks. The information sheets and the proposals for further action are then transmitted to the members of the Advisory Committee. They have one week to pick up other proposals from the Commission’s list or to propose other issues for the topic that the Secretariat has to take into account. Otherwise, further action is pursued as proposed by the Secretariat: likely later scrutiny (no further action at that moment), transmission to permanent commissions, exam by the Advisory Committee.

Twice a year, the Advisory Committee makes a report with all the information sheets and the activities that follow.³

1 Senate, Document, 4 April 2000, op.cit.

2 Senate, Document, 4 April 2000, op.cit.: ‘Deux fois par mois, le secrétariat du Comité d’avis établit une liste qui comprend tous les nouveaux documents publiés par la Commission pendant les semaines précédentes. Sur base de cette liste, le secrétariat sélectionne les documents qu’il estime importants. Il prépare pour chaque document ainsi sélectionné une fiche (avec des informations sur le contenu du document, éventuellement les conséquences pour la Belgique), assortie d’une proposition de conclusion (pas de suite, envoi à la commission compétente, examen par le Comité d’avis). Deux fois par mois, les membres du Comité d’avis reçoivent un document qui comprend les fiches et les propositions de conclusions établies par le secrétariat ainsi que la liste complète des documents publiés par la Commission. Les membres du Comité d’avis disposent d’une semaine pour communiquer au secrétariat leurs observations sur la sélection et/ou les conclusions proposées. Au cas d’une réaction d’un membre, un document est ajouté à la première sélection (et une fiche assortie d’une conclusion sera établie par le secrétariat) et/ou une conclusion proposée est adaptée. Les conclusions adoptées seront exécutées (envoi d’un document par le Président du Comité d’avis au(x) Président(s) de commission(s); examen d’un document par le Comité d’avis). Deux fois par an, les sélections mensuelles du Comité d’avis, les fiches, les conclusions et la suite qui leur a été donnée seront publiés dans un document parlementaire.’

3 The topics chosen are very diversified as the selection for parliamentary scrutiny of the Advisory Committee for January 2000 shows: Employment and work conditions; Tobacco: manufacture, presentation and sale of products; Immigration policy: Third-country nationals, right to family reunification; Guidelines for employment policy of the Member States in 2000; Food safety: action plan, European food Authority; Financial sector: information with third countries; Training, education: teaching and learning, towards the learning society; Common agricultural policy and environment. Source: Federal Advisory Committee on European Questions: ‘Examen des propositions d’actes normatifs et d’autres documents de la Commission européenne’, 3.-28.1.2000.

Permanent commissions designate also “Euro-promoters” responsible to foster the European dimension in their commissions as well as members of the Advisory Committee. They have to ensure that their commission follows topics considered as important by the Advisory Committee. The Euro-promoters have also to ensure the examination of the agenda of the Council of the European Union and the COREPER (in their respective matters). This last activity was already subject to a provision of the rules of procedure of the Chamber of Representatives. The Euro-promoters have one month to make a report on the activities of their commissions on European topics. The Senate does not use the system of Euro-promoters, so that it is the duty of the permanent commissions’ presidents to keep the Euro-dimension in mind. The actual President of the Senate, A. De Decker, pays much attention to this European awareness.

The action of the Euro-promoters and the new version of scrutiny procedure following the evaluation in 1999 started in 2000. The changes in the Advisory Committee did not require an increase of meetings as it is essentially a written procedure. The frequency remains around once to twice a month depending on the European agenda.

2. The Legal Obligation to Inform the Chambers and Councils¹

It is worthwhile to mention how legal obligations are translated in practice. Since the 1999 Belgian elections, the Parliament (via the Secretariat of the Advisory Committee) has not received any documents of the European Commission by the Government. Regional and Community Councils has nearly never. However, the Advisory Committee has not urged for that for different reasons:

- the staff in the cabinet of the federal Government has changed as well as the officials of the administration dealing with European affairs in the Ministry for Foreign Affairs (‘P11 Service’),
- the documents anyway used to be sent too late as regard,
- the rather efficient parliamentary procedure of the Advisory Committee. The Secretariat can easily obtain COM documents on the Internet.
- Most of the documents arrived without comments or explanations. If they did, it appeared not to be useful.

As a consequence, the Advisory Committee used to take COM-documents published on weekly lists in the Official Journal of the European Communities. However, President De Croo asked the Minister for Foreign Affairs Louis Michel to add to the agenda of the Councils of the European Union comments and analytical reports of the meetings². In its answer on 8 September 2000, the Minister for Foreign Affairs explained that the

1 Article 92quarter of the Special Act on Institutional Reforms.

2 Via two letters on 11 April 2000 and 31 July 2000.

request would ask more work for services already very overloaded and even more in the perspective of the Belgian Presidency (second half of 2001). Progressive measures are going to be carried out. Louis Michel proposed as a first step to concentrate on the work of the General Affairs Council of Ministers (under his responsibility). That would imply an information sheet before and after the Council especially concentrated on the Belgian position.

V. Conclusions: Maintaining the EU's Multi-Level Momentum

The Amsterdam Protocol on the role of the national parliaments and COSAC has not fundamentally changed the involvement of Belgian Parliament in European affairs. Uneasiness about lack of democracy was foreseen since the beginning. A first permanent commission for European affairs in the Chamber of Representatives tried to compensate the lack of control but failed. In 1985 a second attempt succeeded with the establishment of the Advisory Committee on European affairs within the Chamber of Representatives and in 1995 with the creation of the federal Advisory Committee.

The results of parliamentary control on European affairs may appear to be amazing considering parliamentary documents. Concrete influence of the Parliament on European affairs is however very limited for many reasons, among others:

- Constitutional limits: it falls to the Government to negotiate in the Council of the EU, without any agency from the Parliament.
- Ideological limits: the federal vision of the main political trends in Belgium supposes a strong EP and no direct interference of national parliaments in the European decision-making process. The general consensus on European integration makes this situation easier.
- Technical limits: lack of time and expertise are major obstacles to systematic control of European legislation.

For Belgium, COSAC is stuck between a minimum of efficiency and no further institutional development that would endanger European integration and the EP in particular.

Those fundamental factors have not changed with the Amsterdam Treaty. Parliamentary scrutiny was already under way before Amsterdam. An evaluation of the Advisory Committee was under way independently of the Amsterdam process, which has not been a trigger for much more involvement. It is true however that Amsterdam, and before, Maastricht, back and legitimate the involvement of the Belgian Parliament and the role of the Advisory Committee.

Comparison with the role of other national parliaments is not easy as we have to compare not only the rules established by each country but, above all, the way they are implemented. The Belgian system features relevant mechanisms of control, which are however not used sufficiently. MP's mainly trust the European policy of the Government; there is consequently no necessity to increase the legal participation of deputies.

Besides, there is no demand to be entitled to commission the Government. This would considerably diminish the Government's scope of action while negotiating. In this context the six-week period is no major challenge in Belgium. Above all, the Belgian Parliament searches for EC documents itself. This proactive behaviour is absent in the regional and Community Councils where their respective Governments do not conform themselves with European and Belgian provisions; even if several parliamentary complaints emerge here and there.

Other national parliaments work more closely with their governments and/or administrations. They even provide sometimes reports that allow the national parliaments to adopt a position. The question is: how far can national parliaments adopt a specific position if all their information is based on governmental ones? The Belgian federal Parliament prefers to work more independently.

For important debates in Belgium like the chocolate directive or the elaboration of a Charter of fundamental rights, the Advisory Committee for European affairs organised hearings of associations and professors or major actors dealing with the challenges at stake. This system enables the Parliament to formulate its own opinion based on the different proposals by these actors. Is this way of working the pre-figuration of the new arbitration role of parliaments in an increasingly complex world?

Indeed our western democracies have to deal with a major phenomenon: the more and more complex and transnational dimension of political, economical and social realities in a global environment. In this regard, the Belgian Parliament faces the question of a multi-polar governance. Political decisions require scientific and technical expertise. Loci of decision-making are everywhere and more and more especially in remote and specialised circles that could be political, administrative, economical or civil. The future role of our parliaments has to take those evolutions into account.

The Danish Folketing and its European Affairs Committee: Strong Players in the National Policy Cycle

Finn Laursen

I. Introduction: The Political System and Culture of Denmark

The Danish Parliament, the Folketing, has developed a rather unique system of control and legitimation of the Government's EU policy. A Market Committee, since 1994 called the European Affairs Committee, was established when Denmark decided to join the then existing EC in 1972.¹ This paper will outline the role of the European Affairs Committee in Danish EU policy-making. This role is in many ways stronger than that of similar Committees in other national parliaments in the EU. EU affairs are serious business in the domestic politics of Denmark, and the Parliament has tried from the very beginning of Denmark's EC membership to control the Government rather tightly. The Danes see that as a way of increasing the democratic legitimacy of European integration. Indeed, when Europeans talk about a 'democratic deficit' in the EU the Danes tend to think of the role of national parliaments.

On the other hand, the Danes have usually hesitated when it came to strengthening the European Parliament. That avenue to more democracy has been seen as 'more Union', something the sceptical Danes have not been enthusiastic about. Recently, however, the idea that the European Parliament (EP) could be an ally for Denmark in the quest for more 'progressive' environmental, social and consumer protection policies has played a certain role.

Denmark has been a Constitutional monarchy since 1849. Since 1901 the practice developed that the King (or Queen) appoints a cabinet which does not have a majority in the Folketing against it. This kind of 'negative' parliamentarism was included in the current Constitution from 1953. There is no formal investiture. The King consults the party leaders and decides who is most likely to be able to form a government that will have the confidence of the Folketing. As long as a government is not met with a vote of no-confidence it can remain in office. But it can also call an election any time.

Since 1953 Denmark has been unicameral. Denmark is also a unitary state, although rather decentralised.² Lijphart has characterised Denmark as having weak judicial re-

1 Actually the Committee's existence goes back to the first Danish application for membership in 1961.

2 See Lijphart, Arend: *Patterns of Democracy*, New Haven/London: Yale University Press 1999, p. 189. Fiscal decentralisation in Denmark is higher than in some federal states. See Gallagher, Mi-

view.¹ Indeed, apart from the Constitution there is no one above the Danish Folketing. Denmark is, however, a very corporatist state.² Interest groups actively take part in the preparation of EC legislation through 35 EC Special Committees established within the administration.³

Another important element of the Danish political system is the fact that there are usually several political parties represented in the Folketing. The party system is highly fragmented, or has been so at least since 1973. No single party has ever had a majority since the beginning of the 20th century. Denmark therefore usually has coalition governments, but these often not have the majority of votes in parliament. They are thus minority governments, which are obliged to build further coalitions to get legislation passed by the Parliament. Indeed, Denmark has only had one majority coalition government since Denmark joined the EC in 1973, i.e. the Government formed by Poul Nyrop Rasmussen in January 1993, which was a coalition of the Social Democratic Party, the Social Liberal Party (Radikale Venstre), the Center-Democrats and the Christian People's Party. But at the elections in September 1994 the Christian People's Party did not get the required two percent of the votes and Poul Nyrop Rasmussen's second government was a minority government of the three remaining parties.⁴ Later the Center Democrats dropped out, so the current government is a coalition between the Social Democrats and the Social Liberals.

Among the political parties four are known as the 'old' parties. Three of them date back to the late 19th century, i.e. the Liberal Party (Venstre), the Conservative Party and the Social Democratic Party. The Social Liberal Party (Radikale Venstre) dates back to the beginning of the 20th century. The latter has often formed governments with the Social Democrats, but also sometimes with the Liberals and Conservatives. Being in this middle swing position has given the party influence out of proportion with its size.

Fragmentation of the party system increased dramatically at the elections in 1973, the first election after accession, when representation in the Folketing increased from five to eleven parties.⁵ The five parties represented in the Parliament before were the four so-called old parties and the Socialist People's Party. Of these only the Socialist People's Party had officially been against membership, although the Social Democrats and Social Liberals were internally split on the issue of membership. Two small anti-EC parties,

chael/Laver, Michael/ Mair, Peter: Representative Government in Modern Europe, 3rd ed. ,New York, McGraw-Hill, 2001, p. 167.

1 See Lijphart, op.cit., p.226.

2 Ibid., p. 177.

3 More on this in Laursen, Finn: 'Denmark: In Pursuit of Influence and Legitimacy', in: Wessels, Wolfgang/Maurer, Andreas/Mittag, Jürgen (eds.): Fifteen into One?: The European Union and the Member States, (Manchester: Manchester University Press 2001, forthcoming).

4 See Arter, David: 'The Folketing and Denmark's 'European Policy': The Case of an 'Authorising Assembly?', in: Norton, Philip (ed.): National Parliaments and the European Union, London, Frank Cass, 1996, pp. 110-123, at p. 121.

5 See Arter, op.cit., pp. 117-118.

which had been represented before, now entered the Parliament again, i.e. the Communists and the Justice Party. Also a new anti-EC party, the Left Socialists, got enough votes to enter the Parliament. The final two parties that entered the Parliament in 1973 were the Center-Democrats, who had split from the Social Democrats six weeks before the election, and Glistrup's Progressive Party. The Center-Democrats were - and remain - strongly pro-integration. The Progressive Party was elected on an anti-tax and anti-bureaucracy platform.

The current Folketing was elected on 11 March 1998. No less than ten parties got more votes than the two per cent threshold. Biggest was the Social Democratic Party with 36 per cent of the vote, followed by the Liberal Party, which got 24 per cent of the vote. Then followed the Conservative Party with 8.9 per cent, the Socialist People's Party with 7.5 per cent and the Danish People's Party with 7.4 per cent. Further down the list were the Center-Democrats, the Social Liberal Party, the Red-Green Alliance (Unity List), the Christian People's Party and the Progress Party (see Table 4).

The current government is formed by the Social Democrats and the Social Liberals. Respectively they have 63 and seven seats. With a total of only 70 seats out of 179 it is clearly a minority government. On the left they have two parties which are rather integration-sceptical, i.e. the Socialist People's Party and the Unity List (Red-Green Alliance). Although the leading opposition parties, the Liberals and Conservatives, are pro-integration, there are two parties on the right side that are anti-integration, i.e. the Danish People's Party and the Progress Party. Given the scepticism of the Danish voters the old established parties have to be attentive to the anti-integration sentiment of the electorate.

For comparison Table 4 also includes the results of the election to the European Parliament on 10 June 1999. Two anti-integration groups, the June Movement and the People's Movement against the EC Union, take part in EP elections. In 1999 they received more than 20 per cent of the votes and 25 per cent of the Danish seats in the EP. These two groups, however, do not take part in national elections.

Table 4: Parliamentary Representation of Danish Parties and Groups

Seats won in the election and % of the total votes in Denmark	Folketing election 11 March 1998		European Parliament election 10 June 1999	
	Seats	% of vote	Seats	% of vote
Social Democrats	63	36.0	3	16.5
Liberal Party	42	24.0	5	23.4
Conservative Party	16	8.9	1	8.5
Socialist People's Party	13	7.5	1	7.1
Danish People's Party	13	7.4	1	8.0
Center Democrats	8	4.3	0	3.5
Social-Liberal Party	7	3.9	1	9.1
Red-Green Alliance	5	2.7	NP	
Christian People's Party	4	2.5	0	2.0
Progress Party	4	2.4	0	0.7
June Movement	-		3	10.1
People's Movement against the EC Union	-		1	7.3
Greenland*	2			
Faroe Islands*	2			
Total number of seats	179		16	

NP: did not participate. * Greenland and the Faroe Islands have home rule and are not members of the European Union. Source: Ministry of Foreign Affairs, "Political Parties in Denmark", <http://www.um.dk/english/danmark/om_danmark/partier/>, and "The referendum in Denmark on 28 May 1998 on the ratification of the Amsterdam Treaty", <<http://www.um.dk/english/udenrigs-politik/europa/vurderinguk>> "Europa-Parlamentsvalget den 10. juni 1999", <<http://www.im.dk/evl1999/evland.htm>>.

Denmark's relationship to the EU is further complicated by the frequent use of referenda in connection with major EU decisions. One could argue that Denmark has two political systems, representative democracy in respect to on-going legislation and direct democracy in connection with decisions affecting Denmark's 'constitutional' relations with the EU. The use of referenda is first of all due to article 20 of the Danish Constitution which requires a 5/6th majority in the Folketing to transfer competences to supranational institutions or a simple majority plus a confirming referendum. However, in 1972 when a referendum was used to confirm Denmark's accession to the EC the then Prime Minister Jens Otto Krag (Soc. Dem.) had decided beforehand that there would be a referendum even if there were to be a 5/6th majority in the Folketing. The party was split on the issue, so Krag decided that the people would in any case have the last say. Later the Single European Act, the Maastricht Treaty and the Amsterdam Treaty have all been ratified after referenda. Indeed, in the case of the Maastricht Treaty a narrow majority first rejected the Treaty in 1992, only to accept it in 1993 after Denmark secured various special arrangements at the Edinburgh meeting of the European Council in December 1992. These concerned the third phase of the EMU, defence policy, Justice and Home Affairs co-operation and citizenship of the Union. Due to the stipulation in the Amsterdam Treaty that citizenship in the Union is a supplement to national citizenship and does not replace it, the latter Danish exemption is now an integral part of the Treaty.

According to promises by the politicians the remaining three exemptions can only be changed through referenda. Recently, on 28 September 2000, the Danish people voted ‘no’ in a referendum about Danish participation in the Euro despite the advice of the Government and leading opposition parties, the Liberals and Conservatives as well as the Center-Democrats, to vote ‘yes’.

Table 5: Danish Referenda on EC/EU Questions

Date	Topic	Participation in %	Yes in %	No in %
2 October 1972	Danish membership	90.1	63.3	36.7
17 February 1986	Single European Act	75.8	56.2	43.8
2 June 1992	The Maastricht Treaty	83.1	49.3	50.7
18 May 1993	The Maastricht Treaty and The Edinburgh Agreement	86.5	56.7	43.3
28 May 1998	The Amsterdam Treaty	74.8	55.1	44.9
28 September 2000	Adherence to the Euro	87.5	46.9	53.1

Source: Branner, Hans/Kelstrup, Morton, ‘Denmark’s Policy towards Europe in a Historical and Theoretical Perspective’, in: Branner, Hans/Kelstrup, Morten (eds.), Denmark’s Policy towards Europe after 1945, Odense University Press, 2000, p. 17, *Morgenavisen Jyllands-Posten*, 30 September 2000, 2nd section, p. 5.

The political elite in Denmark faces a sceptical public. Opinion polls show that Danes support economic integration, but are sceptical of political integration. Prior to the Maastricht referendum in 1992, 69 per cent of the Danes supported abolition of trade barriers and 74 per cent supported the internal market, but only 38 per cent supported a common foreign policy, 30 per cent a common defence policy and 34 per cent a single currency.¹ The latest Eurobarometer shows that two thirds of the Danish electorate do not want the EU to gain more influence in their everyday lives. However, 53 per cent of the Danes believe that the EU is “a good thing”.²

Returning to the Parliament: Since the very beginning of Danish membership of the European Communities in 1973 the Folketing has exercised more control over European policy than any other national parliament in the EC/EU. A Market Relations Committee (markedsudvalg) was established to implement the Accession Act of 1972. According to article 6 of the Accession Act the Government was obliged to inform a Committee of the Folketing about EC decisions that were directly applicable in Denmark or required the action of the Folketing.³ From the spring of 1973 a system developed which in reality included the issuing of binding mandates to ministers negotiating within the Council of Ministers. This happened in response to a political crisis. The minister of agriculture returned from Brussels with a negotiation result concerning agricultural prices that

1 See Laursen, Finn: ‘Denmark and the Ratification of the Maastricht Treaty’, in: Laursen, Finn/Vanhoonaeker, Sophie (eds.): *The Ratification of the Maastricht Treaty*, Dordrecht, Martinus Nijhoff Publishers, 1994, pp. 61-86.

2 Reported in *Jyllands-Posten*, 27 October 2000.

3 See Jensen, Jørgen Albæk: ‘Prior Parliamentary Consent to Danish EU Policies’, in: Smith, Eivind (ed.): *National Parliaments as Cornerstones of European Integration*, London: Kluwer Law International 1996, pp. 39-48.

shocked the Folketing. When it further turned out that he could not explain the result the Liberals and Conservatives forced the Government to accept the mandate-giving procedure in March 1973.¹

The original name, the Market Committee, corresponded to the original concept of integration in Denmark. Integration was seen as a relatively limited economic matter. In 1994 the Committee changed its name to the European Affairs Committee (Europaudvalget) which, after the entry into force of the Maastricht Treaty, seemed more appropriate, although it would have been more correct to call it the EU Committee since its remit is limited to the EU and not to all of Europe.

II. Parliamentary Involvement in EC/EU Affairs 1993-1999²

Since the entry into force of the Maastricht Treaty the Government has continued to seek a mandate for important matters falling under the EU's First Pillar. For Common Foreign and Security Policy (CFSP) matters the Government informs the European Affairs Committee, but the Parliament's Foreign Affairs Committee is also informed about these matters. Similarly, Justice and Home Affairs (JHA) matters are dealt with both by the European Affairs Committee and the Legal Affairs Committee of the Parliament. Whenever a mandate for negotiation is needed it will have to be given by the European Affairs Committee, though.³

The European Affairs Committee has 17 members (and eleven deputies) chosen proportionally among the parties represented in the Folketing. Politically the Committee thus mirrors the Chamber. In many ways it has become a kind of mini-parliament. Indeed, in a parliamentary debate in October 1974 the leader of the Social Democratic Party, Anker Jørgensen, referred to it as a minifolketing.⁴ It plays a central role in accepting EU legislation in Denmark. This legislation - regulations and directives - is as binding as normal Danish legislation, but it does not go through the normal legislative process with three readings in the plenary of the Parliament and deliberations in specialised standing Committees in between. So although the European Affairs Committee is one of 24 standing Committees it has a special role. A special kind of 'mini-parliamentarism'

1 See Skou, Kaare R.: *Folkestyret i arbejde*, Forlaget Ventues 1995, p. 143.

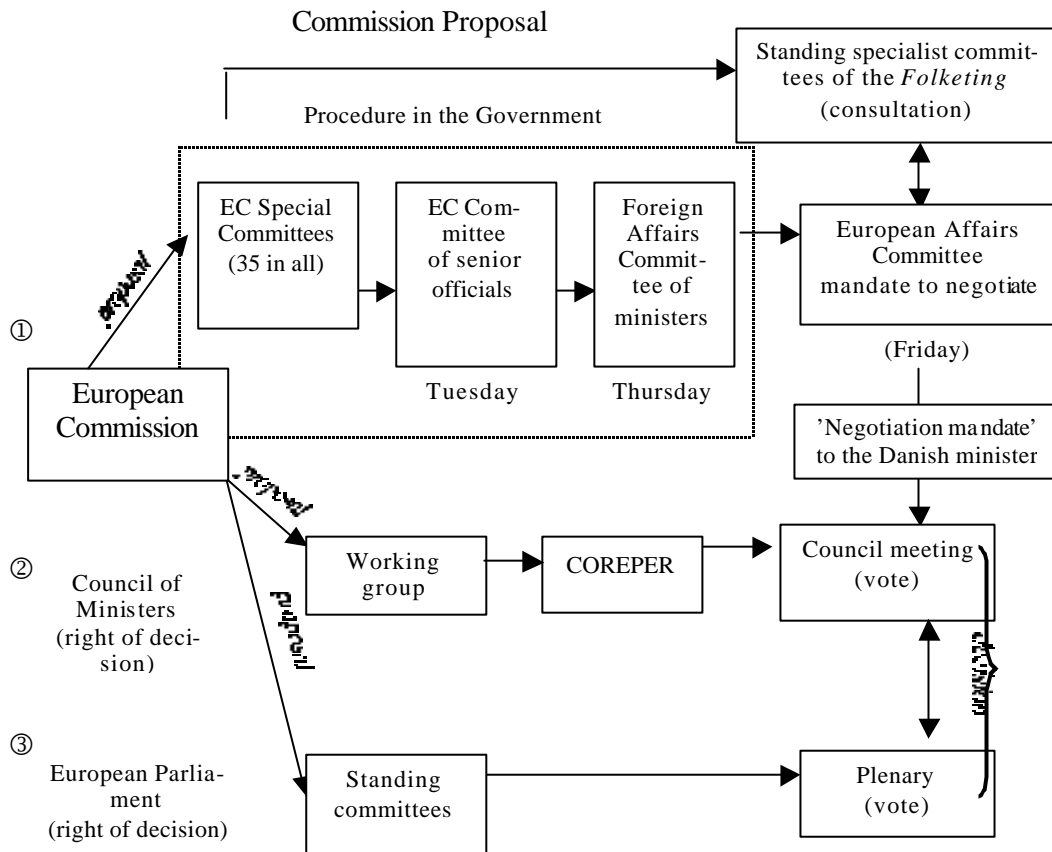
2 The first part of this section relies on Laursen, Finn: 'Parliamentary Bodies Specializing in European Union Affairs: Denmark and the Europe Committee of the Folketing' in: Laursen, Finn/Pappas, Spyros A. (eds.): *The Changing Role of Parliaments in the European Union*, Maastricht, European Institute of Public Administration, 1995, pp. 43-54.

3 See Nedergaard, Peter: *Organiseringen af Den Europæiske Union*, Århus, Handelshøjskolens Forlag, 1994, p. 302; Information brochure from the secretariat of the European Affairs Committee: 'The European Affairs Committee', Copenhagen, October 1996, p. 10.

4 Quoted in Jensen, Jens Albæk: *Parlamentarismens statsretslige betydning: Det parlamentariske principps betydning for forholdet mellem Folketing og regering*, Copenhagen: Jurist- og Økonomforbundets Forlag, 1997, p. 134.

has developed for EU policy-making in Denmark. Given party discipline in Denmark, and the fact the parties tend to send their more influential members to the European Affairs Committee, a government wanting to survive politically knows that it will have to listen to the Committee.

Figure 4: Structure of the Danish EU-Policy-Making Process



Source: Adapted from presentation by Hoffmeyer, Niels at the European Institute of Public Administration (EIPA), Maastricht, June 1994, in: Pappas 1995, p. 14.

The European Affairs Committee normally meets on Fridays. Ministers will appear before the Committee and present their proposals verbally. "If there is no majority against the mandate, the Government negotiates on this basis."¹ The practice is thus to apply the same kind of 'negative' parliamentarism as applies to the formation of governments. Since 1973 the practice has developed that the chairman counts the votes represented by the members of the European Affairs Committee. It takes 90 votes or

1 Report of the Market Relations Committee on 29 March, 1973, English translation quoted from 'The European Affairs Committee,' Copenhagen, October 1996, p. 3.

more against to refuse a mandate for negotiation (i.e. more than half of the 179 members of the Folketing).

Table 6: Membership of the Danish European Affairs Committee on 2 October 2000

Party	Number of members
Social Democratic Party	5
Liberal Party	4
Conservative Party	3
Socialist People's Party	1
Danish People's Party	1
Center Democrats	1
Social Liberals	1
Red-Green Alliance (Unity List)	1
Total	17

Source: Compiled by the author. List of current members can be downloaded from the homepage of the Danish parliament under <<http://www.folketinget.dk>>.

The European Affairs Committee has extensive access to EC documents. Documents that touch on the security of other member states can be read in the office of the Chairman of the Committee. For this reason members have to accept an obligation of secrecy. The Government has the obligation to keep members informed about current proposals for EC legislation. The Committee can request a written orientation from the Government about the negotiation situation related to any issue and it can request a meeting with the competent minister at any time.¹

Usually two to four ministers come to a meeting, each going through ten to 20 points, including proposals on the agenda of the Council meetings in Brussels the following week. Ministers are accompanied by civil servants. The Prime Minister's Office and the Foreign Ministry have civil servants present permanently.²

Apart from presenting the negotiation positions the Government also informs the European Affairs Committee about proposals under consideration. It is usually only during the last part of the legislative process in the EU that the Government presents a negotiation position. At this point in the process the possibilities for influence are of course rather restricted. But the Committee does have the option of requiring the Government to change its negotiation position even then.

By starting the discussion in the European Affairs Committee as soon as the Commission starts considering proposals or puts forward its proposals the Government can try to be sure that it knows the feelings and attitudes of the parliamentarians. It is estimated that by the time a negotiation position is put forward, it is accepted in more than 90 per cent of the cases.³

1 See Nedergaard, *Organiseringen af Den Europæiske Union*, 1st ed., pp. 305-306.

2 See also Fich, Ove: 'Markedsudvalget - dets styrke og svagheder,' *Udenrigs*, Vol. 48, No. 4 (1993), pp. 63-64.

3 See Nedergaard, *Organiseringen af Den Europæiske Union*, 1st ed., pp. 307 -308.

However,

“it does not happen infrequently that the Government changes its original mandate for negotiation during the talks with the Committee - or at least adapts it to meet the points of view which are likely to attract a majority in the Committee.”

The same source goes on to say that

”the Danish civil servants who take part in the negotiations at an early stage - often before the Commission submits its proposal - take into consideration the fact that the Government shall at a given hour have the result approved by the political forum constituted by the European Affairs Committee.”¹

Put differently, anticipated reactions are important in the policy-making process. Civil servants try to anticipate reactions from the European Affairs Committee to protect the Government against political problems.

It should be mentioned that the European Affairs Committee receives deputations as do other standing Committees of the Folketing. This gives interest organisations an additional access point to the policy-making system.

The ‘No’ in the Danish referendum on the Maastricht Treaty in June 1992 led to a discussion about transparency in the EU. This discussion also affected the Danish system to some extent. In a report of 19 March 1993 it was decided to have a press briefing after each meeting of the Committee. At this briefing the Chairman of the Committee informs the press about the cases where the Government has had its negotiation position accepted, and normally also gives the main lines of that position. Information also includes the cases where there is a majority against the Government position. Furthermore it includes information about the position taken by the political parties, whose representatives can take part in the press meeting and explain their positions. In cases where there is a decision about secrecy the Chairman will simply state that the Government has received a negotiation mandate but that it is confidential until a final decision has been made. When a final decision is made the stances taken by the different parties to the negotiation mandate are made public.²

Meetings of the European Affairs Committee still take place behind closed doors. Shorthand minutes have been taken since 1984, but they only go to the Chairman and one representative of each party represented.

The lack of openness of the meetings of the European Affairs Committee has been regularly criticised, especially by the Socialist People’s Party. Another type of criticism has come from the other side of the political spectrum, with the Progress Party saying that the Committee is the only parliamentary control of hundreds of changes in Danish law, which cannot even be changed later by the Folketing.

The Danish system has not answered the question whether EU policy is foreign or domestic policy. A particular issue that rises from this tension is the question of which role

1 See ‘The European Affairs Committee’, October 1996, p. 4.

2 See Laursen, 1994, op.cit., p. 76.

the specialist Committees (fagudvalg) of the Folketing should play. These Committees will usually have more technical expertise than the more 'generalist' European Affairs Committee. A first response to this problem was sharing of information. A practice was started whereby the agenda of the European Affairs Committee was sent to the chairmen on the other standing Committees. In the case of the Environment and Regional Planning Committee a practice of systematically asking for an opinion on proposals for environmental legislation developed in the 1980's during the years of a 'green' majority of Social Democrats, Social Liberals and People's Socialists under the Conservative-Liberal Government of Poul Schlütter.¹

In the report of 19 March 1993 it was also decided to draw in the specialist Committees to a greater extent.

A report from the European Affairs Committee of 20 May 1994 continued this trend and sought further association of specialist Committees with the process of considering EU legislative matters.² A system of parallel information was put in place for new Commission proposals affecting the level of protection in Denmark in the areas of health, environment, labour market and consumer policy. According to the 1994 arrangement, basic notes, prepared by the administration and outlining the implications of the proposal for Danish law, were to be sent concurrently to the European Affairs Committee and to one or several relevant specialist Committees as soon as possible after the Commission had put forward a new proposal. Similarly, information from the Foreign Ministry later in the process, including the topical notes, usually sent at least a week before the meeting of the European Affairs Committee prior to the deciding Council meeting, would be forwarded to relevant specialist Committees.

This system was evaluated two years later and some further changes were introduced by a report from the European Affairs Committee of 27 September 1996.³ The 1996 arrangement agreed between the Government and the European Affairs Committee extended the parallel information system to all new proposals for directives. Basic notes (grundnotater) are prepared for all new directives as well as Green and White Papers. Basic notes should be ready at the latest 10 weeks after the Commission proposal reaches the Council. A topical note (aktuel notat) is still due a week before the meeting of the European Affairs Committee giving the minister a mandate. Basic notes and topical notes are all factual. They do not reveal the Government's stand, which is only revealed orally at the meeting giving the Government a mandate.

1 See Fich, 1993, op.cit., p. 66.

2 See Ameline, Nicole: 'Les Parlements et l'Europe: Les leçons de l'expérience danoise', Rapport d'information, No. 1437, Paris, Assemblée Nationale, Délégation pour l'Union européenne, 1994, p. 22; text of report as appendix in: Laursen: 'Parliamentary Bodies'.

3 See Europaudvalget: 'Beretning om Folketingets behandling af EU-sager', Beretning nr. 6, 27 September 1996, Folketinget 1995-96.

95 per cent of the notes received by the European Affairs Committee are now accessible to the general public.

The European Affairs Committee also decided to introduce public hearings in 1996. Hearings and ensuing readings can be conducted in co-operation with the specialist Committee in question.¹

Concerning implementation the 1996 report mentioned the problem that much implementation of EU directives in Denmark takes place through administrative decrees (bekendtgørelser), i.e. not legislation. This is possible because basic legislation empowers the Government to do so. The European Affairs Committee has been kept informed about implementation through short notes. There was now also a need to send these notes to the specialist Committees and the Government agreed to do this.

The main purpose of the 1996 reform thus was to get information as early as possible and get it to the specialist Committees, too. It was not a radical reform. Indeed the report had minority views which indicated some problems that still exist. The Socialist People's Party suggested that all Commission proposals immediately should be dealt with by relevant specialist Committees. The Unity List and the Danish People's Party went further and suggested that the Folketing should have a full public first reading of EU legislative acts in the plenary. Specialist Committees should be drawn informally and the meetings of the European Affairs Committee should be open.

The Unity List (Red-Green Alliance) also criticised the arrangement concerning implementation whereby the specialist Committees are only informed after the implementation has taken place. For directives where the Government had needed a negotiation mandate from the European Affairs Committee, it should be possible for a political party to demand that implementation be dealt with by the Parliament. Of 127 directives during the period 1994-95 only 27 resulted in laws adopted by the Parliament. No less than 141 administrative acts were issued to implement these directives.

Two other changes have taken place recently. One concerns WTO matters and the other Schengen matters. According to a report of 14 March 1997 the Government will provide the European Affairs Committee with half-yearly reports on developments inside the WTO, especially developments that affect the Danish level of protection in health, environment, labour market and consumer policy. The Government will also provide continuous information about the work in the WTO when important decisions of a political character are prepared. The European Affairs Committee will be informed if the Commission needs a negotiation mandate for WTO negotiations. The same procedures as for normal EU cases will be followed.²

1 See 'The European Affairs Committee', October 1996, p. 6.

2 See Europaudvalget: 'Beretning om Folketingets behandling af WTO-sager', Beretning nr. 7, 14 March 1997, Folketinget 1996-97.

Denmark's decision to accede to the Schengen Convention was confirmed by the Folketing on 10 June 1997. On 27 November 1997 the Minister of Justice suggested a procedure for informing the European Affairs Committee and Legal Affairs Committee prior to meetings in the Schengen Executive Committee. The procedure agreed with the Parliament includes first of all a commitment to send a note concerning the points that are expected to be dealt with, as far as possible a week before the meeting of the European Affairs Committee that takes place prior to the meeting in the Schengen Executive Committee. At the meetings in the Legal Affairs Committee (usually Thursday) and European Affairs Committee (usually Friday) the Minister of Interior and/or Justice will make oral accounts of the essential cases according to the same procedures as for EU matters. After the meeting in the Executive Committee the Government will send a written account of the meeting to the two Committees.¹ This procedure for Schengen matters is comparable to the procedure already adopted for Pillar Three JHA co-operation. Prior to Denmark's accession to Schengen being fully ratified by the other parties to the Convention, however, the Government was not seeking a negotiation mandate, since Denmark was only an observer.

Before getting to the Parliament JHA cases have gone through the Preparatory Committee concerning Legal and Police Co-operation of civil servants (Forberedelsesudvalget vedr. Rets- og politisamarbejde), the Foreign and Security Committee of civil servants (Udenrigs- og Sikkerhedspolitisk Udvalg) and the Government's Foreign Policy Committee (II) (Udenrigspolitisk Udvalg).²

III. The Danish Parliament and the Negotiation of the Amsterdam Treaty³

Denmark went into the Amsterdam Treaty negotiations with certain 'lessons' from the problems of getting the Maastricht Treaty ratified. These 'lessons' led to an increased emphasis on policies that could make the whole integration process more legitimate. This led to more emphasis on environment, consumer protection, social and employment policy as well as openness and nearness. Indeed, the trauma from 1992 affected the way the Amsterdam Treaty negotiations were prepared in Denmark.

Institutionally the Maastricht Treaty's two new pillars had required some adaptations of the Danish policy-making system, involving the Foreign Affairs and Legal Affairs Committees of the Folketing in CFSP and JHA matters respectively. Similarly there has

1 See Europaudvalget: "Beretning om Folketingets behandling af Schengensager", Beretning nr. 2, 7 May 1998, Folketinget 1997-98 (2. samling).

2 See Justitsministeriet, Civil- og Politiafdelingen, Det Internationale Kontor: 'Notits', 27 November 1997.

3 A more detailed treatment will be available in Laursen, Finn: 'Denmark: The Battle for a Better Treaty', in: Laursen, Finn (ed.): *The Amsterdam Treaty: National Preference Formation, Interstate Bargaining and Outcome*, Odense: Odense University Press 2001, forthcoming.

been an effort to involve the functionally specialised Committees in the Parliament earlier and to a greater extent in First Pillar legislation.

In connection with the Amsterdam Treaty negotiations a special mechanism was established for preparation of Danish policy. All interested ministries were represented in the 'EC Committee in special session' (EF-udvalget i særlig samling) at the level of head of office (kontorchef) and chaired by the Head of the Northern division in the Ministry of Foreign Affairs. Above this was the Summit Committee (Topmødeudvalget) in which all interested ministries were represented by the Head of Department (departementschef). The interesting thing was that this Committee was chaired by the Head of Department from the Prime Minister's Office, which meant a somewhat weakened position of the Ministry of Foreign Affairs. About half the ministers took part in the Government's own Summit Committee (Regeringens topmødevalg).¹ All in all this meant a broader involvement compared with the 1991 IGC which negotiated the Maastricht Treaty. The purpose was to capture as many of the domestic implications as possible and avoid the problems of the Maastricht Treaty ratification. Prime Minister Poul Nyrup Rasmussen's personal interest may also help explain the greater involvement by the Prime Minister and his Office (Petersen, 1998).

The Government's interest in central control is clear. It wants to control the politically sensitive aspects of the EU decision-making process. Since even technical details, like which food additives are allowed or prohibited, can become political issues, getting input from experts and affected interests is important. An elaborate system of co-ordination has been set up to assure these relevant inputs. The central role normally played by the Foreign Ministry can be explained by Denmark's efforts to get as much influence in Brussels as possible. So there are both legitimacy and efficiency considerations behind the established co-ordination mechanisms.

The Government's main priorities for the 1996 IGC were debated by the Folketing on 12 December 1995. The Government first of all sought achievements concerning enlargement, employment, environment and openness.

According to the Government the superior goal of the IGC was to create the basis for an enlargement of the EU with Central and Eastern European Countries (CEECs). This required certain changes, including institutional adaptations. It was important that an enlarged EU remains efficient, it was stated.

The parliamentary debate finished with the adoption of a resolution (motiveret dagsorden) where the Parliament accepted the proposed priorities as basis for the IGC negotiations. The Danish exemptions from 1993 could only be changed through a referendum.

1 Foreign Ministry: 'Den danske beslutningsprocedure i EU-sager', Copenhagen, August 1997 gives the following group of participants: Prime Minister (chairman), and Ministers of Economy, Finance, Foreign Affairs, Environment and Energy, Business and Industry, Justice, and Food, Agriculture and Fisheries.

The Parliament also expected to be informed continuously of the progress of the negotiations.¹

Denmark made seven formal proposals during the IGC. They dealt with employment, environment, openness, consumer protection, fraud, subsidiarity and national parliaments, and the role of national parliaments in relation to co-operation on JHA.²

The Danish proposal on openness had four points: (1) Incorporation in the Treaty of the principle of openness, (2) incorporation in the Treaty of right of access to documents, (3) holding of open Council meetings when the Council deals with legislation for the first time as well as the last time and publication of voting results, and (4) publication of all proposals and adopted acts within JHA.

The Danish proposal to the IGC concerning subsidiarity and the role of national parliaments proposed a provision in the Treaty which would create the foundation for an agreement between the European Parliament, the Council and the Commission on national parliaments' access to information on EU and Commission proposals. A declaration should make the content of the agreement more precise. National parliaments should be heard more and be given longer time limits to respond to proposed legislation. The agreement should include more systematic use of green and white papers with the objective of getting the views of national parliaments before important legislation is proposed (CONF/3982/96 of 13 November 1996).

The Danish proposal concerning the role of national parliaments in relation to co-operation on JHA was put forward late in the negotiations. It referred to the earlier Danish proposal on subsidiarity and the role of national parliaments and noted that the section in the Irish Draft Treaty of December 1996 included a section that would strengthen the role of national parliaments. Denmark now said that "a number of special conditions apply to the role of national parliaments in relation to co-operation on justice and home affairs." So, "in parallel with the development and strengthening of co-operation on justice and home affairs ... it is necessary to establish a better framework for the involvement of national parliaments to ensure the democratic supervision of cooperative efforts." Referring to proposals from France and the UK, Denmark proposed the establishment of a special Committee for JHA comprising representatives from national parliaments. This Committee should inter alia be kept informed of developments and be offered an opportunity to present its opinion on JHA proposals (CONF/3915/97 of 16 May 1997). In the end the thrust of the Danish proposals fared well at the IGC.

1 See Isaksen, Susanne/Toft, Ole/Bødtcher-Hansen, Jens: En traktat bliver til. Amsterdam-traktaten: Forberedelse, forhandling og resultat, Copenhagen: Schultz 1998, p. 32.

2 Danish versions of the proposals were made available on the Foreign Ministry's web site: www.um.dk. Six of them were also published in the brochure 'Tæt på det åbne Europa' (Foreign Ministry, March 1997). The seventh proposal on national parliaments and JHA co-operation was made in May 1997 (CONF/3915/97).

Concerning the role of national parliaments the Amsterdam Treaty includes the Protocol on National Parliaments in the European Union, which, along the lines of the Danish proposal, stipulated that “All Commission consultation documents (green and white papers and communications) shall be promptly forwarded to national parliaments of the Member states” and that “Commission proposals for legislation ... shall be made available in good time so that the Government of each Member State may ensure that its own national parliament receives them as appropriate.”¹ The Protocol also foresaw a six-week period between proposals being made available in all official languages and the placing of the proposal on the Council agenda. In a second part the Protocol singled out the Conference of European Affairs Committee (COSAC), giving it the right to make “any contribution it deems appropriate”, and more specifically, to “examine any legislative proposal or initiative in relation to the establishment of an area of freedom, security and justice which might have a direct bearing on the rights and freedoms of individuals”. Instead of establishing a special Committee as proposed by Denmark the IGC thus decided to assign a special role to the existing COSAC.

Three members of the Danish Delegation to the IGC who wrote a book about the negotiations afterwards do not go into these negotiations. They only conclude that the Danish wish to include national parliaments more was fulfilled by the Treaty.²

In an interview in May 1998 the then chairman of the European Affairs Committee Jacob Buksti saw a risk in making COSAC a body that can speak on behalf of the national parliaments. It will be difficult for the Committees to speak meaningfully on behalf of the Committees. And should COSAC become the place where national parliaments are heard the real hearing of parliaments by national governments may suffer. But COSAC can play a role as a forum for exchange of opinions and dialogue between MP's from national parliaments. Information about ‘best practice’ could lead to pressure on governments to take to the spirit of the Amsterdam Protocol seriously.³

1 Quoted from Duff, Andrew (ed.): *The Treaty of Amsterdam: Text and Commentary*, London, Sweet and Maxwell, 1997, p. 302.

2 See Isaksen, Susanne/Toft, Ole/Bodtcher-Hansen, Jens: *En Traktat bliver til Amsterdam-traktaten: Forberedelse, forhandling og resultat* Copenhagen: Schultz 1998, p. 164.

3 See Nielsen, Stine Carsten: *Europaudvalgets rolle i den danske EU-beslutningsproces*. Thesis, Department of Political Science, Copenhagen University, July 1998, pp. 95-96.

IV. The Folketing after Amsterdam

In November 1998 the European Affairs Committee put forward a draft report concerning greater openness in Danish EU decision-making.¹ The main proposals were to increase further the involvement of the specialised Committees of the Folketing at an early stage, to open some meetings of the European Affairs Committee to the public, and to invite Danish MEP's to some meetings of the European Affairs Committee.

According to press reports the Prime Minister decided after the Supreme Court case about the Maastricht Treaty to try to make the decision-making process more democratic. Some EU legislation concerning food additives, where the otherwise environmental and consumer friendly EP did not ask for high levels of protection, had also inspired the proposals. Getting the Parliament's expertise involved early and creating a stronger link to the EP was seen as a way to improve EU legislation. Further it was argued that a public debate on important proposals should take place. The Government would be asked to present such proposals to open meetings of the European Affairs Committee as soon as possible after the proposals are put forward by the Commission.²

The Amsterdam Treaty influenced thinking in Copenhagen in respect to the role of the Danish members of the EP. Because of the increased use of the co-decision procedure the role of the EP would increase. The Government therefore started regular meetings with the Danish MEP's in the summer of 1998. The proposal from the European Affairs Committee would give MEP's access to open meetings of the Committee in the future with a right to speak. These open meetings, however, would not take decisions. Decisions, including mandates for negotiations to the Government, would still be taken in closed meetings.

On 19 February 1999 the European Affairs Committee issued its report on greater openness in the Danish EU-decision-making process.³ The Government had agreed to the parts that affected its involvement. The general lines of the draft proposal from November 1988 were confirmed. Since 1 March 1999, when the report entered into force, it has become possible to have open meetings in the European Affairs Committee including the presence of Danish MEP's. MEP's can also send proposals to the other standing Committees of the Folketing, and the efforts to involve these specialised parliamentary Committees early in the process are reinforced.

The integration of the Schengen acquis and the movement of some JHA matters to the First Pillar under the Amsterdam Treaty seems now to be starting to put pressure on the

1 See Folketingets Europaudvalg: 'Udkast til beretning fra Europaudvalget om større åbenhed i den danske EU-beslutningsproces m.v.', Alm. del - bilag 225, 26. November 1998.

2 See Bostrup, Jens/Andersen, Nina Vinther: 'Folketinget vil tage magt fra regeringen', in: Politiken, 31 December 1998, p. 6.

3 See Folketinget, European Affairs Committee: 'Beretning om større åbenhed i den danske EU - beslutningsproces m.v.', Beretning afgivet af Europaudvalget den 19. Februar 1999.

Danish system, but no institutional adaptation has taken place yet. The need for a new referendum to abolish the Danish JHA exemption has come up in the Danish debate, but initiatives in that direction have probably been postponed due to the 'no' in the Euro referendum in September 2000.

V. Conclusions: Continuous Lesson Drawing from Maastricht

Danish policy-makers have drawn certain lessons from the Maastricht debacle.¹ They tried actively to avoid a repetition of the 1992 referendum by trying to influence the Amsterdam Treaty in certain directions while at the same time retaining the Danish exemptions from 1993.

Domestically more openness and earlier debate in connection with the Amsterdam process was sought. Also, the Prime Minister played a very active role in the process. This led to some adaptations in the long established policy co-ordination system that usually allows Denmark to speak with one voice in Brussels. In general the Danish scrutiny system allows for a fair amount of democratic control of EU policy in Denmark.

The European Affairs Committee has become an important actor in the making of Danish EU policy.

The domestic politics of EU policy in Denmark has occasionally made Denmark a difficult partner in the EU. At the same time, however, the Danish system of co-ordination and parliamentary control has made Denmark good at implementing EU legislation. The early involvement of interest organisations and administrative agencies that have to implement legislation has made this part of the process a success story. And the mandate-giving part of the process assures that post-decision political problems can usually be avoided even under minority governments.

1 See Laursen, Finn: 'The Lessons of Maastricht', in: Edwards, Geoffrey/Pijpers, Alfred (eds.): *The Politics of European Treaty Reform: The 1996 Intergovernmental Conference and Beyond*, London: Pinter 1997, pp. 59-73.

The German Bundestag: From Benevolent 'Weakness' Towards Supportive Scrutiny

Sven Hölscheidt

I. The Constitutionalised Relevance of European Integration for the German Bundestag

The Federal Republic of Germany, as one of the six founding members of the European Communities, is firmly anchored in the European Union. Co-operation between the German Bundestag and the Federal Government in matters concerning the European Union is well established on a sound legal basis.

1. European Integration and German Public Opinion

Support for membership of the European Union and further European integration is uneven, however: the official political position is more positive than that of the public in general. The official political position is represented by the Federal Government, the Bundestag and its parliamentary groups, and the Bundesrat. These political players almost invariably view European integration in positive terms, which is reflected in numerous statements. If there is criticism this solely relates to individual aspects, but never to the principle of European integration per se. In the Federal Republic, there is not a single significant political party or movement which can be described as fundamentally hostile to European integration. This was demonstrated by the debates in the Bundestag on the ratification of the Maastricht¹ and the Amsterdam² Treaty.

If we look at the general public, on the other hand, a different picture emerges. According to surveys carried out by the European Commission,³ on average, 49 per cent of Europeans regard their country's membership of the EU as a "good thing"; 27 per cent think it is "neither good nor bad", and 12 per cent see it as a "bad thing". The surveys show that in the Federal Republic, 44 per cent of people regard their country's membership as a "good thing", 32 per cent think it is "neither good nor bad", and 11 per cent view it as a "bad thing". German public opinion is therefore broadly in line with the EU average: slightly less than half the population views Germany's EU membership in

1 For more detail, see Hölscheidt, Sven/Schotten, Thomas: Von Maastricht nach Karlsruhe, Rheinbreitbach 1993, pp. 64 ff.

2 For more detail, see Section III below.

3 See European Commission, Eurobarometer/Public Opinion in the European Union, Report No. 51; Fieldwork: March-April 1999.

positive terms, one third is neutral, and more than one tenth is opposed to it. It is difficult to judge how realistic these findings are. However, figures on voter participation in the direct elections to the European Parliament suggest that the general public in the EU is actually more sceptical - or at least more indifferent - to European integration. In these elections, turnout has drastically declined since 1979: from a starting point of 62.5 per cent, it dropped to 60.6 per cent in 1984, 58.5 per cent in 1989, and 56.8 per cent in 1994, reaching an all-time low in 1999 with 52.8 per cent. In the Federal Republic, turnout fell by 20 per cent between 1979 (65.7 per cent) and 1999 (45.2 per cent). Yet at the last three Bundestag elections it was around 80 per cent.¹ In general, it seems that the German people support the European Union in principle, but also feel that they cannot follow, or cannot understand, the processes in Europe.²

2. The Co-operation between the Bundestag and the Federal Government in Matters Concerning the European Union

The treatment of European issues in the Bundestag and the Bundesrat was already in need of improvement when the Treaties of Rome were concluded. It could not keep pace with European integration and thus required radical reform. The legislative activity of the Council, i.e. the governments, was increasing. This gradual shift away from the parliaments reinforced the democratic deficit and therefore had to be counterbalanced. For this reason, two new articles relating specifically to the Bundestag were included in the Basic Law as part of the ratification of the Maastricht Treaty in December 1992. Article 23 of the Basic Law now stipulates that the Bundestag and the Bundesrat shall participate in matters concerning the European Union. The second new provision is article 45 of the Basic Law. This states that the Bundestag shall appoint a Committee on the Affairs of the European Union, which it may authorize to exercise the rights of the Bundestag under Article 23 vis-à-vis the Federal Government. The Bundestag has thus acquired the capacity to respond rapidly on matters relating to Europe.³ There is still no ministry with a specific European affairs portfolio within the Federal Government; although the establishment of a Ministry for Europe has been under discussion for some time, there are no plans to set one up at present.

In functional terms, the German Bundestag is the forum for the formation of the political will of the Federal Republic of Germany. In practice, its work is dominated by its political and practical subdivisions, i.e. the parliamentary groups and the committees

1 See Hölscheidt, Sven: 'Commentary on Article 190 ECT', in: Grabitz, Eberhard/Hilf, Meinhard (Eds.), *Das Recht der Europäischen Union*, Munich 2000.

2 See Noelle-Neumann, Elisabeth/Petersen, Thomas: 'Die Bürger in Deutschland', in: Weidenfeld, Werner (ed.), *Europa-Handbuch*, Gütersloh 1999, pp. 585, 599.

3 See Hölscheidt, Sven: 'Der Unionsausschuss des Deutschen Bundestages', in: *Das Parlament*, 12.9.1997.

respectively. The Bundestag can thus be defined as a parliamentary group/committee-based Parliament. It is also a mixed Parliament, which performs its functions with the aid of public and non-public debates. In this context, a distinction must be made between its legislative, control, electoral and public functions.

The Bundestag is part of Germany's federal political system. Far from being "parliamentary absolutism", it leans towards a system of major coalitions. Germany invariably has coalition governments comprising at least two parliamentary groups. No government supported by a single parliamentary group has succeeded in implementing its political agenda. The Federal Chancellor is as the head of government elected by the Bundestag and must have Parliament's confidence. The political direction taken by the executive and the majority of the legislature must therefore agree, at least in principle. It is also significant that the Bundesrat, as the second Chamber, also participates in legislation. In EU matters, which particularly affect the interests of the Länder, the Bundesrat has considerable rights of participation.¹ The leaning towards major coalitions is especially apparent at times when the Bundestag and the Bundesrat have different party-political majorities, which has been the case in around a third of the Federal Republic's history. The Federal Constitutional Court's strong position within the German constitutional system should also be underlined. The Court has handed down numerous decisions stipulating the legal conditions for European policy action, which are binding on the other constitutional bodies.

II. The Treatment of European Affairs in the German Bundestag

1. The Bundestag's Participation in European Affairs as a 'Democratic Necessity'

The German Bundestag's participation in European Union affairs² derives from "democratic necessity". The democratic principle is anchored explicitly in the Preamble of

1 See Article 23.4 of the Basic Law.

2 On this point, see the very informative work by Kabel, Rudolf: 'Die Mitwirkung des Deutschen Bundestages in Angelegenheiten der Europäischen Union', in: Gedächtnisschrift für Eberhard Grabitz, Munich: Beck 1995, pp. 114 ff.; Rath, Christian: 'Die 'unionswärtige Gewalt' des Deutschen Bundestages', in: Zeitschrift für Parlamentsfragen (special volume), Opladen: Westdeutscher Verlag 1995, pp. 124 ff.; Weber-Panariello, Philipp A.: Nationale Parlamente in der Europäischen Union, Baden-Baden: Nomos 1995, pp. 197 ff.; Schloten, Dieter/Bruckmann, Wolfgang: 'Wie demokratiefähig ist die Europäische Union?', in: Maurer, Andreas/Thiele, Burkhard (eds.): Legitimation der Europäischen Union, Marburg: Schüren 1996, pp. 39 ff.; Wiczorek, Norbert: 'Mitwirkung des Deutschen Bundestages in der Europäischen Union', in: Waigel, Theo (ed.): Unsere Zukunft heißt Europa, Düsseldorf 1996, pp. 315 ff.; Kamann, Hans-Georg: Die Mitwirkung der Parlamente der Mitgliedstaaten an der europäischen Gesetzgebung, Frankfurt/Main 1997, pp. 67 ff.; Hölscheidt, Sven: 'Mitwirkungsrechte des Deutschen Bundestages in Angelegenheiten der EU', in: Aus Politik und Zeitgeschichte, No. B 28/2000, pp. 31 ff.

the Treaty on European Union.¹ It is of fundamental importance both for the European Union and the Federal Republic of Germany. This is reaffirmed not only by the Treaty on the European Union but also by the Basic Law and the case law of the European Court of Justice and the Federal Constitutional Court. The democratic principle must therefore be translated into practical policies. The President of the European Parliament summed this up neatly in his inaugural speech in 1994: “The European Union does not need more powers: it needs more parliamentary democracy”.² His words still hold good today.

In a modern democracy, citizens can only exercise power with the help of elected representatives who meet in parliamentary assemblies. Thus the issue of democratic standards within any given polity is always linked with the issue of the parliaments’ influence. The European Union’s democratic standards can only be satisfactory if the European Parliament or the national parliaments - or both - exert real influence over the fortunes of the European polity. The Federal Constitutional Court pronounced on these issues in its decision on the Maastricht Treaty:³ In line with its self-perception as a union of European nations, the EU is seen as an association of democratic states of which its dynamic development is an integral part. If this union of democratic states performs sovereign tasks through the exercise of sovereign authority, it is “first and foremost the citizens of the member states who must legitimise such action through a democratic process via their national parliaments. Thus democratic legitimisation is achieved by referring the activities of European bodies back to the parliaments of the member states [...]”.⁴ Legitimisation of European politics through the European Parliament is merely assigned a supplementary role. The Federal Constitutional Court thus attributes the main role in the democratic legitimisation of the European Union to the national parliaments - i.e. the German Bundestag - as long as the EU is a union of sovereign states. Accordingly, the German Bundestag must “be left with substantial tasks and authority”.⁵ The Court has thus led to a remarkable strengthening of the position of the German Bundestag and the other member states’ parliaments, without ruling out the possibility that the European Parliament will play a more significant role in future. The Federal Constitutional Court’s decision has substantially influenced the integration debate in the Federal Republic.⁶

1 For a comprehensive discussion, see Kluth, Winfried: *Die demokratische Legitimation der Europäischen Union*, Berlin: Duncker&Humblot 1995.

2 Speech by Klaus Hänsch MEP, Proceedings of the European Parliament, 20.7.1994, Official Journal, Appendix No. 4-449, p. 16.

3 Decisions of the Federal Constitutional Court 89, p. 155 ff.

4 *Ibid.*, p. 155, 184 ff.

5 *Ibid.*, p. 155, 156.

6 See Hölscheidt, Sven/Schotten, Thomas: ‘Demokratie in Europa nach der Maastricht-Entscheidung des Bundesverfassungsgerichts’, in: *Verwaltungspraxis*, No. 5/6/1994, pp. 183-189.

2. Institutions and Instruments for the Treatment of EU Issues in the Bundestag

2.1 The Legal Framework

In the Federal Republic of Germany, prior to the entry into force of the Treaty on European Union, the legal basis for the Bundestag's participation in the European legislative process was provided by Article 2 of the law of ratification of the treaties establishing the EEC (European Economic Community) and EURATOM (European Atomic Energy Community).¹ This merely stipulated that the Federal Government is obliged "to notify the Bundestag and the Bundesrat on developments in the Council of the EEC and EURATOM on a continuous basis." Moreover, "if a Council decision makes the enactment of national legislation necessary or establishes law which is directly applicable in the Federal Republic of Germany, this notification should take place prior to the adoption of a decision by the Council".² At sub-legislative level, too, very few specific provisions existed compared with the current, post-Maastricht situation.³ In the long term, this handful of provisions and associated procedures proved inadequate in light of the growing importance of European legislation.

The German Bundestag strengthened its position vis-à-vis the Federal Government by incorporating Article 23 and Article 45 on the Committee on the European Union into the Basic Law as part of the ratification of the Maastricht Treaty in 1992.⁴ Article 23 imposes an obligation on the Federal Government to provide information; it grants the Bundestag the right to state its position. Details of this constitutional obligation are regulated in the Act on Co-operation between the Federal Government and the German Bundestag in Matters concerning the European Union (EUZBBG).⁵ These provisions have been defined more precisely by the executive in an Interministerial Agreement between the Federal Ministries.⁶ On the Bundestag's side, Sections 93 and 93a of the Rules of procedure of the German Bundestag apply. Overall, the legislation is very detailed and poorly coordinated.⁷

1 See Law of 27 July 1957 (Federal Law Gazette II, p. 753).

2 For a comprehensive discussion of this point, see Oetting, Ulf: *Bundestag und Bundesrat im Willensbildungsprozess der Europäischen Gemeinschaften*, Berlin, 1973.

3 On this point, see Kabel, 1995, *op.cit.*, p. 241, 248 ff.; Ferdinand, Horst: 'EG-Vorlagen im Plenum', in: Roll, Hans-Achim (Ed.), *Plenarsitzungen des Deutschen Bundestages*, Berlin, 1982, pp. 145, 157 ff.

4 See Federal Law Gazette 1992 I, p. 2086.

5 See Federal Law Gazette 1993 I, p. 311.

6 See Interministerial Agreement between the State Secretaries for Europe (the Federal Government departments responsible for European matters) on Section 3 ff. EUZBBG of 26.1.1994 as amended on 10.11.1995. Reprinted in Läufer, Thomas (Ed.), *Vertrag von Amsterdam. Texte des EU-Vertrages und des EG-Vertrages mit den deutschen Begleitgesetzen*, Bonn: Europa Union Verlag 1999, p. 372 ff. In some cases, the practice diverges from the Interministerial Agreement.

7 See Lang, Ruth: *Die Mitwirkungsrechte des Bundesrates und des Bundestages in Angelegenheiten der Europäischen Union gemäß Artikel 23 Abs. 2 bis 7 GG*, Berlin 1997, p. 378 f.

According to Article 23 of the Basic Law, the Bundestag and, through the Bundesrat, the Länder shall participate “in matters concerning the European Union”. This is the key term for all issues relating to the key provision of the German Constitution.¹ The term is not restricted in the standard-setting text and should therefore be interpreted comprehensively in line with the purpose and objectives of the standard-setting provisions.² What is guaranteed, “[...] in essence, is a comprehensive right ensuring active participation - also in policy-making terms - in the Federal Government’s European policy...”³ Matters concerning the European Union thus encompass not only EC directives and regulations, but also agreements between the Community and third countries (Article 300 ECT) and measures and agreements adopted in respect of the Common Foreign and Security Policy (CFSP) and police and judicial co-operation in criminal matters (Article 29 TEU), for example.⁴ This interpretation of “matters concerning the European Union” forms the basis of participation in practice.

The Federal Government shall keep the Bundestag and the Bundesrat informed, comprehensively and at the earliest possible time “of all initiatives launched within the framework of the European Union which could be of interest to the Federal Republic of Germany”.⁵ This restrictive option in ordinary law contradicts the constitutional requirement for “comprehensive” information and plays little or no role in practice. The Federal Government - including Germany’s Permanent Representation in Brussels - must provide notification immediately, as soon as it receives relevant information, officially or informally.⁶ Responsibility for many fundamental matters concerning the European Union, such as the revision of the treaties, lies with the Federal Foreign Office, which is therefore obliged to furnish information. The general obligation to provide information, i.e. the transmission of the day-to-day EC/EU items of the Council of Ministers to the Bundestag, is undertaken by the Federal Ministry of Finance. It has been entrusted with this task - previously the responsibility of the Federal Ministry of Economics - since the start of the 14th electoral term in 1998. In addition, each Federal Ministry with specialised responsibility for the relevant EC/EU item is obliged to supply the Bundestag with all the specific information it needs. Thus the Federal Ministry of Transport deals with items concerning transport policy, the Federal Ministry of Social Affairs handles social policy items, etc.

1 See Scholz, Rupert: ‘Commentary on Article 23’, in: Maunz, Theodor/Dürig, Günter (eds.), Grundgesetz, München: Beck 2000.

2 See Rojahn, Ondalf: ‘Commentary on Article 23’, in: Von Münch, Ingo/Kunig, Philip (eds.), Grundgesetz-Kommentar, Vol. 2, 3rd edition, Munich: Beck 1995; Scholz, 2000, op.cit. Note 93.

3 See Scholz, 2000, op.cit., Note 111.

4 See Pernice, Ingolf: ‘Commentary on Article 23’, in: Dreier, Horst (ed.): Grundgesetz-Kommentar, Vol. II, Tübingen: Mohr 1998, Note 98.

5 See Section 3 of the EUZBBG.

6 See Pernice, 1998, op.cit., Note 102.

In particular, the Federal Government sends draft European directives and regulations to the Bundestag and informs the Bundestag at the same time about their substance and purpose, the procedure to be applied in enacting the planned legislation, and the time set for the Council to deliberate - and, to decide on - the item. It must inform the Bundestag without delay of the decisions it intends to take, the progress of deliberations, the opinions and amendments of the European Parliament and the European Commission, the opinions of the other member states, and the decisions taken. However, the Federal Government retains its general competence with regard to integration politics as such: it is not obliged to divulge full details of its internal opinion-forming process.¹ The Federal Government also provides regular information to the EU Committee about the current situation regarding the adoption and implementation of European directives.

Based on the information supplied by the Federal Government, the EU Committee Secretariat prepares two lists. The first - as from 1 July 1996 - contains a catalogue of all the European directives adopted, as well as information about requirements for their incorporation into national law, the Federal Ministry responsible for incorporation, and the details of its completion. The second list contains a catalogue of the European directives whose time limit for incorporation has been exceeded by more than six months. Both lists are updated twice a year.

Both Article 23 of the Basic Law and the Co-operation Law (EUZBBG) state that before participating in legislative acts of the European Union, the Federal Government shall provide the Bundestag with an opportunity to state its opinion. In this context, the term "legislative acts" should be interpreted in the broad sense defined above. Under Section 5 of the EUZBBG, 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 Federal Government shall take the position of the Bundestag into account during the negotiations".² According to the regulation in ordinary law, the Federal Government shall use the opinion "as a basis for its negotiations";³ however, this provision is not authoritative on account of its derogation from the constitutional text.⁴ These positions by the Bundestag can be classed as simple parliamentary decisions. They contain political statements, which, however, are not legally binding on the Federal Government.⁵ In the Federal Republic's parliamentary system, the Federal Government takes account of the Bundestag's position as a matter of course. The Government must consider and debate the Bundestag's position when forming its opinion, and must give reasons if it deviates - or wishes to deviate - from the position.⁶ However, the right of decision remains

1 See Scholz, 2000, *op.cit.*, Notes 112 and 115.

2 See Article 23, § 3, sentence 2 of the Basic Law.

3 See Section 5, sentence 3 of the EUZBBG.

4 In individual cases, this is an extremely controversial issue; see, for example, Lang, p. 308 ff.

5 Scholz, 2000, *op.cit.*, Note 117.

6 *Ibid.*; Pernice, 1998, *op.cit.*, Note 105.

with the Federal Government; the Bundestag's loss of legislative competence is merely mitigated slightly.¹ Theoretically and legally, the Bundestag can determine the Federal Government's decision on the basis of a formal mandatory law in line with its competencies arising from Article 73 of the Basic Law. However, this has no political relevance in practice.² Nonetheless, it was considered as an option on one occasion: the Bundestag had debated whether an Article 1(a) should be included in the law to ratify the Maastricht Treaty - as proposed by the Bundesrat - stating that the "consent" of the Bundestag and the Bundesrat would be required in respect of the Federal Government's vote on entry to the third stage of monetary union (Article 121 ECT). Until its repeal, this regulation would have been legally binding on every government. Ultimately, however, this option was dismissed, also in order to avoid giving the impression that the Federal Republic - like Denmark and the United Kingdom - wanted to reserve the right to "opt out" of the transition to the third stage of economic and monetary union. The Bundestag therefore did not bind the Federal Government in law, and merely stipulated that the transition to the third stage should require a "vote in favour", i.e. a simple parliamentary decision.³

2.2. *The Appointment of the Committee on the Affairs of the European Union*

The appointment of the Committee of the European Union is thus prescribed by the German Constitution, along with the establishment of Foreign Affairs and Defence Committees and a Petitions Committee. These committees thus have a guaranteed right to be appointed in every electoral term. The Bundestag may authorize the Committee on the Affairs of the European Union to exercise the Bundestag's rights under Article 23 vis-à-vis the Federal Government. After false starts during the 12th electoral term, the committee was finally set up - and the necessary amendments to the Rules of procedure⁴ agreed upon - at the start of the 13th electoral term in December 1994. Section 93 a of the Bundestag Rules of procedure contains more detailed provisions concerning this committee. On 25 October 1995, in line with the Rules of procedure, the EU Committee drew up principles governing the treatment of EU items sent to it pursuant to Section 93.¹

1 See Lang, 1997, op.cit., pp. 330 f. and 371 f.

2 See Scholz, 2000, op.cit., Note 118.

3 See Hölscheidt, Sven/Schotten, Thomas: 'Zur Rolle des Deutschen Bundestags beim Eintritt in die dritte Stufe der Währungsunion', in: *Zeitschrift für Rechtspolitik*, No. 12/1997, pp. 479, 480, and 483.

4 See Bundestag Printed Paper (hereinafter BPP) 13/89, 14.12.1994; Bundestag Minutes Plenary Protocol (hereinafter BMPP) 13/9, 15.12.1994, p. 440 (B) ff.; Federal Law Gazette 1995 I, p. 11; see also Hölscheidt, Sven/Schotten, Thomas: 'Die künftige Gestalt des Unionsausschusses des Deutschen Bundestages', in: *Integration*, No. 4/1994, pp. 230 ff.

2.2.1. Forerunners of the EU Committee, and Subcommittees on European Affairs

In order to consolidate the link between the Bundestag and the European Parliament, the German Bundestag's Council of Elders set up a Commission in 1979 - obviously in conjunction with the first direct elections to the European Parliament - to deal with issues relating to the co-operation between the German Bundestag and the European Parliament.² On the basis of a proposal of this Commission in 1983, the 'Europa-Kommission of the German Bundestag' was set up under Section 56 of the Rules of procedure.³ For the first time, German members of the European Parliament who were not members of the Bundestag were entitled to participate. As the Commission did not have the right to submit recommendations for decisions to the plenary of the German Bundestag, it relied on one of the Bundestag's specialised permanent committees taking up its proposals. As a result of this institutional impediment, the Commission had little impact.⁴ At the start of the 11th electoral term, the Foreign Affairs Committee set up a Subcommittee on EC Affairs, which had 26 members; members of the European Parliament also belonged to the Subcommittee but without the right to vote. The truly subordinate status of this body meant that its influence was limited.⁵ Since the 6th electoral term, the Budget Committee too had regularly appointed a Subcommittee on EC - now EU - Affairs.⁶ Other specialised committees have also set up subcommittees to deal primarily with EU items.⁷ In the current 14th electoral term, for example, the Legal Affairs Committee has set up a Subcommittee on European Law. It was only in the 12th electoral term that the Bundestag agreed to set up an EC committee as the 24th permanent committee.⁸ Its members comprised 33 members of the Bundestag; 11 German members and observers of the European Parliament were given the right to take part in the committee's deliberations but not to vote. In accordance with the decision to set up the committee, it was responsible for considering amendments to the EC treaties, institutional matters relating to the EC, co-operation between the EP and national parlia-

1 Reprinted in Läufer 1999, op.cit., pp. 366 ff.

2 See Hölscheidt, Sven: 'Parlamentarische Mitwirkung bei der europäischen Rechtssetzung', in: Kritische Vierteljahresschrift für Rechtswissenschaft und Gesetzgebung, No. 2/1994, pp. 405 and 417.

3 See Bundestag BPP 10/161, 15.6.1983; BMPP 10/14, 16.6.1983, p. 850 (A) f. See also Pöhle, Klaus: 'Die Europa-Kommission des Deutschen Bundestages. Ein politisches und geschäftsordnungsmäßiges Novum', in: Zeitschrift für Parlamentsfragen, No. 2/1984, pp. 352 ff.

4 See Mehl, Peter: Die Europa-Kommission des Deutschen Bundestages, Kehl/Strasbourg 1987, p. 92 f.; similarly, Seider, Rainer: Die Zusammenarbeit von deutschen Mitgliedern des Europäischen Parlaments und des Deutschen Bundestages und ihr Beitrag zum Abbau des parlamentarischen Defizits in der Europäischen Gemeinschaft, Frankfurt/Main: Lang 1990, p. 248.

5 See Brück, Alwin: 'Europäische Integration und Entmachtung des Deutschen Bundestages: Ein Unterausschuss ist nicht genug', in: Zeitschrift für Parlamentsfragen, No.3/1988, p. 220 ff.

6 See Walther, Rudi: 'Haushaltsfragen', in: Hellwig, Renate (ed.): Der Deutsche Bundestag und Europa, Bonn: Olzog 1993, p. 102 and 109 f.

7 See e.g. Eylmann, Horst: 'Die Umsetzung von EG-Recht in nationales Recht und die Mitwirkung des Rechtsausschusses', in: Hellwig, 1993, op.cit., pp. 114 and 115 f.

8 See Bundestag BPP 12/739, 12.6.1991; BMPP 12/31, 13.6.1991, p. 2441 (D).

ments and for dealing with EC items - “unless this is within the remit of other specialised committees”.

3. The Committee on the Affairs of the European Union

The Committee on the Affairs of the European Union (EU Committee) was appointed in line with Article 45 of the Basic Law for the first time at the beginning of the 13th electoral term.¹

3.1. Composition, Organisation and Working Methods

The EU Committee set up in the 14th electoral term has 36 members and the same number of substitute members (its predecessor had 39 in each case). It is thus one of the largest of the Bundestag’s 23 specialised committees.² Pursuant to Section 12 of the Rules of procedure, the composition of the committee - like that of all the committees - must be in proportion to the strengths of the parliamentary groups in the German Bundestag. The SPD (Social Democratic Party of Germany) has appointed 16 members, and there are 13 from the parliamentary group of the CDU/CSU (Christian Democratic Union/Christian Social Union), 3 from Alliance 90/Greens, and 2 members from the parliamentary groups of the FDP (Free Democratic Party) and PDS (Party of Democratic Socialism) respectively. The chairman is Friedbert Pflüger, who belongs to the Opposition parliamentary group, the CDU/CSU; his deputy, Jürgen Meyer, is a member of the governing parliamentary group, the SPD. The committee is thus an “Opposition” committee in this electoral term, as it was in the previous electoral term. It is customary in a specialised committee - and therefore also the EU Committee - that the members of the parliamentary groups elect spokespersons who act as leaders or representatives of their parliamentary groups in the committee. They voice the interests of their parliamentary groups and also represent them in committee work.³ Within the parliamentary group administrations, parliamentary group staff working in specific units (e.g. European Union working groups) are responsible for handling the parliamentary groups’ policy work on Europe.

In common with the other specialised committees of the German Bundestag and many other bodies, the EU Committee has its own secretariat. This is a unit within the Bundestag Administration, which - in the case of the EU Committee - consists of a Head of Secretariat, two other civil servants from the higher service, clerical officers

1 See Bundestag BPP 13/35, 23.11.1994; BMPP 13/6, 24.11.1994, p. 157 (B) f.

2 See Bundestag BPP 14/22, 9.11.1998; BMPP 14/4, 11.11.1998, p. 131 (C) f.

3 The current - 1998-2002 - spokespersons are: Günter Gloser (SPD); Peter Hintze (CDU/CSU); Christian Sterzing (Alliance 90/Greens); Dr Helmut Hausmann (FDP); Manfred Müller (Berlin) (PDS).

and secretarial staff. The secretariat prepares committee meetings by e.g. compiling documents for deliberation, takes the minutes, advises committee members, drafts recommendations for decisions and reports for the Bundestag plenary, and deals with the committee's correspondence. Various research sections employing specialist researchers and corresponding to the committee secretariats also exist within the Bundestag Administration. The Research Section Europe (RSE) was set up in 1990. The research sections are staffed on broadly similar lines to the committee secretariats. They are responsible for answering members' enquiries on issues relating to their specialist areas. The resources available to them for this purpose include the library and the central point for accessing information from external databases. In addition, the RSE maintains its own archive of EU-related material from European and national sources (e.g. directives, draft laws, essays from academic journals, etc.) classified by subject area. It also uses the on-line CEP database (CEP - Concordance of EC items with parliamentary materials) operated by the Bundesrat. The database contains all the referred EU items listed in the order received, with their original COM number, Council document number and title. Each item is given at least one keyword based on its title, which makes it easier to locate unknown items.

According to the Bundestag's Rules of procedure, German members of the European Parliament shall have access to the meetings of the EU Committee; additional German members of the EP shall be entitled to attend as substitutes. The members of the European Parliament entitled to participate in the deliberations are appointed to the committee by the President of the German Bundestag on the basis of nominations submitted by the parliamentary groups in the Bundestag from which the German members have been elected to the European Parliament.¹ After the fifth direct elections to the European Parliament, the parliamentary groups agreed on a total of 14 committee members from the European Parliament. Seven are from the CDU/CSU parliamentary group, five from the SPD, and one member from both Alliance 90/Greens and the PDS.² This reflects the relative strengths of these parties in the European Parliament. The appointed MEP's may attend committee meetings, suggest that certain items be considered, provide information and state opinions. However, only the members of the German Bundestag on the EU Committee have the right to vote. In practice, German MEP's rarely attend the meetings of the EU Committee as they usually take place on a Wednesday, when MEP's have a full programme in Brussels or Strasbourg. Their right to attend the meetings of the EU Committee might have greater impact if they were able to attend regularly.

The committee's meetings take place regularly on Wednesday afternoon during each week of parliamentary sittings, whereas the other committees convene on Wednesday

1 See Section 93 a, § 6, sentence 2 of the Bundestag's Rules of procedure.

2 See BMPP 14/50, 1.7.1999, p. 4321 (A).

morning. Scheduling the meetings for Wednesday afternoon means that committee members, who usually sit on other specialised committees too, are able to attend both meetings. During the period under review, the EU Committee held 132 meetings. The committee convened 84 times during the 13th electoral term. During this period (1994-1998) 901 items - so-called Bundestag printed papers and EU items - were referred to the committee for deliberation; of these, 174 were referred to it as the committee responsible. On average, meetings last four hours.

As a rule, the Bundestag's committee meetings - including the EU Committee meetings - are not open to the public. However, a committee may decide to admit the public during the discussion of a particular item of business or parts thereof.¹ Out of the EU Committee's 132 meetings, 19, i.e. 14.4 % were fully or partly open to the public; in this context, the EU enlargement debate played a major role. For the purpose of obtaining information on a subject under debate, a committee may hold public hearings of experts, representatives of interest groups and other persons who can furnish information. The EU Committee arranged a public hearing in collaboration with the EU Committee of the Bundesrat on 8 May 1996 to examine the issue of subsidiarity. The EU Committee also held a hearing with the Bundestag's Environment Committee on 11 November 1996 to discuss whether an 'environmental union' should be anchored in the EU treaties. The committee's third public hearing was held jointly with the Finance Committee on 3 April 1998 and focussed on economic and monetary union. The fourth hearing - on fraud and corruption in the EU - was organized by the EU Committee alone on 21 April 1999.

3.2. Powers and Potential Voice Opportunities

In essence, the EU Committee is a normal specialised committee. Its task is to deal "with EU items in accordance with the Rules of procedure and the decisions of the Bundestag".² In particular, such items include initiatives launched within the framework of the EC/EU which could be of interest to the Federal Republic - e.g. Commission communications, green and white papers -, as well as draft directives and regulations; bulletins about developments within the Council; and communications from the European Parliament.³ No clear distinction can be made between the terms "EU item" and "EU document", which is also used. I shall refer to "EU items" as this is the most common term, although it describes EC rather than EU items.

Compared to the other Bundestag committees, however, the EU Committee has a special legal position on account of the Bundestag's right to authorize the committee to

1 See Section 69, § 1, sentences 1 and 2 of the Bundestag Rules of procedure.

2 As defined in Section 93 a, § 1 of the Bundestag Rules of procedure.

3 See Section 93, § 1 of the Bundestag Rules of procedure in conjunction with the Committee's Procedural Principles.

exercise the rights of the Bundestag under Article 23 vis-à-vis the Federal Government.¹ The details are regulated in Section 93 a, para. 2 of the Bundestag Rules of procedure:

“Upon the motion of a parliamentary group or five per cent of the members of the Bundestag, the Bundestag may empower the Committee on the Affairs of the European Union, in respect of specifically designated EU items, to exercise the rights of the Bundestag in relation to the Federal Government in accordance with Article 23 of the Basic Law. The Bundestag’s right at any time to take a decision itself on a matter concerning the European Union shall remain unaffected.”

In the case of its empowerment, the committee must, before stating its opinion to the Federal Government, request an opinion on the EU item from the specialised committees concerned. Empowerment grants the EU Committee its own right to state its position vis-à-vis the Federal Government, and the Federal Government must therefore take the committee’s position into account to the same extent as a position of the Bundestag.² If the committee is empowered, it must deal with the item in a session open to the public in accordance with Article 42 of the Basic Law.³ The Bundestag can revoke such empowerment at any time.⁴ The possibility of empowerment was created to give the Bundestag the chance to state its position on matters concerning the European Union to the Federal Government at any time, irrespective of its somewhat inflexible timetable of plenary sittings.⁵ The Bundestag has not yet made use of this empowerment option, however. There are two reasons why it is unlikely to do so in future: Firstly, the empowerment procedure is rather complicated and contradicts the aim of empowerment, which is to accelerate the formation of opinion within Parliament. Secondly, empowering the EU Committee would enhance its status, not only in legal but also in practical terms, compared to the other committees, which would conflict with the principle that all committees are equal. This applies especially if the chairman of the EU Committee belongs to the Opposition parliamentary group, as it has been the case in every electoral term to date. The empowerment option is therefore an interesting and unique form of Delegation in constitutional law, but is largely meaningless in practice.⁶

The committee is generally empowered to state its opinion on an EU item to the Federal Government unless one of the specialised committees concerned objects.⁷ This power has been exercised on four separate occasions. The EU Committee must submit a report on the content of, and the reasons for, the opinion. The report must be distributed as a Bundestag printed-paper and placed on the agenda of the plenary within three weeks of

1 See Article 45 of the Basic Law; and Section 2 of the EUZBBG.

2 See Rojahn, 1995, op.cit., Note 8.

3 See Pernice, 1998, op.cit., Note 11.

4 See Rojahn, 1995, op.cit., Note 9.

5 See Ibid., Note 7.

6 See Pernice 1998, op.cit., Note 9.

7 See Section 93 a, § 3, sentence 2 of the Bundestag Rules of procedure.

sittings of its distribution.¹ However, a debate takes place only if a parliamentary group or five per cent of the members of the Bundestag so demand.² So far, only the report on the EU Charter of Fundamental Rights has been discussed, as it featured on the agenda together with other items of business.³ This empowerment therefore also has little significance in practice.

Under certain circumstances the committee may convene outside the Bundestag's timetable or not at the permanent seat of the Bundestag, if the schedule of the relevant organs of the European Union so requires and the President of the Bundestag has given his consent. During the period under review only two such meetings have been convened. They took place during the Bundestag's 1996 summer recess⁴ in connection with the discussions in the Council of Ministers on the European Police Office (Europol) and the European Commission's policy on EU assistance in Eastern Germany (Subsidies for Volkswagen in Saxony).

Finally, the EU Committee may, in respect of an EU item, which has been referred to it as a committee asked for an opinion, move motions for amendments to the recommendation for a resolution submitted by the committee responsible.¹ The EU Committee is the only specialised committee to be granted this right, whose purpose is to ensure that the Bundestag's decisions reflect the current European policy situation. If a specialised committee responsible for dealing with an EU item fails to take into account the opinion submitted by the EU Committee, the latter can press for its position to be taken into account in the plenary's deliberations by moving an amendment to the recommendation for a resolution. However, as motions for amendments to recommendations for a resolution can be tabled by the parliamentary groups and members anyway, this power also has little significance in practice.

3.3. Characteristics of 'Committee Scrutiny' in EU Affairs

The EU Committee is the focal point of the German Bundestag's work in the field of European policy; it is the central decision-making body in this area and can thus be described as a "European integration Committee". This is borne out, in particular, by the

1 In the 13th electoral term, the EU Committee submitted three opinions as the committee responsible; in the 14th electoral term, it submitted one such opinion. In all cases, the Bundestag voted to take note. The reports are listed in chronological order below; the BMPP state where the decision to take note can be found: Bundestag BPP 13/5209, 3.7.1996 (Combating fraud); BMPP 13/128, 10.10.1996, p. 11475 (B); Bundestag BPP B/6638, 18.12.1996 (European Centre for Monitoring Racism and Xenophobia); BMPP 13/154, 31.1.1997, p. 13848 (A); Bundestag BPP 13/6891, 3.2.1997 (COSAC/Intergovernmental Conference on the Review of the Maastricht Treaty); BMPP 13/160, 27.2.1997, p. 14421 (D); Bundestag BPP 14/1819, 19.10.1999 (EU Charter of Fundamental Rights); BMPP 14/77, 3.12.1999, p. 7097 (B).

2 See Section 93 a, § 4, sentence 2 of the Bundestag Rules of procedure.

3 See Bundestag BPP 14/1819; BMPP 14/77, p. 7059 (D) ff.

4 The 37th meeting on 9.7.1996 and 38th meeting on 29.8.1996.

fact that the EU Committee was the committee responsible for considering the draft law ratifying the Amsterdam Treaty.² The EU Committee is also a “horizontal committee”,³ i.e. it deals with European matters which cut across several different policy fields making it inappropriate to refer such items to a specialised committee.

Due to this horizontal function, the EU Committee was responsible for deliberating the Agenda 2000, for example. This item of business demonstrates the close link between the committee’s horizontal and integration functions. Finally, as its third function, the EU Committee acts as a kind of “specialised committee for European affairs”. In this capacity, it is generally requested to submit opinions on items relating to draft directives and regulations which have particular significance for the process of integration. For example, while the main responsibility for considering items relating to the BSE issue lay with the Health Committee, the EU Committee was requested to comment on institutional aspects, including possible failings on the part of EU bodies and member states.

The EU Committee is not involved in the implementation of EC directives in German law, as this task is generally undertaken on the basis of bills presented by the Federal Government. These bills are considered by the relevant specialised committees as part of the normal legislative process under Article 77 of the Basic Law and Section 75 of the Bundestag Rules of procedure. The EU Committee - like the Foreign Affairs Committee - is therefore not a legislative committee.

The EU Committee’s powers highlight its role as a committee, which exercises control.⁴ In essence, its task is to examine draft Community legislative acts or EU law, which has not been implemented, rather than Community legislation, which is already in force.⁵

1 See Section 93 a, § 5 of the Bundestag Rules of procedure.

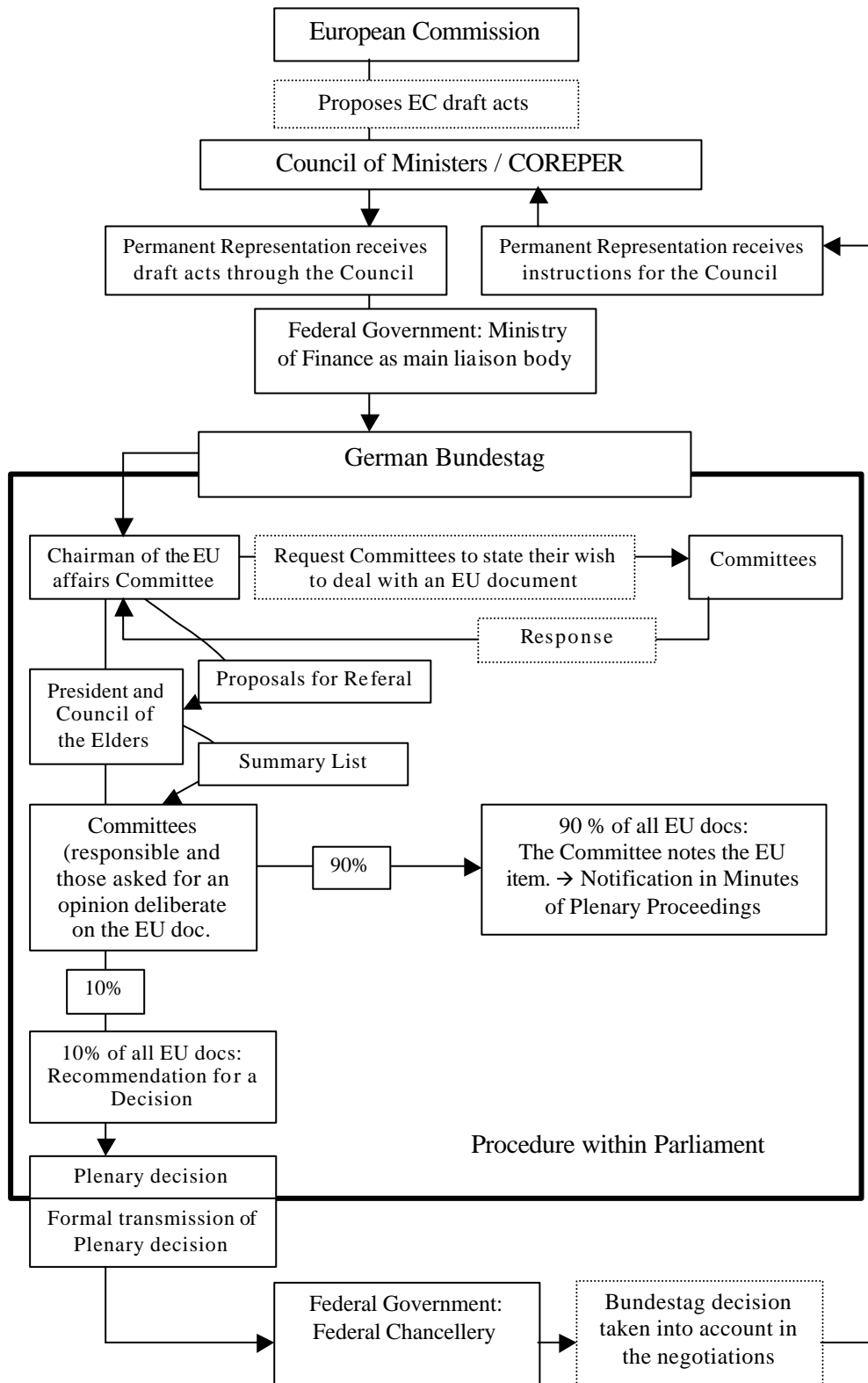
2 See Section III below.

3 See Pernice, 1998, op.cit. Note 9.

4 See Ibid., Note 7.

5 See Secretariat of the Committee on the Affairs of the European Union of the German Bundestag (ed.): *The Committee on the Affairs of the European Union of the German Bundestag*, Jacqueline Bila/Uwe Gehlen/Hartmut Groos/Beate Hasenjäger, Bonn 1998, pp. 17 ff.

Figure 5: The Treatment of EU Items in the German Bundestag



4. General Instruments of Control

The Bundestag's general instruments of parliamentary control - above all, the parliamentary right to put questions - are of secondary importance in the treatment of European affairs. In the German parliamentary system of government, these instruments of control are primarily the instruments of the Opposition, and are utilized to a far lesser degree by the Bundestag - i.e. the parliamentary majority - as a whole. As there is fundamental consensus between the Government and Opposition parliamentary groups on European policy, the parliamentary groups forming the Opposition rarely have recourse to the instruments of control available to them.

The most important types of questions are the major and the minor interpellations addressed to the Federal Government. The essential distinction between them is that a major interpellation or the Federal Government's reply may be debated in the plenary. During the period under review, 2883 minor interpellations were addressed to the Federal Government; 72 (2.5 %) related exclusively to the European Union. Out of 195 major interpellations, 13 (6.7 %) directly concerned the EU. A substantial proportion of all the interpellations addressed to the Federal Government focussed on some aspect of EU affairs.

The Bundestag holds general debates on European policy at irregular intervals. During the period under review, the EU Committee submitted 23 recommendations for decisions to the Bundestag, which were adopted by the plenary during its European policy debates.¹

1 These are as follows: BPP 12/6256, 26.11.1993 (Implementing the subsidiarity principle); BMPP 12/197, 3.12.1993, p. 17155 (A); BPP 12/6257, 26.11.1993 (Free movement of persons); BMPP 12/197, 3.12.1993, p. 17155 (A); BPP 12/6258, 26.11.1993 (The Commission's work programme 1993-1994); BMPP 12/197, 3.12.1993, p. 17155 (A); BPP 12/6653, 21.1.1994 (EU enlargement); BMPP 12/216, 10.3.1994, p. 18609 (C); BPP 12/8104, 24.6.1994 (Strengthening the legislative powers of the European Parliament); BMPP 12/237, 29.6.1994, p. 20781 (A); BPP 13/1957, 6.7.1995 (Integration of the Federal Republic of Germany into the European Union); BMPP 13/55, 21.9.1995, p. 4637 (D); BPP 13/3247, 6.12.1995 (The 1996 reform of the Maastricht Treaty and European policy; European Council on 26-27 June 1995; The Federal Government's European policy); BMPP 13/77, 7.12.1995, p. 6710 (A); BPP 13/3248, 6.12.1995 (Promoting women in the European Union); BMPP 13/77, 7.12.1995, p. 6710 (D), 6761 (C); BPP 13/3692, 6.2.1996 (European Union action plan to combat drugs (1995-1999)); BMPP 13/92, 7.3.1996, p. 8159 (A); BPP 13/4470, 26.4.1996 (Infringement of the EURATOM Treaty by France; Muroroa); Minutes Plenary Proceedings 13/105, 10.5.1996, p. 9255 (D); BPP 13/4534, 7.5.1996 (Possible application of Article K. 9 of the Treaty on European Union); BMPP 13/107, 23.5.1996, p. 9438 (A); BPP 13/4922, 17.6.1996 (Intergovernmental Conference 1996; Common employment and social policy for the European Union); BMPP 13/128, 10.10.1996, p. 11418 (A); BPP 13/7129, 4.3.1997 (Preparing the associated CEEC for membership of the European Union); BMPP 13/166, 20.3.1997, p. 14962 (B); BPP 13/7488, 22.4.1997 (Dublin European Council, 13-14 December 1996); BMPP 13/181, 12.6.1997, p. 16275 (B); BPP 13/7566, 28.4.1997 (Area of application of the co-decision procedure); BMPP 13/178, 5.6.1997, p. 16010 (D); BPP 13/8428, 28.8.1997 (EP resolution on the Intergovernmental Conference); BMPP 13/200, 30.10.1997, p. 18046 (C); BPP 13/9332, 2.12.1997 (A referendum on the Federal Republic of Germany's participation in European monetary union and the ratification of the conclusions of the Intergovernmental Conference on the review and revision of the Treaty on European Union); BMPP

4.1. Procedures for the Treatment of European Affairs in the Bundestag

Under Article 48 TEU, any amendment to the treaties on which the European Union is based shall only enter into force “after being ratified by all the member states in accordance with their respective Constitutional requirements”. This also applies if a Treaty amendment is required for the conclusion of an international agreement (Article 300.5 ECT). Article 49 TEU stipulates that a European state’s admission to the EU requires such ratification as well. The member states must also adopt a Council decision on police and judicial co-operation in accordance with their respective constitutional requirements (Article 42 TEU). The same is envisaged for the uniform electoral procedure (Article 190.4 ECT). Article 269 ECT states that without prejudice to other revenue, the budget of the European Community shall be financed wholly from own resources. Under Article 269 ECT, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, shall lay down provisions relating to the system of own resources of the Community, which it shall recommend to the member states for adoption in accordance with their respective constitutional requirements. Various other matters concerning the European Union, such as the protocol on the privileges and immunities of Europol officers, have necessitated adoption by the member states in accordance with their respective constitutional requirements.¹ All these norms identify the member states as the “masters” of the treaties.²

The constitutional provisions to which EC law refers are Article 23 and Article 59 of the Basic Law. They stipulate that the adoption or ratification required by Community law must take place through a federal law. In such cases, a normal legislative procedure under Article 76 of the Basic Law and Section 76 of the Bundestag Rules of procedure is carried out, although this does not absolve the Federal Government of its obligation to furnish information.³ Amendments to the treaties on which the European Union is based, and to other comparable regulations, therefore cannot take place without the consent of the Bundestag. So when does the adoption of the law require a two-thirds major-

13/210, 11.12.1997, p. 19109 (A); BPP 13/9418, 10.12.1997 (EU enlargement); BMPP 13/210, 11.12.1997, p. 19109 (C); BPP 13/9913, 13.2.1998 (Draft law on the Treaty of Amsterdam of 2 October 1997); BMPP 13/222, 5.3.1998, p. 20240 (C); BPP 14/685, 29.3.1999 (Preparation of a draft electoral procedure, based on common principles, for the election of the members of the European Parliament); BMPP 14/77, 3.12.1999, p. 7059 (B); BPP 14/845, 23.4.1999 (Consolidating and developing the European Union during the German Presidency in the first half-year of 1999); BMPP 14/77, 3.12.1999, p. 7060 (C); BPP 14/1288, 28.6.1999 (The current situation in Kosovo after NATO intervention: Outcomes of the extraordinary meeting of the European Council in Berlin); BMPP 14/77, 3.12.1999, p. 7060 (B); BPP 14/1819, 19.10.1999 (Draft EU Charter of Fundamental Rights); BMPP 14/77, 3.12.1999, p. 7060 (A).

1 For a detailed discussion, see Hölscheidt, Sven/Schotten, Thomas: ‘Immunität für Europol-Bedienstete - Normalfall oder Sündenfall?’, in: Neue Juristische Wochenschrift, No. 39/1999, pp. 2851 ff.

2 See Decisions of the Federal Constitutional Court 89, p. 155, 190.

3 See Section II.2.1. above.

ity in the Bundestag? This is still a controversial issue.¹ The Bundestag sets the basic course for integration as it decides on Germany's membership of the European Union, and its development and financing in line with the provisions of the Basic Law, the TEU and the ECT. It thus safeguards the legitimisation of the European Union per se and also the legitimisation of legislative activity by the European Community.

4.2. Other Matters Relating to the European Union

The procedure for deliberating the vast majority of EU items in the Bundestag begins in the EU Commission. This body has an almost unlimited monopoly on initiating Community legislation, i.e. as a rule, the Council adopts the EC legislative act in response to a proposal by the Commission. It submits its legislative proposal to the Council. The Council consists of representatives of each member State, who furnish information to their respective governments. The transmission of EU items to the Bundestag's EU Committee is undertaken by the Federal Ministry of Finance. The number of EC/EU documents officially transmitted to the Bundestag has developed as follows:²

Table 7: EC/EU Documents Transmitted to the Bundestag 1957-1999

3 rd electoral term	(1957-1961):	13
4 th electoral term	(1961-1965):	224
5 th electoral term	(1965-1969):	745
6 th electoral term	(1969-1972):	946
7 th electoral term	(1972-1976):	1759
8 th electoral term	(1976-1980):	1706
9 th electoral term	(1980-1983):	1355
10 th electoral term	(1983-1987):	1828
11 th electoral term	(1987-1990):	2413
12 th electoral term	(1990-1994):	2070
13 th electoral term	(1994-1998):	2387
14 th electoral term	(1998-1999):	661

In addition to these items, around 15000 to 20000 accompanying and follow-up documents are sent to the German Bundestag every year. They include notes, communications, corrigenda, etc.

The following table shows the number of EU items referred to the committees from 1 November 1993 up to 31 December 1999, and the committees' recommendations for decisions by the Bundestag plenary.

1 See Rojahn, 1995, op.cit., Note 49.

2 Source: Datenhandbuch zur Geschichte des Deutschen Bundestages II, Baden-Baden: Nomos 1999, p. 2590; author's own calculations.

Table 8: EU Items Dealt with in the Committees of the Bundestag

Electoral Term	Total number of EU items	Treatment in plenary		The following committees' recommendations for a decision		No. of EP res.	Treatment in plenary		The following committees' recommendations for a decision	
			In %					In %		
1993- 1994	404	40	9,1			68	4	5,9		
				16	CERTA				1	FC
				11	CTBH				1	CERTA
				4	FC				1	IAC
				4	BC				1	FAC
				4	CENCNS					
1994-1998	2387	106	4,4			390	14	3,6		
				29	CTBH				4	CAEU
				16	FC				2	FC
				12	CENCNS				1	SC
				10	BC				1	LAC
				10	CFAF				1	BC
				7	CLSA				1	CEAT
				6	LAC				1	CFASCW Y
				6	CFASCW Y				1	CTBH
				5	CAEU				1	CTBH
				4	CEAT				1	CT
				2	IAC					
				2	CERTA					
				1	CPT					
1	CT									
1998-31.12.99	661	24	3,6			154	5	3,2		
				12	CAEU				4	CAEU
				6	CTBH				1	CENCNS
				5	CENCNS					
				1	CFAF					
Total	3452	170	4,9	170		612	23	3,8	23	

Committee names:¹ CTBH: Committee on Transport, Building and Housing; FC: Finance Committee; BC: Budget Committee; CENCNS: Committee on the Environment, Nature Conservation and Nuclear Safety; CEAT: Committee on Economic Affairs and Technology; IAC: Internal Affairs Committee; FAC: Foreign Affairs Committee; CFAF: Committee on Food, Agriculture and Forestry; CLSA: Committee on Labour and Social Affairs; LAC: Legal Affairs Committee; CFASCWY: Committee on Family Affairs, Senior Citizens, Women and Youth; CAEU: Committee on European Union Affairs; CERTA: Committee on Education, Research and Technology Assessment; CPT: Committee on Posts and Telecommunications; CT: Committee on Tourism; SC: Sports Committee.

Experience has shown that between two and - at most - four weeks generally elapse from the time the item is received by the Council to its receipt by the German Bundestag. The letter of transmission merely contains the item's official title and a brief outline of its contents. The EU Committee's Procedural Principles require the Federal

Government regularly to submit a written explanatory report, within five sitting days, on the EU items transmitted to the committee. Exceptions are possible, but the full written report must be submitted, at the latest, five sitting days before it is due to be considered by the committee. The report must include reasons why a European regulation is necessary (subsidiarity principle), the main content of the proposed legislation, Germany's specific interest, financial implications, and the timetable for deliberation of the item. In general, the Federal Government fulfils its reporting obligation, although it is not always performed satisfactorily by all ministries. The Bundestag is notified of European Parliament resolutions in a letter from the Secretary-General of the European Parliament to the Secretary-General of the German Bundestag.

As soon as he receives the item, the chairman of the EU Committee asks the other committees to state which items they wish to discuss, and on what basis. The committee secretariat assists him in this task. The secretariat draws up a list of all the EU items recently received. The Bundestag deals with all the items transmitted to it; no selection process takes place. The secretariat prepares a proposal for the referral of the items to one committee responsible and, in most cases, several committees asked for an opinion. The list is circulated to the members and substitute members of the EU Committee, the other committees, and the relevant units of the parliamentary groups. If no other proposals have been put forward by a certain date - usually eight days after the list has been drawn up - there is assumed to be general consent to the secretariat's proposals. The chairman of the EU Committee notifies the Council of Elders² of the committees' wishes to discuss the item. On this basis, a draft summary list of the referrals is drawn up.³

In consultation with the Council of Elders, the President of the Bundestag refers the EU items to one committee as the committee responsible and to other committees as committees asked for an opinion.⁴ The titles of the referred items are included in a Bundestag Printed Paper. This summary list indicates to which committees the items have been referred.⁵ During the period under review, a total of 128 summary lists were drawn up.⁶

1 The names of the committees are subject to change. The list relates to committees established in the 14th electoral term, where such committees exist.

2 See Section 6 of the Bundestag Rules of procedure.

3 See Section 93, § 3, sentence 1 of the Bundestag Rules of procedure.

4 See Section 93, § 3, sentence 2 of the Bundestag Rules of procedure.

5 See Section 93, § 4 of the Bundestag Rules of procedure.

6 The first is Bundestag BPP 12/6155, 12.11.1993 'Notification of items referred to the committees in accordance with Section 80, § 3, and Sections 92 and 93 of the Rules of procedure (Period of receipt 27 October-9 November 1993)'; the last is Bundestag BPP 14/2414, 17.12.1999, 'Notification of items referred to the committees in accordance with Section 93 of the Rules of procedure (Period of receipt 1-14 December 1999)'.

The procedure can be illustrated using the example of the Directive on electronic commerce: The Commission proposal was submitted on 23 December 1998¹ and referred to the Council with a letter dated 7 January 1999. Transmission to the Bundestag took place with a letter from the Federal Ministry of Finance dated 20 January 1999. The committee secretariat's proposal for referral is dated 26 January 1999; the draft Directive was referred to the Legal Affairs Committee, as the committee responsible, on 5 March 1999,² which noted the item on 17 March 1999.³ The European Parliament gave its opinion on 6 May 1999, the Council's common position is dated 28 February 2000, and the European Parliament resolution is dated 4 May 2000. The Directive was published in the Official Journal on 17 July 2000.⁴

EU items are only distributed as a Bundestag printed paper if the EU Committee so requests and the Council of Elders consents⁵, if it is agreed in the Council of Elders, or - as it is usually the case - if the committee responsible submits a recommendation for a resolution, going beyond acknowledgement, on the item to the plenary.⁶ During the period under review, less than 5 per cent of the EU items were the subject of a recommendation for a resolution and included as such on the Bundestag agenda. The plenary deals with them in accordance with the procedure applied to recommendations for a decision on national items.⁷ In the majority of cases, the committees simply note the EU items without lengthy debate, or do not debate the item at all; such an item will not appear in a printed-paper. In the specialised committees and the EU Committee itself, 20 or more items may be noted without debate, even if they have been referred to the committee as the committee responsible. The committee chairman informs the President of the Bundestag that the committee has noted the item. It is then published as "Notification for members", without a reading, in an annex to the Minutes of Plenary Proceedings.¹

5. Practical Outcomes for the Federal Government

The Bundestag's treatment of European matters can only have an impact if it is clearly manifested to the Federal Government. This is the case if members of the Federal Government attend plenary sittings or committee meetings dealing with European matters and hear the parliamentarians' views on these issues. European matters are frequently

1 See Official Journal EC 1999 C 30/4.

2 See Bundestag BPP 14/488, 5.3.1999.

3 See BMPP 14 /31, 26.3.1999, p. 2618 (A).

4 See Official Journal EC 2000, L 178/1.

5 Agenda 2000 was published on this basis; Bundestag BPP 13/8391, 13.8.1997.

6 See Section 93, § 4, sentence 2 of the Bundestag Rules of procedure.

7 See Section 62, § 1, sentence 2 and Section 78, § 1, sentence 1 of the Bundestag Rules of procedure.

discussed in the Bundestag, both on a broad basis in the plenary or EU Committee and in specific terms in the specialised committees. However, the consequence of this treatment is simply that the Federal Government is informed about the Bundestag's position. This informal awareness does not impose any obligation on the Federal Government to take the Bundestag's position into account in line with Article 23 of the Basic Law. To this end, a position for the purpose of this provision is required. The Bundestag very rarely makes use of its opportunity to impose a binding political obligation on the Federal Government through a position on European matters. The ex-post control procedure set out in the Federal Government's Interministerial Agreement² plays a significant role in practice and is now well-established: the EU Committee expects the Federal Government, after completion of the decision-making process on the EU initiative in question, to report to the committee informing it as to how the Bundestag's decisions were taken into account and whether, and to what extent, the Federal Government complied with corresponding decisions of the Bundesrat in these cases. The report is submitted by the ministry responsible as part of its reporting on Council meetings.

A legally binding consequence for the Federal Government arises only if the Bundestag stipulates such a consequence through a formal law. This applies, for example, in instances when Community law requires member states to adopt or ratify a legislative act in accordance with their respective constitutional requirements. Until now, the Bundestag has always adopted such laws and will continue to do so as long as European internal policy is formulated and completed on the basis of international law, i.e. as long as the governments at the level of Community law achieve outcomes in their negotiations which can only be amended through complex follow-up negotiations - which is generally impossible in practice. In this situation, the Bundestag - like the other parliaments - faces a dilemma if it does not agree with the outcomes in at least one key respect: if the Bundestag ratifies them, it signals its agreement; if it does not ratify them, it nullifies the entire result (which is binding not only on the Federal Government but on all the other member states as well), and faces accusations that it has undermined the integration process. Although the Bundestag invariably chooses the former option, this does not always serve the interests of integration as defined in the Treaties (e.g. Article 6 TEU). For example, the granting of immunity to Europol officers does not serve the rule of law in the Community.³ Moreover, the Bundestag's opportunity to bind the Federal Government with a mandatory law is also likely to remain a theoretical option.⁴ The

1 See, for example, BMPP 12/226, 29.4.1994, p. 19063 (C) f.; 13/13, 20.1.1995, p. 822 (C); 13/117, 28.6.1996, p. 10631 (D), 13/158, 21.2.1997, p. 14275 (C) f.; 14/12, 4.12.1998, p. 742 (C) f.; 14/23, 26.2.1999, p. 1806 (B) f.

2 See Section II.2.1. above.

3 See Hölscheidt/Schotten, 1999, op.cit. pp. 2851 and 2854 f.

4 See Section II.2.1. above.

Bundestag is in a relatively strong position in all cases where the Council must adopt an unanimous decision, as with key issues such as tax harmonization (Article 93 ECT). The Bundestag can set out its position and demand that the minister responsible put forward its views in the Council and, under certain circumstances, can lodge a parliamentary proviso, which means that he states a provisional position in advance of the final consent of the Bundestag. However, this merely enables the Bundestag to prevent a decision from being adopted. It cannot bring about a decision; it simply has “preventive powers”. The veto enjoyed by every member State rules out the possibility of Council representatives claiming to their own parliaments that a positive decision was adopted by a majority in the Council despite their objection. The other side of the coin is better known: any member State can block a decision and thus delay the integration process. Nonetheless, it should not be overlooked that the shift to majority voting and/or the restriction of unanimity further curtails national parliaments’ opportunities for participation.

Thus the Federal Government’s European policy scope is largely unrestricted by the Bundestag. In addition to the factors mentioned, this is because the Federal Government is generally able to rely on a solid coalition majority in Parliament, which supports its European policy line. It should also be borne in mind that the general consensus on European policy¹, to which reference has already been made, ensures that fundamentally divergent positions are rarely represented in the Bundestag, at least by the major Opposition parliamentary groups.

In terms of European policy, the Bundestag thus finds itself in the role of a supportive scrutinizer. Its political line is essentially identical to the Federal Government’s, which means that the Federal Government’s negotiating position at European level is safeguarded by Parliament. However, it has also ensured that the parliaments play a significant role in the Convention preparing the EU Charter of Fundamental Rights.

Finally, the Bundestag also examines European Parliament resolutions. Whether it is useful for a national parliament to state its position on a decision, which has already been adopted by the European Parliament, is a moot point. Nonetheless, by doing so, the Bundestag can reaffirm or contradict the European Parliament’s position and thus adopt a position of its own vis-à-vis the Federal Government at the same time.

1 See Section I.1. above.

III. The Treatment of the Amsterdam Treaty in the German Bundestag

The ratification debate had already begun in the EU Committee before the Federal Government's draft law ratifying the Amsterdam Treaty¹ was referred to it as the committee responsible in December 1997.² This procedure is possible because the committees can take up questions on their own initiative.³ The EU Committee had informed itself about the work of the Reflection Group since June 1995 and examined the issues relating to the Treaty revision in great detail. In response to its recommendation for a decision,⁴ a motion entitled "Making the European Union viable for the future"⁵ tabled by the then parliamentary majority i.e. the CDU/CSU and FDP, was adopted in December 1995.⁶ In this decision, the Bundestag expressed its general expectations of the Treaty revision. In October 1996, at the EU Committee's recommendation, the Bundestag then adopted a "Resolution on the Intergovernmental Conference '96 as the way forward towards social and ecological reform of the European Union".⁷ In February 1997, the committee stated its opinion on the Intergovernmental Conference/COSAC. On the central issue of whether the European Parliament's co-decision rights should be expanded, the Bundestag adopted a resolution in June 1997, at the recommendation of the committee, in which the Federal Government was called upon to work actively for the strengthening of the European Parliament.⁸ On 12 June 1997, the European Parliament adopted a resolution on its relations with the national parliaments.⁹ The resolution was received by the EU Committee on 2 July 1997 and was referred to it for deliberation as the committee responsible on 29 September 1997.¹⁰ At its meeting on 11 February 1998, the EU Committee unanimously declared the item disposed of.¹¹

As soon as the Treaty negotiations were concluded at the Amsterdam European Council on 16 and 17 June 1997, the committee continued its deliberations with the participation

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- 1 See Draft law presented by the Federal Government: 'Draft law on the Treaty of Amsterdam of 2 October 1997', Bundestag BPP 13/9339, 3.12.1997.
 - 2 See BMPP 13/210, 11.12.1997, p. 19109 (A). 9 committees were asked for an opinion.
 - 3 The right of committees to take up an issue on their own initiative is based on Section 62, § 1, sentence 3 of the Bundestag Rules of procedure.
 - 4 See Bundestag BPP 13/3247, 6.12.1995.
 - 5 See Bundestag BPP 13/3040, 21.11.1995.
 - 6 See BMPP 13/77, 7.12.1995, p. 6710 (A).
 - 7 See Bundestag BPP 13/4922, 17.6.1996; BMPP 13/128, 10.10.1996; p. 11418 (A).
 - 8 Bundestag BPP 13/7566, 28.4.1997; BMPP 13/178, 15.6.1997, p. 16010 (D).
 - 9 See European Parliament, Neyts-Uyttebroeck Report (A4-0179/97), Official Journal C 200/153, 30.6.1997.
 - 10 See Bundestag BPP 13/8615, 29.9.1997. The committees asked for an opinion were the Committee for the Scrutiny of Elections, Immunity and the Rules of procedure, the Foreign Affairs Committee, the Internal Affairs Committee, the Legal Affairs Committee, the Committee on Food, Agriculture and Forestry, and the Budget Committee.
 - 11 See BMPP 13/225, 27.3.1998, p. 20707 (B).

of the Federal Government.¹ It discussed policy issues such as justice and home affairs, and individual issues such as consumer protection, transparency, subsidiarity, employment, environmental protection and health, and the provisions on CFSP. At one meeting, the committee debated the role of the national parliaments and the Treaty's Protocol on this issue.² The institutional reforms were an ongoing subject of discussion. The EU Committee devised substantive amendments to the Amsterdam Treaty vis-à-vis the Maastricht Treaty and the Netherlands' most recent Treaty draft prior to the June summit in Amsterdam. Key assessment criteria for the Amsterdam Treaty were the demands addressed to the Federal Government by the parliamentary groups in the German Bundestag before and during the Treaty negotiations. The parliamentary majority as well as the SPD as the major Opposition parliamentary group especially welcomed the progress achieved in bringing justice and home affairs into the Community framework, and the introduction of an option to impose sanctions against states with serious and persistent breaches of fundamental rights. The plans to establish the ECJ's responsibility for scrutinizing the observance of fundamental rights and to include a general ban on discrimination in the Treaty were also viewed as landmarks. The parliamentary groups regretted the fact that the follow-up conference did not commission the drafting of a Charter of Fundamental Rights.

The CDU/CSU, SPD and FDP parliamentary groups in the EU Committee voted in favour of the recommendation for a decision on 11 February 1998. The Alliance 90/Greens parliamentary group abstained; the PDS voted against the recommendation. In line with the recommendation, the draft law ratifying the Amsterdam Treaty, together with a resolution, was adopted by the Bundestag on 5 March 1998 with 561 votes in favour and 34 votes against. There were 50 abstentions.³ The Bundesrat voted for the law on 27 March 1998.⁴ The instrument of ratification was deposited in Rome on 7 May 1998 following the execution of the law ratifying the Treaty on 8 April and its promulgation in the Federal Law Gazette on 16 April 1998. The Federal Republic was thus the first member State to complete its ratification of the Amsterdam Treaty.⁵

The resolution states:

“The Treaty of Amsterdam is an important step towards the completion of political union. It enables the enlargement process to begin, and provides European answers to global challenges. It strengthens the European Parliament and therefore democracy in Europe, and enhances closeness to citizens, especially through greater transparency and subsidiarity.”

1 For details, see Bundestag BPP 13/9913, 13.2.1998, p. 9 ff; Läufer, Thomas/Bila, Jacqueline (eds.): Vertrag von Amsterdam, Die parlamentarische Debatte 1997/98, Bonn: Europa Union Verlag 1998, p. 27 ff.

2 See Section IV.1 below.

3 See Bundestag BPP 13/9931, 13.2.1998, p. 1 ff.; BMPP 13/222, 5.3.1998, p. 20291.

4 See Bundesrat BPP 196/98 (Decision).

5 See Läufer/Bila, 1998, op.cit., p. 35 ff.

It notes that the Treaty brings substantial areas of justice and home affairs into the Community framework, and facilitates the fight against crime. It observes that in the field of foreign and security policy the European Union's profile is sharpened and its capacity to act increased. However, the resolution also states that despite the progress achieved, the outcomes of the negotiations do not fulfil all the expectations placed in the Amsterdam Treaty.

As regards justice and home affairs, the German Bundestag welcomed the European Union's strengthened commitment to the basic principles of freedom, democracy and respect for human rights, fundamental freedoms and the rule of law. It noted with regret that no agreement could be reached on the drafting of a Charter of Fundamental Rights. A section entitled "The European Union and its Citizens" states that the Bundestag views the fight against unemployment in member states as the most important social challenge, and thus welcomes the inclusion of a chapter on employment in the EC Treaty. The Bundestag also welcomed the more precise definition of the goals and tasks of the common foreign and security policy, as well as the improvements in its procedures and instruments.

The resolution states that the reform of the European institutions is one of the key goals of the Intergovernmental Conference; regrettably, despite some progress, it had failed in its efforts to push ahead with reform in a more consistent manner. The Bundestag welcomed the strengthening of the European Parliament through the substantial expansion of its co-decision rights, and also noted that this process was not yet concluded. "It calls for the European Parliament to be granted co-decision rights in all areas in which the Council, as the legislator, will in future decide on the basis of majority voting." The Bundestag supported the call for the European Parliament to devise a draft for general and direct elections on the basis of a uniform procedure in all member states or in accordance with the principles common to all member states. At the same time, the just distribution of seats must also be guaranteed. Setting an upper limit of 700 members of the European Parliament is an important step in maintaining the Parliament's capacity to act. The Bundestag welcomed the fact that the Treaty also addresses the role of the national parliaments. "It notes that the rights of information already apply to the German Bundestag". It took the view that the new provisions on COSAC¹ are a pragmatic approach to an exchange of opinions and experience. Informal exchange is important, but "the Bundestag opposes any further institutionalisation of COSAC". Finally, the Bundestag welcomed the provisions on strengthened co-operation, which will promote further integration.

1 For more detail, see Section IV.2. below.

IV. The Bundestag after the Amsterdam Treaty's Entry into Force

In connection with the ratification of the Maastricht Treaty, the legal bases for the treatment of European affairs in the German Bundestag were reshaped and expanded. This has substantially improved the Bundestag's opportunities for participation.¹ The Amsterdam Treaty's entry into force has thus had no effect in this respect, as the Bundestag sees no need for further amendments to the provisions currently in force. This also applies to the EU Committee which - after a lengthy experimental phase² - has now identified its role in the treatment of European matters in the Bundestag.³ The Protocol on the Role of National Parliaments in the European Union⁴ did not prompt any major reaction in the Bundestag.

1. The Bundestag and the Protocol on the Role of National Parliaments in the European Union

The Protocol is legally binding and thus goes beyond Declaration No. 13 contained in the Maastricht Treaty. The Protocol aims to ensure that all Commission consultation documents (green and white papers and communications) are forwarded promptly to the national parliaments of the member states. It is also intended to guarantee that the parliaments have a minimum period of six weeks between the time a legislative proposal is made available and the date when it is placed on a Council agenda for decision. This provision is largely irrelevant for the Bundestag, as the Basic Law already obliges the Federal Government to keep the Bundestag informed, comprehensively and at the earliest possible time, about all matters concerning the European Union.⁵

2. The Bundestag and the Conference of European Affairs Committees

The Protocol of the Treaty of Amsterdam on the Role of National Parliaments in the European Union also states that, with respect to the legislative activities of the EU, COSAC may make any contribution it deems appropriate for the attention of the European Parliament, the Council and the Commission, and that these contributions shall in no way prejudice the position of the national parliaments. The Bundestag has described the new provisions on COSAC as a pragmatic approach to an exchange of opinions and

1 See Section II.2.1. above.

2 See Section II.2.2. above.

3 See Section II.2.3. above.

4 See the documentation by Astrid Krekelberg in this volume, document No. 2.

5 See Section II.1 and 2 above.

experience without cumbersome new institutional regulations. At the same time, however, it has also opposed any further institutionalisation of COSAC.¹

The sceptical attitude towards COSAC is currently justified on the grounds that there is an imbalance between the time and effort expended in connection with COSAC's activities and its tangible outcomes. Its suitability as a forum for an exchange of opinions and information is limited, as the limited size of Delegations provided for in COSAC's Rules of procedure (6 representatives per member State) means that not all the political movements within the national parliaments can be represented in COSAC. This problem has been exacerbated by the new provisions laid down in the Protocol. In view of COSAC's unrepresentative nature, it is unclear how its contributions can be given legitimisation, as provided for under the Protocol. It is also unclear why the Treaty grants COSAC the right to address contributions to the European institutions, a right which not even the national parliaments enjoy. Nor is it immediately apparent what purpose is served by permitting COSAC to address contributions to the European Parliament, since six of its members participate in COSAC and the link between their opinion-forming processes therefore already exists.

V. Conclusions: A Supportive Scrutiniser and Protagonist of the European Parliament

Since the ratification of the Maastricht Treaty, the treatment of European matters in the German Bundestag has been regulated in numerous legal norms. Article 23 of the Basic Law is particularly important in this context. It obliges the Federal Government to keep the Bundestag informed about all matters concerning the European Union comprehensively and at the earliest possible time. The provisions contained in the Protocol on the Role of National Parliaments in the European Union fall far short of this requirement. This is why the Protocol's significance in the Federal Republic is very limited. Since the ratification of the Maastricht Treaty the establishment of an EU Committee has also been guaranteed by the Constitution (Article 45 of the Basic Law). The Bundestag rules of procedure (Section 93) equip it with special rights and functions compared with the other specialised committees; however, these rights and functions are not particularly important for the treatment of European matters. The essential point is therefore that Maastricht - not Amsterdam - changed the Bundestag's role in European affairs. Above all, the Federal Constitutional Court's decision on the Maastricht Treaty underlined the Bundestag's importance for the process of European integration. The official political position², too, has not significantly been modified by the Treaty of Amsterdam.

1 See Bundestag BPP 13/9913, 13.2.1998; BMPP 13/222 of 5.3.1998, p. 20291 (D); see also Bundestag BPP 13/6891 (Section II.3.c), bb) (2) above).

2 See Section I.1. above.

Altogether, the German Bundestag is well informed about European matters, if the quantity of information is taken as a basis. Members are no longer critical of the situation now that the procedure for the treatment of EU items, based on the new regulations, is operating effectively. The problem at present is that there is too much information, which distracts attention from important issues. The Bundestag receives and processes a large number of EU items, but examines only a few of them in detail. It states its position, through the plenary, on less than five per cent of the EU items transmitted to it. The Bundestag devotes a significant proportion of its resources to dealing with EU items, yet in very few cases do the outcomes of its work have any external impact with the help of the plenary. Nonetheless, there are currently no specific plans to redefine the Bundestag's role in European matters.

The Bundestag cannot be described as a key player in the European decision-making process. It is a 'supportive scrutinizer' of the actions of the Federal Government, which dominates European policy. In this sense, European policy is still foreign policy, although in substantive terms, it has now evolved into (European) internal policy.

Within the Federal Republic's parliamentary system, the Bundestag can only exert substantial influence in European matters within narrow limits. Firstly, due to the relatively stable majorities, which have traditionally existed in Parliament, the political consensus between the Federal Government, which acts, and the Parliament, which scrutinizes its actions through its majority, is safeguarded on a broad basis. Moreover, in European policy in particular, there is little potential for conflict with the minority/opposition. Secondly, the Bundesrat is vigilant in its efforts to ensure that it is always able to exercise its rights of participation.

The Parliament of Greece: Slow but Constant Moves Towards European Integration?

Peter Zervakis and Nikos Yanniss

I. Political Culture and Parliamentary Democracy in Greece

Greece has a fully functioning parliamentary democracy only since 1974.¹ Unlike in Spain and Portugal, however, the end of the military dictatorship did not decisively affect the traditional functioning of the Greek Parliament (Vouli ton Ellinon) as a single legislative body, which currently comprises 300 members.² Two factors may explain this: The regime of the colonels (1967-1974) did only last for seven years. "Parliamentary democracy", as stated in article 1 of the Constitution of 1975, has a long tradition of over 130 years.³ Therefore, the established client-oriented networks ('routéfi'/favouritism) among deputies and electors and the charisma of party leaders resisted successfully the authoritarian military rule. On the other hand, this also applies for the problematic habits, which survived beneath all institutional innovations of the third Greek Republic. Untameable party patronage, nepotism, clientelism, and charismatic leadership still characterise Greek political culture.⁴ Despite these lasting structural features in the political culture of the country, the Greek political system has changed dramatically after the restoration of democracy in 1974. At least five factors contributed to its smooth democratisation:⁵

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- 1 See Pridham, Geoffrey: 'Comparative Perspectives on the New Mediterranean Democracies: A Model of Regime Transition?', in: Pridham, Geoffrey (ed.): *The New Mediterranean Democracies: Regime Transition in Spain, Greece and Portugal*, London 1984, pp.1-29; Featherstone, Kevin/Katsoudas, Dimitrios K. (eds.): *Political Change in Greece before and after the Colonels*, London 1987; Grothusen, Klaus-Detlev (ed.), *Handbook on South Eastern Europe*, vol. III, Greece, Göttingen 1980.
 - 2 Greek constitutions only twice provided for exceptions to the rule: Between 1844 and 1864 and 1924 and 1935 central authority was completed by regional and functional (by occupational groups) representation in an upper house (Senate) which respected the fact that the weak central state was founded on strong regions. Legg, Keith R./Roberts, John M.: *Modern Greece, A Civilization on the Periphery*, Boulder 1997, p. 119.
 - 3 Zervakis, Peter: 'Das griechische Parlament. Kontinuität und Wandel seit 1974', in: Steffani, Winfried/Thaysen, Uwe (eds.): *Demokratie in Europa: Zur Rolle der Parlamente*, Opladen 1995, pp. 232-261.
 - 4 These deficiencies create a fertile soil even for political terrorism, in so far as it pretends to act in the Greek public as a credible counterforce to the state. See Kassimeris, George: 'Greece: Twenty Years of Political Terrorism', *Terrorism and Political Violence*, 7/2, 1995, pp. 74-92.
 - 5 Diamandouros, P. Nikiforos: 'The Political System in Post-authoritarian Greece (1974-1996): Outline and Interpretations', in: Ignazi, Piero/Ysmal, Colette (eds.): *The Organisation of Political Parties in Southern Europe*, Westport/London 1998, pp. 181-201.

- the definite solving of the historical dispute with regard to the constitutional form of the state by organising a consensual plebiscite which led to the abolition of the monarchy,¹
- the abolition of discriminatory legislation of the - post-civil war - authoritative governments (1944-1967) ensuring political equality for all citizens. The result was the effective integration of the Communist and left wing losers of the civil war into the new Greek democratic system,
- the transition of the dominate post-war Greek Right into a moderate, center-right political force (ND/Néa Dimokratía: New Democracy) supporting democracy,² and the establishment of a new political movement. PASOK (Panellínio Sosialistikó Kínima: Panhellenic Socialist Movement) was transformed into a socialist mass party covering the left-of-center of the Greek political spectrum, which was hitherto excluded from political representation by the post-civil war “parakrátos” system,³
- the modernisation of the Greek party system resulting in the emergence of two mass parties that represent the overwhelming majority of the electorate at the expense of the smaller parties.⁴ This trend, on the other hand, triggered a fierce bipartisan competition leading to middle-of-the-way politics avoiding any particular trends and cleavages,
- the slow but gradual modernisation of the Greek State and its politics towards ‘mainstream’ West-European political culture.

There is no doubt that the most enduring feature in Greek politics is the transformation of the main political parties. They developed from traditional parties of ‘notables’ to modern mass parties. This development was induced by the election system that favours - in its strict majoritarian logic - a one-party government. It influenced decisively the emergence of a polarised but stable ‘two-party-system’ in Greece.⁵

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- 1 Here it is interesting to note that the plebiscite as the only mechanism of direct democracy in Greece is fully controlled by the Greek Government. No Prime Minister has ever used it again since 1974.
 - 2 See Kalyvas, Stathis N.: ‘The Greek Right: Between Transition and Reform’, in: Wilson, Frank L. (ed.): *The European Center-Right at the End of the Twentieth Century*, London 1999, pp. 87-115.
 - 3 See Moschonas, Gerassimos: ‘The Panhellenic Socialist Movement’, in: Ladrech, Robert/Marlière, Philippe (eds.): *Social Democratic Parties in the European Union, History, Organization, Policies*, London 1999, pp. 110-122.
 - 4 Papadopoulos, Yannis: ‘The Decline of Small Parties and the Emergence of Two-Partyism in Greece’, in: Müller-Rommel, Ferdinand/Pridham, Geoffrey (eds.): *Small Parties in Western Europe, Comparative and National Perspectives*, London 1991, pp. 174-202.
 - 5 Papadopoulos, Parties, p. 200. See also Clogg, Richard: *Parties and Elections in Greece, The Search for Legitimacy*, London 1987.

1. Greece in View of European Unification

Greek post-war governments had agreed to all initiatives by the Council of Europe, NATO and the European Communities for a co-operation framework in Western Europe to immunise the country against Communist influence. Therefore and because of the perspective of economic prosperity, consecutive governments had been willing to include the country into the European Union. However, the Greek society considered these developments rather passively. At least those parts, which identified themselves with the winners of the civil war supported almost blindly any options of their leadership. Besides, those who had come out as winners of the civil war were convinced that they ought a lot to the western support. Consequently, they aimed at more help from the 'West'.

The Greek European movement did play a role in these developments. It is clear that European integration has been an issue of political and economic elites in all EU member states. This was also the case of Greece: In the 1950's just two or three non-governmental organisations (NGOs) made their appearance with the aim to promote the European idea, using the limited resources allocated to this purpose through the Marshall plan. But their impact on government and society was slim to none. Several Greeks, MP's and others, participated in the Hague Conference in 1948 as well as in subsequent meetings of the early European movement. However, it remains a dispute whether the European founding countries included Greece into their plans. It was mainly due to the financial milieu, which expressed its reservations with regard to the 'immature circumstances' that led the Greek Government to ignore a possible participation of the country in the founding of the European Economic Community (EEC). However, Greece submitted its application for an association agreement with the EEC in 1961. The agreement was signed in 1962. The Greek economic circles now supported the country's European perspective with more enthusiasm. However, the society focused onto the domestic political controversies that led to the coup in 1967. During the years of the dictatorship the country's European course was officially suspended. Nevertheless, the European idea was identified - at least to a certain degree - with the perspective to reinstall democracy. Accordingly, European co-operation and integration acquired more attention within the society.

The restoration of democracy was marked by the simultaneous and decisive promotion of democratic institutions as well as Greece's accession to the EC under the leadership of Constantine Karamanlis and his party New Democracy. Since then the party became closely identified with the 'European option' of Greece. However, a large part of the society wanted to manifest its anti-American feelings and repulsions to the 'West' due

to the Turkish invasion in Cyprus.¹ The European idea lost its attractiveness for an additional reason: Hence, the popular reaction to dictatorship induced a shift of the Greek electorate towards the left-wing - at that time rather Euro-sceptic - parties. The conflict between capitalism and socialism caused the refusal of public opinion and the societal organisations to support Greece's European aspirations.² In the 1977 elections, the then 'anti-European' party of PASOK became the major opposition party, rendering parliamentary acceptance of accession even more difficult. The legitimacy of the European Community became an intensely debated issue in society. The trade unions and local governments, mostly under the control of the left, were fighting the accession fiercely. At the same time the pro-European NGO's³ made their appearance once again and promoted the European idea. However, they did not substantially influence the accession process.

The 1980's - the first EC decade for Greece - are considered as rather sterile with regard to the potential effects of Europeanisation, the official policy and the mobilisation of the societal powers and the non-governmental organisations. Nevertheless during the mid-1980's the 'societal soil' was turning fertile for a spectacular turn. At the level of public opinion, the EU's bi-annual 'Eurobarometer' surveys reported a growing Greek support for integration.⁴ In the 1990's all political parties supported their country's European direction - with the sole exception of the Kommounistikó Kómma Elládas (KKE), the Communist Party of Greece (CPG). Social movements, universities, mass media - traditional and new private channels - as well as local governments changed their stance vis-à-vis the European idea and gradually rephrased their strategy with respect to the EC reality. A set of new - rather pro-European - NGO's appeared covering various themes and a wider geographic distribution across the country, larger membership and greater openness towards the society.⁵

However, during the negotiations of the Single European Act (SEA, 1985-1986), the participation of civil society and public opinion did almost not exist. In all parliamentary elections since 1974 as well as in the elections to the EP since 1984 European s-

1 See Bahcheli, Tozun: 'Domestic Political Developments', in: Grothusen, Klaus-Detlev/Steffani, Winfried/Zervakis, Peter (eds.), Handbook on South Eastern Europe, vol. 8, Cyprus, Göttingen 1998, pp. 91-125.

2 Concerning this period see Kazakos, Panos: 'The historical choice of Greece's integration and the 'adjustment gap'', in: Ekfrasi, Evropaiki, 32, Winter 1999, pp. 20. (in Greek)

3 For instance 'Association Européenne des Enseignants', 'Young European Federalists', 'European Union of Journalists', and 'House of Europe'.

4 Verney, Susannah: 'Dual Vision: Divided Perceptions of Europe in the Political Party Debate on European Integration', in: Heppner, Harald/Katsiardi-Hering, Olga (eds.): Die Griechen und Europa, Außen- und Innenansichten im Wandel der Zeit, Köln/Weimar 1998, pp. 225.

5 Today it is estimated that in Greece there are more than 15 NGO's that have a character of direct promotion of the European idea; some 20-30, which contribute indirectly to the promotion of the European idea. Of course, the European dimension has also penetrated most of the civil society organisations. Civil society, which was substantially weak, has been developed particularly during the last years.

sues had never played an important role: Hence, all elections in Greece - with an average voter turnout of 79 percent due to compulsory voting - are mainly an arena for the two competing national mass parties and their leaders.¹

On the other hand, the Maastricht Treaty on European Union (TEU) generated heated debates, especially after its ratification by the Greek Parliament.

2. The Relationship between Parliament and Government

By recognising the crucial role of political parties in article 29 of the Greek Constitution of 1975, their party leaders (Art. 37.II) and the dependence of any government on the parliamentary majority (Art. 84), the Greek Chamber of Deputies became the central forum for the political battles between majority and opposition for the first time in modern Greek history.² In reality, the Vouli is more or less instrumental to the Prime Minister and his government. This counts even more when a single party received the majority of votes and provides an absolute majority of deputies in parliament. This has been the case in post-dictatorial Greece with only two exceptions in 1989/90.³

Therefore, since 1975 the Vouli resembled more to a "talking" than to a "working" parliament.⁴ Like in the pre-dictatorial past, the Parliament features ideological conflicts and obstructive disputes rather than constructive or informative deliberation. Their only aim seems to score points vis-à-vis the electorate. This attitude does not help to form consensual solutions. Most activities in parliament therefore have an adversarial rather than a consensual function. Each parliamentary majority simply enacts legislation proposed by its leader (like Karamanlis, Papandreou or Simitis) who usually presides over his party and the Government. Therefore, the parliamentary minority simply tends to restrict itself to generally opposing, delaying and disrupting government. Absentions and parliamentary withdrawals are a common rule. The major actors in the chamber are the parties and not its individual members. The latter are dependent on

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- 1 Zervakis, Peter: 'Das politische System Griechenlands', in: Ismayr, Wolfgang (ed.): *Die politischen Systeme Westeuropas*, second edition, Opladen 1999, pp. 637-672, p. 654. For basic empirical data on voters turnout at elections to the European Parliament see Wenturis, Nikolaos: *Griechenland und die EG, Die soziopolitischen Rahmenbedingungen griechischer Europapolitiken*, Tübingen 1990. Although PASOK was a mass party since its beginnings in 1974, the N.D./Conservatives became a mass party only gradually between 1982-1989, while the party was for the first time and for a longer period out of government. See Frangakis, Nikos/ Papayannides, Antonis D.: 'Greece: a never-ending story of mutual attraction and estrangement', in: Wessels, Wolfgang/Maurer, Andreas/Mittag, Jürgen (eds.): *Fifteen into One?*, Manchester 2001.
 - 2 Zervakis, Peter: 'Republik Griechenland', in: Steffani, Winfried (ed.): *Regierungsmehrheit und Opposition in den Staaten der EG*, Opladen 1991, pp. 195-219.
 - 3 Zervakis, Parliament, p. 243.
 - 4 Legg/Roberts, Greece, pp. 120-122. See also Zervakis, Griechenland, p. 641 and Alivizatos, Nikos: 'The Difficulties of 'Rationalization' in a Polarized Political System: the Greek Chamber of Deputies', in: Liebert, Ulrike/Cotta, Maurizio (eds.): *Parliament and Democratic Consolidation in Southern Europe: Greece, Italy, Portugal, Spain, and Turkey*, London 1990, pp. 131-153.

party whips, which ensure voting and party discipline according to government's wishes. If a MP resigns during the legislative period because of disagreement with the party, s/he gets immediately replaced by another member of the party list who is loyal to the leadership. Therefore, MP's tend to break away from their main party by making a statement of independence and then remain in parliament without exerting much influence inside the legislative process. The small parties are virtually ignored.¹

Although the Constitution gives both single deputies and government the same right to propose legislation, it is the Greek Government that virtually monopolises this function. In practice, all legislative tasks are increasingly delegated to ministers who tend to introduce 'catch-all' bills. The minister of finance plays a special role in the Constitution. This is due to the restrictions that are placed on the act of introducing the annual budget, which is regarded as the most important piece of legislation. Additionally, there is no mechanism for parliamentary oversight with regard to the budget and its implementation. A further weakening of parliamentary power is that all Greek governments rely on an increasing use of 'urgent' provisions to avoid critical discussions, which might endanger the ministers' public stand. If the plenary meeting fails to discuss and vote within just a few sessions such a 'urgent' bill is automatically passed without parliamentary vote.

The Committee stage of the legislative process is rather formal and the parliamentary organs generally debate on legislation for only about a week. In the Greek Parliament there are only six permanent standing committees in operation.² Proposed legislation is not discussed thoroughly by the committees. Public hearings that might draw attention on proposed legislation and its consequences are not often provided for. The committees are only allowed to prepare non-binding reports on a pending bill. This report has to be ignored by the plenary if the proposing minister wishes so; the debate is then restricted to the original minister's bill. Consequently, every proposal introduced in parliament is debated and voted on in a few days, because the outcome is quite clear and the Government can rely on its parliamentary majority.

The number of passed bills has constantly diminished in recent years. Hence, there is an increasing tendency to transfer legislative activity from parliament to the administration, although the Constitution permits such a transfer only in times of emergency (Art. 43 and 44.2).³

Overall, parliamentary control of government provided for by the Constitution is not very effective. The deputies' attendance in parliament is minimal. Motions of confi-

1 Papadopoulos, Parties, 192.

2 There are three more permanent committees (for technology evaluation, the Greek diaspora and institutions and transparency) called 'idikés mónimes epitropés'. But they are not authorised to do any legislative work. Then there are the various other select and ad hoc committees as well as the so called 'internal committees' dealing with the Rules of Chamber.

3 Alivizatos, Difficulties, p. 139-142, Legg/Roberts, Greece, p.121 and Zervakis, Griechenland, p. 645.

dence and/or censure are uncommon in Greece. The Government (Prime Minister and his cabinet) depends on the formal support of parliament and normally receives this from the majority of members within two weeks after taking over office. Despite a narrow margin of the voting turn-out - 0.5 percent as in the last elections in April 2000 - , the electoral system ensures that only one party operates with an absolute majority of seats.¹ As there is no danger of party fragmentation, a government cannot be threatened effectively by successful motions of censure or non-confidence. In addition, many constitutional regulations favour the governmental majority. As a consequence, the average MP² - who has significant staff of up to five assistants³ and office facilities at his disposal - is less involved in the activities of the chamber. Instead s/he tries to meet the demands and requests of his/her constituency by concentrating efforts towards the production of exceptions and loopholes in the - national - legislative process to the benefit of particular individual interests.⁴

II. The Long Way towards Europeanisation of Greece

The term 'Europeanisation' defines an ongoing and time-consuming process, whereby various economic, administrative, social and political actors shift the center of gravity of decision-making from the traditional, strictly national level to a multi-level focus that considers the European Union (EU) as part of the domestic structure.⁵ In this perspective, the EU acts as a co-formulator for national political choices. This approach looks at European policy not as foreign policy but as an integral part of a new, self-sufficient whole, which has not reached its final structure.⁶ This does not mean that European unification is a purely supranational procedure, as its eminent protagonists are the governments, and states remain the masters of the Treaties. However, Europeanisation of domestic structures points at a new supranational level, which co-exists among the nation-states on the basis of a "confederal consociation"⁷. Besides governments many institutional actors (like trade unions, professional and business associations, parties

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- 1 Zervakis, Peter: 'Griechenland', in: Weidenfeld, Werner/Wessels, Wolfgang (eds.), *Jahrbuch der europäischen Integration 1999/2000*, Bonn 2000, pp. 340-341.
 - 2 Women are still a vast minority in the Vouli; between 1981 and 1989 on average only 4,3 percent of all MP's were women. Zervakis, Griechenland, p. 642.
 - 3 Three civil servants from the public service, of whom only one needs to have an academic background, one personal aide and one policeman/security staff.
 - 4 For these particular political patron-client relations see Campbell, John K.: 'Traditional Values and Continuities in Greek Society', in: Clogg, Richard (ed.): *Greece in the 1980's*, New York 1983, pp. 184-207.
 - 5 See Wessels, Wolfgang: 'The Growth and Differentiation of Multi-Level-Networks: A corporatist Mega-Bureaucracy or an Open City?', in: Helen Wallace/Alasdair A. Young (eds.), *Participation and policy-Making in the European Union*, Oxford 1997, p. 36.
 - 6 See the introduction by Andreas Maurer in this volume.
 - 7 Chrysochoou, Dimitris: *Theorising European Integration*, London 2001, p. 2, pp. 26-27.

etc.) in the member states increasingly focus their individual demands at the European dimension by establishing representative federal structures in Brussels (e.g. European parties such as the PSE or EPP, interest groups such as COPA-COGECA). Hence, the influence of national interest groups is gradually reinforced by their European federations, while they organise their presence in these - sometimes rather loose - structures in a way to become the most gaining receptors of the European negotiation process.¹

Greece became the tenth member of the European Community in 1981 after almost twenty years of the association agreement with the EC granting a customs union. This remarkable development at the international level was initially intended to recognise the need of stabilising a state with a sensitive geo-political frontline position between the two Cold War blocks. In addition, the recourse to classical humanistic education helped contemporary Greece to be romantically regarded by its European partners as a crucial contributor to the Western civilisation with a historical privilege to participate in the Community.² Later, Brussels mainly saw the European integration of Greece as a reward for the successful completion of the country's re-democratisation process after dictatorship. Greek actors emphasised their need for external security vis-à-vis Turkey. But as the European integration process was itself a by-product of the Cold War it had several lasting effects for the Greek society and politics. At the time, the poor Balkan country was not prepared to compete with the open economies of the advanced, industrialised and pluralistic societies in Western Europe. A high degree of bureaucratic centralisation and state control of the private business sector prevented the emergence of an independent civil society. Therefore, the two major political parties were - and still are - compelled to compete for the effective control of the state in order to distribute favours to their supporters and to secure their electoral success. As a reaction, Greece's European vocation soon became part of the traditional party struggle for the temporary exploitation of the state's benefits. This resulted in contradictory policies, especially with regard to economic, regional and social policy.¹

Beneath the instrumentalisation of the EU for domestic party competition a deeply polarised image of Europe reigns in large segments of the elites and of public opinion. The 'Euro-enthusiasts' understand 'imported' Europeanisation and integration as the only way to modernise Greece's democratic institutions according to the needs and with the help of the 'Western' (European) model. The 'Euro-sceptics' represent a "traditional,

1 See Lavdas, Kostas: *The Europeanisation of Greece - Interest politics and the crises of integration*, London 1997.

2 Though Greeks generally tend to overemphasise ancient Greece's contribution to European civilisation because of their strong national identity virtually ignoring other elements of European history. Veremis, Thanos/Constas, Dimitris: 'The Beginning of the Discussion on European Union in Greece', in: Lipgens, Walter/Loth, Wilfried (eds.), *Documents on the History of European Integration*, vol. 3: *The Struggle for Political Union by Political Parties and Pressure Groups in Western European Countries, 1945-1950*, Berlin, 1988, pp. 801-825.

anti-modern orthodox Greekness" (Romiosíni) and are highly suspicious against any external (especially catholic-western) threat (Xénos parágonas) to the "sacred national identity". These competing perceptions of Europe run through the two major parties, the Socialists/PASOK and the Conservatives/ND. Both parties became the main actors in the EC/EU debate. Due to the lack of participation and interest of public opinion in EU politics, they can dominate and direct the debate.

Karamanlis, the ND's founder and prime minister took the initiative for Greece's accession to the EC/EU because he wanted his country "to belong to the West". Andreas Papandreou, his long term adversary and founder of PASOK, won the elections in 1981 with 48 per cent of the votes. His campaign was largely inspired by radical anti-European slogans, which opposed vehemently Greek membership in the EC. Hence, until the early 1980's the Greek Left largely identified European integration with U.S. capitalist and NATO subjugation dreaming of a 'third way' between the two cold war superpowers. Not surprisingly - given the populist style of Greek politicians - there was little interest of what the European model actually contained and how it functioned. The variations in political and social institutions and practices among the Western European states have never been deeply discussed.²

These opposing attitudes with regard to 'Brussels' only changed progressively from 1985 onwards.³ After fiercely debating the renegotiation of Greek EC membership a majority of PASOK finally accepted the EC as a useful framework within they had to operate in order to meet their national goals without risking the end of the financial transfers. By the end of the Cold War and after experiencing international isolation because of its temporary nationalist foreign policy in the Balkans all major parties except the traditional Communists (KKE) moved towards an enthusiastic support for European integration. Finally, having been accepted as the tenth member state of the Schengen Agreement in 2000 - after being rejected twice since 1992 - and as the 12th member of Economic and Monetary Union (EMU) in 2001, Greece features today an enthusiastic and wholehearted party support for the EU.⁴ The EU is widely regarded as the main catalyst for the modernisation of society - especially among the economic and political elites as well as in the media. Hence, the EU assists the ambitious Greek infrastructure projects through both the Cohesion and the Structural funds. Moreover, the EU stabilises Greek foreign policy. However, the Greek society notes bitterly the ignorance of important Greek interests during the Öcalan crisis in 1999 and the absence of EU initia-

1 See Trombetas, T. P.: 'The Political Dimensions of Greece's Accession to the EU: Commitment or Regression', *Australian Journal of Politics and History*, 29, 1983, pp. 63-74.

2 Verney, *Dual Vision*, pp. 193-226. See also Wenturis, Nikolaos: *Griechenland und die EG, Die soziopolitischen Rahmenbedingungen griechischer Europapolitiken*, Tübingen 1990.

3 Ioakimidis, Panayiotis: 'Contradictions in the Europeanisation process', in: Featherstone, Kevin/Ifantis, Kostas (eds.): *Greece in a Changing Europe, Between European integration and Balkan disintegration?*, Manchester 1996, pp.33-52.

4 Zervakis, *Griechenland*, p. 339.

tives during the Kosovo war. Europe is therefore not regarded as a reliable partner securing the country's and the Community's external borders. On the other hand, the new leadership of Prime Minister Simitis and the ruling PASOK have adopted a convincing pro-European stance by declaring Greece's participation to the third stage of EMU as the ultimate national policy objective.¹

One can find resistance to this devoted Europeanisation policy from the KKE and some dissenting factions within the ruling PASOK. However, the Communists have become relatively marginal in Greek political life. Today, only the state subsidised Orthodox Church seems to be the most 'aggressive' Euro-sceptic part of the Greek society. Church authorities organise mass rallies thereby challenging Greek government's actions to adhere to the separation of church and state. Thus, the Greek clergy perceives secular Europe as a potential threat to its own state protected privileges.²

III. The Institutional Framework in EC/EU Affairs from Maastricht to Amsterdam

The Treaty of Accession of Greece to the European Communities was ratified only by a simple majority in the Vouli based on Article 28.3 of the Greek Constitution. During the debate on the ratification of the Treaty the then Socialist opposition asked for a two-thirds majority voting and a constitutional referendum to sanction the transfer of sovereignty that followed accession. But since 1974 no political issue has been dealt through a referendum. Hence the Greek Constitution does not foresee such an element of direct democracy. The Conservative Government tried to avoid any provocation endangering Greek membership. However, once PASOK was in government it virtually ignored all future demands for ratification acts via referenda. Due to a weak opposition and traditionally weak institutions of Greek civil society the Socialists in power did not meet much resistance. Finally, the political costs of ignoring anti-governmental views were minimal due to the highly centralised forms of policy-making in Greece.³

During the 1980's - a 'lost decade' for Greece's engagement in the EC/EU, the then anti-European PASOK Government only agreed to an intergovernmental approach with

1 Papaschinopoulou, Mary (ed.): Griechenland auf dem Weg zur Europäischen Wirtschafts- und Währungsunion, Wie kann von den deutschen Erfahrungen sinnvoll profitiert werden?, Greece on Course Towards the European Economic and Monetary Union, Lessons to be learnt from the German Experience, Baden-Baden 1999.

2 See Archbishop Christodoulos' speech in Pnika: 'The role of Orthodoxy in the European Union', in: Evropaiki Ekfrassi, 39, 2000, pp. 812 (in Greek) and Zervakis, Peter: 'Griechenland', in: Weidenfeld, Werner/Wessels, Wolfgang (eds.): Jahrbuch der europäischen Integration 2000/2001, Bonn 2001, pp. 149-154.

3 See Spanou, Calliope, 'Greece', in Kassim, Hussein, B./Peters, Guy/Wright, Vincent (eds.): The National Co-ordination of EU Policy, Oxford 2000, p. 177 and Sotiropoulos, Dimitris: The Remains of Authoritarianism: Bureaucracy and Civil Society in Post-authoritarian Greece, Madrid, Juan March Institute, Working Paper, 1995/96.

regard to European integration. It was only during the negotiations and the ratifications of the Maastricht and Amsterdam versions of the TEU that PASOK changed its general attitude on the vertical and horizontal organisation of the EU. During the 1990's a unique consensus between government and opposition emerged in favouring increased majority-voting in the Council, more powers for the Commission and a stronger role for the European Parliament. When these positions were 'tested' in the reality of the EU relations with the "Former Yugoslav Republic of Macedonia" (FYROM) and with Turkey, the Greek members in the Council of Ministers either did not respect the EU's decisions on foreign policy and initiated an important legal dispute, or they tried to block all relevant decisions. As single member state the Greek government argued with its sovereign rights in sensitive national issues. But once the European Court of Justice decided in favour of the EU's foreign policy towards FYROM, Greece complied with the ruling.

1. The Institutional Framework of the Government

The creation of a Ministry for EC/EU affairs has been discussed since 1981. However, the relevant proposals have not been realised due to a sharp competition for responsibility between the affected ministers. Therefore, co-ordination in EU matters has been shared by the Ministry of Foreign Affairs and the Ministry for National Economy, where alternate ministers or under-secretaries are in charge of European affairs. The most stable form of intra-governmental co-operation is to be found at the level of inter-ministerial committees. Their meetings frequently take place at the Secretary-General or Minister's assistants level. The Ministry of Agriculture and the Ministry of Labour and Social Services also have Secretary-Generals for European Affairs. Many other ministries (e.g. Interior and Public Order as well as Industry, Public Works, Urbanism and Environment, and Education) have European Affairs Directorates that report directly to their respective minister. Because of the traditional dominating role of the Prime Minister in Foreign Affairs and the competition between the aforementioned ministries, co-ordination is also assumed by his office in matters of national importance.

The Greek Permanent Representation in Brussels is a formal branch of the Ministry of Foreign Affairs and works with a staff of some 100 civil servants (40 diplomats, 60 *détachés* from technical ministries). Here the administrators try to co-ordinate European affairs as semi-independent actors, but occasionally meet the envy and passive resentment of their mid-career colleagues in the Ministry of Foreign Affairs in Athens.¹

1 Spanou, Greece, pp. 166-170.

2. *The Institutional Framework of the Greek Parliament*

In the first two decades after Greece's accession to the Union the Greek Parliament played a minimal role in the domestic formation of foreign policy in general, and European policies in particular. The technical nature of delegated legislation for the incorporation of European legislation sidelines the Vouli and limits its access to information and the opportunity of debating EU subjects. Adaptation of Greek law to the 'Aquis Communautaire' usually takes place by presidential decrees. The Greek Constitution does not oblige the Government to consult Parliament before accepting these decrees. Therefore, the extensive use of 'legislative authorisations' has been established. Although there are no systematic research data available on the structure and functions of the Greek Vouli either in Greek political science or in the Greek parliament's research unit, occasional studies on the way of incorporating EC legislation into Greek legislation between 1981 to 1995 suggest that from 795 legal acts, which incorporated previous EC legislation, 215 were Presidential Decrees and 381 Ministerial Decisions.¹ Consequently the main burden of incorporating Community directives is shouldered by the executive-administrative power. It is clear that this practice is not a real incentive to exercise parliamentary scrutiny in the upstream process of EU law-making effectively. But even the limited opportunities of parliament to play a role in EC politics have not been exploited, because neither the governmental majority nor the opposition have shown any substantive interest in EU affairs. Despite the 1979 law obliging the Government to submit annual reports on EC developments to the Parliament, it was only in 1989 that the Government submitted a first report of this kind.

As regards the so-called 'pre-agenda' debates - a special procedure aside the normal parliamentary routine strictly limited to party leaders to debate on public national issues, including EU issues, without real decision-making function - only seven items were discussed since 1990. Instead, Parliament strongly relied on its traditional indirect ways of influencing governmental policies in the process of European integration by promoting structural reforms of the Constitution and the political system resulting from EU membership.²

The situation changed slightly after the Maastricht Treaty on European Union. As the implementation of the Treaty with regard to the daily business of the EU institutions has modified the characteristics of EC regulations - rendering them a more legislative dimension - it allowed the increased involvement of national parliaments. Indeed, the

1 Unpublished Communication with the Hellenic Chamber of Deputies, Directorate for International Relations, 'The follow-up of incorporation and application of community legislation by the Hellenic Parliament', 27 January 1995, pp. 1-4.

2 Zervakis, System, p. 668, Spanou, Greece, p. 174, fn. 21, Ioakimidis, Panagiotis C.: 'The EC and the Greek Political System: An Overview', in: Kazakos, Panos/Ioakimidis, Panagiotis (eds.), Greece and EC Membership Evaluated, New York 1994, p. 6; Pliakos, Alexandros: 'The Legislative Production of Parliament', in: Evropiaki Ekfrassi, 20 January 1996, pp. 18-19. (in Greek)

directives on the accomplishment of the internal market and the perspective of Monetary Union have resulted in a more frequent resort to legislative bills at the national level. Since Greece's EC/EU membership 40 legislative bills concerning the incorporation of EC directives have been adopted step by step. Through these bills the Greek legislator induces institutional changes upon a series of the Greek economy's sectors, thus modifying their structure to fulfil the demands of European integration. However, the Greek Parliament is still reluctant to deal with technical EU issues and has restricted itself to ex-post-scrutiny of governmental actions in EU affairs or even to simply following the Government and the administration.¹

3. The Committee for European Affairs

In June 1990, thus right at the beginning of the ND Mitsotakis Government and in view of the upcoming IGC leading to the adoption of the Maastricht Treaty, the President of the Chamber decided to establish the first Standing Committee for European Affairs (Epitropí Evropaikón Ypothésseon). The attempt was mainly influenced by the IGC debates on democracy and transparency in the European Union. The decision referred explicitly to a motion of the EP, which recommended the creation of such an institution in each national parliament and which underlined the fact that Greece was the only member state without such a committee. In 1993 the Chamber added a new article 32a to its Rules of Procedure and confirmed the new parliamentary Committee for European Affairs (CEA).² Following a further revision of the Rules of Procedure of the Chamber (1997) the Government became obliged to notify all EU proposals to all Permanent Committees of the Vouli through its President.

The CEA is composed of 16 MP's and 15 Greek MEP's. The Committee is chaired by a - non-elected - vice-president of the Greek Chamber who presides the meetings as ex officio member. The MEP's have the same voting rights like their national colleagues. The Committee meets only irregularly and considers institutional issues arising from EU membership, co-operation between national parliaments and the EP, the incorporation of European legislation into Greek law and EU issues arising from the work of other national parliamentary committees. It holds seven to eight meetings a year with regular presence of the Minister of Foreign Affairs. All ministers have to brief the Committee and answer questions - the main instrument of parliamentary control. Hence, from 1981 to 1993, 743 questions concerning European affairs were posed by Parlia-

1 Though one has to take into account the special and technical nature of Community law until the entering into force of the Single European Act and the limited cases where the Greek Constitution excludes the issue of legislative authorisations (i.e. restriction on personal rights, regulation of issues of tax or penal character according to articles 72.1, 78.1 and 78.4 Greek Constitution).

2 Yannis, Nikos: 'The Quest for Participation in European Policy'; Ekfrasi, Evropaiki, 20 January 1996, pp. 20-27. (in Greek)

ment to scrutinise government. However, while 427 questions were directed to the Ministries of Agriculture and National Economy, only 55 were aimed at the Ministry of Foreign Affairs.¹ The CEA's main mission is to evaluate European Union affairs with particular attention to actions taken by the Greek authorities. In addition the CEA expresses its opinion in reports which are submitted to the Parliament and the Government. Since 1993, it presented two reports per year. The reports can be discussed in the plenary sessions of parliament, without being voted on. This procedure was not used until 1996.

The CEA has a mere consultative status and does not operate as a legislative body. Government, on the other hand, is required to transmit all documents and legislative proposals of the EU to the CEA and to other interested parliamentary committees. In addition, the Government has to submit an annual general report on its EC/EU related activities on European affairs. As already noted, it made no use of this possibility at all until the end of 1996.

In reality, the initial - post-1990 - awakening of parliamentary activities in EU affairs did not last for long. Effective scrutiny by the CEA has been rather low, although ministers as well as government officials show up to defend or to explain government's positions. Hearings are usually a mere formality due to the rather complicated technical nature of the issues on the EU's agenda and the consensual mode of implementation between governmental majority and opposition in Parliament. On the other hand, the hearings sensitise the members of the Committee who tend to participate more actively in the plenary debates and the exercise of parliamentary control than their other colleagues. European issues with importance to the general public are dealt with in the normal plenary debates, because they are likely to catch the interest of the media.

However, these exchanges between majority and opposition do not lead to any kind of effective scrutiny. The CEA's demands for more information and involvement in European matters are not taken into account adequately by the Government. If there is no media interest on a given EU item, EU affairs are dealt with in the Chamber with long delays. Hence, the ministers are responsible for the delayed submission of bills and the tactical involvement of domestic party politics. Moreover, the Prime Minister's question time is normally used by the opposition to criticise the Government and not to raise essential questions with regard to EU issues. Given their complicated and technical nature, EU draft acts are largely neglected.

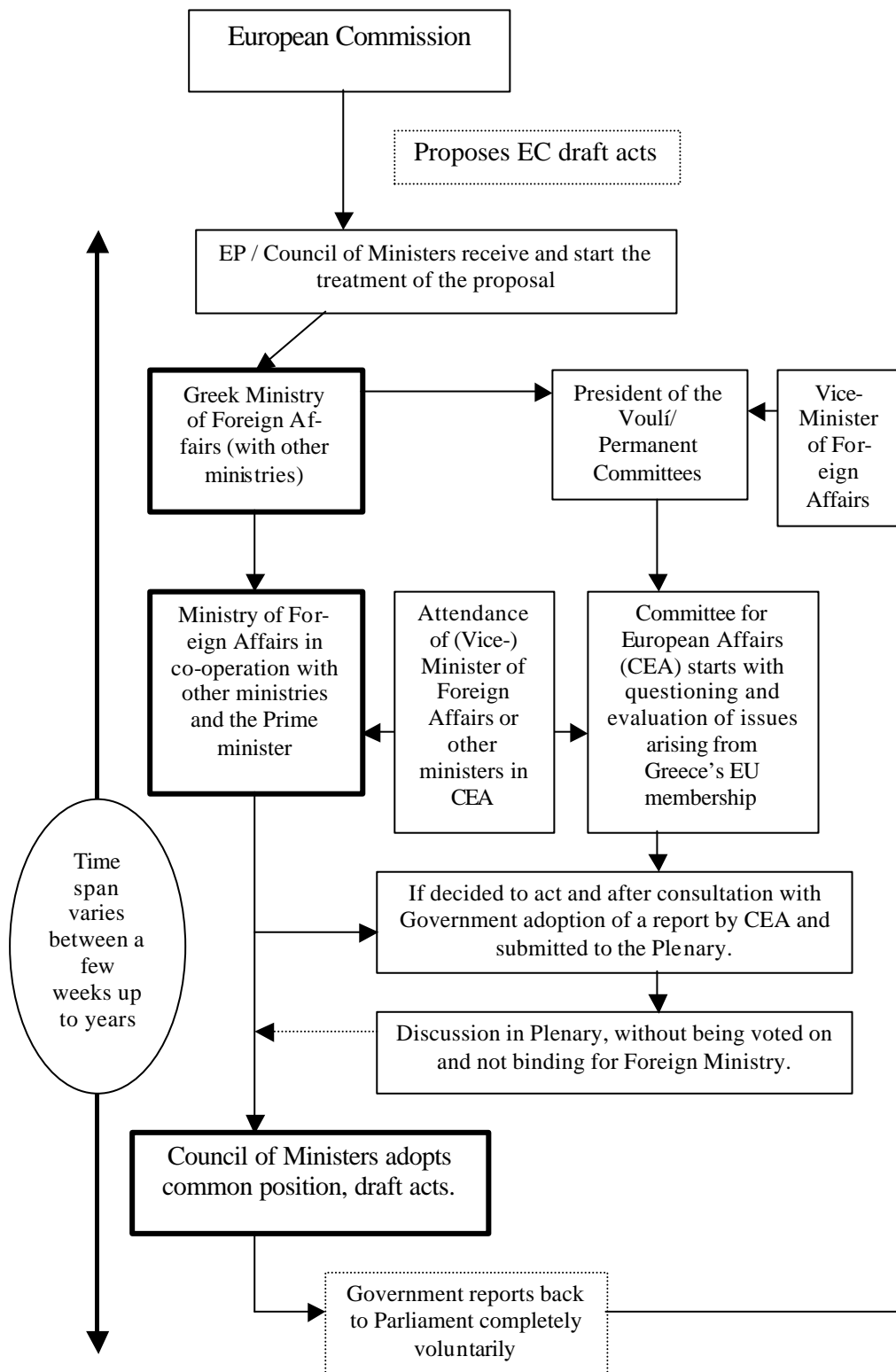
Despite its low political visibility, the CEA helped decisively to promote the 'Europeanisation' of the Greek Parliament.² The reason for the relative failure of effective parliamentary scrutiny - and thus for the 'democratic deficit' in the Greek context - are

1 Yannis, Parliament, p. 24.

2 Yannis, Parliament, p. 26, Spanou, Greece, p. 175. See also Papadimitriou, Giorgos: 'European Integration and National Constitution', in: Maraveyas, Nikos/Tsinisizelis, Michalis (eds.): The Integration of the European Union, Athens 1995. (in Greek)

certainly not the inappropriate or insufficient institutional arrangements. The Vouli simply does not make enough use of the already existing possibilities, which are offered by the Constitution! Moreover, the decision-making at the governmental level still permits and prefers traditional client-driven networks and an authoritarian prime minister rather than exhausting negotiations. This kind of EU policy-management 'from above' ensures that no positions are taken that may lead to public or media criticism.

Figure 6: The Process of Parliamentary Scrutiny in EC/EU Affairs in Greece



IV. The Greek Parliament and the Negotiation of the Amsterdam Treaty

1. The Mobilisation of the Greek Society

The Greek society became mobilised during the process of the 1996/1997 Intergovernmental Conference. It was also one of the most intense campaigns at pan-European level.¹ The intensified interest can be attributed to the following reasons:

(A) The remarkable re-orientation of the major political forces with regard to European affairs since the beginning of the 1990's - mirrored by a large parliamentary majority of over 90 per cent on the ratification of both, the Maastricht and Amsterdam Treaties.² The parliamentary debate in both cases was more extensive than ever before within both the CEA and the plenary. It should be noted that from 1990 until the signing of the Amsterdam Treaty in 1997, eleven debates took place in the plenary on the issue of the country's course in the EU. During the first ten years of membership no such debate had ever taken place! Following the entry into force of the TEU on 1 November 1993, the CEA asserted its claim for participation in the discussions for the revision of the Maastricht Treaty. From September 1994 until May 1997, the Committee held twenty-one sessions on issues related to the 1996/1997 IGC and elaborated two reports presenting its own views: One before the official start of the IGC in July 1995³ and another one before the conference's conclusion in May 1997.⁴ It is also noteworthy that the plenary held the first public hearing on 8-9 May 1997, in which the Greek social partners convened together with Prime Minister Costas Simitis and Jacques Santer, the then President of the European Commission.

(B) The public debate on the ratification of the Maastricht Treaty lasted in Greece one year and a half before its final entry into force. This was due to the fact that the Greek Government rushed to ratify the Maastricht Treaty in June 1991 following the anti-European referendum in Denmark. Therefore, it discontinued Parliament's summer session and summoned up an extraordinary meeting of the plenary, to send out its clear pro-European message. The Euro-scepticism that emerged through the negative Danish referendum also began to influence the public debate in Greece - after the Treaty's ratification. The raised awareness of EU issues became visible in the growing interest of

1 For Panayotis K. Ioakimidis, the key advisor of the Greek foreign ministry on the EU who participated actively in almost all official preparation of the IGC and the new Treaty as well as to the public debate, the discussion in Greece was the most intense among all the other EU members.

2 See more extensively, Kazakos, Panos/Ioakimidis, Panayotis C. (eds.): Greece and EC membership evaluated, London 1994.

3 See Greek Chamber of Deputies (ed.): European Union - IGC '96, debate, positions and proposals that have been expressed in European Affairs Committee, Athens 1995. (in Greek)

4 See Greek Chamber of Deputies (ed.): Report of European Affairs Committee on the IGC '97, Athens 30 May 1997. (in Greek)

the Greek media and public opinion with regard to the debate on the EU's institutional reform and the revision of the Maastricht Treaty.

(C) A growing number of interest groups and NGO's realised that the center of gravity of decision-making had been gradually developed outside Greece, in the EU Council of Ministers. Because organised Greek policy interests can only be ensured by an active participation at the European level, the Greek Industries Association (SEV) submitted its own views regarding the general topics dealt by the 1996/1997 IGC as well as issues of specific interest for the industry.¹ The SEV's counterpart, the General Confederation of Greek Workers (GSEE), also submitted its views² as did the Athens Bar of Lawyers (DSA) and other professional organisations.

(D) The decisions taken in Brussels on the allocation of the Second Community Support Framework led to a renewed motion of the economic actors, public administration, local governments and mass media on Europe in general and Greece's participation in EU politics.

(E) The intensity of European NGO's, which formulated claims of great diversity with regard to the 1996/1997 IGC, also affected the Greek NGO's and their attitudes vis-à-vis the revision of the Maastricht Treaty. Various Greek sections of European NGO's channelled their views and positions to their respective European organisations, and informed the Greek citizenry about their activities.³ Some of their contributions were directly publicised in Greece.⁴ At least four NGO's dealt with the IGC exclusively: European Expression (Evropaiki Ekfrasi)⁵, the Greek Committee for the European Union⁶, Interpost jointly with the Marangopoulou Foundation,⁷ and the Citizens Movement Against Racism. The main purpose of the NGO's interventions was their claim for more instrumental participation rights in EU decision-making. It should not be overlooked, however, that the NGO's have already contributed successfully to the dissemination of information, to the transparency, and thus to a limited lifting of the 'government re-

1 See Provlmatismi, - edition GIA (SEV), 20 June 1995. (in Greek)

2 See 'The proposals of GCGW - GSEE: To pave the way for a progressive revision of the Treaty of Amsterdam', in Trigazis, Petros, The Citizens demand, Athens 1997. (in Greek)

3 See, for instance: 'Association Européenne des Enseignants - A.E.D.E.', 'European Women's Lobby', 'European Union of Journalists', 'Helsinki Citizens Assembly-HCA', 'House of Europe', 'Amnesty International', 'Forum des immigrés de l' U.E.', 'SOS Racism' or 'Young European Federalists'.

4 See, for instance: 'Towards a more fair and equal world - the proposals of the European NGOs for the external relations of E.U', Liaison Committee of 800 European Development NGOs, 'The proposals of the Platform of European Social NGO's', the campaign of six big environmental and ecological NGO's called 'Greening the Treaty - Sustainable Development in a Democratic Union' and proposals of the European Network of Unemployees (ENU).

5 See the special issues of Ekfrasi, Evropaiki: 'The double speed in Europe' (16, 1995), 'Europe 1996' (18, 1995), and 'Institutions and Intergovernmental Conference 1996', (19, 1995), as well as, 'Veto and unanimity vote in E.U.' (22, 1996).

6 Adoption and propagation of a declaration titled 'The goals of 1996 IGC - declaration', 23.1.1995.

7 See the brochure: 'Athens Appeal for a Europe of Social Rights' published in January 1997 and 1998.

stricted area'. In one specific case, the Greek Youth Organisations and the European Youth Forum had put forward several proposals on the inclusion of EC treaty provisions for an integrated youth policy. The Greek Government set up a specific proposal on this issue in its memorandum to the IGC, though it did not meet any success. Equally characteristic is the participation of specialised Greek research institutes and think tanks. They contribute to a more academic processing of EU related themes and provide for a wider exchange of ideas. The Hellenic Foundation for European and Foreign Policy (ELIAMEP)¹, the Greek Center for European Studies (EKEM)² and the Greek Center of European Studies & Research (EKEME)³ also contributed widely to the IGC debate. It is also noteworthy that these three semi-public and independent institutes assembling leading scholars of the country succeeded to arrange their events on the future of European integration to take place at the Ministry of Foreign Affairs! Thus they aimed to attract the attention of the Greek Government.

(F) The question of a referendum in Greece - like in Denmark - was continuously posed by the Referendum Committee for Maastricht⁴, with the Communist Party holding a crucial influence on it. Thus, these extreme left-wing organisations, although totally rejecting the EU, indirectly contributed to the debate on the nature and long term objectives of the EU, its social and class stratification, its course, and institutional structure.⁵

(G) Interest in EU affairs was also raised by the Greek political leadership at the time because it favoured and encouraged a structured dialogue with civil society in the public.¹ This mobilisation, however, did not sustain for long. As soon as the official IGC negotiations began, it lost its momentum. The dialogue with the civil society broke off and diplomacy took over again. This rupture proved again that the state governments remain the masters of the Treaties and that inter-governmental diplomacy remains the only way to amend the European treaties.

1 See Kazakos, Panos: 'Greece in front of the IGC - 1996', Hellenic Foundation for European and Foreign Policy (ELIAMEP), Athens, May 1995. This policy paper has later been published under the title 'Modest reforms and practical innovations, a strategy for the revision of the Maastricht Treaty', in: Defence and Foreign Policy Studies, 24, 1995. See also 'Conference about IGC', in: Ministry of Foreign Affairs, Athens, 22 May 1995.

2 See the EKEM edition: 'Conference in the Ministry of Foreign Affairs with the participation of MEP's about the IGC - 1996', 19 May 1995.

3 See the EKEME conference edition: 'Priorities and strategy for the revision of Maastricht', Round Table talk in the Greek Center of European Studies and Research, Ministry of Foreign Affairs, Athens, 26 January 1996.

4 More than 15 press releases of the 'Referendum Committee for Maastricht', which have been distributed during the elaboration of the new Treaty (11.6.1996 - 5.6.1997), have been collected in Nikos Yannis' personal archives.

5 See 'Common Declaration of 100 Greek Scholars - University Professors in view of the European Council of Amsterdam and claim for a referendum to be carried out in Greece', ESIEA Conference, Athens, 13.6.1997 and Papadopoulos, Makis: 'In front of the IGC - 1996', in: Communist Review, 3, 1995.

Overall, the interest of the main Greek social actors concerning their involvement into the new Treaty was substantially high and unprecedented. They finally succeeded to initiate a public debate on the Greek national interests in the Treaty. But they were then excluded from the negotiations and decision-making in 1996/97.

2. The Amsterdam Treaty and Greek 'National Claims'

Public opinion in Greece was not set into motion by the very content of the Amsterdam Treaty. This became clear at the European elections of 13 June 1999: The campaigns in Greece concentrated mainly on national topics. 70 per cent of the electorate did cast their vote for the EP, despite compulsory voting a low rate in the Greek context but a particularly high participation rate if compared with the EU average. It is doubtful whether even a small part of the voters were aware not only of the content of the Treaty but also of the fact that it had entered into force only a month before the elections (1 May 1999). The European elections were seen as an occasion to debate the country's progress towards EMU and Greek economic policy in general. However, the debate was largely characterised by the introversion of its protagonists. Therefore, the debate can not be recorded as an integral part of the discourse in relation to the Amsterdam Treaty, which was not connected to a revision of EMU. On the other hand, Common Foreign and Security Policy (CFSP), and the question whether this policy includes the protection of Greek Community borders to Turkey, constituted a major national issue. Media coverage in 1999 mirrors the points of interest of public opinion, and provides clear evidence for this analysis.² Apart from the latter issue, arrangements such as the reinforcement of the EP's powers, the development of the Greek insular areas and the creation of a specific Employment Title into the EC Treaty (Title VIII; Art. 125-130 ECT) were interpreted as attractive and popular reforms. When the Amsterdam Treaty finally set limitations to the principle of closer co-operation and avoided the creation of a hard core group of member states to accelerate integration at the expense of their less motivated partners, it satisfied the Greek elites totally. At the time they were terribly anxious to become completely isolated from Western Europe. It was expected that the Greek public opinion after Amsterdam would be further mobilised by the issues Treaty's 'left-overs': In particular, the re-weighting of votes in the Council, the abolition of the right of veto and the reduction of the number of Commissioners, especially in the absence of a European Constitution and a European Bill of Citizen's Rights. However, it can be

1 This positive approach of the governmental side is registered also in the Memorandum of the working group for the IGC '96 of the Ministry of Foreign Affairs under the title 'For a Citizen's Europe, a Europe of Democracy and Development', Athens 1996.

2 Among the 30 representative abstracts published by Greek daily newspapers and magazines selected by the authors, more than half of them were concerned with the CFSP and borders protection while the others include normal references on this issue.

assumed that in Greece the more substantial public debate about the essence of European politics goes hand in hand, if not as a precondition, with the more rapid and deeper modernisation and Europeanisation of the countries' institutions and its functions in state and society.

3. The Parliament and Civil Society: National Interests and Shared European Interests

In analysing the development of the Greek Parliament with regard to the 1996/1997 IGC, one can distinguish three periods: a) the period of the Treaty's informal elaboration by the Reflection Group, b) the period of the formal negotiations and c) the ratification period following the European Council in Amsterdam in June 1997. The participation of citizens and society was visible, with unprecedented vigour, especially in the first period. When the negotiations among the representatives of the member states began, neither Parliament nor the Greek citizenry were involved any longer. This happened mainly due to the structural deficiencies of the 'authoritarian' Greek state, the weak civil society, and the unceasing debate on anti-European "Greekness" in Greek political culture.¹

The Amsterdam Treaty was ratified by the Greek Parliament twenty months after its adoption. That was the longest delay until today, although it was not related to the acceptance of the Treaty by the Greek society nor with any difficulty in achieving an approval in Parliament. On the contrary, the Maastricht Treaty, despite the limited interest it attracted from society - which at that time was absorbed by the newly born FYROM -, provided the Greek Government with an opportunity to follow up its self-declared pro-European stance. Consequently, the Government accelerated the ratification. As to the Amsterdam Treaty, the delay was obviously due to some political bargaining chips and package-deals set by the Greek Government.

The Greek Government's strong support for the Amsterdam Treaty demonstrates the inconsistent and contradictory way in which the political elites handle European unification in Greece. On the one hand, the elites proclaim their faith in deeper co-operation, the political unification of Europe, Citizens' Europe and many even talk about the creation of a federal identity. On the other hand, they remain attached to the inter-governmental method of constructing the Union through IGC's and IGC-like bargaining marathons, using 'their' national parliament as an ungenerous pressure tool to promote a strictly national attitude for the Greek presence in the EU.

¹ See the analyses by Sotiropoulos, Authoritarianism, and Diamantouros, Nikiforos: 'Cultural Dualism and Political Change in Post-authoritarian Greece', Madrid, Juan March Institute, 1994 (Working Paper No. 50).

V. The Relations between the Greek Parliament and the European Parliament after Amsterdam

Inter-parliamentary relations of the Greek Parliament are generally maintained by its Office for Public and International Relations. As already noted, the Vouli monitors European Affairs rather unsystematically through its Committee on European Affairs. Upon sole decision of the Chamber's President selected CEA-members may represent the Greek Parliament at COSAC, which is generally welcomed as a non-politically, additional source of information on EU matters. But they do not have a binding mandate to speak on behalf of the CEA.¹ Nevertheless, the CEA emphasises the necessity of further improvement of the co-ordinating role of COSAC. Moreover, better co-ordination is seen as a prerequisite to consolidate, expand and update co-operation at the COSAC level. Because the valuable expertise gained through the exchange of documents, methods of parliamentary scrutiny and ways of coping with problems emerging from the incorporation and application of community law, COSAC is expected to facilitate the parliamentary follow-up and intervention at the domestic and European levels.² But Greek MEP's are only loosely associated with domestic parliamentary activities relating to the competences of the EP, although they provide for nearly half of the CEA's members. Besides, the President of the Chamber has established his own service on foreign relations. He uses this special unit either to travel to other legislatures or to receive foreign parliamentarians. Given the strong commitment of the present government to Greece's participation in EMU, useful links have also been developed by the Vouli to the Central Bank Governors and the Economic and Financial Committee of the EC. It is only in foreign affairs matters that the Vouli and its CEA organise more permanent briefings of MP's and MEP's by the Greek Ministry of Foreign Affairs or by the Greek Permanent Representation in Brussels. However, since the inter-parliamentary networking is done rather unsystematically, the potential of influencing the individual parliamentarian's decision has not been fully extended.

Among the informal contacts between the Greek Parliament and the EP the biannual meetings of the presidents and speakers of national parliaments and of the EP are worth to mention. In the meantime, they have become a fixed point in the procedures of the Greek Chamber in spite of their informal status. Hence, the Rules of Procedure of the Greek Parliament empower its committees to collect opinions of experts and other non-members. By referring to this procedural outline, close contacts have been established

1 See Yannis, Nikos: The Conference of the Committees for European Affairs and the Committee for Institutional Affairs of the European Parliament. Institutional characteristics, efficiency, critical assessment, Greek Parliament Research Report, No. 12, Athens, 6 June 1997. (in Greek)

2 See Questionnaire for the Parliaments of Member States, XXIIIrd COSAC - Versailles, 16-17 October 2000. Answers by the Committee for European Affairs of the Hellenic Parliament and written contribution of Mr. Tzortzopoulos, Secretary General of the Greek Parliament (September 1997).

with MEP's, who are invited to join the proceedings of the corresponding committees in Athens. This interaction has been remarkably intensified since 1989 and has increased the information flow and co-operation between the two legislatures. Moreover, officials of the Greek Parliament attend the plenary sessions of the EP from time to time. As regards the Greek MEP's in the CEA, they have no particular status in relation to the Greek Chamber. Formally they operate on the same status as their colleagues of the Vouli: Their parliamentary salaries are paid through the national parliament, they belong to the same social insurance scheme as the national MP, they possess diplomatic passports and they enjoy the right of parliamentary immunity. In terms of belonging to a party, only MEP's of the conservative ND can participate in meetings of their party's parliamentary group in the Vouli, and they may also vote for the party's president. There are no such rights for their fellow colleagues in other Greek parties. The prohibition of a dual mandate makes it impossible for MEP's to be regular members of one of the Vouli's committees. If they want to follow a plenary session they have to use the public tribune like other Greek citizens. Finally, some additional relations between the two kinds of parliaments are provided by the EP office in Athens and the European Center for Parliamentary Research and Documentation in Luxembourg.¹

VI. The Vouli after Amsterdam: Slow Adaptations

The patterns of Greece's historical, political and cultural development are perhaps unique in the EU context. The gap between institutional promise and daily reality is characteristic for Greece's political culture. Although Greece was relatively successful in adapting Western political institutions to traditional environments in the legacy of the Ottoman Empire, Greek experience is marked by the dichotomy between the challenges of a 'modern' Western state on the way to deeper European integration and the inadequate responses of a 'traditional' society with powerful, but sharply conflicting cultural traditions.² The highly centralised Greek state was effective in cowing the opposition and in imposing a singular national identity upon society at the expense of an independent development of civil society. The societies in the geopolitical core of the EU appear more comfortable with the idea of Europe than Greece does, because its sense of national identity is subverted by the participation in a formal institutional framework.³

In Greece, there are two mechanisms which enable the Parliament to participate in European politics: the Committee on European Affairs, which became permanent in 1993, as well as the major plenary debates. In the meantime, the insufficient informa-

1 Wenturis, Nikolaus: 'Greece', in: Morgan, Roger/Tame, Lare (eds.): *Parliaments and Parties: the European Union in the Political Life of Europe*, London 1996, pp. 283-303.

2 Diamantouros, *Cultural Dualism*, pp. 11-15.

3 Legg/Roberts, *Greece*, pp. 200-206.

tion basis of the Greek Parliament, and its institutional, structural and technical problems in scrutinising EC/EU affairs convincingly, have been discovered by the governing PASOK. There are proposals for a constitutional revision to improve the existing situation. This will include a new provision, which obliges the Government to inform the Vouli regularly on the total number of the European Commission's legislative proposals, through the conduct of a relevant debate. The Parliament's participation in the incorporation of EC legislation is still limited in size if compared to the respective input of the administration. In this sense the proposal for the amendment of the Constitution aims to allow better information of the Greek Chamber of Deputies.¹ The identified problems in the field of incorporation of EC law into Greek law may induce the introduction and general use of new information systems. They might then enable the Greek MP's to access directly the EP's computerised services as well as COSAC's internet and intranet services. In exchange, an information system will allow all member states concerned as well as the EP to get constant information about the existing situation in Greece. The PASOK's proposal asks for the EP's financial assistance to meet the costs of such an initiative because the financial and personal resources as well as the infrastructure are much better developed in all the other parliaments.²

Studying the degree of the Greek society's involvement in the EU, one should not overlook the limitations of the Greek Europeanisation process:

- the harsh political client-oriented system where non-associated individuals bypass institutions and laws, and negotiate directly and unscrupulously personal favours for their support to Greek governmental parties,
- the existence of a fairly popular mass movement against further EU integration, which is still fuelled by the Communist Party of Greece and the Greek Orthodox Church, and
- the fact that the proponents of civil society came to the limelight only during the last ten years as part of an overall modernisation process that is emerging slowly but with justified claims.³

The historical experience of incorporating 'Europe' by the Greek society, the gradual Europeanisation of Greece in institutional terms, and the direction which European unification took itself, determine the degree in which the IGC's, new Treaties and the institutional evolution of the EU get legitimated by the Greek society. The wider identifica-

1 Unpublished Communication with the Hellenic Chamber of Deputies, Directorate for International Relations, 'The follow-up of incorporation and application of community legislation by the Hellenic Parliament', 27 January 1995, pp. 4/5.

2 Ibid.

3 About a broader perspective of civil society and authoritarian structures in Greece see Sotiropoulos, Dimitris: 'Civil Society and central state in the third Greek Democracy', in: Lyrintzis, Christos/Nikolakopoulos, Iliopoulos/Sotiropoulos, Dimitris (eds.): *Society and politics, Views of the Third Greek Democracy, 1974-1994*, Hellenic Society of Political Science, Athens: Themelio 1996. (in Greek)

tion of Greek citizens with Europe remains an objective which presupposes a deeper change in the society's value system and the structuring of a European demos. This denationalised demos could result from the institutional evolution that is effectuated at the various levels of the European space as well as, at the level of NGO's, the civil society, and the European movements.

In practice, the Greek case still combines a real deviation from all other EU-member states and is characterised by a hesitant acceptance of the institutional deepening through the nominal convergence and a federal-type rhetoric.

The Parliament of Finland: A Model Case for Effective Scrutiny?

Tapio Raunio

1. Introduction: Elite Orientations and Mass Attitudes Towards European Integration

Finland's integration policy is a combination of elite-level pro-integrationist and pragmatic adaptation. This was first evident in the membership negotiations, where the Government accepted the Maastricht Treaty without any reservations, and with the exclusion of Common Agricultural Policy (CAP) sought no exemptions from existing policies. Government behaviour in the negotiations was characterised by flexibility driven by the imperative of achieving Union membership. This approach can be explained by two main factors: the depression of the early 1990's which had exposed the vulnerability of the national economy, and the broad consensus between government and the main opposition party, Social Democratic Party (SDP), which was also in favour of membership.¹ Secondly, with the referendum outcome clear,² the Finnish political system, including all political parties, accepted the result and started adjusting to life in the Union. Thirdly, national European policy has sought to consolidate Finland's position in the inner core of the Union, EMU membership included. The Finnish approach, at least on the elite level, has thus been co-operative and pragmatic, with membership seen as an effective channel for advancing national interests.

1 For information on the membership debate and negotiations, see Arter, David: 'The EU Referendum in Finland on 16 October 1994, A Vote for the West, not for Maastricht', in: *Journal of Common Market Studies*, No. 3/1995, pp. 361-387; Kivimäki, Timo: 'Finland, a Case of Beneficial Integration', in: *Journal of International Relations and Development*, No. 2/1999, pp. 154-168; Tiilikainen, Teija: 'Finland and the European Union', in: Miles, Lee (ed.): *The European Union and the Nordic Countries*, London: Routledge 1996, pp. 117-132; Törnudd, Klaus: 'Ties that Bind to the Recent Past, Debating Security Policy in Finland within the Context of Membership of the European Union', in: *Co-operation and Conflict*, No. 1/1996, pp. 37-68.

2 A consultative referendum on EU membership was held on 16 October 1994. 56.9 per cent voted in favour and 43.1 per cent against membership. Turnout was 74 per cent. A clear majority of the political elite was in favour of joining the Union, including the three main parties (SDP, the Center Party, the National Coalition), the Government, the parliamentary majority, and both the former President Mauno Koivisto and the new President Martti Ahtisaari. The Eduskunta approved membership on 18 November 1994. 152 voted in favour of membership, 45 against, one member was absent and one abstained (the Speaker does not vote). See Jenssen, Anders Todal/Gilljam, Mikael/Pesonen, Pertti, (eds.): *To Join or Not to Join, Three Nordic Referendums on Membership in the European Union*, Oslo: Scandinavian University Press 1998; Pertti Pesonen (ed.): *Suomen EU-kansanäänestys 1994, Raportti äänestäjien kannanotoista*, Helsinki, Ulkoasiainministeriö, Eurooppatiedotus ja Painatuskeskus, 1994.

Measured by the effective number of parliamentary parties, Finland's party system is relatively highly fragmented.¹ The 1994 membership referendum indicated that European questions would prove problematic for the parties. The majority of parties were divided over the issue, particularly the Center Party (KESK), the Left Alliance (VAS), and the Green League (VIHR) (Table 9). The two rainbow governments - bringing together SDP, National Coalition Party (KOK), Left Alliance, Swedish People's Party (RKP), and the Green League - headed by Prime Minister Paavo Lipponen (SDP) since 1995 have been steadily committed to integration and have emphasised that only a strong and efficient EU can guarantee the interests of smaller member states. Similar arguments were used to defend the decision to join the third stage of the EMU. The strong leadership shown by Lipponen has been crucial in shaping Finnish European policy. While the supporters and certain social democrat MP's have been more critical, he has not met any strong opposition within his party. The National Coalition and the Swedish People's Party pursued broadly similar pro-integrationist policies throughout the 1990's. The Green League and the Left Alliance have found themselves in a rather awkward situation. As junior partners in a government committed to deeper integration, the party leaders had to strike a delicate balance between the pro-European views of the cabinet and the party followers who remain divided over integration. The leadership of the main opposition party, the Center Party, has likewise faced a tough challenge in pacifying its often strongly Euro-sceptical, primarily rural, voters while remaining cautiously pro-integrationist in order to maintain the party's credibility as a potential future governing party. Parties that resisted membership before the referendum, the Christian Union and the True Finns (then as its predecessor, the Rural Party), have accepted membership but were against EMU and do not support deeper integration.

Finnish parties prefer to portray the EU as an association of independent states. Referring to the principle of subsidiarity, parties demand to bring decision-making closer to the citizens. However, apart from CAP, no party has put forward concrete proposals to reduce EU's powers. On the other hand, none of the parties can be classified as federalist, with the nation-state logic dominating integration policies. The geopolitical and economic context is highly relevant, as all parties see the Union as a way to consolidate Finland's place in the West. Euro-criticism is based on prominent individual MP's or MEP's, and the lack of organised factions is at least partially explained by the Finnish

1 See Lijphart, Arend: *Patterns of Democracy, Government Forms and Performance in Thirty-Six Countries*, New Haven: Yale University Press 1999, pp. 74-77. Center-right parties are the National Coalition, the Swedish People's Party, the Center Party and the Christian Union. The Left consists of the mainstream Social Democratic Party and the Left Alliance. The Green League is one of the strongest environmental parties in Europe, and in 1995 became the first green party to gain a cabinet seat in Europe. There is no extreme right-wing party. See Borg, Sami/Sänkiäho, Risto (eds.): *The Finnish Voter*, Tampere: The Finnish Political Science Association 1995; Sundberg, Jan, *Partier och partisystem i Finland*, Esbo, Schildt 1996; Sundberg, Jan: 'The Enduring Scandinavian Party System', in: *Scandinavian Political Studies*, No. 2/1999, pp. 221-241.

electoral system. The candidate selection process is decentralised and voters choose among individual candidates. This mechanism facilitates intra-party protest based around individual persons and reduces the probability of establishing organised factions.¹

The relatively broad elite consensus about the overall direction of national integration policy cannot be found among the voters. Eurobarometers show that support for membership and the deepening of integration is lower in Finland than in the EU as a whole. National surveys report similar findings, with Finns especially concerned about the influence of small countries in the Union.² Particularly noteworthy has been the increasing salience of the rural-urban cleavage. While the left-right dimension remains the most important structure of competition in domestic politics, the rural-urban / center-periphery cleavage comes not far behind. Disaffection, and outright hostility, towards the EU is widespread among the rural population, a development explained primarily by the destructive impact of the CAP on the farming sector. The Government and the party elites have taken a gamble on European issues by adopting positions that have been contradictory with the mood among the voters. According to a survey carried out in 1995 Finnish MP's were considerably more pro-integrationist than the citizens.³ Such behaviour is mainly explained by the elites' desire not to exclude their parties from future government negotiations.

The unicameral national Parliament, the Eduskunta, has 200 members elected from 14 multimember electoral districts in proportional elections held every fourth year. The autonomous province of Åland is entitled to one seat. Voters choose between individual candidates from non-ordered party lists. Because of the decentralised, candidate-centered electoral system, larger party groups always include stubborn and troublesome MP's that the leaders of the parliamentary party groups cannot easily control. Decision-making in the Eduskunta is based on a continuous interplay between committees and party groups.⁴

1 See Raunio, Tapio: 'Facing the European Challenge, Finnish Parties Adjust to the Integration Process', in: *West European Politics*, No. 1/1999, pp. 138-159; Johansson, Karl Magnus/Raunio, Tapio: 'Partisan responses to Europe, comparing Finnish and Swedish parties', in: *European Journal of Political Research*, 2001, forthcoming 2001.

2 See Eurobarometers and the public opinion surveys published in English by the Center for Finnish Business and Policy Studies (EVA) at <http://www.eva.fi>.

3 See Raunio, Tapio/Wiberg, Matti: 'Parliaments' Adaptation to the European Union', in: Esaiasson, Peter/Heidar, Knut, (eds.): *Beyond Westminster and Congress, The Nordic Experience*, Columbus, Ohio State University Press 2000, pp. 344-364.

4 See Wiberg, Matti: 'The partyness of the Finnish Eduskunta', in: Heidar, Knut/Koole, Ruud, (eds.): *Parliamentary Party Groups in European Democracies, Political parties behind closed doors*, London: Routledge 2000, pp. 161-176; Esaiasson, Peter/Heidar, Knut (eds.): *Beyond Westminster and Congress, The Nordic Experience*, Columbus, Ohio State University Press 2000.

Table 9: Party Positions on EU Membership and Distribution of Votes in Finnish National and EP Elections in the 1990's

Party	Party line in the 1994 Referendum ³	1991 %	1995 %	1996 EP %	1999 %	1999 EP %
Center Party of Finland (KESK)	Yes	24.8	19.8	24.4	22.4	21.3
Social Democratic Party (SDP)	Yes	22.1	28.3	21.5	22.9	17.8
National Coalition (KOK)	Yes	19.3	17.9	20.2	21.0	25.3
Left Alliance (VAS)	No decision	10.1	11.2	10.5	10.9	9.1
Swedish People's Party (RKP)	Yes	5.5	5.1	5.8	5.1	6.8
Green League (VIHR)	No decision	6.8	6.5	7.6	7.3	13.4
Finnish Christian Union (SKL)	No	3.1	3.0	2.8	4.2	2.4
Finnish Rural Party (SMP) ¹	No	4.8	1.3			
Liberal People's Party (LKP)		0.8	0.6	0.4	0.2	
Young Finns (NUORS) ²	Yes		2.8	3.0	1.0	
True Finns (PS)				0.7	1.0	0.8
Others		2.7	3.5	3.1	4.0	3.1
TOTAL		100	100	100	100	100

¹ The Rural Party was disbanded after the 1995 elections. The True Finns, established that same year, can be considered as its successor.

² The right-wing Young Finns was established in 1994. The party failed to gain seats in the 1999 elections and was subsequently disbanded.

³ The Left Alliance and the Green League did not adopt official positions prior to the referendum. The Center Party adopted a pro-membership line in its party congress, but only after the party chairman and the PM Esko Aho had threatened to resign were the party to oppose membership. The share of party supporters voting in favour of membership were: National Coalition 89 per cent, Swedish People's Party 85 per cent, SDP 75 per cent, Green League 55 per cent, the Center 36 per cent, Left Alliance 24 per cent.

Source: Statistics Finland; Sänkiäho, Risto: 'Puoluesidonnaisuutta vai sitoutumattomuutta', in: Pensonen, Pertti, (ed.), Suomen EU-kansanäänestys 1994: Raportti äänestäjien kannanotoista, Helsinki, Ulkoasiainministeriö, Eurooppatiedotus ja Painatuskeskus, 1994, pp. 164-173.

The distribution of committee seats is proportional to the distribution of seats among the parties in the Chamber. Committees are the principal arenas for examination and scrutiny of legislative initiatives. The Eduskunta has 14 specialised standing committees, plus the Grand Committee, which is the committee responsible for coordinating EU matters. All legislative proposals must be referred to a committee for deliberation before a final vote to approve or reject can be taken. The final committee report on a legislative proposal contains a recommendation to the Eduskunta and a statement explaining the majority position. Committee members opposed to the majority resolution may add their dissenting opinions to the report. The decision rule in committees is simple majority. Committees meet behind closed doors, but may declare their proceedings open to the public if this is seen as necessary for collecting relevant information. The Parliament may also establish temporary committees.

Since the early 1980's Finnish governments have stayed in office for the whole electoral period. The governments, enjoying broad parliamentary majorities and bringing together parties across the left-right dimension, have been able to rule without much ef-

fective dissent from the Eduskunta. Governments are as a rule formed around two of the three main parties: the Center, National Coalition and the SDP.¹ Nevertheless, the MP's have a variety of ways to control the executive, the most important of which are no confidence votes and parliamentary questions. There are three types of votes of no confidence: those following interpellations, government-initiated votes, and votes held without prior warning during plenary debates. Most important are the votes following interpellations. Members have the right to table written and oral questions as well as questions to the Government. The representatives ask questions on virtually all kinds of issues. Other scrutiny mechanisms include parliamentary motions and debates following government reports.²

Membership in the Union has strengthened the position of the Government and the Prime Minister. During the post-1945 period foreign policy decision-making had been firmly in the hands of the President and a narrow circle of the political elite. Constitutional amendments enacted since the early 1990's have strengthened the role of the Government and the Eduskunta in foreign policy decision-making, particularly in integration matters.³ The constitutional and political powers of the President have been reduced to such an extent that Finland can arguably no longer be classified as a semi-presidential system.⁴ Reflecting these constitutional reforms, Finnish integration policy has been largely government-driven, with the President intervening mainly when foreign policy matters are on the agenda.⁵

1 See Lijphart, Arend, 1999, *op.cit.*, pp. 109-111.

2 See Wiberg, Matti (ed.): *Parliamentary Control in the Nordic Countries, Forms of Questioning and Behavioural Trends*, Jyväskylä, The Finnish Political Science Association, 1994.

3 According to Section 93 of the new codified Constitution that entered into force in March 2000, 'the foreign policy of Finland is directed by the President of the Republic in co-operation with the Government. However, the Parliament approves Finland's international obligations and their denouncement and decides on the bringing into force of Finland's international obligations in so far as provided in this Constitution. The President decides on matters of war and peace, with the consent of the Parliament. The Government is responsible for the national preparation of the decisions to be made in the European Union, and decides on the concomitant Finnish measures, unless the decision requires the approval of the Parliament. The Parliament participates in the national preparation of decisions to be made in the European Union, as provided in this Constitution. The communication of important foreign policy positions to foreign States and international organizations is the responsibility of the Minister with competence in foreign affairs.'

4 See Nousiainen, Jaakko: 'From Semi-Presidentialism to Parliamentary Government, Political and Constitutional Development in Finland', in: Karvonen, Lauri/Ståhlberg, Krister (eds.): *Festschrift for Dag Anckar on his 60th Birthday on February 12, 2000*, Åbo, Åbo Akademi University Press 2000, pp. 337-352.

5 The Prime Minister represents Finland in the European Council. However, the President can also participate, especially when foreign policy matters are on the agenda. The Eduskunta's Committee for Constitutional Law decided prior to EU membership that the Prime Minister should represent Finland in the European Council. President Ahtisaari refused to accept this interpretation, and in May 1995 the Prime Minister announced a statement, formulated jointly with the President's Office, according to which the Prime Minister will always attend the summits and the President will attend them whenever she/he chooses. The new President, Tarja Halonen (SDP), announced upon taking office in March 2000 that she will take part in the summits.

Within the Government two developments warrant attention: the strengthened position of the Prime Minister and the autonomy of the departments. Governmental EU decision-making is heavily sectionalised, with each ministry enjoying much freedom of action both in the preparation of issues and in actual decision-making. The main inter-ministerial coordinating body is the Committee for EU Matters located in the Foreign Office. It has 17 members: high-level officials from ministries, the Prime Minister's Office, the Office of the President, the Bank of Finland, the Office of the Attorney General and the autonomous Åland region. In reality the Committee plays a minor role. The Committee had 38 sections in 2000, and their function is to co-ordinate European matters within the respective ministries. Sections include also representatives from relevant interest groups. Officials present matters to sections for discussion and inform them about issues in preparation. When agreement is reached, the section procedure provides a sufficient basis for determining Finland's final position. Otherwise the matter is presented to the Committee for EU matters and/or the Cabinet European Union Committee.

Government work is coordinated through its four statutory ministerial committees, the other three being the Cabinet Foreign and Security Policy Committee, Cabinet Finance Committee, and the Cabinet Economic Policy Committee. All committees are chaired by the Prime Minister, and they prepare decisions which are given the final seal of approval by the plenary session of the whole cabinet. Established in 1995, the Cabinet European Union Committee handles all politically sensitive EU matters. With all government parties represented, and headed by the Prime Minister, the ministerial Committee procedure ensures that all key decisions are coordinated at the highest level. The Cabinet EU Committee has therefore provided an important forum for coordinating national integration policy.

The Foreign Ministry was initially given the overall responsibility for handling European matters. It was in charge of coordinating ministerial policies and provided the home for the EU Secretariat. However, the EU Secretariat was transferred to the Prime Minister's Office in the summer of 2000. Moving the responsibility for European issues from the Foreign Ministry to the Prime Minister's Office was argued to enhance the capacity of the whole state bureaucracy and the Parliament to process EU issues.

In the EU the Government is represented through Finland's Permanent Representation, which has performed a crucial role during the first years of membership. The permanent representation not only participates in the work of COREPER, but has also been an important source of information to Finnish civil servants, ministers and MEP's, and is a key actor in preparing and formulating national positions prior to Council meetings.¹

1 See Raunio, Tapio/Wiberg, Matti: 'Building Elite Consensus, Parliamentary Accountability in Finland', in: *Journal of Legislative Studies*, No. 1/2000, pp. 59-80.

II. The Practice and Evaluation of Parliamentary Activity in EU Affairs

Adaptation to European integration within the Eduskunta started already in 1990, when the Foreign Affairs Committee demanded that the Parliament and particularly its standing committees have access to information and can influence national policy in European Economic Area (EEA) decision-making.¹ The constitutional reforms that reduced presidential powers and increased parliamentary involvement in foreign policy decision-making, especially in integration matters, were implemented by broad consensus. This near unanimity reflected the intention of president Mauno Koivisto (SDP) to parliamentarise decision-making in both domestic and foreign policy. The goal was to guarantee the Eduskunta as powerful a position in EU decision-making as is possible for any national legislature. On the other hand, the constitutional amendments aimed at respecting the separation between executive and legislative branches: the Parliament was given the right to participate in national policy formulation in EU matters while the Government was assigned the right to decide on such matters and to represent Finland at the European level.

1. The Institutional Setting

The Grand Committee (*Suuri valiokunta*) and the Foreign Affairs Committee are the main committees responsible for European questions. The former handles first and third pillar issues, the latter second pillar matters. Decisions relating to Treaty amendments are prepared by the Foreign Affairs Committee. The Grand Committee has 25 members and 13 substitutes. In addition, the MP representing the Åland Islands is always entitled to participate in Grand Committee meetings. The Committee convenes on Wednesdays at one pm and on Fridays at two pm. An average meeting lasts two until two and a half hours. The Committee had 40 meetings in 1995, 56 in 1996, 45 in 1997, 55 in 1998, and 38 in 1999.² The Grand Committee tends to attract prominent Eduskunta members. Fol-

1 This section draws on previous work by the author and Matti Wiberg. See Raunio, Tapio/Wiberg, Matt: 'Efficiency Through Decentralisation, The Finnish Eduskunta and the European Union', in: Wiberg, Matti, (ed.): *Trying to Make Democracy Work, The Nordic Parliaments and the European Union*, Stockholm: Gidlunds 1997, pp. 48-69; Wiberg, Matti/Raunio, Tapio: 'Strong Parliament of a Small EU Member State, The Finnish Parliament's Adaptation to the EU', in: *Journal of Legislative Studies*, No. 4/1996, pp. 302-321. See also Jääskinen, Niilo/Kivisaari, Tiina: 'Parliamentary Scrutiny of European Union Affairs in Finland' in: Wiberg, Matti (ed.): *Trying to Make Democracy Work, The Nordic Parliaments and the European Union*, Stockholm: Gidlunds 1997, pp. 29-47; Boedeker, Mika/Uusikylä, Petri: 'Interaction between the Government and Parliament in Scrutiny of EU Decision-Making; Finnish Experiences and General Problems', in: *National Parliaments and the EU - Stock-Taking for the Post-Amsterdam Era*, Helsinki, Eduskunnan kanslian julkaisu 1/2000, pp. 27-42; and especially Jääskinen, Niilo: 'Eduskunta, Aktiivinen sopeutuja', in: Raunio, Tapio/Wiberg, Matti (eds.): *EU ja Suomi, Unionijäsenyyden vaikutukset suomalaiseen yhteiskuntaan*, Helsinki, Edita, 2000, pp. 114-134.

2 Information provided by the Eduskunta. Parliamentary elections were held in 1995 and 1999.

lowing both the 1995 and 1999 elections, the Committee membership included five chairmen of standing committees and representatives from the leadership of the three main party groups.

The documents considered by the Committee, together with the minutes of the meeting, usually become public when the minutes are signed as a correct record. Additionally, a press release is published after each meeting and is also available in the internet. At the request of the Government, however, the Committee may decide that its members will maintain the confidentiality of certain questions. This usually occurs when the Government cannot reveal its margin of manoeuvre in the negotiations. It is also customary not to publish the negotiating positions of other member states. When the Committee decides to maintain the confidentiality of question, the relevant documents and the views of the Committee are not appended to public documents.

2. The Scope and Procedural Features of Parliamentary Involvement

The involvement of the Grand Committee in EU matters is three-fold. It participates in national policy formulation on issues decided at the European level, gives instructions to cabinet ministers attending the meetings of the Council of Ministers, and scrutinizes the behaviour of Finnish representatives in the European Council.¹ The Constitution (Section 96) defines the Parliament's role in European matters as follows:

Firstly, the Parliament considers those proposals for acts, agreements and other measures which are to be decided in the European Union and which otherwise, according to the Constitution, would fall within the competence of the Parliament.

Secondly, the Government shall, for the determination of the position of the Parliament, communicate a proposal referred to in paragraph 1 to the Parliament by a communication of the Government, without delay, after receiving notice of the proposal. The proposal is considered in the Grand Committee and ordinarily in one or more of the other Committees that issue statements to the Grand Committee. However, the Foreign Affairs Committee considers a proposal pertaining to foreign and security policy. Where necessary, the Grand Committee or the Foreign Affairs Committee may issue to the Government a statement on the proposal. In addition, the Speaker's Council may decide that the matter may be taken up for debate in plenary session, during which, however, no decision is made by the Parliament.

Finally, the Government shall provide the appropriate Committees with information on the consideration of the matter in the European Union. The Grand Committee or the

1 The technical details of the procedures are explained in Suuren valiokunnan lausunto 3/1995 vp, Euroopan unionin asioiden käsittelystä suuressa valiokunnassa ja sille lausunnon antavissa erikoisvaliokunnissa, 22.11.1995 (SuVL 3/1995 vp). Information on the processing of EU matters, together with statistics, is also found in English and in French at the Eduskunta's web site <http://www.eduskunta.fi>.

Foreign Affairs Committee shall also be informed of the position of the Government on the matter.

3. National Policy Formulation on EU Matters

The government must inform the Parliament without delay of any proposal for a Council decision. These so-called 'U-matters' are usually Commission's legislative proposals that fall within the competence of the Parliament. Table 10 shows the number and categorization of 'U-matters' and the number of 'E-matters' processed by the Parliament in 1995-99. The government must also send the Grand Committee information on the preparation of any issue relating to the EU that might belong to the competence of the Parliament. Also, according to Section 97 of the Constitution the Grand Committee "shall receive reports on the preparation of other matters in the European Union." These so-called 'E-matters' are not legislative proposals nor require a decision by the Eduskunta.¹

The process begins with the Government sending a formal letter to the Speaker. The letter includes a summary and normally the full text of the proposal, its relevance and consequences for Finland, and the (tentative) position of the Government. The government has also the duty to provide, on its own initiative, the Grand Committee and the competent standing committees all relevant documents relating to the decisions handled by the Parliament. Occasionally the Eduskunta has complained that the information provided by the Government is too extensive, making it difficult for MP's to identify the key points of the proposals.² The Speaker forwards the matter to the Grand Committee and requests the competent specialised committee or committees to give their opinion to the Grand Committee.

1 It is not possible to determine the exact number of EU documents processed by the Parliament. The data reported in Table 2 shows the number of dossiers opened each year. The number of documents included in the dossiers is much higher. Dossiers remain open until the item is no longer on the agenda of the EU institutions.

2 According to Boedeker and Uusikylä, 'given the vast amount of information flowing into the Eduskunta and the tight schedules of the affairs under preparation, its real opportunities to influence the Finnish EU-positions seem to be rather limited. The Eduskunta also seems to have difficulties in monitoring and following up the decision-making process after it has given its opinion on a particular matter.' See Boedeker/Uusikylä, 2000, op.cit., p. 41.

Table 10: The Number of 'U-matters' and 'E-matters' Processed by the Eduskunta (1995/99)

Year	Directives	Regulations	EC agreements with third parties	Third Pillar Conventions	Others	Total	E-matters	Total
1995	32	20	6	5	2	65	19	84
1996	28	25	11	10	6	80	134	214
1997	27	21	7	7	4	66	99	165
1998	31	47	6	5	7	96	119	215
1999	9	25	4	-	11	49	72	121

Source: The Eduskunta.

The majority of 'U-matters' are processed by more than one standing committee. Committee involvement in European matters depends on their policy jurisdiction. The standing committees issued in 1995-99 on average 148 written opinions on 'U'- and 'E'-matters (Table 11). The Finance Committee has been most burdened with EU legislation, followed by the Agriculture and Forestry Committee and the Economic Affairs Committee. The Defence Committee has processed least EU issues. The number of domestic legislative initiatives has been approximately 250 per year during the same period. Table 11 shows the sources of 'U-matters' transmitted by the Government to the Eduskunta. The Ministry of Finance produced most U-matters for parliamentary consideration.

Table 11: Opinions Issued by Standing Committees on 'U'- and 'E'-matters (1995-1999)

Committee	1995	1996	1997	1998	1999
The Committee for Constitutional Law	1	10	3	8	1
The Legal Affairs Committee	4	16	4	7	13
The Foreign Affairs Committee	4	24	5	14	11
The Finance Committee	10	31	27	60	29
The Administration Committee	5	6	16	25	7
The Transport and Communications Committee	9	14	12	31	7
The Committee for Agriculture and Forestry	13	22	14	25	19
The Defence Committee	-	-	-	-	-
The Committee for Education and Culture	2	2	3	7	2
The Social Affairs and Health Committee	4	12	8	8	6
The Economic Affairs Committee	13	19	20	30	11
The Committee for the Future	-	-	-	-	-
The Committee of Labour and Equality	2	11	8	8	6
The Environment Committee	7	2	18	16	6
Total	74	169	138	239	118

Source: The Eduskunta.

Table 12: The Source of 'U-matters' Transmitted to the Eduskunta (1995-99)

Ministry	No.	SHARE (%)
Ministry of Finance	99	28
Ministry of Agriculture and Forestry	51	14
Ministry of Transport and Communications	37	10
Ministry of Foreign Affairs	34	10
Ministry of Justice	31	9
Ministry of Trade and Industry	26	7
Ministry of Social Affairs and Health	25	7
Ministry of the Interior	19	5
Ministry of the Environment	15	4
Ministry of Education	11	3
Ministry of Labour	8	2
Ministry of Defence	0	0
Total	356	100

Source: The Eduskunta.

The specialised committees prepare their opinions in light of information about the Government's tentative position and after having heard expert testimony. It has been estimated that in approximately 90 per cent of the cases the Grand Committee agrees with the opinion of the specialised committee.¹ When more than one specialised committee delivers an opinion, the Grand Committee summarises and mediates. After debating the issue, the Grand Committee formulates a position - a parliamentary recommendation, not a formal decision - in the form of a summary from the chairman. The Government representatives are notified of the decision. In order to enhance the ability of the Eduskunta to monitor and guide government behaviour in the Council, an effort is made to formulate the view of the Grand Committee before the consideration of the matter begins in the preparatory organs of the Council. The Grand Committee and the specialised committees monitor the progress of the initiative. The government has occasionally failed to inform the Eduskunta of legislative amendments enacted by the Council and the European Parliament (EP), forcing the committees to take steps to acquire the relevant information. Finally, the Grand Committee has an opportunity to express its views to the minister prior to the decisive Council meeting.

4. Instructing the Government before Council Meetings

The Grand Committee convenes, usually on Fridays, to hear ministers about Council meetings scheduled for the following week. Committee members receive the agendas of the meetings, as approved by COREPER, in advance. They also receive, for each

¹ See Lampinen, Risto/Räsänen, Ilkka: 'Eduskunnan asema EU-asioiden valmistelussa', in: Lampinen, Risto/Rehn, Olli/Uusikylä, Petri: EU-asioiden valmistelu Suomessa, Helsinki, Eduskunnan kanslian julkaisu 7/1998, pp. 121-132.

agenda item, a standardised memo with appropriate document references, a historical background summary, a summary of outstanding questions and the Government's proposed course of action. The ministers must give the Committee the chance to express its opinion on all matters before final decisions are taken in the Council. The Grand Committee has insisted on this, and the Government representatives have used this parliamentary scrutiny reserve in negotiations at the European level, particularly during the 1996-1997 IGC. After Council meetings the Committee always receives a report on the Council meeting. Ministers must be prepared to appear before the Committee and to explain in detail any deviations from the given policy guidelines.

Advance scrutiny of Council agenda items means, in most cases, discussing the relevant issues and their implications, usually from the Finnish perspective. Actual voting instructions are only given at the final stage of the process and constitute a small percent, albeit an important one, of all instructions. These voting instructions by the Grand Committee are not constitutionally binding. Politically, however, they are important because the Government must enjoy the support of the legislature. The Grand Committee usually does not impose very strict mandates, thus giving ministers a certain amount of freedom of manoeuvre. This is reflected in the behaviour of the Finnish Government in the Council, which is mainly characterized by flexibility and the desire to build compromises. Moreover, the Grand Committee focuses its scrutiny on selected issues, often those of special interest to the MP's. The overwhelming majority of European matters do not cause any controversy. Excluding two cases, there have been no major differences of opinion between the Eduskunta and the cabinet, although standing committees do occasionally insist that the Government adopts a more stringent and detailed negotiating mandate.¹

5. European Council Summits

According to Section 97 of the Constitution "the Prime Minister shall provide the Parliament or a Committee with information on matters to be dealt with in a European Council beforehand and without delay after a meeting of the Council. The same applies when amendments are being prepared to the treaties establishing the European Union." The Prime Minister must inform the Grand Committee in advance of questions to be addressed by the European Council. After European Council meetings, she/he must provide the plenary session or the Committee with information on what took place. The

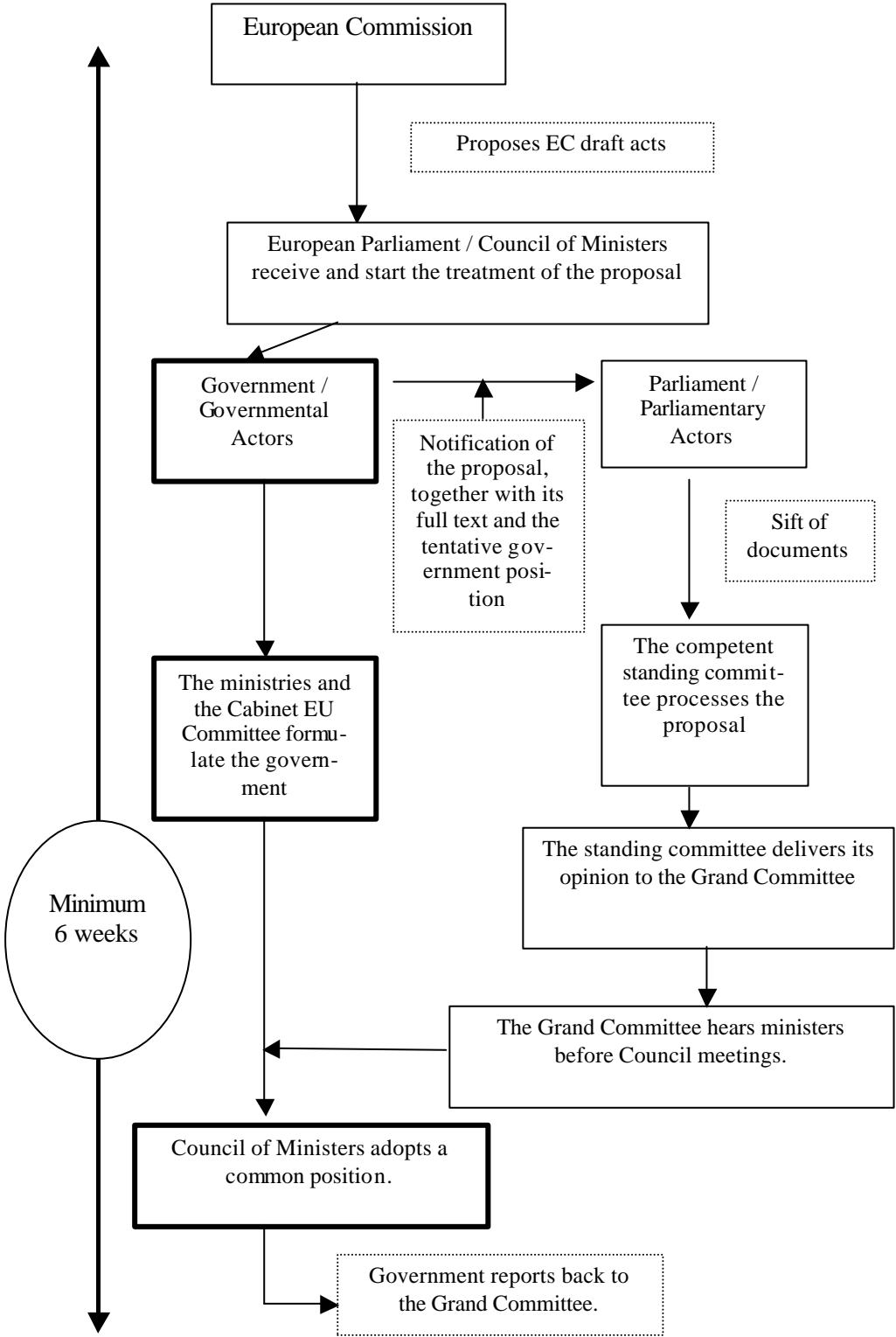
1 Both conflicts emerged in 1995, at early stages of adaptation to membership, when the parliamentary routines for government scrutiny were yet to be effectively established. More importantly, on a few occasions the Grand Committee has received information after a considerable delay, or it has not received all the relevant information, notably in third pillar matters. In these cases the Chancellor of Justice has ruled that the delays have been accidental, resulting from misunderstandings, and the Government has accepted the criticism voiced by the Parliament. See Jääskinen, 2000, op.cit.

Prime Minister informs the Foreign Affairs Committee about Common Foreign and Security Policy (CFSP) matters discussed in the European Council.

The functional capacity of the Grand Committee has been enhanced by its secretariat. In 2000 the Grand Committee employed three committee counsellors and three secretaries, who together with the secretariat of the Foreign Affairs Committee, the Eduskunta's representative in the EU, and the information officer of the Grand Committee form the EU Secretariat of the Parliament. When additional staff is required, the Grand Committee primarily relies on the staff of the specialised committees. Committee counsellors with personal experience of EU matters have been especially important, suggesting that it would facilitate parliamentary scrutiny if each committee had one functionary specializing in European issues. The Eduskunta has its own EU information service. All members and staff of the Eduskunta have unrestricted online access to the sources of the Government, including its central and non-public database of EU documents, and to the public services of the EU institutions.

The plenary can become involved both before and after decisions are taken at the European level. The plenary session may, after a proposal by the Speaker's Council, request the Grand Committee to submit Commission proposals to the whole Parliament, along with all information provided to the Committee by the Government. The plenary may debate the proposals, but does not make formal decisions in such cases. A formal Act of Parliament, that is, a decision made after plenary debate, is necessary when the implementation of directives requires legislation. Treaty amendments also require the consent of national parliaments. While routine EU legislation is rarely debated on the floor, far-reaching political decisions such as EMU, Agenda 2000, and notably the development of CFSP, have inspired long plenary debates. As in the case of scrutinizing European legislation in the committees, the debates have been conducted primarily from a national perspective, with broader, EU-wide implications of the matters receiving less attention. MP's who do not sit on the Grand Committee have expressed their concern about the difficulty of following European matters, arguing that more EU issues should be debated on the floor.

Figure 7: The Process of Parliamentary Scrutiny in EC/EU Affairs in Finland



6. *The Implications of Parliamentary Involvement*

What explains the low level of conflict between the Eduskunta and the Government? First, the Eduskunta gets involved in processing Commission's initiatives at a relatively early stage, not only before the decisive Council meeting. This enables the Parliament to monitor the preferences of the other member states and the Commission and the EP, and to frame its own position accordingly. Second, hearings with civil servants enable the Eduskunta to identify key issues and to learn about issues under preparation at the European level and in national ministries. For example, the Environment Committee has regular meetings with civil servants from the Environment Ministry. Such direct contacts with civil servants are important, for according to a report based on extensive interview data middle-level civil servants have a central role in the preparation and processing of European legislation in Finland. Ministers or even high-level bureaucrats seldom have a significant impact on the substance of the issues.¹ Civil servants appreciate these meetings, particularly in politically controversial matters, for the committee hearings enable the civil servants to hear the MP's views and to acquire the backing of the relevant Eduskunta committee for their preparatory work. Meetings also serve as occasions for conflict management, where possible differences between the ministries and the Parliament are ironed out, and thereby reduce conflicts between the cabinet and the Parliament.

Finally, committee scrutiny of European matters differs in one important respect from domestic legislation: the Government-opposition dimension does not play the only significant role in either the Grand Committee or in specialised committees. The Grand Committee has refused to act as the Government's rubber-stamp and insists that all relevant information is to be made available to both the Government and opposition representatives on equal terms. The main goal is understood to be to achieve parliamentary, and thus national, unanimity or at least broad consensus, which can be translated into additional influence in the Council.² This not only facilitates efficient scrutiny of government behaviour, but also provides consistency and long-term legitimacy for the policy choices. With no single party forming the cabinet or even controlling anywhere near the majority of Eduskunta seats, the opposition has hardly any realistic chances of radically altering national European policy without the support of the other parties.

Overall the Parliament has been more critical of integration than the two rainbow governments led by Lipponen. This applies not only to the opposition, but also to the governing parties. All parties are, to a varying degree and depending on the policy area, divided over European matters, and the Government is usually criticized by individual MP's from both opposition and government parties rather than by a united opposition or

1 See Lampinen, Risto/Rehn, Olli/Uusikylä, Petri, 1998, op.cit.

2 See Tuomioja, Erkki: 'Konsensus tärkeää pienelle maalle', in: Hallinto, No. 4/1998, pp. 3-7.

even by unitary party groups. EU matters featured in around 10 per cent of all parliamentary questions and interpellations tabled between 1991 and 1998. A large share of the questions concerned either agriculture or regional policy.¹ However, while the Eduskunta has been more critical towards the EU than the Government, and has subjected the cabinet to tight scrutiny in European matters, neither the Center-led Aho government (1991-95) nor the Lipponen governments (1995-) have faced any major internal crisis or parliamentary rebellions over integration matters.

III. The Finish Parliament and the Negotiation of the Amsterdam Treaty

The Eduskunta was actively and closely involved in the proceedings of the 1996-97 IGC. The Grand Committee set up in September 1995 a special sub-committee to deal with the IGC. The Eduskunta recognized the political importance of the conference:

“The results of the IGC will require the approval of Parliament. The substance of the IGC, with effects for the very basis of public life and society, is comparable to a revision of the Constitution.”²

Before the Conference began the Grand Committee required “that any negotiating positions of the Government having a bearing on the Eduskunta as a national Parliament of a member state are duly communicated to the Eduskunta in advance and that the parliamentary acceptability of any such position be established before it is advanced at the Conference.”³ Constitutionally, Article 54 g of the Parliament Act stated that the Prime Minister shall give the Grand Committee and the Foreign Affairs Committee advance information concerning sessions of the IGC. Article 53(2) gave each specialised committee the ability to receive reports on subjects within their remit that were on the table at the IGC. Regarding information from the Government, the Grand Committee required that “Committees are given information in advance, before Finland’s negotiating positions have been fixed, as well as the possibility to adopt positions within the Committees and to express these, and not only simply information on decisions that have already been taken at the Conference.”⁴ Similarly, the Foreign Affairs Committee stated that it “takes it for granted that the Government will create conditions that enable a

1 See Raunio, Tapio/Wiberg, Matti, 2000, *op.cit.*, p. 71.

2 Grand Committee, Opinion No. 2/1996 Session, to the Foreign Affairs Committee, 10.4.1996 (SuVL 2/1996 vp), p. 45.

3 Grand Committee, Opinion No. 2/1995 Session, Preparing for the Intergovernmental Conference of the European Union, Opinion of the Grand Committee to the Council of Ministers, 22.11.1995 (SuVL 2/1995 vp), p. 11.

4 SuVL 2/1996 vp, pp. 44-45.

functioning dialogue with Parliament when choices have to be made between conflicting lines of action.”¹

The Grand Committee occasionally criticised the Government for not keeping it properly informed on the IGC. However, according to the Speaker, Riitta Uosukainen (KOK), the Eduskunta’s informational requirements were fulfilled: Prime Minister Lipponen personally testified in the Grand Committee and the Foreign Affairs Committee on the progress of the IGC before and after the Turin, Florence, and the two Dublin Summits, and the Grand Committee received from the Government all documents of the IGC.² Following the IGC, the Grand Committee also saw that the dialogue between the Government and the Eduskunta had functioned rather well considering the scope and complexity of the Conference agenda and the fact that this was the first IGC in which Finland participated as an EU member state. The disagreements that surfaced concerned the timing of providing information to the Parliament, not so much the issues themselves. The Grand Committee argued that in the future particular attention should be paid to improving the openness of decision-making within the Government. More importantly, the Eduskunta should always be informed beforehand, so that it does not find itself in a situation where the Government has already committed itself to a specific position at the Conference without first hearing the opinion of the Parliament.¹

The Government stated in its IGC report that “the EU shall be developed as an association of independent states”, and argued that it “accords with Finland’s economic and security-policy interest that the European Union is developed as a strong association of states, in which the member states have shared power in order to use it to achieve the objectives that they have collectively approved.” Underlying these statements is a conviction that strong EU institutions are especially beneficial for smaller member states. The Government supported limited transfer of policy competence to the Union, for example through a partial transfer of third pillar matters under the Community pillar, and being a founding member of EMU. Regarding institutional reform, the Lipponen Government favoured the maintenance of overall inter-institutional status quo and preserving the Council as the primary legislative organ of the Union. The Government defended the position of smaller member states, including the right of each country to a Commissioner. The Government supported the simplification of decision-making through extended application of QMV in basically all matters with the exception of

1 Parliament of Finland, Finland and the Intergovernmental Conference, Report of the Foreign Affairs Committee, concerning the report of the Council of Ministers ‘Finland’s points of departure and objectives at the 1996 Intergovernmental Conference’, 26 April 1996 (UaVM 7/1996 vp - VNS 1/1996 vp), p. 22.

2 See Uosukainen, Riitta, Speech at the informal meeting of the Presidents and Speakers of national parliamentary assemblies in the European Union and of the European Parliament, The Hague, 28 February 1997.

constitutional questions, and the extended use of co-decision procedure. On the basis of a joint initiative of the Finnish and Swedish governments, a new article on military crisis management was included in the Amsterdam Treaty.² When submitting the Treaty to ratification in the Eduskunta in February 1998, the Government stated that its goals were primarily fulfilled. For the most part, the final text reflected Finnish positions or even initiatives, particularly in crisis management, gender equality, transparency, consumer protection, employment, environment, basic rights, and justice and home affairs. On the other hand, the Government expressed its disappointment that the member states failed to strengthen EU's competence in external trade policy, to extend QMV in the Council, and to simplify third pillar decision-making.

The position of the Eduskunta on the outcome of the IGC reflected that of the Government.³ The Foreign Minister, Mrs. Tarja Halonen (SDP), said that it was necessary to go carefully through in advance with the Eduskunta the most controversial questions, such as the weighting of votes and application of QMV in the Council and the inter-institutional balance of power. According to Halonen there was hardly any conflict between the Eduskunta and the Government: "we have pretty well anticipated Eduskunta's opinions."⁴ The Grand Committee opined that there were "no actual conflicts between the report and [its] opinion, although there is some difference in emphasis."⁵ Both the Grand Committee and the Foreign Affairs Committee produced detailed opinions on Finland's political goals and priorities in the negotiations.⁶ The overall position of the Eduskunta was somewhat more critical than that of the Government, especially regarding EMU. The Grand Committee stated on EMU that "a delay in the realization of EMU may be a realistic and possibly even a desirable solution that would allow further improvement of the EMU scheme at both the national and the European level."⁷

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- 1 See Suuren valiokunnan lausunto 1/1998 vp, Hallituksen esitys Euroopan unionista tehdyn sopimuksen, Euroopan yhteisöjen perustamissopimusten ja niihin liittyvien tiettyjen asiakirjojen muuttamisesta tehdyn Amsterdamin sopimuksen eräiden määräysten hyväksymisestä (SuVL 1/1998 vp).
 - 2 See Council of Ministers, Report, Finland's points of departure and objectives at the 1996 Intergovernmental Conference (VNS 1/1996 vp). For an overview of Finnish positions in the Conference, see Stubb, Alexander/Kaila, Heidi/Ranta, Timo: 'Finland - An Integrationist Member State', in: Zeff, Eleanor E./Pirro, Ellen B., (eds.): *The European Union and the Member states, Co-operation, Coordination, and Compromise*, Boulder, Lynne Rienner, 2001, forthcoming; Petersen, Nikolaj: 'The Nordic Trio and the Future of the EU', in: Edwards, Geoffrey/Pijpers, Alfred (eds.), *The Politics of European Treaty Reform, The 1996 Intergovernmental Conference and Beyond*, London: Pinter 1997, pp. 159-187.
 - 3 See HE 245/1997, Hallituksen esitys Eduskunnalle Euroopan unionista tehdyn sopimuksen, Euroopan yhteisöjen perustamissopimusten ja niihin liittyvien tiettyjen asiakirjojen muuttamisesta tehdyn Amsterdamin sopimuksen eräiden määräysten hyväksymisestä; SuVL 1/1998 vp.
 - 4 Helsingin Sanomat, 6 March 1997.
 - 5 SuVL 2/1996 vp, p. 30.
 - 6 Information on the Eduskunta's views are based on the following documents, SuVL 2/1995 vp; UaVM 7/1996 vp -VNS 1/1996 vp; Committee for Constitutional Law, Opinion No 6/1996 Session; SuVL 2/1996 vp; and Suuren valiokunnan lausunto 2/1997 vp, Hallitusten välinen konferenssi, 4.6.1997 (SuVL 2/1997 vp).
 - 7 SuVL 2/1996 vp, pp. 33-34.

Regarding the European Parliament, the Government and the Eduskunta supported strengthening EP's legislative powers through extending the co-decision procedure to basically all matters in which Council decides by QMV. The extension of co-decision procedure was linked to simplifying the procedure. Both the Government and the Eduskunta argued that the legislative process should be simplified by adopting first pillar legislation through consultation or co-decision procedures, with the assent procedure limited to approving international treaties. The Government and the Parliament were against giving the EP the right of legislative initiative, making Treaty ratification subject to EP's approval, and of extending EP's budgetary powers to compulsory expenditure. Both also favoured the current system of controlling and appointing the Commission, and supported setting an upper limit to the number of MEP's provided that a fair allocation of seats between the member states is maintained. The Eduskunta also supported establishing a single seat for the EP.

Turning to party positions¹ on the EP, all parties were in favour of maintaining the present institutional balance and of safeguarding the influence of small member countries in EU decision-making. The Social Democratic Party wanted to increase EP's powers in issues already decided by the Union. The Center Party, on the one hand, saw no need to increase the powers of the EP, but on the other hand favoured a limited extension in the application of the co-decision procedure. The National Coalition supported using the co-decision procedure when the Council decides by QMV, budgetary matters included. The Left Alliance favoured the extension of co-decision-procedure and giving the EP the right of legislative initiative. The Green League was also in favour of extending the co-decision procedure to further policy areas, such as environmental and taxation issues, and of giving the EP the right of legislative initiative. The Swedish People's Party favoured using the co-decision procedure when the Council decides by QMV, including in processing the annual EU budget. The party also supported making decisions on own resources and Treaty ratification subject to EP's approval. The Christian Union argued that the powers of the EP should not be increased at the expense of national parliaments.

1 The party programs used in the analysis of party positions are, The Center Party: 'Suomen Keskustan kannanotto EU:n tulevaan kehitykseen', Puoluevaltuuskunta, Joensuu 25.-26.11.1995; 'Suomen päätösvalta turvattava HVK:ssa', Työvaliokunta, 11 June 1997; The Christian Union: 'Europoliittinen ohjelma', 1996; The Green League: 'Vihreän liiton tavoitteet EU:n hallitusten väliseen konferenssiin', Puoluekokous, Tampere 18 June 1995, 'Europarlamenttivaali-ohjelma', Vihreän liiton vuosikokous, Vaasa 25.-26.5.1996; The Left Alliance, 'Vasemmistoliitto ja Euroopan unionin kehittäminen', Puoluevaltuusto, 26 November 1995; 'EU:n hallitusten välinen konferenssi ja Suomen linja, Avoin ja sosiaalinen Eurooppa', Kannanotto, Euroopan unionin asioiden jaosto, 24 April 1997; The National Coalition: 'Statement on the European Union', Party Congress, Vaasa 9.-11.6.1995, 'Kokoomuksen tavoitteet EU:ssa Kokoomus korostaa läheisyysperiaatetta ja EU:n toimintakykyä', Puoluevaltuusto, 30 March 1996; The Social Democratic Party: 'Kannanotto Eurooppa-politiikasta', Puoluekokous, Helsinki 6.-9.6.1996, 'EU-vaalijulistus, Työllisyys, hyvinvointia, turvallisuutta - sosialidemokraattinen Eurooppa', Puoluehallitus 22 August 1996; The Swedish People's Party: 'EU:sta paras mahdollinen', Rkp:n Eurooppapoliittinen ohjelma, 1996. Electorally marginal parties are excluded from the analysis (see Table 1).

The Government and the Eduskunta emphasised that national parliaments are the primary channel for providing democratic legitimacy to EU decision-making, with the EP complementing the role of national legislatures. According to the Grand Committee

“national parliaments are now and for the foreseeable future the primary representatives of the political sovereignty of the peoples of the member states and of the democratic legitimacy of their political systems. Differences in the languages, cultures, historical experience and political traditions of the populations of the Member states inhibit political organization at the European level and the formation of truly European parties and political movements.”¹

The Government and the Eduskunta held it important that national legislatures have effective means to influence EU decision-making and thereby to strengthen its democracy.

Both the Foreign Affairs Committee and the Grand Committee listed four main points of departure:

- The foundations of the Union’s legal regime and decisions concerning the funding of the Union must - as was stated in the report of the Council of Ministers - be based on treaties entered into by the Member states and requiring ratification by all national parliaments.
- National parliaments will continue to be the primary representatives of the political sovereignty and democratic identity of the peoples of the Member states.
- Member states cannot be bound without their consent to decisions that endanger their external or internal security or vital interests of economic or social balance.
- The primacy of the member states, in practice the governments representing them and answerable to national parliaments, must be safeguarded in the decision-making of the European Union.²

Neither the Eduskunta nor the Government saw any need for Union-level regulation on the role of national legislatures:

“realising effective supervision by national parliaments in decision-making on Union affairs is a matter within the exclusive competence of the Member states. This issue must not be regulated in the Treaties. The same applies to inter-parliamentary co-operation. Parliaments are capable of agreeing on the forms and procedures of such co-operation without government interference at the IGC.”³

There was broad inter-party consensus on this position. The Government, the Eduskunta and all the main parties emphasised strongly the need to increase the openness and transparency of EU decision-making, partially in order to enhance national parliamentary scrutiny of European matters. According to the Grand Committee effective national parliamentary control required that

1 SuVL 2/1995 vp, p. 10.

2 UaVM 7/1996 vp - VNS 1/1996 vp, p. 5; SuVL 2/1996 vp, p. 31.

3 SuVL 2/1996 vp, p. 40.

“the procedures of the Council should urgently be made more disciplined and more similar to the formal procedures of a legislative institution. Without binding agendas and public draft decisions or other preparatory documents, available in time and in all the official languages, it is difficult for government and parliaments in the Member states to make the preparations expected of responsible and democratic government.”¹

Similarly, the Foreign Affairs Committee wanted to see documents of the meetings made public: “When votes are taken in the Council, the votes of the member states, as well as any explanation of votes or other declarations should be made public.”² The Grand Committee expressed its satisfaction with the Protocol on national parliaments.³

The Social Democratic Party stressed that improving the ability of national parliaments to influence and control their governments is essential to increasing the openness and democratic control of EU decision-making. The Center Party argued that the influence of the Eduskunta in the formulation of national European policy should be strengthened. The National Coalition supported strengthening the right of national parliaments to shape EU policies and argued that the Union must have a legal duty to inform national parliaments of all legislative initiatives within a specified time limit. The party was also in favour of intensifying co-operation between the EP and national legislatures. The Left Alliance emphasised that the role of the Eduskunta in EU decision-making needs to be strengthened, with particular importance attached to hearing the Parliament and its committees before national positions are formulated. The party also supported giving national parliaments the right of legislative initiative in EU decision-making. The Green League saw that each national Parliament should be guaranteed at least as good an opportunity to control its government in EU matters as that enjoyed by the Eduskunta. The Swedish People’s Party stressed that national parliaments need to be actively involved in preparing Union decisions and that the Commission should inform national legislatures of its forthcoming legislative initiatives.

The Government and the Parliament argued that the forms and scope of inter-parliamentary co-operation should not be regulated in the Treaties. The Government and the Eduskunta were against reconvening the Assizes. According to the Grand Committee and the Foreign Affairs Committee inter-parliamentary co-operation should be strengthened through COSAC and intensification of bilateral contacts between parliamentary committees. The idea of establishing a second Chamber consisting of national MP’s received no support.

1 SuVL 2/1996 vp, p. 40.

2 UaVM 7/1996 vp - VNS 1/1996 vp, p. 11. The Grand Committee emphasised the publication of documents instead of increasing the openness of the actual meetings. “The Committee considers that Finland’s primary objective in the transparency issue should be to ensure the access of citizens to information and to documents [...] In the decision-making stage, transparency could be achieved through access to documents so that the positions taken by Member states could be verified from the documents of the Council.” (SuVL 2/1996 vp, p. 38)

3 SuVL 1/1998 vp.

Co-operation with the 16 Finnish MEP's is primarily carried out within parties. All seven parties with EP seats have meetings each year between MEP's and leading party organs. In addition, in most parties at least one MEP belongs to the executive party organs. While there is less institutionalised co-operation between the Euro-Parliamentarians and the Eduskunta, the MEP's are in regular contact with their parties' Grand Committee members. However, the contentiousness of EU matters causes conflicts within parties, and this has to a certain extent hampered co-operation between MEP's and party leadership.¹

The EU Secretariat of the Eduskunta forwards all agendas and press releases, and, upon request, the minutes of the meetings, of the Grand Committee to the Finnish MEP's. The Eduskunta's representative in the EU acts also as a link between the MEP's and the MP's. Finnish MEP's are not allowed to attend the meetings of the Grand Committee, and so far the Committee has not invited MEP's to give testimony. The Grand Committee and the Finnish MEP's hold a joint seminar twice a year, once in Strasbourg/Brussels, and once in Helsinki. The autumn seminar focuses on the EU budget while the spring meeting focuses on topical issues. Lasting only a couple of hours, the seminar is more a social occasion than a forum for exchanging detailed policy information. Moreover, only the minority of Grand Committee MP's and MEP's has attended the seminars. Also the standing committees have made little use of the MEP' policy expertise. The Foreign Affairs Committee heard one MEP from each party during the 1996-97 IGC, but otherwise during 1994-98 only three committees invited MEP's to provide information on European matters.² It appears that there is little genuine interest in the Eduskunta to develop contacts with MEP's, the main reason being that the MP's do not see MEP's as useful sources of information or as an effective channel to influence EU decision-making.³

1 See Linnapuomi, Mari: 'Täällä Strasbourg, kuuleeko Helsinki? Suomalaiset europarlamentaarikot eurooppalaisen ja kansallisen tason yhteensovittajina' in: Martikainen, Tuomo/Pekonen, Kyösti (eds.): Eurovaalit Suomessa 1996, Vaaliumusta päätöksenteon arkeen, Acta Politica, No. 10, Yleisen valtio-opin laitos, Helsingin yliopisto, 1999, pp. 228-280; Raunio, Tapio: 'Losing Independence or Finally Gaining Recognition? Contacts between MEP and National Parties', in: Party Politics, No. 2/2000, pp. 211-223.

2 Apparently also other Committees have invited MEP, but schedule problems have prevented them from attending Committee meetings.

3 Linnapuomi, 1996, op.cit., pp. 246-250.

IV. The Finnish Parliament after Amsterdam

The Eduskunta ratified the Amsterdam Treaty on 15 June 1998 with 110 votes for and four votes against. Overall, the Treaty and its Protocol on national parliaments necessitated no changes within the Eduskunta. The Protocol was transformed into Finnish law together with the whole Amsterdam Treaty and required therefore no specific implementation by the Parliament. The Protocol led neither to amendments of the rules of procedure, nor to changes in the composition of the COSAC delegation.

Perhaps the two most important aspects of the Amsterdam Protocol concerned the six-week time limit and the constitutional right of national parliaments to receive EU documents. The informational rights of the Eduskunta in EU matters were already well established before the Amsterdam Treaty. The right of the Parliament to receive information from the Government is regulated in Section 47 of the Constitution:

The Parliament has the right to receive from the Government the information it needs in the consideration of matters. The appropriate minister shall ensure that Committees and other parliamentary organs receive without delay the necessary documents and other information in the possession of the authorities. A Committee has the right to receive information from the Government or the appropriate ministry on a matter within its competence. The Committee may issue a statement to the Government or the ministry on the basis of the information. A representative has the right to information which is in the possession of authorities and which is necessary for the performance of the duties of the Representative, in so far as the information is not secret or it does not pertain to a State budget proposal under preparation. In addition, the right of the Parliament to information on international affairs is governed by the provisions included elsewhere in this Constitution.

This constitutional passage is important in terms of the standing committees' access to EU information. The right of the Grand Committee and the Foreign Affairs Committee to receive information on EU matters is instead based on Sections 96 ('U-matters') and 97 ('E-matters') of the Constitution. The constitutionally regulated, basically unlimited, access to information from the Government is an essential prerequisite for effective parliamentary scrutiny. The Grand Committee may request information on the preparation of any matter within the European Union. The Government is also under an obligation to provide information of this kind to the Grand Committee on its own initiative when necessary. This access to information is particularly important regarding two procedures related to EU decision-making: written reports from the Government to the Grand Committee ('E-matters') and hearings with ministers in the Grand Committee prior to Council meetings. The difference between 'E-matters' and 'U-matters' is that the former do not belong to the remit of the Parliament. The Government delivers to the Grand Committee a report on an 'E-matter', either upon request from the Committee or on its own initiative. Typical 'E-matters' are Commission's legislative initiatives that

fall outside the jurisdiction of the Eduskunta and non-legislative documents published by the Commission (i.e., green and white papers and Commission's opinions). Other 'E-matters' include reports on Finland's integration policy or on court cases concerning Finland in the European Court of Justice. In decision-making related to the foreign and security policy of the EU, the Foreign Affairs Committee enjoys the same rights to receive information and to express the view of Parliament as the Grand Committee enjoys in relation to other EU matters. The Foreign Affairs Committee considers EU affairs falling within its competence in the same manner as the Grand Committee and also expresses the view of Parliament on those affairs. The Foreign Affairs Committee has occasionally complained that the relevant information has arrived too late.

According to the Protocol the six-week time limit is "subject to exceptions on grounds of urgency, the reasons of which shall be stated in the act or common position." The Grand Committee has stressed that these exceptions should require unanimity in the Council, and that the time limit should be taken seriously by all sides and that any deviations from it should be allowed only in truly exceptional circumstances.¹ However, the Eduskunta is informed of the Commission's legislative initiative normally months before the six-week time limit of the Amsterdam Treaty begins, that is, before the proposal is received in all official languages by the Council and the EP. Not only is the Government obliged to inform the Parliament without delay of any proposal for a Council decision, but it also has to inform the Eduskunta of the preparation of any issue relating to the EU that might belong to the competence of the Parliament. Thus the Eduskunta normally becomes involved in the processing of the initiative long before it is officially published by the Commission.

V. Conclusions: Streamlining the Dialogue

Membership in the European Union has been an important catalyst for parliamentarising decision-making in Finland. The Government dictates national integration policy, with the President intervening mainly when Second Pillar questions are on the EU agenda. While decision-making on routine European legislation is rather strongly decentralised, with much ministerial autonomy, the overall direction of national EU policy and key policy choices are coordinated within the Cabinet EU Committee and between parties, including the opposition, in the Eduskunta. This domestic consensus building is at least partially driven by the need to achieve consistency and cohesion when negotiating with other member states and the EU institutions. The multi-party coalition governments,

¹ Suuren valiokunnan lausunto 3/1998 vp, Valtioneuvoston selvitys neuvoston työjärjestyksen muuttamisesta (SuVL 3/1998 vp - E 92/1998 vp).

together with the role accorded to the opposition in the Grand Committee, facilitate broad backing for governmental action at the European level.

There is no doubt that the system established for parliamentary scrutiny of European matters works well. Both the MP's and politicians in Finland as well as civil servants from other EU member state legislatures considered the Finnish model as success, at least in comparative terms. The scrutiny model of the Eduskunta has four main strengths: the position of the Parliament is regulated in the Constitution; the Eduskunta gets relatively early involved in the process of EU legislation; the Parliament enjoys unlimited access to information from the Government; and the responsibility of preparing and monitoring European matters is delegated downwards to specialised committees.¹ Particularly the decentralisation of scrutiny and policy formulation to standing committees increases the ability of the whole Parliament to influence the position of the Government. More centralised arrangements which give specialised committees a much smaller role, such as those found in the majority of member states, fail to benefit from the cumulative expertise of the standing committees. A decentralised system, on the other hand, enables all representatives to engage in EU matters.²

The active scrutiny of European legislation has arguably improved the overall dialogue between the Government and the Eduskunta, thus strengthening parliamentary accountability also in domestic issues. The regular appearance of ministers before the Grand Committee has had an impact on the internal work of the Government, leading to improved policy coordination within the cabinet and among the ministries and forcing the ministers to study the issues more thoroughly than might otherwise be the case. The Protocol included in the Amsterdam Treaty led to no changes within the Eduskunta: the system established for scrutinising the Government in European affairs works efficiently, and there are no plans for reforming the procedures.

After Amsterdam, the Government, the Eduskunta and the main parties have continued to balance their broad pro-integration statements and policies with a relatively conservative approach to institutional reform. In their opinions on the IGC held in 2000, both the Government and the Eduskunta were against giving the EP the right to dismiss individual Commissioners. The Grand Committee and the Foreign Affairs Committee were also against the introduction of supranational EU-wide lists for Euro-elections. The Finnish position is basically the same as in the 1996-97 IGC, in favour of preserving the overall institutional status quo, with only limited changes in the direction of more supranational decision-making.³

1 See Jääskinen, 2000, op.cit.

2 See Raunio, Tapio: 'Always One Step Behind? National Legislatures and the European Union', in: *Government and Opposition*, No. 2/1999, pp. 180-202; Raunio, Tapio/Wiberg, Matti: 'Does Support Lead to Ignorance? National Parliaments and the Legitimacy of EU Governance', in: *Acta Politica*, No. 2/2000, pp. 146-168.

3 See Valtioneuvoston selonteko 1/2000 vp, Suomen lähtökohdat ja tavoitteet Euroopan unionin vuoden 2000 hallitusten välisessä konferenssissa (VNS 1/2000 vp); Suuren valiokunnan lausunto

Finally, while the Eduskunta deserves credit for establishing an effective system of parliamentary scrutiny, the debating function of the Parliament has so far remained marginalised in European matters. CFSP, EMU, and Agenda 2000 excluded, plenary involvement has been weak, with lack of constructive debates on national European policy or on the future of integration. Two main factors explain this brevity of integration debate. The Eduskunta is a committee-based institution, with the plenary in a secondary role, also in the context of domestic legislation. Secondly, despite the overall consensus in the Grand Committee, European matters continue to produce disagreement within and among parties, and public debates on the floor might damage the parties by highlighting these internal cleavages.

1/2000vp, Valtioneuvoston selonteko Suomen lähtökohdista ja tavoitteista Euroopan unionin vuoden 2000 hallitusten välisessä konferenssissa (SuVL 1/2000 vp - VNS 1/2000 vp); Ulkoasiainvaliokunnan mietintö 2/2000 vp, Valtioneuvoston selonteko Suomen lähtökohdista ja tavoitteista Euroopan unionin vuoden 2000 hallitusten välisessä konferenssissa (UaVM 2/2000 vp - VNS 1/2000 vp); Perustuslakivaliokunnan lausunto 2/2000 vp, Valtioneuvoston selonteko Suomen lähtökohdista ja tavoitteista Euroopan unionin vuoden 2000 hallitusten välisessä konferenssissa (PeVL 2/2000 vp - VNS 1/2000 vp).

The Parliament of Spain: Slowly Moving onto the European Direction?

Felipe Basabe Lloréns and Maria Teresa González Escudero

I. Introduction: The Political Culture and System of Spain

1. Interests, Ideas and Attitudes in EU Affairs

Attitudes towards European integration in Spain are rather stable and easy to evaluate; no major differences can be ascertained among the main political parties and societal actors, partly due to the historic and political context of accession. Spain's entry into the European Communities in 1986 was the result of a long political process and the fulfilment of a historical aspiration for the Spanish society.¹ For most internal and external observers, Spain's incorporation to the EC constituted the final step of the transition process to democracy. The prospect of EC membership was one of the stabilising elements in the transition towards democracy, being a selective incentive for it. Membership meant, for political elites and public opinion alike, the return to the Western world from which the country felt excluded. The EC had a legitimising effect on the new Spanish democracy because of Community members' permanent criticism and rejection and occasional condemnation of Franco's regime. Accession to the EC was supported almost unanimously by all political parties and societal actors.² This readiness to integrate was reflected by the inclusion of Article 93 in the 1978 Constitution which allows for constitutional powers to be vested in international institutions. Such broad social and political consensus has presided over the negotiation and ratification processes of the later Treaty reforms and is still to be found at the basis of most of the present features of Spanish public attitudes towards the process of European integration.³

The aforementioned broad support of European integration has nevertheless experienced a relative decline in the past years from 1995 onwards. This is due to political conflicts on certain specific issues such as fisheries, industrial re-conversion, and the reform of the EC common market on olive oil⁴, to the rise of interests groups - still at a

1 See Ramírez Jiménez, M.: *Europa en la conciencia española y otros estudios*, Madrid, Trotta 1996.

2 See Moreno Juste, A., *España y el proceso de construcción europea*, Barcelona, Ariel Practicum 1998.

3 See Almarcha Barbado, Amporo (ed.): *Spain and EC membership evaluated*, London: Pinter Publishers 1993; Burgorgue-Larsen, L., *L'Espagne et la Communauté Européenne*, Etudes Européennes, Bruxelles, Université de Bruxelles, 1995; Barbé, Esther: *La política europea de España*, Ariel Practicum 1999.

4 See Morata, Francesc: 'Spain: Modernization through Integration', in: Hanf, Kenneth/Soetendorp, Ben (eds.): *Adapting to European Integration. Small States and the European Union*, London: Longman 1998, pp. 100-115; Barbé, 1999, op.cit., pp. 73-85.

minor scale -, and to dissenting opinions within some of the national political parties (People's Party, United Left) contrary to further developments in the process.¹ However, the general public's and political elites' perception still confirms a very positive attitude and integrationist approach to European issues, which have traditionally been considered as 'state policy' not subject to down-to-earth political debate.² Both Presidents Gonzalez and Aznar have publicly declared that "the most precious asset Spain has with regard to EU negotiations is the general consensus among the political parties on the necessity and success of the process of European integration".³ The 1999 EC budgetary reform and the future enlargement towards Central and Eastern Europe necessarily are to be a crucial test for such consensus.⁴

2. Dynamics of Political Parties at the Domestic and the European Level

The results in the 1989, 1994 and 1999 European Parliament elections tend to reflect similar results to those in domestic elections.⁵ The massive predominance of the Spanish Socialists' Party (PSOE) and the People's Party (PP) is barely nuanced by the electoral presence of the United Left (Izquierda Unida) at EU level - which temporarily borrowed Socialist votes in 1994 - and changing coalitions among the 'nationalist' regional parties in order to achieve the election of at least one seat which later was to rotate among the party members of the coalition.

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- 1 See España y el Tratado de la Unión Europea, Madrid, COLEX 1994; Alvarez-Miranda Navarro, B.: 'Integración europea y sistema de partidos en el Sur de Europa: despolarización y convergencia', in: Revista de Estudios Políticos No. 3/1994, pp.143-167.
 - 2 See Cienfuegos Mateo, Manuel: 'El control de las Cortes generales sobre el Gobierno en asuntos relativos a las Comunidades Europeas durante la década 1986-1995', in: Revista de las Cortes Generales, No. 38/1996, pp. 47-99; Cienfuegos Mateo, Manuel: 'La Comisión Mixta para la Unión Europea: Análisis y balance de una década de actividad en el seguimiento de los asuntos comunitarios', in: Gaceta Jurídica de la CE, No. D27/1997, pp. 7-69; Barbé, Esther: 'The National Interests of Spain' in: Wessels, Wolfgang (ed.): National versus. EU-Foreign Policy Interests. Mapping 'important' national interests (Final collective Report), Köln/Brussels, TEPSA, 1998, pp. 70-81; Barbé, 1999, op.cit., p. 31.
 - 3 In fact, the political use of the case of alleged corruption in EC flax subsidies within the Spanish Ministry of Agriculture under the former mandate of the current Vice-President of the European Commission, Ms. Loyola de Palacio, during the 1999 EP electoral campaign and the Commissioners' EP individual auditions has constituted a major exception, which was heavily criticised by most political actors and national press.
 - 4 See Cortes Generales - Comisión Mixta para la Unión Europea, Informe sobre La ampliación de la Unión Europea, Publics. Secretaría General del Congreso de los Diputados, 1999.
 - 5 See Almarcha Barbado, 1993, op.cit.; Moreno Juste, 1998, op.cit.

Table 13: Results of Elections to the European Parliament in Spain 1994-1999

Political Parties	1999 Elections			1994 Elections		
	% Votes	Seats	Seats in EP Groups	% Votes	Seats	Seats in EP Groups
People's Party -PP	39.74	27	27 PPE	40.12	28	28 PPE
Socialist Party - PSOE	35.32	24	24 PSE	30.79	22	22 PSE
United Left - IU	5.77	4	4 IUE	13.44	9	9 IUE
CiU (CDC +UDC) Catalonian center-right	4.43	3	1 PPE + 2 ELDR	4.66	3	1 PPE + 2 ELDR
C.E. (CC/PA/UV/PAR) Canarian/ Aragonese/ Valencian/ Andalusian Center	3.20	2	1 ELDR+ 1 V-ALE			
C.N. PNV/EA/ERC/UM) Basque/Catalonian/Balearic "Radi- cal" Nationalists	2.90	2	2 V-ALE	2.82	2	1 PPE + 1 CRE
BNG (Galician nationalists)	1.65	1	1 V-ALE	0.75		
EH (Basque Independentists)	1.45	1	NI	0.97		

Source: www.idea.eu.int.

In any case, the relevance of the 'nationalist' parties, especially the Catalanian, Basque and Canarian ones is enormously reduced at EU level, due to the single national constituency used for EP elections, compared to their actual pre-eminent role at national level.¹

In any case, it can be stated that Spanish EU policy is definitely not driven by domestic politics.² The established political parties have not fundamentally changed their political attitudes towards EU issues, with the exception of the Basque Nationalist Party (PNV). This has, within the context of the current Basque 'peace process', recently been obliged to abandon the European People's Party. The main differences with regard to international politics among the Spanish political parties mainly refer to Cuba and, to a lesser extent, other Latin-American and Mediterranean specific relationships.³ Finally, the appointment of Javier Solana as Secretary-General of NATO, apart from its repercussions in domestic politics, helped to dilute traditional reticences and misconceptions within the Spanish left parties towards NATO and other military alliances.

1 See the controversial Judgment 28/91 of 14 February of the Spanish Constitutional Court denying the abolition of the single electoral constituency for the whole Spanish territory demanded by the Basque Regional Parliament.

2 See Morata, Francesc: 'Fundamentals of Spain in EU Affairs', in: Wessels, Wolfgang/Rometsch, Dietrich (eds.): The European Union and its Member States. Towards Institutional Fusion?, Manchester: Manchester University Press 1996, pp.134-154; Moreno Juste 1998, op.cit.

3 See Barbé, 1999, op.cit., p. 121.

3. The Territorial Distribution of Power: Increasing Asymmetric 'Regionalisation'

Spain's gradual incorporation into the process of European integration has followed a process parallel to its internal territorial redistribution of power - progressive transfer and acquisition of powers from the central State by the regions (Comunidades Autónomas) - and to the reorganisation of its administrative structure and decision-making procedures, hence facilitating its adaptations to the EC/EU decision-making process.¹ In its fourteen years of EU membership, Spain has also contributed relevantly to the process of European integration with important initiatives - such as the concept of European citizenship, the development of the notion of economic and social cohesion and, together with Germany and Belgium, the enactment of the Committee of the Regions.²

The rise of the 'nationalist' regional parties, especially the Catalanian (CiU), Basque (PNV) and Canarian (CC) ones, onto the main national political stage from 1993 to 2000 has somewhat changed a lot within Spanish politics, due to the 'moderating' role played by these parties and their continuous demands of territorial nature. Though it was commonly accepted that no national government would be constituted without the participation or agreement of one or various 'nationalist' parties, the 2000 general elections granting absolute majority to Aznar's party are inevitably to lessen the political influence and decision power of 'nationalists' at national level. The dramatic ongoing Basque 'peace process' and the surprising results of the 1999 Catalanian regional elections have already de facto weakened the political influence of the 'nationalist' parties.

4. Basic Features of Parliament-Government Relationship

The constitutional provisions concerning the involvement of the Spanish national Parliament in European affairs are rather scarce because of the preponderance of the Executive in the management of international and EC/EU affairs. The main role of the Parliament concerns the ratification of international treaties - among them those related to the transfer of competences to supranational organisations - according to articles 93, 94 and 96.2 of the Spanish Constitution. Different voting majorities are required depending on the specific types of international treaties. The negotiations leading to the

1 See Morata, 1996, op.cit., pp.134-154; Burgorgue-Larsen, Laurence: 'Espagne', in: Rideau, Joel (ed.), *Les États Membres de l'Union Européenne. Adaptations - Mutations - Résistances*, Paris, L.G.D.J. 1997; Newton, M.T./Donaghy, P.J., *Institutions of modern Spain: A political and economic guide*, Cambridge, Cambridge University Press 1997; Arias Martín, M.A., *Comunidades Autónomas y elaboración del Derecho Comunitario Europeo*, Oñati, I.V.A.P 1998.

2 See Molina del Pozo, C.F. (ed.): *España en la Europa comunitaria: balance de diez años*, Madrid, CEURA 1996; Elorza Cavengt, J.: 'El Tratado de Amsterdam: valoración para España', in: *Meridiano CERI* No. 16/August 1997a, pp. 4-7; Elorza Cavengt, J.: 'Reflexiones y balance de diez años de España en la Unión Europea', in: *Información Comercial Española* No. 766/1997b, pp. 15-29.

adoption and signature of an international treaty are exclusively led by the Central Government without any prior mandate from the national Parliament.

The Spanish Constitution of 1978 grants the Government the most powers vis-à-vis the conduction of international relations and the negotiation of international agreements;¹ there is barely no role for the Parliament (Cortes) in such issues, apart from the ratification procedures of international treaties and the ex post-control of international negotiations conducted by the Executive.² The predominant role in international negotiations is therefore assumed by the Ministry of Foreign Affairs, though the dynamics of European integration are increasingly granting greater roles to other sectoral ministries as well as to the President's Office together with the Permanent Representation in Brussels which acts as its long-distance direct agent. There are no constitutional powers granted to the Autonomous Communities in strict "international affairs" issues,³ though the EU decision-making-process has indirectly provoked and allowed for their - still incipient - participation in the process.⁴ The set-up of such participation and coordination mechanisms vis-à-vis the definition of the Spanish national negotiation positions is the main demand to the Central Government unanimously shared by all 'nationalist' parties and, in some cases, regional governments.⁵

The Spanish Cortes is a bicameral Parliament where the Lower Chamber, the Congress, represents the people and the Upper Chamber, the Senate, is a chamber of territorial representation. The 350 deputies in the Congress are elected according to a system of proportional representation, with the provinces serving as constituencies. Two hundred senators are directly elected in a plurality system in the provinces, four senators per province. The remaining senators are designated by the assemblies of the *Comunidades Autonomas* according to population. Therefore, two different territorial entities are represented by the Senate. This has provoked continuous demands for a constitutional reform, together with the fact that the Senate practically serves as a rather ineffective second reading Chamber - despite formal equality with the Congress.

1 See Pérez Tresp, P.: *Constitución Española y Comunidad Europea*, Madrid, Civitas 1994; Mangas Martín, A.: 'Le droit Constitutionnel national et l'intégration européenne: Espagne', in: Schwarze, Jürgen (ed.): *XVII F.I.D.E. Kongress* (Berlin, Oktober 1996) - *Ergebnisse und Perspektiven*, Baden-Baden: Nomos Verlag 1997, pp. 206-230.

2 See Closa, Carlos: 'Spain: The Cortes and the EU - A Growing Together', in: Norton, Philip (ed.): *National Parliaments and the European Union*, London: Frank Cass 1996; Cienfuegos Mateo, 1997, op.cit., pp. 7-69.

3 See Mangas Martín, 1997, op.cit., pp. 206-230.

4 See Ministerio para las Administraciones Públicas (Ministry for the Public Administrations), *La participación de las Comunidades Autónomas en los asuntos comunitarios europeos*, Madrid, Publicaciones del Ministerio para las Administraciones Públicas 1995; Morata, 1996, op.cit., pp.134-154; Arias Martín, 1998, op.cit.

5 See Cortes Generales-Comisión Mixta para la Unión Europea, *Proposición no de Ley sobre participación de las Comunidades Autónomas en la delegación del Estado en el Consejo de Ministros de la Unión Europea*, Boletín Oficial de las Cortes Generales No. 176, 10 March 1998.

Democratic parliamentary tradition, interrupted for almost 40 years, has been restored and developed in parallel to the EC membership during five legislatures: the Third (1986-1989), the Fourth (1989-1993), the Fifth (1993-1996), the Sixth (1996-2000) and the Seventh Legislature (since 2000). Between 1982 and 1993, the Socialist Party governed with the backing of an absolute parliamentary majority. This is also the case with the People's Party during the recently inaugurated Seventh Legislature. From 1993 to 1996, as well as from 1996 to 2000, the Socialists and the Conservatives have respectively governed with the parliamentary support of the Catalan nationalists and other 'regional' nationalist parties with parliamentary representation (Canarian, Basques, Aragonese, etc.).

From the beginning of its existence until 1983, the Spanish Parliament was more concerned with the elaboration and enactment of a new constitution and the normalisation of public and political life. Therefore, there was only a marginal interest in the process of European integration, which was reflected in the way the Parliament adapted collectively to the Constitutive Treaties and the Single European Act both in procedural and substantive terms at the time of accession. This could serve to explain why parliamentary changes and reforms in Spain dealing with general instruments for parliamentary information and control in EC/EU affairs have been limited.

The Spanish Constitution empowers the Government to direct foreign policy. Relations between the Executive and the Cortes in dealing with foreign affairs are exclusively framed by article 93 of the Spanish Constitution. This provision establishes that it is incumbent upon the Cortes or the Government, as the case may be, to guarantee compliance with international treaties and with the resolutions emanating from international and supranational organisations in which the powers have been vested. The legislative role permitted by the EC legal system is limited to the implementation of directives. Given the very technical nature of the matters usually regulated by directives, they are seldom dealt with by the Cortes. If the matter is under "reserve of law", then either the Cortes implements the directive through a bill or the Government does so through a 'Delegation bill' from the Cortes. Although the diminution of competences linked to EC/EU membership affects the Parliament more than the Government, there appears to be an agreement that in Spain EC/EU membership has not resulted in an excessive unbalance in the distribution of powers between them. Given the reduced involvement of the Spanish Parliament in international affairs - which could be extended to other policy areas -, there is a common understanding that the level of parliamentary scrutiny in EC/EU affairs is similar or even higher than the average in other fields.

Finally, the quasi-federalist structure of the Spanish State renders the Autonomous Communities (Comunidades Autónomas) competent for the implementation of EC legislation. Both, the Congress' and Senate's legislating committees, are precluded from interfering with the competences of the Communities and cannot scrutinise legislation enacted by the Autonomous Communities to give effect to EC Law, even though the Central Government remains responsible for non-compliance. Nevertheless, and again

because of the abovementioned weak nature of parliamentary scrutiny in the Spanish system, there is no evidence that the territorial structure of the state has implied a significant diminution or erosion of parliamentary involvement in EC/EU affairs at national level.

II. The Practice and Evaluation of Parliamentary Scrutiny in EU Affairs

1. The Participation of the Cortes in European Policy-Making

The Spanish Cortes has a very indirect presence in the EC decision-making process. Parliamentary scrutiny in EC/EU affairs has in practice never been too relevant, given the reduced institutional role of the Parliament vis-à-vis the management of certain policy areas by the Government. Post-Maastricht and post-Amsterdam developments have confirmed this situation, except for specific issues of great relevance for the general public which had its origin in EC decisions.¹ The main parliamentary activity in relation to EC/EU matters has been government control - preferably ex-post, but increasingly ex-ante -, while legislative activity has been a secondary issue. Parliamentary scrutiny mechanisms also operate on the legislative process to incorporate EC rules into Spanish statutes - until the Law of 1994 this was not the case with administrative decrees -, as well as through the control of Spanish government representatives in EC institutions and the implementation of EC decisions by the public authorities, for which the Spanish Government is responsible.

The broad positive consensus among the major political parties towards the process of European integration also explains the limited participation and activity of the Parliament in this field. Only certain Congress deputies of the left coalition Izquierda Unida and of some of the Basque, Catalan and Canarian 'nationalist' parties have actually developed major dissenting strategies on EC affairs. The Parliament's role - apart from its symbolic connotations - is basically reactive and limited to the reception of information given by the Government or administrative bodies. Such information is generally granted after the definition of the Spanish official positions by the Government.

The main standing parliamentary organ dealing with EC/EU affairs is the Mixed Committee of the Congress and the Senate for the European Union (Comisión Mixta para la Unión Europea). It is the successor of the Mixed Committee for the European Communities created by Act 47/1985 of 27 December 1985, later modified by Act 18/1988 of 1 July 1988, whose name - and, to some extent, whose functions - were changed by Act 8/1994 of 19 May 1994 following Spain's parliamentary ratification of the Treaty on

1 Reform of certain CMOs within the CAP, fisheries, reconversion of coal and shipbuilding industries, immigration policy and police co-operation after the Tampere European Council...

European Union. Initially this Committee was composed of a fixed number of members; the Congress had a larger representation than the Senate, which produced a very rigid structure. The Mixed Committee is currently composed of an equal number of Congress deputies and senators and reflects the relative strength of the political groups within the two Chambers. The number of representatives varies. It is agreed upon by the bureaus of both Chambers in a joint session at the beginning of the legislature in order to guarantee the proportional presence of all parliamentary groups. The result was a considerable growth in number of its members, from 15 in the Third to 46 in the Seventh Legislature.

The post of the presidency of the Committee is normally delegated by the President of the Congress. During the Committee's early days, it used to be the First Vice-President of the Congress. The current parliamentary custom, however, allocates the presidency to the largest opposition group. Relevant politicians have in practice assumed the coordinating role of the committee in the last legislatures.¹

There is no specific quorum for holding sessions, although half of the members plus one must be present for a vote to be held. Decisions are reached by simple majority, for which each group has a number of votes proportional to its total number of deputies and senators.

The Committee is the only Mixed Committee with two members of the Parliament's Legal Service (*Letrados de Cortes*²) ascribed to it. They direct its Secretariat, which plays an extremely important role in the transmission of documents and legislative proposals from the Government to the Parliament. The Congress provides for the Secretariat's staff, which is shared with the Standing Committee for Foreign Affairs. The Parliament's Administration acts as correspondent to the EU institutions by means of the General Directorate for Studies and Documentation (*Dirección General de Estudios y Documentación*), though no Spanish parliamentary "linkage fonctionnaire" (*funcionario de enlace*) has ever been attached to the European Parliament. The large political parties have specialists in EC/EU affairs who traditionally sit in this Committee, while the smaller and 'nationalist' parties only intervene to the extent that the powers and interests of their respective Autonomous Community or of a certain social group or economic sector are affected.

The Mixed Committee is not a legislative Committee. It is not directly involved in preparing legislation. The tasks of a non-legislative committee tend to be of study and control, as well as of "impulse of the legislative activity".³ However, secondary legislation

1 Marcelino Oreja, former Minister of Foreign Affairs and European Commissioner; Isabel Tocino, former Minister for Environment; Pedro Solbes, former Minister of Economy and Finance and current European Commissioner; Josep Borrell, former Minister of Finance and Public Works.

2 At present, Isabel Revuelta (Congress), soon to be replaced by Ana Álvarez, and José Manuel Bretal (Senate).

3 See the Standing Orders of the Congress and the Senate.

enacted in pursuance of EC law has to be scrutinised by the standing committees of a legislative nature. Any reform of the Mixed Committee itself has to be carried out by a legislative committee, namely the Foreign Affairs Committee. The Mixed Committee may adopt conclusions, opinions and motions, and pass them onto the competent legislative Committee in either Chamber. However, its effectiveness depends on the political will and decision of the bureaus of both Chambers. In practice, the Mixed Committee only manages to stimulate the involvement of other committees when they depend on it for the provision of information.

Proposals are sent by the Government Ministries to the Congress by means of the coordination of the Ministry of Foreign Affairs and distributed to the relevant Parliament Committees by the Bureau of the Chamber. Not surprisingly, there has been frequent conflicts over the demarcation of the responsibilities between the legislative committees and the Mixed Committee. In any case, the new system enacted for the transmission of information from the Government to the Parliament has eased such lack of precision in the allocation of powers. The Mixed Committee can appoint reporting bodies - legally no sub-committees (see table 14) - for the follow-up and monitoring of a certain political or reform process. These reporting bodies can produce a final report, which, approved by the committee, is presented to the Government, though without any legal binding effect. Such was the case of the 1995 Report on the Negotiation of the Amsterdam Treaty.

The Mixed Committee is the only parliamentary body with direct and regular links to the European Parliament. Hence it plays a vital role in ensuring that the Cortes is kept informed of activities and developments in the European institutions. It has not been considered as an important parliamentary committee, in perpetual competition with other committees, especially that for Foreign Affairs. While the Government has always used the latter Committee as its main means of communication with the Parliament in EC/EU affairs, the opposition does not tend to consider it as its main device for government supervision and control. However, it has become an atypical and rather relevant committee of growing importance, because its action encompasses the totality of government policies.

The Mixed Committee holds regular meetings, some on general information and others on specific issues. There is an average number of approximately 40 sessions per legislature, thus more than one meeting per month (see table 14). Oral questions posed by the Committee are usually of a sectoral nature. Except for some appearances of officials at their own request, and for the regular, institutionalised appearance of the Secretary of State for Foreign Policy and the EU, every appearance tends to take place upon request from the opposition groups. The Committee has been locating its field of action between ex-post- and ex-ante-control of the Executive's action within the Council of the EU. The opposition has repeatedly asked that the Committee becomes an advisory body getting active prior to governmental action within the Council of the EU. The government in turn has always maintained that the speed required within the EC/EU decision-

making process makes it impossible to seek parliamentary support or authorisation for each decision. According to a proposal of Resolution presented in November 1993 by the then opposition PP, the Mixed Committee has been closely involved in the preparation of the IGC 1996/1997. A major consequence of such involvement was the Committee Resolution of 21 December 1995 which contained guidelines agreed to by all parliamentary groups on the Spanish position for the IGC negotiations.

Table 14: Statistics on Spain's Parliamentary Activity in EC/EU Affairs

IV Legislature (1989-1993)		
Plenary Sittings		
Non-legislative proposals in plenary session		3
Interpellations and Oral questions in plenary session		10
Written questions with written response		29
Other Sectoral Committees		
Hearings (Agric. 9; Indu. 7; Soc. 1; FA 1)		12
Oral questions (Budg. 14; Soc. 1; FA 1; R&D. 1)		17
Mixed Committee for the European Communities		
Non-legislative proposals		3
Hearings (Government: 60), (Officials: 72), and (Specialists 73)		205
Oral questions in Committee		26
Subcommittees on: the Accession Treaty and the Sea (known as ponencia on the internal market); on Economic and Monetary Union; Subcommittee/Reporting Body on Political Union		
V LEGISLATURE (1993-1996)		
Plenary Sittings		
Non-legislative proposals in plenary session		8
Interpellations, Hearings and Oral questions in plenary session		60
Written questions with written response		114
Other Sectoral Committees		
Hearings		23
Oral questions		37
Mixed Committee for the EC/EU; 35 sessions; Total duration: 82 hours, 12 minutes		
Non-legislative proposals		5
Hearings (Government: 59), (Officials: 16) and (Specialists 12)		87
Oral questions in Committee		39
Subcommittees on: Consequences for Spain of EU enlargement and institutional reforms (154/6): 13 sessions; report adopted on 21 december 1995; on EMU, structural and cohesion funds (154/7): 1 session; no final report adopted; on the situation and reform of fruit and vegetables cmo (154/21): 3 sessions; no final report adopted		
VI Legislature (1996-2000)		
Plenary Sittings		
Non-legislative proposals in plenary session		36
Interpellations, Hearings and Oral questions in plenary session		86
Written questions with written response		271
Other Sectoral Committees		
Hearings		41
Oral questions		84
Mixed Committee for the European Union; 38 sessions; Total duration: 99 hours, 23 minutes		
Non-legislative proposals		27
Hearings (Government: 58), (Officials: 28) and (Specialists: 10)		96
Oral questions in Committee		69
Subcommittees on: IGC follow-up (154/1): 13 sessions; Total duration: 30 hours 5 minutes, Number of members: 11, Hearings: 10 + 2, Final Report adopted on 29 May 1997; on EU enlargement (154/20): 10 sessions; Total duration: 17 hours 45 minutes, Number of members: 14, Hearings: 1 + 6, Report adopted on 18 November 1999.		

Sources: Closa, 1996, op.cit.; Congreso de los Diputados; Own data calculation.

Among the rights granted to the Committee by the law of 1994 are the following (see table 14):

- to receive, via the Government, legislation proposals emanating from the European Commission in sufficient time to be properly informed or to examine such proposals;
- to request a full debate on such proposals if it should consider them necessary;
- to request the appearance of a government member before the Committee to inform it on the outcome of bills approved by the Council of the EU;
- to be informed by the Government about the general lines of its European policy;
- to draft reports on matters relating to the European Union; and
- to establish links of co-operation with their counterparts in the parliaments of other member states of the European Union.

A delegation of the Mixed Committee also participates in the meetings of the Conference of European Affairs Committees (COSAC) and bilateral meetings with delegations or bodies both from the European Parliament and other national parliaments of the EU.

The Spanish Parliament limits itself to exercise its legislative functions for the implementation of EC Law by means of the regular activity of the sectoral legislative committees (tabling of amendments) - normally at the initiative of the Government. The aim is to adopt the regulatory measures in order to adapt internal law to the European provisions. The motions and non-binding legislative proposals approved in a parliamentary committee or in plenary formally oblige the Government, though there is no later system of effective legal control.

Informal sessions are the most important parliamentary control activity in EC/EU affairs. They are practiced on the basis of information given by the Executive, on the latter's own initiative or on that of the Chambers. The plenary session of the Congress of Deputies holds a meeting after every summit of the European Council in order to get informed about the result of the negotiations. This practice was institutionalised after the meeting of the European Council held at the end of the first Spanish Presidency of the Council (1989). Since then, it has become the major EC/EU affairs-related activity at parliamentary level. The President also reports to the Congress and answers the questions and interpellations addressed by the parliamentary leaders on such issues. Such interaction generally helps to create the necessary consensus for the production of agreements on resolutions and recommendations aiming to guide the Spanish negotiating positions in Brussels.

The Secretary of State for Foreign Policy and the European Union also appears bi-monthly before certain bodies of both Chambers - the Mixed Committee and the Senate's Budget Committee - in order to answer questions by deputies and senators on EC/EU related issues. Most of the sectoral committees of the Congress (Committee on Agriculture and Fisheries, Committee on Foreign Affairs, Committee on Industry) also require hearings and raise questions in order to actually control the application and enforcement of EC legislation in their respective fields.

The Mixed Committee is empowered to receive information from the Government. The two main instruments for the exercise of this function are the oral questions in committee and hearings. The hearings tend to be of a more general character and have taken the form of general debates. As regards the informal powers of the Mixed Committee in the upstream process of EC legislation, it receives - via the Ministry of Foreign Affairs, but not directly from the Permanent Representation to the EU - all Commission proposals (COM documents) from the Government through the distribution mechanisms of the Bureau. In practice, the timing has considerably improved in the past years; the present situation consists of a fortnightly envoy within six weeks from the date of the adoption of the proposal. The Government's obligation is limited to sending the Commission's proposal, without any accompanying government reports and studies on proposed measures.

The actual use of this information flux is very reduced. The Mixed Committee makes limited use of its power to produce reports (non-binding proposals, reports, resolutions, motions...), despite the recommendations by legal specialists for further activity and involvement in the scrutiny of normative proposals.

Concerning informal powers on the implementation of EC Law, the Mixed Committee might receive information from the Government on the decisions and agreements reached within the Council of Ministers, though most of these documents concern major EC/EU initiatives. At the same time, the Government - by means of the Secretariat of State for the European Union - is obliged to provide the information expressly requested by individual MP's, as well as accompanying documents that it might consider relevant. Finally, fifty MP's can always start "in-constitutionality legal procedures" before the Constitutional Court if they consider the implementation of EC Law as opposing any constitutional provision.

It is remarkable that an annual debate on EC/EU affairs has never been established - as it is the case of the "State of the Nation" or "State of the Autonomous Communities" annual debates -, though the general aspects of European integration and more specific policy-oriented issues have always been among the issues dealt with in wider political debates. There is, however, an important number of oral and written questions, as well as interpellations and motions subsequent to interpellations presented to the Government, both in the plenary sessions and in some of the sectoral committees of both Chambers. Note that at least one third of these questions still pose general or institutional problems.

At the invitation of the country holding the Presidency, the President of the Congress and/or a delegation of the members of the Mixed Committee regularly attend meetings of the President of the European Parliament and representatives of the national Parliaments, whose aim it is to review the network of relations among parliaments and to suggest ways in which existing links could be improved. The international activities and active involvement of Spanish parliamentary organs in external conferences (e.g. European Parliament hearings, Euro-mediterranean parliamentary fora) has considerably

increased in recent times. However, the empowerment of the Mixed Committee to maintain relations with equivalent committees in other national parliaments has been scarcely used and the activity has been kept to a minimum.

The Plenary Sitting of the Senate has not been especially involved in EC/EU affairs except for questions and interpellations addressed to the Government on EC issues affecting the Autonomous Communities, such as those related with the Structural Funds or the Committee of the Regions. After the ratification of the Treaty on European Union, the Senate decided to set up a special committee to report on regional participation in Europe. However, it is before the Senate's Budget Committee where the Secretary of State for Foreign Policy and the EU regularly reports on a bi-monthly basis.

Spanish deputies and senators do not generally have other permanent channels of communication with the EU institutions apart from the Secretariat of State for the EU, their respective political parties and personal contacts with MEP's.

2. The Participation of the Parliaments of the Autonomous Communities in EU Affairs

The Spanish Autonomous Communities implement EC policies within their own areas of competence according to the constitutional distribution of powers. The adaptation of regional legislation already in force prior to Spain's accession to the EC only affected Catalonia and the Basque Country. Similar to the situation at national scale, regional governments remain the main actors for the decision-making and the management of EC/EU-related affairs. Nevertheless, regional parliaments, traditionally excluded from the management and control of these areas, started to expand their activities in this field during the last years. Apart from debating the general or sectoral impact of European integration for the respective Autonomous Community, regional parliaments regularly adopt resolutions or recommendations addressed to the regional Government in order to influence both its internal policy and the relationship with the Central Government and administration.

Most regional parliaments have set up permanent parliamentary committees of a non-legislative nature in order to monitor the developments in EU affairs.¹ These parliamentary committees are based on the model of the Mixed Committee of the national parliament. The regional Minister coordinating the EC/EU affairs - normally the Minister for the Presidency or the Minister of Economy and Finance - reports to these committees on a regular basis and answers questions and interpellations posed by its members. Some of these committees have established formal relations with the EU Committee of the Regions or with similar committees in regional parliaments of other member states. The first meeting of regional parliaments of the EU member states was recently held in 1998

1 Comisión para el seguimiento de la Unión Europea y de Actuaciones Exteriores in Catalonia, Comisión Permanente para Asuntos Europeos in Madrid or Asturias...

in Oviedo (Asturias) and created a permanent follow-up Committee presided by Ovidio Sánchez Díaz, the President of the regional parliament of Asturias (Junta General del Principado).

In 1994, three regional parliaments - those of Cantabria, Madrid and Aragón - adopted Regional Acts establishing specific procedures to participate in and to control the management of the EC's Structural Funds during its different stages (project selection, programming, financial execution...) - a step further ahead of the control mechanisms set up by the national Cortes.

Each of the seventeen Autonomous Communities has created a department which deals exclusively with EC/EU affairs. These departments vary considerably in size and administrative relevance. They are situated within one of the regional ministries (Consejerías) and tend to be located in the regional capital. The ministry concerned varies from one Community to another, though it generally is a directorate general or service reporting to the regional Minister of the Presidency. In some of the larger regions, like Andalusia or Catalonia, these departments have even established some offices at provincial level. Thus the relationships between these departments and the regional parliamentary committees vary extremely from one Community to another and are still in a continuous process of institutional redefinition.

As regards regional participation of the Autonomous Communities in the EC/EU decision-making process, several steps have been taken in the last years. This development was mainly induced by the Socialist and Conservative governments from the Catalan - but also Basque and Canarian - nationalist parties. The initial mere structure of information did not satisfy Catalonia and the Basque Country. They always wanted their own representatives to have more autonomy with respect to the Permanent Representation of Spain to the EU. Regions and the Central Government institutionalised regional participation in EC/EU affairs by means of the Conference on Community Affairs (Conferencia para Asuntos relacionados con las Comunidades Europeas), set up at Ministry level. This Conference will be assisted by a permanent working group, the Committee of Coordinators on Community Affairs (Comisión de Coordinadores para Asuntos Comunitarios). At the same time, the Conference gives the impulse for regional participation in each Community policy and monitors it through the specific Sectoral Conferences Government-Regions. The functions of the Conference have been revised by means of the 1990, 1994, 1996 and 1999 agreements between the Central Government and the regions. The Council of Fiscal and Financial Policy of the Autonomous Communities (Consejo de Política Fiscal y Financiera de las Comunidades Autónomas) coordinates, among the general economic interests of the regions, those related with the EC (relations with the Ecofin, Structural Funds...).

III. The Spanish Parliament and the Negotiation of the Amsterdam Treaty

Spain played a relevant and high-profile role in most phases of the 1996/1997 Intergovernmental Conference. Unlike at previous IGC's, its traditional 'integrationist' approach was more moderate. Hence, the Spanish Delegation acted in clear defence of its national interests in several negotiation dossiers.¹ In fact, despite its official position, the Spanish Delegation did not envisage enlargement to the Central and Eastern European countries as the all-embracing common objective which justified the reform; nor did the Spanish public opinion. The Spanish negotiation positions during the different IGC were not affected by the change in Government because of the broad consensus in these fields, the maintenance of the same negotiating team at technical level centered around the Permanent Representation staff², and the referral to the Cortes Resolution on the 1996 IGC.³

Hence, for the first time during an IGC, the Spanish Delegation dealt with a complete parliamentary text agreed by all Spanish political parties within the Mixed Committee for the European Union - which acted to a certain extent as a "negotiation mandate". This resolution was completed by two specific legislative proposals (motions) on the status of the Canary Islands (29 October 1996) and on children's protection (9 April 1997). The serious impact on the Spanish political elites caused by the Schäuble-Lamers-Paper of 1994 - especially its scheme for 'variable geometry', and the proposal for a massive transfer of policy areas to qualified majority voting (QMV) at a later stage - is to be found at the basis of the Cortes' Resolution and most of the later Spanish negotiating positions.⁴ The Spanish negotiation positions and national interests, though not as proactively expressed as in the Maastricht negotiations, were clearly focused on institutional issues, the reluctance to the extension of qualified majority voting to certain areas, the limitation of the inclusion of the concept of flexibility within the Treaty on European Union, and the creation of a European area of freedom, security and justice with the reinforcement of police and judicial co-operation in criminal matters. No major differences could be ascertained among the main positions vis-à-vis the negotiations of the Amsterdam Treaty adopted by the Government, the Spanish Parliament and the main political parties. In fact, the Spanish national positions for the 1996/1997 IGC were the result of a broad political consensus among the major political forces and democratic institutions. The Government - without further political debate - accepted the

1 See Elorza Cavengt, 1997a, op.cit., pp. 4-7; Various authors, *España y la negociación del Tratado de Amsterdam*, Biblioteca Nueva, Madrid, ed. Política Exterior 1998, p. 35.

2 See Various authors, 1998, op.cit., p. 45.

3 See Dictamen de la Comisión Mixta para la Unión Europea en relación con el Informe elaborado por la Ponencia sobre consecuencias para España de la ampliación de la Unión Europea y reformas institucionales (Conferencia Intergubernamental, 1996) of 21 December 1995 (Boletín Oficial de las Cortes Generales Serie A, No. 82, of 29 December 1995, pp. 1-28).

4 See Elorza Cavengt, 1997a, op.cit. pp. 4-7; Various authors, 1998, op.cit.; Barbé, 1999, op.cit., p. 80.

points included within the 1995 Cortes Resolution on the IGC; most of them were drafted in a very general and non-binding formulation.

The Spanish Government did not table any specific proposal during the Amsterdam negotiations, which directly concerned the role to be played by the European Parliament and the national Parliaments in EC/EU decision-making. Nevertheless, some of its proposals indirectly affected the parliamentary institutions, since they concerned the co-decision procedure and its extension to other policy areas. In fact, the Spanish Government has never been too keen on a large or even a general extension of the powers of the European Parliament. Concerning the reinforcement of the role of national parliaments, the Spanish Government expressly rejected such a possibility in order to avoid the extension of strong parliamentary scrutiny models in EC/EU affairs to the Spanish case, which would go against the current constitutional distribution of powers among the institutions and the Spanish parliamentary practice.

For the same reasons, the Spanish Government did not issue any proposal regarding the roles of the European Parliament and the national parliaments within intergovernmental co-operation. It would have never accept any further role to be played by the Spanish Parliament than the currently assigned ones. Finally, nothing can be said about the possible incorporation of any issue related to the upgrading of the role to be played by national parliaments unilaterally vis-à-vis their governments or collectively vis-à-vis the EC/EU into the Spanish Government's proposals.

Hence, the 1995 Cortes Resolution on the 1996 IGC, as well as its 1997 follow-up report¹ only contain a short reference to the issue of the roles of national parliaments in the EC/EU decision-making process. This reference was obviously not assumed or expressly defended by the Spanish Government during the IGC as one of its main negotiation priorities. Both the 1995 Resolution and the 1997 follow-up report defended the impulse of a larger and more active participation of national parliaments in the activities of the European Union and formulated four proposals, namely:

- the punctual transmission of all consultation documents of the European Commission in the official languages of each member state,
- the supply of all legislative proposals from the European Commission to the national parliaments, according to their respective legal procedures, in the official languages of each member state, with a sufficient preceding time lapse,
- the establishment of a minimum two-month period between the date of presentation of a legislative proposal by the European Commission to the European Parliament and the Council in all linguistic versions and the date of inclusion of its debate on the agenda of the Council,

1 See Informe de la Subcomisión especial de seguimiento, encargada de estudiar y discutir el proceso abierto por la Conferencia Intergubernamental (154/1), aprobado a su vez por la Comisión Mixta para la Unión Europea en su sesión de 29 de mayo de 1997.

- the maintenance of the present functions of COSAC as stated in Declaration No. 13 of the Treaty on European Union.

Nevertheless, the 1995 Resolution stated the need to reinforce the role of COSAC as the only institutional mechanism to provide for the incorporation of national parliaments to the EC/EU decision-making process in a clearer way, in view of the divergences and different constitutional and parliamentary traditions of the EU member states.

No official reaction from the Government was issued concerning this aspect and the introduction of the Protocol on National Parliaments to the Amsterdam Treaty.

IV. The Spanish Parliament after Amsterdam

The Treaty of Amsterdam was ratified by the Spanish Parliament on 16 December 1998 after a long procedure in both Chambers¹ which, contrary to some fears of the Government, did not provoke major political controversies.² In fact, the whole ratification process had an extremely low profile and was dealt with by the Government and the Cortes with a high degree of technicality, which clearly hindered a broad political debate.³ Most of the parliamentary proceedings were parallel to the ratification of the agreements leading to Spain's full participation in the military structure of NATO and

1 The whole series of parliamentary documents related with the process of ratification of the Treaty of Amsterdam are published in the Boletín Oficial de las Cortes Generales (BOCG) as follows: Proyecto de Ley Orgánica 121/000116 (BOCG Congreso de los Diputados Serie A Núm. 117-1, of 26 May 1998); Ampliación del plazo de enmiendas (BOCG Congreso de los Diputados Serie A Núm. 117-2, of 10 June 1998); Debate de totalidad (Diario de Sesiones del Congreso de los Diputados, Pleno y Diputación Permanente, Núm. 171, of 18 June 1998); Enmiendas (BOCG Congreso de los Diputados Serie A Núm. 117-3, of 22 June 1998); Ratificación de la Ponencia (Diario de Sesiones del Congreso de los Diputados, Pleno y Diputación Permanente, Núm. 492, of 24 June 1998); Informe de la Ponencia (BOCG Congreso de los Diputados Serie A Núm. 117-4, of 22 September 1998); Debate del Dictamen de la Comisión (Diario de Sesiones del Congreso de los Diputados, Pleno y Diputación Permanente, Núm. 514, of 23 September 1998); Dictamen de la Comisión (BOCG Congreso de los Diputados Serie A Núm. 117-5, of 30 September 1998); Debate del Dictamen de Comisión (Diario de Sesiones del Congreso de los Diputados, Pleno y Diputación Permanente, Núm. 184, of 1 October 1998); Aprobación por el Pleno (BOCG Congreso de los Diputados Serie A Núm. 117-6, of 8 October 1998); Proyecto de Ley Orgánica 621/000103 (BOCG Senado Serie II Núm. 103(a), of 9 October 1998); Propuestas de veto (BOCG Senado Serie II Núm. 103(b), of 26 October 1998); Enmiendas (BOCG Senado Serie II Núm. 103(c), of 26 October 1998); Informe de la Ponencia (BOCG Senado Serie II Núm. 103(d), of 6 November 1998); Debate del Dictamen de Comisión (Diario de Sesiones del Senado Núm. 358, of 12 November 1998); Dictamen de la Comisión (BOCG Senado Serie II Núm. 103(e), of 18 November 1998); Debate de totalidad (Diario de Sesiones del Senado Núm. 107, of 24 November 1998); Texto aprobado por el Senado (BOCG Senado Serie II Núm. 103(f), of 1 December 1998).

2 See Congreso de los Diputados - Secretaría General, Tratado de Amsterdam - Documentación preparada para la tramitación del Proyecto de Ley Orgánica por la que se autoriza la ratificación por España del Tratado de Amsterdam, Boletín Oficial de las Cortes Generales nº 117-1/2 - Serie A of 26 May 1998; Mangas Martín, 1997, *op.cit.*, pp. 206-230.

3 See Donaire Villa, F.J.: 'El Tratado de Amsterdam y la Constitución', in: *Revista Española de Derecho Constitucional*, No. 54/1998, pp. 119-167.

the accession of the first new Central and Eastern European States. Evidently, this mixture diluted the relevance of the Amsterdam ratification vis-à-vis public opinion and even the parliamentary forces.¹ In comparison to the ratification of the Maastricht Treaty, the Amsterdam Treaty's one was simple, fast and free of unexpected legal or political problems.²

President Aznar presented the results of the Amsterdam negotiations to the Plenary Session of the Spanish Cortes on 25 June 1997. Aznar opted for an extremely technical intervention. Consequently, the later debate basically focused on the political aspects of the "asylum protocol", the special statute agreed for the Canary Islands and the final solutions agreed for the institutional problems at EU level. While no major discrepancies arose with regard to both issues - though some opinions criticised Aznar for an exaggeratedly positive presentation of the results "addressed to the internal public opinion consumption"³ -, the 'nationalist' parties insisted on the poor results obtained with regard to the redefinition of the subsidiarity principle and asked for the creation of effective institutional mechanisms.⁴

The later parliamentary debates at committee and plenary level took place during four occasions: On 10 March 1998, 10 June 1998, 1 October 1998 and 16 December 1998. Special attention was granted to the modalities and problems derived from the inclusion of the new Chapter on Employment within the EC Treaty and the 'nationalist' demand for new institutional mechanisms with regard to regional coordination and representation. This was due to the controversial role played by President Aznar during the extraordinary Luxemburg European Council on Employment in November 1997, which caused harsh criticism by the Spanish Trade Unions and the Socialist Party.⁵ Throughout the whole ratification process, only three special "parliamentary motions" were addressed to the Government, namely with regard to the maintenance of the Cohesion Fund (PP motion of 8 October 1997), the principle of subsidiarity (EA motion of 29 October 1997), and the role of the Autonomous Communities in the EC/EU decision-making process (IU motion of 10 March 1998).

While the Spanish media occasionally paid attention to the developments of the ratification process in other member states - especially the Danish referendum, the French Constitutional reform and the German reactions to the Treaty - and while the Cortes itself demanded information from its French and Italian colleagues on their respective ratification processes,⁶ most of the Spanish parliamentary debates were exclusively cen-

1 See Barbé, 1999, op.cit., p. 172.

2 See Donaire Villa, 1998, op.cit.; Mangas Martin, 1999, op.cit.

3 Barbé, 1999, op.cit., p. 132.

4 See 'Informe de la Ponencia de la Comisión General de las Comunidades Autónomas sobre papel y funciones de los entes territoriales en el futuro de la Unión Europea' (543/000010), Boletín Oficial de las Cortes Generales, Senado, VI Legislatura, Serie I, Núm. 360, pp. 1-21.

5 See Barbé 1999, op.cit., p. 134.

6 See Donaire Villa, 1998, op.cit.

tered on one single issue: the need for an increased participation and representation of the Regions vis-à-vis the definition of the Spanish negotiating positions at EU level. In fact, the only amendments proposed to the draft proposal for an Organic Law of ratification tabled by the Government in this sense came from the Basque ‘nationalists’ parties (PNV and EA) and the United Left (IU). They merely included the re-drafting of the Preamble of the Organic Law, and not its substantive content.¹ These amendments to the text of the internal Organic Law of ratification were globally rejected, though, due to a procedural error by the PP parliamentary Group. They resulted in a so-called “proposición no de ley” (motion, non-binding parliamentary legislative proposal), which had to be accepted by the People’s Party despite its lack of future legal effects on 10 March 1998.

The Spanish Ratification Act of the Treaty of Amsterdam of 17 December 1998² was passed with the practical unanimity of votes from all political parties, except for some abstentions by the Basque ‘nationalist’ MP’s and IU members. It includes a short Preamble and a single substantive article, together with an additional provision accepting the automatic jurisdictional competence of the European Court of Justice vis-à-vis preliminary rulings in the field of judicial and police co-operation in criminal matters.³

The Spanish Parliament has neither officially reacted nor issued any report or motion concerning the introduction of the Protocol on National Parliaments (PNP) in the Amsterdam Treaty. So far, no normative attempt has been materialised to implement the PNP in terms of amendments to the Rules of Procedure of the Parliament or of any of the parliamentary committees. No debates have been held in the Parliament about a possible extension of the scope of parliamentary scrutiny to second or third pillar issues. Hence, the Government already provides the Congress’ committees on External Affairs and Home and Justice Affairs with the EC/EU documents that it considers necessary on a voluntary basis. Some issues related with the Schengen acquis have been dealt with in the framework of the Mixed Committee at its own request.

The PNP does not clearly commit the Government to use the time provided by the Council for informing its national parliament. It therefore remains up to the Cortes and the Spanish Government to negotiate on the content and procedures to be applied, especially with regard to the timing of information supply. In the Spanish case the provision about the six-week-period has been practically implemented after Amsterdam by means of informal arrangements with the Ministry of Foreign Affairs via the Legal Service of the Cortes and its members of the Mixed Committee.

Without any formal request (“solicitud de amparo”) from the Committees to the Bureau of any of the Chambers, the Legal Service of the Cortes established a new system in

1 See Boletín Oficial de las Cortes Generales, Congreso de los Diputados, VI Legislatura, Serie A, Núm. 117-3, pp. 73-76.

2 See Boletín Oficial del Estado, 17 December 1998, p.42266ss.

3 See Elorza Cavengt, 1997a, op.cit.; VV.AA., 1998, op.cit., p. 291.

1997 for the regular and early transmission of information from the Government about all legislative proposals from the European Commission to the parliamentary committees. Though each sectoral Ministry is in charge of the transmission of information related to its field of activity, the Ministry of Foreign Affairs assumes a coordinating role for the information flux to the Parliament. This transmission system (“Seguimiento parlamentario de los Documentos COM (Final)”) has been enacted by the Secretariat of the Mixed Committee and the Documentation Services of the Cortes and allows for a two-month period - presently being reduced to a six-week-period in 1999 - between the date of adoption of the legislative proposal and its receipt and distribution at the Cortes. The clear organisational success of this system, however, does not rely on any particular legal provision, but on the informal arrangements between the Secretariat and the Ministry. It might not be considered as a direct consequence of the Amsterdam Protocol. The ‘fiche’ transmitted to all members of the Chambers includes:

- the list of documents and legislative proposals;
- their dates of adoption by the EU bodies and the dates of receipt at the Cortes;
- the voluntary provision of additional information by the Government on the proposal;
- the number of parliamentary committees to which the document or proposal is sent;
- the legal initiatives to which the proposal or document has given way;
- procedural remarks at EC/EU level; and
- the type of domestic legal provision in which the procedure might end.

This system is updated on a fortnight or monthly basis, depending on the periods of parliamentary activity throughout the year.

Despite the enactment of such an efficient information procedure, its impact on the actual effectiveness of the parliamentary scrutiny of EC/EU legislative proposals has been much more reduced. The relative attention given to these policy areas in the day-to-day activity of parliamentarians remains rather low.

No single provision has been incorporated into Spanish national parliamentary law concerning the recognition of COSAC as a means to contribute to the lack of parliamentary scrutiny in EC/EU affairs on a multilateral basis. In fact, the participation of the Spanish Parliament in COSAC is based on the same provisions enacted in 1994¹ and the informal practice of the bureaus of the Chambers. The PNP provisions on COSAC have not induced any revision of the composition of the Spanish Parliament’s Delegation to COSAC. The composition of the Spanish Parliament’s delegation to COSAC is only ruled by the principle of maximal representativity of the parliamentary groups and is traditionally integrated by the Spokesmen of all parliamentary groups represented

1 See Ley 8/1994, de 19 de mayo, por la que se regula la Comisión Mixta para la Unión Europea (BOE No. 120, of 20 May 1994)

within the Mixed Committee for the European Union. During the last years, the participation of the Spanish Parliament in COSAC has increased both in quantitative and in qualitative terms. The Spanish Parliament has been sending a growing delegation to all COSAC meetings since 1998, whose members have always been recruited within the Mixed Committee for the European Union. The secretariat of the Mixed Committee has also increased its tasks and work for the preparation and active involvement of the Spanish Delegation in COSAC meetings.

While at the present moment there is a major parliamentary process to revise the Standing Orders of the Congress, no discussion has been undertaken in order to revise the working mechanisms of the Mixed Committee for the European Union regarding the frequency of meetings or its specific competencies. Due to the non-legislative nature of the Mixed Committee, any revision could only be initiated by reforming its Constitutive Act. This rigid legal basis for the actual implementation and development of its activities is responsible for the fact that most reforms and changes of the Mixed Committee materialise in an informal way and by means of parliamentary day-to-day activity. To date, no parliamentary group has tabled a proposal for the revision of the working mechanisms of the Mixed Committee. Instead, the 'nationalist' political parties tend to center the debate on the enactment of a new system of representation of regional interests at national parliamentary level.

V. Loose Supervision: National Restrictions Matter

It can be generally stated that the process of negotiation, adoption and enactment of the Treaty of Amsterdam has not directly and to a large extent altered the role of the Spanish Parliament, its Chambers or Parliamentary Committees with regard to the EC/EU decision-making process. It is true that some institutional and procedural changes can be acknowledged in the past years, but mainly due to the increase in the general interest on EU affairs, both within the Spanish public opinion and the political elites. This increased presence of EU-related issues in the Spanish public debate has led to an extended involvement of the Spanish parliamentary institutions in these fields. However, it is questionable whether that reaction derives directly from the political process that has surrounded the Amsterdam Treaty or whether it is rather an indirect consequence of the steps forward in the process of European integration in terms of the increase in policy scope, institutional participation etc.

It is clear that - with the exception of very specific issues, normally related to a domestic politics' dimension - the Amsterdam Treaty has not altered the positions, strategies or basic concepts taken by the national or regional political parties with regard to the EC/EU. The process of European integration remains an area of broad political and social consensus. It is just in the field of political strategies and formal discourse where the 're-nationalisation' of the positions of the People's Party vis-à-vis the European

Union occurs, though without major ideological gaps to the rest of the political spectrum. One example for these 'specific concerns' are the areas related to Home and Judicial affairs, especially immigration, asylum and police co-operation. Hence, these areas are highly relevant in the domestic political arena.

The nature of EC/EU-activities of the Spanish Parliament¹ could be largely categorised as that of loose supervision and monitoring of the Government's action in the EC/EU decision-making process. It is characterised by an increasing support for the deliberate definition of national preferences via reports and resolutions as well as through the transmission of societal requests to the Government via interpellations, oral or written questions. The Spanish Parliament does not play a major role in EC/EU affairs in legislative terms, apart from its participation in the national legislative procedures for the adoption of domestic law. Furthermore, it does not condition the positions defended by the Spanish national delegations at EU level. In general terms, the position of the Spanish Parliament with regard to EC/EU affairs is more reactive and supervisory than proactive and agenda-setting.

However, we also witness a progressive involvement of the Spanish Parliament during the last years. This development has a direct impact on the increase of the number of initiatives, hearings and parliamentary procedures related to EC/EU affairs. However, this increase has a more quantitative than qualitative nature. The procedural changes with regard to the monitoring and participation of parliamentary committees concerning EC/EU proposals and the activity of the Government in EC/EU affairs are results of informal negotiations with little substantial effect. There remains a large difference between the technical levels of the Parliament (Legal Service, Secretariat of parliamentary committees etc.) and the strictly political level of its elected members.

The reasons for this relative lack of parliamentary involvement in EC/EU decision-making are not only to be found in procedural and institutional variables, but also in the widespread social and political consensus with regard to European integration. This broad 'yes' to EU membership does not cause ideological differentiation among the political parties. Other reasons are

- the power structures of the Spanish State, which grants a preponderant role to the Executive in international politics,
- the relative weakness of the parliamentary institutions,
- the perception of political elites that EU affairs have no direct repercussion on the day-to-day activities of the citizen and that they should remain a highly technical domain in politics reserved to specialists;

¹ Carlos Closa defines it as 'relative lack of interest in parallel to a very poor record of both qualitative and quantitative outcomes in its treatment of EU affairs' with regard to the 1986-1994 period, see Closa 1996, op.cit., p.145.

- the Spanish parliamentary culture, which provides for a consensual style of parliamentary practice, and which paradoxically has ended up in reinforcing government majorities against the opposition; and
- the specific nature of the institutional framework for the handling of EC/EU affairs - including the low status of the Mixed Committee for the European Union.

Any attempt to change this situation should start from a revitalisation of the European debate at the parliamentary level as well as from a reinforcement of the Parliament within the constitutional structure of the State. The announced change of the legal nature of the Mixed Committee for the European Union from a non-legislative to a legislative parliamentary committee would probably not result in a further involvement and participation of the Spanish Parliament in EC/EU affairs. Hence, a more effective legislative committee should be created in both Chambers simultaneously. This option seems rather unrealistic if one takes the similarity of the parliamentary committee structure and the Ministerial allocation of competencies within the Government into account. In fact, the non-legislative nature of the Mixed Committee, together with the actual benefits from improvements in the timing and procedures of parliamentary scrutiny might help its members to become parts of a real forum for in-depth discussion and more proactive activities with regard to EC/EU affairs.

The French Parliament and the EU: Progressive Assertion and Strategic Investment

Andrea Szukala and Olivier Rozenberg

I. French Parliamentarism: A Difficult Quest for Accommodation

1. The Political and European Culture in France

From 1960 up to the 1990's French politics have been extraordinarily non-parliamentarian. Since the founding years of the European Economic Community (EEC) coincided with the first years of the Fifth Republic, political elites - parliamentarians as well as bureaucrats and ministers - have been impregnated by the behavioural routines of the 'de Gaullian policy' style. First of all, after the painful experience of national split under Vichy, a leading principle was the preservation of national unity and coherence in policy-making 'à tout prix'. Secondly, the alienation of the general will through party battles and conflicts among social groups needed to be banned from the political arena. France's elites and bureaucrats had a mission to fulfil: the modernisation of society and the furthering of the competitiveness of a nation that was an industrial 'late-comer'. The Marshall plan and the creation of the European Communities have been the unrivalled opportunity to accomplish this difficult task.¹

France's political culture is characterised by the common belief that a strong and independent nation state plays an essential role for the preservation of the 'one and indivisible' Republic.² Lijphart stipulates that France is one of the few West European countries (like Italy, Denmark, the UK and Portugal) where foreign policy is an issue (of medium salience) for party system cleavages.³ With regard to Europe such cleavages are even more salient because they are not only shaped by inherited perceptions about France's rank in the Western World but also by a certain understanding of the role that the state should play in the making and the implementation of public policy decisions. Today these beliefs still explain political cleavages and public attitudes towards European integration to a large extent.¹ And indeed: France is characterised by a unique cross-cut of old party system cleavages such as the traditional division between republi-

1 See Milward, Alan: *The European Rescue of the Nation State*, London: Routledge 1992.

2 See Flynn, George: *Remaking the Hexagon. The New France in the New Europe*, Boulder, Westview 1995.

3 See Lijphart, Arend: *Patterns of Democracy. Government Forms and Performance in Thirty-six countries*, New Haven/Yale: University Press 1999, pp. 79ff., table 5.3.

cans and liberals² and a 'European' cleavage brought about by bitter political choices that profoundly re-orient the ruling state capitalist model.³ The state still remains the French's focus of demands for social protection. The disentanglement of the state from the European level was a main reason for the - occasionally - conflictual adaptation processes during the 1990's.⁴

Hence the impact of the 'Maastricht'-conflict on public opinion and on party-political cleavages remained perceivable until the 1995's Presidential election and the third cohabitation (since May 1997). The entire process from the Maastricht referendum in 1992 up to the conclusion of the Amsterdam Treaty and its ratification in March 1999 reflects a development from refusal to the accommodation with the inevitable. Nevertheless this process was not linear. More than in other member states French public opinion suffers from a kind of 'overload' with regard to the European dimension. Accordingly, conflictual issues tend to provoke eruptive shocks that may alienate a generally positive tendency and hide a basically low interest in European matters. As a result, French public opinion today is at an average with regard to the general support for the European integration process. According to Eurobarometer 53 of April 2000, 49 per cent of the French population think that EU-membership is 'a good thing' for France.⁵ The importance ascribed to 'self governance' and national sovereignty is still high and a prominent feature of French political culture, but it is not as far reaching and as strongly attached to the idea of parliamentary sovereignty as in Great Britain. In the eyes of French citizens parliament and parties represent a source of political legitimacy among others, namely the direct expression of the political will through referenda.⁶

2. The French Party System and the European Issue

The French party system has become more and more complex during the last twenty years. Of course the multiplication of political parties does not primarily result from the

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- 1 See Dupoirier, Elisabeth/ Grunberg, Gerard: 'La Déchirure Sociale', in: *Pouvoirs* 73, avril 1995, pp. 143-157.
 - 2 See Rémond, René: *Les droites en France*, Paris, Aubier Montaigne, 1982. See for a more general account: Marks, Gary/ Wilson, Carole J.: 'The Past and the Present: A Cleavage Theory of Party Response to European Integration', in: *British Journal of Political Science*, Vol. 30, 2000, pp. 433-459.
 - 3 See Hooghe, Liesbet/ Woolcock, Stephen: 'Atlantic Capitalism versus Rhine Capitalism in the European Community', in: *West European Politics*, No. 3/1993, pp. 329-344. See also Wilks, Stephen: 'Regulatory Compliance and Capitalist Diversity in Europe', in: *Journal of European Public Policy*, No. 4/1996, pp. 536-559.
 - 4 See Szukala, Andrea: 'Die Öffnung der politischen Entscheidungsprozesse in Frankreich: Ein Umbau des Staates in europäischer Absicht?', in: *Deutsch-Französisches Institut (ed.): Frankreich-Jahrbuch 1999*, Opladen: Leske 1999, pp. 145-159.
 - 5 See Eurobarometer 53, April-May 2000.
 - 6 See Schmidt, Vivien: 'Discourse and (Dis)Integration in Europe: The Cases of France, Germany, and Great Britain', in: *Daedalus*, No. 3/1997, pp. 167-198.

European challenge. But political parties' attitudes towards European integration have also become more complex. Today the French conservatives - except from the extreme right which is deeply opposed to Europe - are divided into four factions. Choosing to present a separate list for the 1999 European elections, the centrist wing UDF (Union Pour la Démocratie Française, created by the former President Valéry Giscard d'Estaing) positions itself as euro-enthusiastic. DL (Démocratie libérale), the 'liberal party' in the French sense of the term, is favourable to European integration but very opposed to the development of a 'European State'. The gaullist RPR (Rassemblement Pour la République) has always been deeply divided on European questions, as proved by the various shifts of President Chirac during his career. The European conflicts within RPR became uncontrollable after Chirac's election to the presidency in 1995 when he decided to follow the former President Mitterrand's European orientations. The 'souverainistes' - so-called in reference to the partisans of the autonomy of Quebec - chose to break up with the RPR during the 1999 European elections and created their own party, the RPF (Charles Pasqua's Rassemblement pour la France). Thus, the French right is severely disoriented and unable to deal coherently with European challenges. Solely a voter-oriented perspective permits the preservation of some kind of common bottom line, namely with regard to the important rural interests. But when it came to a parliamentary vote on another core issue - the entry into stage three of EMU¹ -, Gaullists appeared once again unable to keep up a partisan cohesion adequate to the problem at stake: by obeying their party leader Séguin, MP's from the RPR risked to categorically refuse the passage to the third stage. The intervention of President Chirac prevented the worst.

Left political parties are less perturbed by European issues. The PS (Parti Socialiste) can be seen as largely pro-integrationist. But even if key members of the actual Jospin government have solid European convictions (e.g. E. Guigou, H. Védrine), the post-1997 socialist governmental policy differs from the 'old' approach: Whereas Mitterrand's European policy was characterised by a functionalism combined with a great deal of voluntarism and symbolism², the new approach reveals to be more pragmatic in terms of interest formulation vis-à-vis other European governments. L. Jospin's conditions to the achievement of EMU during the 1997 election campaign, the concept of a 'federation of nation states'³ as well as the Amsterdam-TEU ratification law⁴ that conditions the further development of the EU's institutional system on the fulfilment of certain French demands elucidate a shift of political mentalities within the French left and

1 See National Assembly, 24 April 1998.

2 See La Serre, Françoise de: 'La politique européenne de François Mitterrand: innovante ou réactive?', in: Cohen, Samy (ed.): Mitterrand et la sortie de la guerre froide, Paris, PUF, 1998, pp. 109-125, pp. 112ff.

3 See Parti Socialiste, Secrétariat National: 'Mondialisation, Europe, France', Texte d'orientation adopté par le Conseil National le 30/31 Mars 1996, p. 58.

4 Loi No. 99-229 du 23 mars 1999.

within the French political class in general. A new European rhetoric is gaining ground, underlining no longer that Europe is a challenge for the French nation (like during the Mitterrand years), but that the importance of a genuine French contribution to the European project is growing: “Exporting the French model can, in the French’s government’s (and President’s) view, provide the basis of a new European synthesis markedly less favourable to the neo-liberal, free market solutions en vogue since the mid 1980’s.”¹ Therefore, Jospin tries to convince his European partners and public opinion of a political reorientation of the EU concentrating on social and employment concerns. Inevitably, the very heterogeneous PS still has great capacities for the articulation of resistance against the process of European integration within the left wing ‘courants’ (factions). The communist party, the Greens, and the left wing of the PS are not satisfied with the perceived ‘ultraliberal’ orientation of the EU either. But the predominant position of social democrats within the governing coalition makes sure that the largely pro-European orientation of the current ‘gauche plurielle’-cabinet does not really suffer from those critics.

Finally the majority of the left as well as the majority of the right are - on a more or less enthusiastic mood - favourable to the pursuit of the European integration process. Except for some attempts to bring euro-sceptics from both sides of the political landscape together they remain deeply divided: between a right concerned about sovereignty and the preservation of the ‘one and indivisible republic’, and a left worried about social consequences of the EU and the neo-liberal ‘pensée unique internationale’.

Table 15: European Orientation of French Parties and Results from the 1999 EP Elections

	PC	PS	Green	UDF	RPR/DL	RPF	Extreme right	Hunting party
Euro-enthusiasm	-	++	+	++	+-	--	--	--
European elections ¹	6,8 %	22 %	9,7 %	9,3 %	12,8 %	13 %	9 %	6,8 %

Authors’s own compilation. Data based on idea.int.

3. The French Political System

The classification of the French political system is problematic due to the originality of the institutional model of the Fifth Republic. The duality of the two heads of the executive constitutes a specific feature, because the respective influence of the President and of the Prime Minister depends on the conformity of the parliamentary majority with the Presidential one. Therefore the Ljiphardian classification of democracies has to be

1 Cole, Alistair/Drake, Helen: ‘The Europeanisation of the French polity’, in: Journal of European Public Policy, No. 1/2000, pp. 26-43, p. 34.

slightly modified in the case of France.² His underlying argument that stipulates a causal link between vertical and horizontal power distribution within a political system and a typical decision-making style is not unambiguous. The case is quite clear with regard to the degree of hierarchical distribution of power, since France - despite all decentralisation efforts - surely still counts among the most vertically integrated countries in Europe.³ But unlike a traditional majoritarian system the concentration of executive power (one party government with cabinet dominance)⁴ is not an invariable factor, since there is a paradoxical French share of competencies between the Prime Minister and the President⁵ that may actually lead to quite different configurations and a structural division of executive power.

Although the National Assembly as well as the Senate are more talking than working parliaments⁶, in political terms they can be classified as “loyal workhouses but poor watchdogs”⁷. Indeed the basic pattern of the French Fifth Republic’s ‘parliamentarisme rationnalisé’ is not very conducive to an effectiveness in the exercise of the functions of control, legislation and interest aggregation. Legislative functions are delegated competencies, the Parliament has no organisational autonomy and the Government disposes of a set of strong instruments to overrule a disobedient Assembly (e.g. ‘Vote bloqué’, ‘Question de confiance’). The President can dissolve the National Assembly. In case of conformity between the political colour of the President and the parliamentary majority, the National Assembly is largely deprived of the choice of the Prime Minister. In case of ‘cohabitation’ the latter tends to appropriate a part of the political supremacy of the President for himself.

Even if the French institutional model has been analysed as strongly limiting parliamentary prerogatives, the various instruments of the ‘parlementarisme rationnalisé’ and the scrutiny mode have also contributed to the strengthening of the cohesion of the parliamentary majority, be it in favour of the whole executive or in favour of the Government in case of cohabitation.⁸ Finally France’s deputies have quite stable “electoral connec-

1 European elections of the 13 June 1999. This ‘second order’ election explains the dispersion of the votes in favour of non governmental parties.

2 See Lijphart, Arend, 1999, op.cit., p. 190.

3 Ibid.; but see processes of change due to European integration: Balme, Richard/Jouve, Bernard: ‘Building the Regional State: Europe and Territorial Organization in France’, in: Hooghe, Lisbeth (ed.): Cohesion Policy and European Integration: Building Multi-Level-Governance, Oxford, OUP, pp. 219-255.

4 See Lijphart, Arend, 1999, op.cit., pp. 10ff.

5 Above all in foreign and European policy-making, see Articles 5, 15, 20, 21, 52 of the French Constitution.

6 See Steffani, Winfried (ed.): Parlamentarismus ohne Transparenz, Opladen: Westdeutscher Verlag 1971.

7 Frears, John: ‘The French Parliament: loyal workhouse, poor watchdog’, in: West European Politics, No. 3/1990, pp. 32-51.

8 See Huber, John D.: Rationalizing Parliament, Legislative institutions and party politics in France, Cambridge: Cambridge University Press 1996.

tions”¹, since the electoral system creates a strong link between MP’s and their constituencies. This close relationship constitutes one of the major reasons for the deputies to demand more competencies as to the control and the making of European politics in France.

4. French European Policy-Making

The core element of French European policy-making is the strong proclivity to an executive dominated style when it comes to political intercourses with the ‘exterior’.² The anxiety to preserve a homogenous image of the ‘national interest’ and sovereignty towards the outside stands in the center of a quite ‘Rousseauian’ concept of interest representation. That is why the competence-share between the Prime Minister and the President always attracts a lot of foreign policy analysts. But today more and more students of French foreign policy tend to recognise that the political and academic perception of the President’s role in European politics was not free from intentionalism.³ Indeed the reality of genuine European policy-making in the 1990’s was not as strongly affected by cohabitation as some may have stipulated: in ‘high politics’ a very firm sense of solidarity regarding the preservation of France’s rank and influence on its European partners helps to surmount the potential cleavages between the Prime Minister and the President in almost any situation.⁴ Due to the changing character of European day-to-day-politics the President’s policy-making functions are constantly diminishing. The relative insufficiency of the Elysée’s information tools and the President’s isolation from the interfaces of ministerial co-ordination - the SGG and the SGCI⁵ - have contributed to the strengthening of the Prime Minister’s role in European affairs for the last fifteen years. The central role played by the SGCI in the institutional framework in European decision-making also stands for the traditional administrative centralism of the French bureaucracy.⁶

1 Mayhew, David R.: *Congress: The electoral connection*, London: Yale University Press 1974.

2 The following analysis is based on: Szukala, Andrea: ‘The European Transformation of the French Model’, in: Maurer, Andreas/Wessels, Wolfgang/Mittag, Jürgen (eds.): *Fifteen Into One. The European Union and the Member states*, Manchester: MUP 2001.

3 See Kessler, Marie-Christine: *La politique étrangère de la France. Acteurs et processus*, Paris: Presses de Sciences Po 1999, p. 193.

4 Any of the three difficult European negotiations during the three cohabitation periods (1986-88 SEA, 1993-1995 GATT, 1997 Stability Pact) has been achieved in a consensual mode. See as well Massot, Jean: *Alternance et Cohabitation sous la Vième République*, Paris, La Documentation Française, 1997.

5 The general secretary of government (SGG) is in charge of the co-ordination of the Government, especially for the dispatching of information. Under the supervision of the Prime Minister, the SGCI (Sécrétariat général du Comité interministériel pour les questions de coopérations économiques européennes) provides the ministerial co-ordination for European affairs.

6 See Lequesne, Christian: *Paris - Bruxelles. Comment se fait la politique européenne en France ?*, Paris: Presses de Sciences Po 1993.

5. *The Pioneers of Parliamentary Intervention in European Policy-Making*

During the first decades of the Fifth Republic, the Parliament paid very limited attention to European integration. The progressive awakening of the two assemblies is undoubtedly due to the fear of losing prerogatives. The unfavourable situation of the legislative power has contributed to make MP's sensible to that issue. The first direct elections of the European Parliament (EP) in 1979, the Single Market Program and above all the progressive recognition of the superiority of EC legislation by the Council of State (Conseil d'Etat) and the Constitutional Council had fostered the awareness of deputies and senators. The first functional organ that monitors French European policy-making at the parliamentary level, the Delegation for European Affairs, was created very early by the Senate in 1973; the National Assembly came next in 1979.¹ As the number of permanent committees is constitutionally unchangeable and as the existing committees had not been very open to make use of the expertise provided by those new 'Délégations pour les Communautés Européennes' (18 members/Chamber), their performance had been more or less a failure. They had no relevant competencies and were permanently overlooked by governments, which felt absolutely unbounded in their diplomatic practice of 'foreign policy' -making in Brussels.

At the beginning of the 1990's, the parliamentary elite progressively awakened. Obsessed by Jacques Delors' assertion that 'in the future, eighty percent of the legislation will come from the EC', they felt that a growing part of parliamentary work was explicitly induced from the 'above', i.e. the EC. A first step consisted in a rudimentary reform of the Delegations' general role to inform parliament on European matters: in 1990 membership of the Delegation for European Affairs doubled, governmental information policy became more systematic and the ministers for European Affairs gained an informed parliamentary forum to present governmental policy via the organisation of periodic auditions.² But the real break-through occurred in the context of the constitutional reform, on which the final ratification of the Maastricht Treaty was conditional. The preceding decision of the Constitutional Council³ had stated non-conformity with the Constitution because certain treaty provisions such as the formulation of a common visa-policy affected 'the essential conditions for the exercise of national sovereignty'. This ruling brought the two Chambers of Parliament into a veto-position, that they - above all the Senate - used in a proficient way and against the Government's initial dispositions.⁴ As a result there emerged an extension of Parliament's power to call into question the constitutional conformity of ratification laws and a revised system of par-

1 Loi No. 79-564, 1979.

2 Loi No. 90-385, 1990.

3 Decision du Conseil Constitutionnel No. 92-308 du 9 avril 1992.

4 Loi ordinaire No. 92-554, 1992.

liamentary screening and controlling of European secondary law-making, which is based on 'the 88-4', a new article in the French Constitution.

II. The Practice and Evaluation of Parliamentary Involvement in EU Affairs

1. A Bounded and Complex Procedure

The 1992's article 88-4 dispositions for the first time provide the Parliament with the constitutional right to be informed, to scrutinise, and to intervene - via the tabling of parliamentary resolutions - with the conduct of French European Community policy.¹ These 'resolutions' allow the two Chambers to give to the Government their views about EC draft acts.

Normally a proposal for an act is communicated by the European Commission to the Permanent Representation of France to the European Union, which transmits it by fax to the SGCI. Before the proposal is officially forwarded to the assemblies, a special kind of pre-selection has to be accomplished. Up to 1999 the Parliament was only allowed to adopt resolutions on 'legislative' proposals in terms of the French Constitution. The Council of State (Conseil d'État) decides on the legislative quality of EC acts. The Council thus plays a core role for determining the chances of the Parliament to get fully involved into the EC legislative process.²

The evaluation of the Council of State is also fundamental in the sense that the legislative or regulative nature of a proposal may prefigure the parliamentary or administrative way of future transposition measures into national law. That is why today the reports of the Conseil d'Etat on the legislative or simply regulative quality of a proposal have to be published.³ The Council has seven days to provide its analysis. In case of emergency, this delay can be abridged up to three days or even to twenty-four hours. When receiving the note of the Council of State, the SGG sends those EC draft proposals, which are of legislative nature - and therefore demand an involvement of Parliament - to the Presidents of the two assemblies supplemented by the report of the Council of State. The draft proposals are notified and published as parliamentary documents and mentioned in French Official Journal. The SGCI also sends the proposals that are 'non-legislative' to the Delegations of the two assemblies - be they regulative or 'without object'.

1 See Rizzuto, Franco: 'The French Parliament and the EU: Loosening the Constitutional Straitjacket', in: Norton, Philip (ed.): *National Parliaments and the European Union*, London, Cass, pp. 46-59.

2 See Aguila, Yann: 'Le rôle du Conseil d'Etat', in : Roussillon, Henri (ed.): *L'article 88-4 de la Constitution française: le rôle du parlement dans l'élaboration de la norme européenne*, Toulouse, Presse de l'Université des Sciences Sociales de Toulouse, 1995, pp. 161-171.

3 See letter from the Prime Minister to President of Assembly's Delegation, 10 July 1995, in *Assemblée Nationale, L'Assemblée Nationale et l'Union Européenne*, Paris, pp. 121ff.

Table 16: The Legislative Impact of EU Proposals and the Rulings of the Conseil d'Etat

		1993	1994	1995	1996	1997	1998
1 st Pillar	Total	542	483	488	439	357	316
	Legislative	179	172	213	192	214	177
2 nd Pillar	Total	0	0	0	3	0	0
	Legislative	0	0	0	1	0	0
3 rd Pillar	Total	0	0	0	95	90	80
	Legislative	0	0	0	44	52	50
Schengen	Total	0	0	0	14	42	17
	Legislative	0	0	0	4	1	0

Source: Sauron, Jean-Luc, 'Le contrôle parlementaire de l'activité gouvernementale en matière de droit communautaire en France', *Revue trimestrielle de Droit européen*, No. 2, avril-juin 1999, p. 179.

Theoretically, any MP can table a proposal for a resolution. Given the large number of legislative proposals, the assemblies had to find a way to cope with the risk of a 'European overload'. A modification in the National Assembly's standing orders (RAN) in 1994 underlined the eminent function of the parliamentary Delegation in this context.¹ The National Assembly's Delegation examines all texts that have been transmitted by the SGG. In most cases, the Delegation concludes that it is not necessary to continue the parliamentary scrutiny procedure. The same is true for the Senate, but here the President of the Delegation transmits a written comment to the members of the Delegation for the less important proposals.

For the more important drafts both Delegations can draw proposals of resolutions. The Delegations may also express their opinion in a more informal way, by adopting 'conclusions' or by sending a written note to the minister in charge of the draft proposal. When there is agenda pressure - which is quite often the case - the first Chamber's Delegation may nominate instantly an own 'rapporteur d'information', who is competent to submit an immediate proposal for a resolution. Two thirds of the resolutions tabled at the National Assembly have this origin.¹

The analysis of the Delegation, with or without recommendations, or the information report of the Delegation whose recommendations may be made in the form of a motion for a resolution, are transmitted to one of the six permanent committees. Indeed, any proposal has to pass through a permanent committee to come into force.

The scrutiny of European proposals by the permanent committees constitutes the major transformation introduced by the 88-4 procedure. Before 1992 the permanent committees had not been involved into the European decision-making process because they did not examine European texts prior to their transposition into national law. As one Euro-

1 See Assemblée Nationale: *Le Nouveau Règlement de l'Assemblée Nationale*, Paris 1994. The evolution had been different at the Senate's Delegation but the new Senate's 1999 standing orders gave it the right to review all proposals, too.

pean proposal may provoke several parliamentary initiatives, they are pooled at the level of the Commission concerned. If members of other committees or if the Delegations want to intervene at this stage, they must address the Committee in charge of the draft proposal. At the National Assembly a Commission has one month to examine the proposals for resolutions if the motion was tabled by a rapporteur from the Delegation.

The Committee's draft resolution is considered effective if the Government and the Presidents of commissions, Delegations and political groups do not call for a further inscription at the agenda for a session.² If the motion is set down on the agenda, it is debated in public sitting before being voted upon. The debate on the floor has the advantage to give to the adoption of a resolution a more solemn feature, to implicate a larger number of MP's and to lead the Government to express its official position on a European issue. During the tenth legislature (1993-1997), 33 resolutions, that is to say nearly half of the resolutions, had been debated on the floor. The situation has changed since 1997: no more than seven resolutions have been debated on the floor and all the resolutions have been approved with no debate since June 1999. The SGCI always has to be informed at an earlier stage, immediately when it comes to the tabling of a resolution.

2. A Complete Examination of EC Documents by the Delegations for European Affairs

The Parliament's scrutiny system is based on the European Affairs Delegation as the major pillar. Often described as the 'European watchtowers' of the assemblies³, they play an important role, as they are supposed to select the proposals which are judged to be politically significant. The Delegations are composed of 36 members proportionally representing the political groups and permanent committees. Although the Delegations' members have adopted a quite consensual working-style, the cleavage between euro-sceptics and euro-enthusiasts should not be neglected. The majorities of the Senate's Delegation do not vary a bit and an important number of the - mostly center right - senators are favourable to European integration. At the National Assembly the majority is more fluctuating and the Delegation has rallied some influent right-wing anti-European MP's during the 1990's. Within Parliament the reputation of the Delegations has progressively improved. They meet about three times a month at the Senate and once a month at the National Assembly. The meetings last about two hours.⁴

1 During the 1998-99 session, the National Assembly Delegation has registered 31 reports. Bulletin de l'Assemblée Nationale, Statistiques, 1998-1999.

2 The delay is eight days at the Plenary Assembly and ten days at the Senate.

3 See 'La délégation, vigie européenne de l'Assemblée', Assemblée Nationale, L'Assemblée Nationale et l'Union Européenne, Paris, 1998, p. 73.

4 The National Assembly Delegation met 34 times during the session 1998-99 which represents 65 hours. Bulletin de l'Assemblée Nationale, Statistiques, 1998-1999.

In general, about a dozen MP's are present. Both Delegations are supported by an important administrative staff: About fifteen civil servants at the European affairs service of the National Assembly and nine at the Senate. The Delegations perform frequent hearings of personalities and particularly of the minister for European affairs. During the tenth legislature (1993-1997), 45 auditions of members of the Government have been realised.¹ Representatives of the European institutions and various personalities are also heard. In total, about twenty persons are auditioned each year.² The minutes of those meetings as well as the other activities of the Delegation are published as written reports and put on the internet. Note that the Internet site of the National Assembly and of the Senate grant an important room to European affairs.

Two committees examine most of the proposals of resolutions.³ During the tenth legislature (1993-1997), 74 resolutions were adopted by the National Assembly - the Committee for Production and Exchange examined 32 proposals while the Committee for Economic Affairs and the Plan examined 24 proposals. European affairs can also be raised at a floor session. But MP's hardly put questions to the Government about Europe during question time. Specific Floor sessions dedicated to European questions have been tested in 1994 and in 2000 but it seems that the parliamentary opposition tends to talk more about 'national' affairs. Public debates about French European policy including governmental general declarations seem to be a more efficient way to evoke EU-related issues. Even if it is the Government that tables those debates and even if the debates are purely formal, the proceedings make a larger number of MP's participate in the examination of European matters. The debates are also a rare opportunity for the Government to publicly present its opinion about European issues, especially before European Council meetings. Thus, public debates on 'Europe' at the National Assembly have increased from five (1984-1990) to 15 (1991-1997).⁴ This development testifies the changing political mentalities and the strengthening of the link between Parliament and the Government in European policy-making.

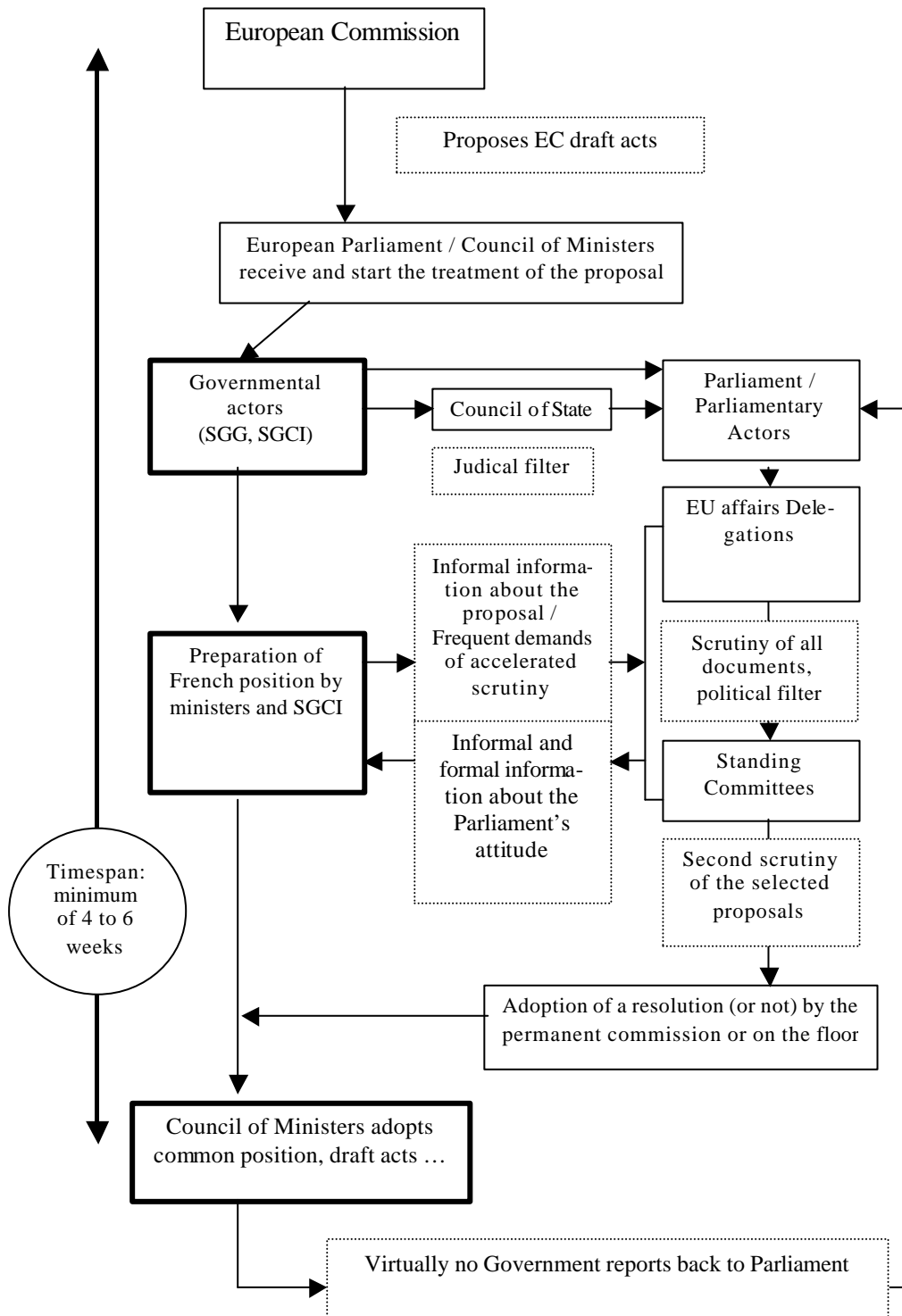
1 See Assemblée Nationale, 1998, *op.cit.*, pp. 82-84.

2 Fifteen persons have been heard by the National Assembly Delegation during the session 1998-99, seven of them were members of the Government. Bulletin de l'Assemblée Nationale, Statistiques, 1998-1999.

3 See Nuttens, Jean-Dominique/Sicard, François: *Assemblées parlementaires et organisation européennes*, Paris: La Documentation française 2000, pp. 68-69.

4 Bulletin de l'Assemblée Nationale, Statistiques 1984-1997.

Figure 8: The Process of Parliamentary Scrutiny in EC/EU Affairs in France



3. The Nature of Parliamentary Scrutiny

The Delegation of the National Assembly scrutinises European proposals on the basis of the following criteria¹:

- legal basis of a draft proposal, voting procedures at the Council, involvement of EP,
- date of transmission to the Council/date of reception at the Parliament's presidency,
- reasons for EU activity (respect of the subsidiary principle)/subject matter/content,
- national legislation engendered,
- French and other member states positions,
- Agenda in the Council of Ministers.

The parliamentarians made a regular but not excessive use of the new instrument as the following statistics show. On average, five to ten per cent of the proposals transmitted are subject to a resolution.

Table 17: The Parliamentary Resolutions in France (1993-99)

	1993	1994	1995	1996	1997	1998	1999
Proposals transmitted to the Assemblies	143	171	206	201	231	206	181
Resolutions adopted by the National Assembly	11	23	18	18	12	12	13
Resolutions adopted by the Senate	7	13	9	13	3	9	12

Source: Nuttens, Jean-Dominique/Sicard, François, *Assemblées parlementaires et organisation européennes*, Paris, La Documentation française, 2000, p 73.

In a recent study², two Senate civil servants, Jean-Dominique Nuttens and François Sicard, have established a synthetic presentation of the content of the resolutions. Institutional questions are at the center of the assemblies' interests, because MP's are strongly attached to the respect of member states prerogatives. Thus, the Delegation of the National Assembly systematically analyses the legal basis of a European proposal. One of the most important criteria for parliamentary evaluation of a proposal at the Senate is the subsidiarity principle.³ In a sectoral perspective the parliamentary interest for European matters affects agriculture, trade issues, budgetary questions and proposals related to public utilities. The preservation of the Common Agricultural Policy (CAP) and of the Community preference are the major characteristics of the resolutions regarding agriculture. Nuttens and Sicard indicate that about one third of the resolutions from

1 See Assemblée Nationale, 1998, op.cit., pp. 124-125.

2 See *Assemblées parlementaires et organisation européennes*, Paris, La Documentation française, 2000, pp. 73-83.

3 See Senate Civil Servant, Interview 4, 2 October 1998.

1993 to 1999 have been related to agriculture. The preservation of France's interests in international trade - namely in the agricultural and cultural sector and vis-à-vis the United States - is another important issue. During the economic crisis in the middle of the 1990's, the two assemblies have been very keen on restrictions to the European Communities' budget. The frauds related to EC subventions have been periodically denounced. MP's also have expressed concerns about the development of competition policy in various strategic fields, such as the energy and communication sector. The special interest of France regarding the preservation of certain monopolies and public utilities ('Service public') against European competition policy as well as regarding the social consequences of the progression of de-regulative policies in the Single Market have been constantly stressed.

The parliamentary matters of interest reflect both concrete electoral concerns - for instance in agriculture - and a specific way of apprehending Europe through 'national lenses'. Thus, the interest for public utilities and international trade is related to the conception of European integration as an answer to the perceived 'danger' of globalisation. In the public debate, the European construction is generally justified as a protection against various global threats that could affect France's social and economic health and lead to the dilution of French culture. Reflecting this national perception parliamentary resolutions turn out to be ambiguous regarding the support for European integration: Europe is both considered as a symptom and a possible remedy against the nasty consequences of major world-wide evolutions.

4. The Extent of Parliamentary Scrutiny, the Delays and the Access to Information

The interpretation of article 88-4 had at first been quite restrictive. The right to adopt resolutions initially concerned solely EC proposals of a 'legislative' quality according to the analysis of the Council of State. Second and Third Pillar policies, Inter-Institutional agreements and European Commission communications were excluded from that definition. However, there was a great readiness of Parliament to step into fields outside the EC-framework and therefore to violate the boundaries of article 88-4, e.g. when potential additional EU/EC competencies appeared in the Commission's Green or White papers or when 'Agenda 2000' was published in 1997. Important EC decisions may not have touched the legislative domain at all while being very incendiary in political terms, e.g. the decisions on prices and the market organisation in CAP. French governments progressively decided to widen the field of examination of the Parliament during the 1990's. Since the adoption in 1994 of a new law modifying the 'Loi Josselin' of 1990¹, the Government had to provide the Chambers with all documents concerning the EU including the Second (Common Foreign and Security Policy) and the Third Pillars (Jus-

tice and Home Affairs). However, the transmission had only an informative value. In a letter to the President of the Assembly's Delegation in 1995² Prime Minister Alain Juppé indicated that all legislative proposals - including the Second and Third Pillars - would be transmitted to both houses of Parliament. The latter were not allowed to table resolutions on EC proposals but they could adopt 'conclusions'.

At the beginning of the 1990's the delays for the parliamentary examination of European proposals have been too short. Some proposals had even been adopted by the Council before their transmission to the French Parliament. Nevertheless, the situation has progressively improved. The average delay of examination by the Council of State has been reduced from nine days in 1993 to six days in 1998. In 1999 one quarter of the European proposals were analysed within three days.³ The two Chambers now estimate that they receive European legislative proposals in due time. As concerns the time left for the examination, a major reform has been introduced by a 'circulaire' of the Prime Minister in 1994⁴: This letter outlines that the Chambers shall have one month to let the Government know if they want to adopt a resolution on a proposal. During that time the Government is obliged to evoke a parliamentary scrutiny reserve in the Council. The follow-up at the Brussels-level is two-fold:

- If the Council intends to put the subject matter on its agenda in less than fourteen days (before the meeting of the Council), the SGCI instructs the Permanent Representation to intervene and to declare a 'parliamentary scrutiny reserve'.
- If the Council intends to put the subject matter on its agenda in more than fourteen days, the SGCI instructs the Permanent Representation to ask for a postponement of the vote until a 'prise de position du Parlement français'.

Hence, the parliamentary reserves are implemented in a relatively informal way. The minister indicates at the beginning of a Council meeting if the Parliament has finished its scrutiny process. The introduction of this procedure has contributed to resolve the problems of time lag. Further, at the national level, the French Government can always make use of the procedure of accelerated examination at the Parliament. Theoretically the competent minister has to declare the official reasons for this demand but the procedure is often handled in an informal way, too. In practice rapid examinations are very frequent. Until today the Parliament has complied with each governmental demand for an accelerated examination. The Delegations have recently pointed to the abuse of such procedure, and the Government has committed itself to be more careful. However, the problems of delay do not always have a governmental origin. They can also be caused

1 Loi No. 94-476, 1994.

2 See Letter from the Prime Minister to President of Assembly's Delegation, 10 July 1995, in: Assemblée Nationale, L'Assemblée Nationale et l'Union Européenne, Paris, 1998, pp. 166-170.

3 See Conseil d'Etat, Rapport public 1999, Paris, La Documentation française, pp. 136-137.

4 Circulaire du Premier ministre du 19 juillet 1994 sur la prise en compte de la position du Parlement français dans l'élaboration des actes communautaires. The new circulaire (circulaire du 13 décembre 1999) confirms these dispositions.

by problems of transmission between the EC institutions and France. When the European Commission produces temporary documents on delicate issues, the Council occasionally begins to work on those documents without any transmission to the Parliament of France. Last but not least, the Parliament itself is often responsible for the problems of delay: The two-fold system of scrutiny by the Delegation and then by a permanent committee does not favour a quick examination of European proposals. A clear political bias emerges when the French Government makes clear to the assemblies that it would be tactless to evoke the parliamentary scrutiny reserve during the French Presidency of the Council or on strategic texts, e.g. trade agreements, when France's protectionist reputation is at stake. At first sight, the Chambers seem to have a complete access to information. On the basis of the 'Loi Josselin', the Parliament receives all the texts produced by European institutions.

Table 18: EU Documents Transferred on the Basis of the Loi Josselin

	First Pillar	Second Pillar	Third Pillar	Total
1993	994	0	0	994
1994	1038	0	141	1179
1995	1060	2	985	2045
1996	1221	77	1445	2743
1997	1136	78	1019	2233
1998	1144	145	926	2215

Source : Sauron, 1999, op.cit. p. 200.

Despite the elevated number of documents transferred to the Parliament its main problem is to gather information. A National Assembly civil servant, Christophe Lescot¹, points to the governmental reserve to deliver strategic information. This attitude, which is characteristic for the dominant position of the executive, affects many types of documents, for instance diplomatic telegrams and Council's working group agendas. Only the Council's agenda is transferred by the French Government, so that two thirds of the decision-making, the 'A-points' decided at the COREPER-level, pass rather unnoticed.² Contrary to the British procedure, the Government does not transmit explanatory memoranda that could help the Assemblies to early seize the relevant issues at stake and to question the official governmental position. According to the legal provisions the Parliament should be informed of the evolution of the bargaining in Brussels but this information is not systematically given. The more delicate a project is, the more difficult it is to obtain written information. Thus, the former President of the National Assembly Delegation had asked for the systematic transmission of the ministerial analysis

1 See Lescot, Christophe: 'Les interactions entre le Gouvernement et le Parlement dans le processus de décision communautaire', juin 2000, p. 8.

2 See National Assembly Civil Servant, Interview 1, 30 September 1998.

and of the reports of the Council and of the COREPER to the Parliament.¹ However, beyond the lack of important texts, it is in practice impossible for the two Delegations to cope with the massive inflow of European documents. The Chambers remain dependent on governmental information if they want to qualify a proposal. Which projects are significant? Who is at the origin of a proposal? What is France's position? Is the Government isolated in the Council? Only the national Government is competent to give answers to those questions. Regular informal contacts between the sectoral specialists of the European affairs service of the two Chambers and their counterparts at the Permanent Representation of France to the European Union at Brussels or at the SGCI in Paris seem to be the dominant way of parliamentary information gathering.² Thus, the access to information may be judged as informal and efficient as well as sporadic, uncertain and therefore not always exhaustive. The quality of the delivered information depends on personal relationships, past practices and the political rank of the questioner, a MP being better treated than a civil servant.

5. Parliamentary Involvement without Implications ?

The problems of timing and of access to information have not been fully solved but the situation has improved. Given the feeble equipment, of which the assemblies dispose in most of the 'internal' policy-making domains, the resolutions are comparatively strong instruments. Despite 'motions of no confidence', resolutions are the only parliamentary instrument that allow a relatively spontaneous intervention of Parliament into current executive decision-making.³ In 1995, a constitutional reform⁴ improved the opportunities of the Parliament to fulfil its role as a 'European' actor by extending the session period, and by loosening the governmental monopoly on the parliamentary agenda. The Government paid high attention on the implementation and effectiveness of the parliamentary examination of European projects. Consequently the Government has never opposed the tabling of a draft resolution on the parliamentary agenda.

However, the resolutions have no compulsory effect.⁵ The Prime Minister in several 'circulaires' has pointed out to his ministers that a negotiation in Brussels is inconceivable without taking into consideration the positions of the Parliament⁶. Nevertheless, the

1 See Nallet, Henri: 'Le rôle du Parlement national dans la définition des positions françaises. Le Parlement: quelle influence?', in: ENA Mensuel, No. 2/1998, p. 32.

2 See National Assembly Civil Servant, Interview 2, 30 September 1998 and Senate Civil Servant, Interview, 27 October 2000.

3 There was only one vote of no confidence on governmental European policy after Maastricht concerning the reform of CAP: Journal Officiel, Assemblée Nationale/Débats, séance du 1 juin 1992, pp. 1741-1763.

4 Loi Constitutionnelle No. 95-880.

5 Conseil Constitutionnel, décision No. 92-314 DC du 17 décembre 1992.

6 Circulaire du 13 décembre 1999 relative à l'application de l'Article 88-4 de la Constitution, Journal Officiel, 17 décembre 1999.

latter is hardly ever informed by the Government of the follow-up of the resolutions. Only in some cases an explicative note has been transmitted to the Parliament. It is quite difficult to evaluate the implications of the resolutions because in most cases the positions of MP's and of the Government are not divergent. The majorities of the National Assembly and of the Senate tend to support the President's and the Government's European policy if they belong to the same coalition. Furthermore, the tabling of resolutions is not an arm that the opposition exploits to undermine governmental business in Brussels. However, the Parliament does not only legitimate the European decision-making. Some analysts have observed an ideological-instrumental division of labour between parliament and the executive, 'that offered new political levers to both, whether on the domestic or on the international stage'¹, and provided an opportunity to contain the forceful right-wing anti-European faction by granting a parliamentary arena.

The proximity between the Parliament and the Executive power does not constitute the only explanation of the unsatisfactory follow-up of the resolutions. The follow-up of European draft proposals necessitates a considerable amount of work and a deep understanding of the EU mechanisms. This is hardly ever profitable in electoral terms. Apart from specific policy fields such as agriculture, the electoral impact of parliamentary involvement in European projects is not obvious. MP's political willingness to step into European scrutiny also depends on the internal discipline of the majority and of their conception of their political career. A majority MP may or may not want to be in a delicate position vis-à-vis the Government when defending a controversial resolution. During the tenth legislature, the tandem between two euro-sceptic MP's, the National Assembly's President Philippe Séguin and the Delegation's President Robert Pandraud, turned out to be efficient. Since 1997, the left Government has avoided public votes about resolutions given the fragmentation of the parliamentary majority and its division about Europe. It preferred to organise floor sessions, public debates without vote, and therefore adopted a low profile in European policy-making. This strategy differed from its attitude towards WTO-Policies, e.g. about the genetically modified organisms, when parliament was largely implicated into the debate. Further, the twofold scrutiny system does not promote the follow-up of resolutions, because outside the Delegations MP's are less interested in EC/EU draft acts and some have not fully understood the utility of the resolutions as an instrument for exercising political influence.

Thus, the two-fold scrutiny of a European proposal by the Delegations and the permanent committees may be considered as complex and not too efficient. Even if in most cases the examination of a proposal for resolution by a committee does not profoundly modify the analysis of the Delegation, the procedure is very time-consuming. In other domains proposals for resolutions tabled in a Delegation are examined with an impor-

1 Notably used by government in the IGC preparing the Treaty of Amsterdam, see Benoît, Bertrand: *Social-Nationalism. An Anatomy of French Euroscepticism*, Aldershot: Ashgate 1998, p. 56.

tant time lag. The Delegations often hesitate to transmit a text to a permanent committee given the latter's work-load with national legislation. As a civil servant notes, proposals for resolutions are received with a mix of 'scepticism and boredom'¹ by permanent committees. For instance, the Law Committee spent a lot of time considering national projects about immigration whereas recent European proposals on that topic have not been examined. The passage through committees is justified from a constitutional and a political point of view, because the six permanent committees are the only constitutional bodies that can adopt binding texts. Politically, the sift through committees is supposed to increase MP's awareness for European affairs. If the Delegations were transformed in permanent committees, only the 36 members of each Delegation would be informed about European proposals and the other MP's would discover a resolution at the moment of the transposition. Last but not least, the permanent committees have been very reluctant to be deprived of a part of their prerogatives since the creation of the Delegations, especially at the Senate. Thus, the former National Assembly President's proposal to create a European Permanent Committee has not been implemented.²

III. The French Parliament and the Negotiation of the Amsterdam Treaty

During the negotiation of the Amsterdam Treaty the French Government as well as the two Chambers prepared original proposals in favour of a strengthening of the role of national parliaments in the EU. As France has been one of the few countries to support the collective and direct participation of national parliaments to the EU-level decision-making process, an analysis of its position may be helpful to further clarify the specificity of the French approach towards national parliaments in the European integration process.

1. High Parliamentary Expectations

The two parliamentary Delegations observed very closely the evolution of the IGC from March 1996 up to June 1997. They auditioned Michel Barnier each month, the ministry for European affairs and French negotiator in the IGC. Even before the formal opening of the IGC the Delegation of the National Assembly called for the establishment of an inter-parliamentary committee at the European level.³ This committee should consist of

1 National Assembly Civil Servant, interview, 14 November 2000.

2 See Fabius, Laurent: 'Préface', in : Assemblée Nationale, Les Commissions à l'Assemblée nationale, Paris, ed. Assemblée nationale, 2000, p. 5.

3 See Rapport d'information No. 1939 de Nicole Catala et Nicole Ameline: 'Quelles réformes pour l'Europe de demain?', 8 February 1995, conclusion No. 39. See also rapport d'information No. 2969 de Maurice Ligot, Nicole Catala et Patrick Hoguet: 'Les parlements nationaux dans l'Union européenne : acteurs ou spectateurs?', 23 July 1996.

an equal and small number of representatives from each EU parliament and represent collectively the national parliaments at the European level. It was called to monthly express its positions on European texts, without being able to amend them. The committee's responsibilities could cover the major decisions of the European Union - revision of the Treaties, international agreements, enlargements, the budget, Justice and Home Affairs, monetary affairs and defence - as well as monitor the respect of the subsidiarity principle through the adoption of specific resolutions, so-called 'exceptions de subsidiarité', on difficult issues. Indeed, the Gaullist deputy Nicole Catala explained that the Court of Justice could not play this role, because the control of the principle of subsidiarity was essentially political. The position of the Senate was similar; its Presidents have supported the idea of an European Senate for a long time. Note that President Poncelet has re-launched this project during the Versailles-COSAC in October 2000.

The proposals of the Chambers had been based on the implicit willingness to share competencies between national parliaments and the EP. According to many French MP's, the EP should keep a central position in the Community process and national parliaments should play a similar role in intergovernmental affairs, that is in Second and Third Pillar policies. Thus, the preparation of the Amsterdam Treaty illustrated once again the distrust of many French MP's towards the EP. The prevailing feeling was that the 'immature' EP was trying to endorse the monopoly of democratic legitimacy in the EU. The conflict became obvious in February 1997 when the EP adopted a resolution against a French law about immigration. However, the relations improved after a meeting of the National Assembly Delegation and the EP's Institutional Affairs Committee institutional Commission, and the Neyts-Uyttebroeck report was also interpreted by French deputies as a recognition of the legitimacy of COSAC.¹

After the first months of the IGC, the Parliament stressed the isolation of France. Not only were the other governments globally opposed to the creation of a second Chamber but also did the other national parliaments not follow the idea of a collective assertion of national parliaments. Before the Dublin COSAC of October 1996, a Delegation of the National Assembly visited all European parliaments in order to convince them.² Those efforts contributed to the adoption of point five of the conclusions of the Dublin COSAC. Taking into consideration the reluctance of the majority of member states to create another European body, the French Parliament decided to concentrate its efforts on the strengthening of COSAC.³ MP's hoped that an obligation to consult COSAC in some cases would become part of the new treaty, especially regarding the subsidiarity

1 See Rapport d'information No. 3509 de Robert Pandraud, Révision des traités européens, Avant Amsterdam: treize mois de Conférence intergouvernementale, 21 April 1997, pp. 20-22.

2 The Delegation was composed of Nicole Catala, Charles Josselin, Patrick Hoguet and Maurice Ligot.

3 See Rapport d'information No. 3113, Maurice Ligot, Nicole Catala et Patrick Hoguet, 12 November 1996.

principle. The National Assembly Delegation also wanted COSAC to express its opinion on questions concerning the two intergovernmental pillars (CFSP and Justice and Home Affairs) and in the area of unanimous decision-making of the Council.

2. The Strategic Support of the French Government

Alain Juppé's Government defended quite similar ideas. This attitude may be seen as a 'post Maastricht' trauma. The 'right' and especially the Presidential party had been deeply cleaved during the referendum campaign. The quite consensual claim for the strengthening of national parliaments was able to conciliate pro-European - as Alain Juppé and Michel Barnier - and euro-sceptic - as Philippe Séguin and Charles Pasqua - leaders of the gaullist family. From time to time, the Juppé Government also showed some troubles to control the plethoric majority of the National Assembly and to overcome divisions resulting from the Presidential campaign. In that context, the support for a parliamentary assertion in the European process had the twofold advantage of unifying the right and of bringing about an answer to popular concerns about French European policy. Moreover, the proposal for a parliamentary involvement at the EU level was eventually less constraining for the executive power than the potential strengthening of the Parliament in the national political system. Thus, official documents produced during that period point to many reasons for upgrading the role of national parliaments¹:

In its official paper of 13 November 1995 the Government followed the National Assembly conclusions and suggested to create a body composed of representatives of national parliaments which would be consulted in the field of subsidiarity. Such a 'High Parliamentary Council' was supposed to take shape through an institutionalisation of COSAC. Concerning the Third Pillar the Government suggested 'a participation of national parliaments in the drawing up of legislation regarding civil or penal law, thus enabling national parliamentarians to have their say.' The French Government described quite precisely an original mechanism of collective association of national parliaments based on a 'flexible forum' that 'could be composed of national MP's alone or have the same members as COSAC'. Confronted with the criticism that any further involvement of national parliaments at the EU-level would complicate the system, the proposal specified that the forum would not be a new institution. The forum could deliver advisory opinions in the field of justice and home affairs and on the theme of subsidiarity. During the negotiations the French Government quickly perceived that it would be difficult if not impossible to create a collective permanent body and that the reluctance was strong about the subsidiarity principle and the Second Pillar. At the end of 1996 the Government finally focused on the association of national parliaments to the projects

1 See the memorandum about France's position published in *Le Figaro*, 20 February 1996.

under the Third Pillar.¹ Afterwards, in a common letter with Germany - on 9 December 1996 - the Government surprisingly suggested the creation of a mixed parliamentary body composed of MP's and MEP's. Such shifts indicate that the governmental support of national parliaments was probably not as strong as it may seem, those contradictory statements provoked quite negative reactions both at the Senate and at the National Assembly.

3. The Reasons for the 'Exception Française'

Why did French parliamentary proposals turn out to be unsuccessful and rather isolated? One explanation is related to the experience of the two Delegations. The French Parliament had been one of the few to systematically study all legislative EC proposals in the years preceding the 1996/97 IGC. During that period, the Delegations discovered how bounded their prerogatives were. Since they were told repeatedly that it was not possible to change a legislative proposal because of the position of other member states' governments the conviction that national parliaments should intervene directly and collectively - before a Council decision is taken - gained ground. The second element of explanation refers to the intermediary situation of the French Parliament in comparison to other European Assemblies. In some countries - in Italy for instance - the level of euro-enthusiasm was so significant that any assertion of national parliaments may have been seen as a backward movement of European integration. In other member states - notably in the Nordic countries - the main fear was that a direct and collective intervention of national parliaments at the Community level could reduce national prerogatives of the legislative power vis-à-vis their government.

The creation of a collective body representing national parliaments and the defence of the subsidiarity principle were ambiguous. At the parliamentary level the project attracted pro-European MP's and some famous euro-sceptic leaders. Thus, the President of the National Assembly, Philippe Séguin, launched numerous initiatives during that period in favour of the strengthening of the parliamentary influence in the national as well as in the European sphere. Known as a leader of the 'Anti-Maastricht' coalition, he recommended that a majority of national parliaments could express their opposition to a EC draft proposal on the basis of the subsidiarity principle.² Both the perspective of a reduction of the democratic deficit in the EU and the claim for a development of the parliamentary prerogatives contributed to the conciliation of euro-sceptics and pro-integrationists. The left - less divided on the European issue - was also less enthusiastic about the creation of a European second Chamber. The efforts of the political elite to

1 See Audition of Michel Barnier by the National Assembly Delegation, 20 November 1996.

2 See his report to the Conference of Presidents of Parliaments of the European Union (London, 12-13 May 1995) as well as the Charlemagne colloquium in Aachen (26 January 1996).

demonstrate the compatibility of the national and European sphere may also explain the French specificity during the negotiations. The major political leaders of the right and of the left agreed on the fact that European integration was a substantial precondition for upholding France's position in the world. The building of Europe and the defence of France tended to be understood as the terms of the same equation with parliament at its core.

IV. The French Parliament after Amsterdam

1. The Reform of Article 88-4

The ratification of the Amsterdam Treaty has been an opportunity to codify previous informal practices through an amendment of the French Constitution. The revision was imposed by the Constitutional Council¹ and helped Parliament to further foster its instruments for controlling the Government. In this context MP's benefited both technically and politically as they negotiated their support of the treaty in exchange of an improvement of their European prerogatives. The new article 88-4² establishes that all legislative proposals - including those of the Second and Third Pillar- are transmitted to the Chambers and that they are able to adopt resolutions. The amended article also provides for the possibility for the Government to transmit any other document emanating from the EU to the Parliament. The Parliament is now able to adopt resolutions on those documents.

The procedure established for Second Pillar proposals remains different from the other areas insofar as the Ministry of Foreign Affairs covers the functions of the SGCI. If it is logical that the Ministry should play such a role, one may however conclude that this substitution is the result of a reluctance of French diplomats to unleash their monopoly of control on international affairs.

All those changes are not really significant as they tend to 'constitutionalise' previous informal practices. The transmission of non-legislative documents still depends on the Government's appraisal. The so-called 'clause facultative' may be considered as a restriction of parliamentary power. However, experience has shown that the Government is open to the demands of the Presidents of the Delegations. For example, the Government transmitted the European Commission's report of the on the WTO-negotiations and other documents regarding the WTO. Lionel Jospin decided to systematically transmit the White and the Green books and the annual programme of the Commission³.

1 See Décision du Conseil Constitutionnel No. 97-394 du 31 décembre 1997.

2 Loi Constitutionnelle 99-49 du 25 janvier 1999, Journal Officiel, 26 janvier 1999.

3 See Circulaire du Premier ministre du 13 décembre 1999 relative à l'application de l'article 88-4 de la Constitution, remplaçant celle du 21 avril 1993 et celle du 19 juillet 1994.

As concerns the CFSP Pillar, the 1999 modification is symbolic given the traditional monopoly of the executive power on external affairs. If it is too early to evaluate the implementation of the new article, the major feature is the large transmission of non-legislative documents by Jospin's Government which contributes significantly to increase the work of the Delegations.

2. The Protocol on National Parliaments

The introduction of the Protocol on National Parliaments (PNP) in the Amsterdam Treaty has not changed the scrutiny of European legislation by the French Parliament in a significant way. The reform of article 88-4 is certainly not the result of the implementation of the Protocol on National Parliaments.¹ The delay of a six weeks-period provided in the Protocol was a positive element but the parliamentary preferences were not strong on that subject given the four weeks-period provided by the national provisions. The protocol is even accused of being 'anecdotal'² and its main impact has been psychological. The fact that the Treaty distinctively mentions national parliaments may have changed the views of some MP's- especially centrist senators - who have been 'too' euro-enthusiastic to favour a strengthening of national parliaments. In a document established for the Versailles COSAC in October 2000, both the Senate and the National Assembly indicate that the PNP has not fundamentally changed the shape of their control on European activities. As for the time-span within which the MP's have to consider European legislative proposals, they remark that it is sometimes too short in three specific fields, namely in trade policy, in CFSP and when budgetary documents are amended. The Parliament estimates that the PNP has not helped to improve this problem. However Prime Minister Lionel Jospin's 'circulaire' of December 1999 reminds his cabinet colleagues to be careful about European deadlines and refers to the 'spirit of the Protocol'³. The document specifies that the Government will respect the delay of six weeks as provided in the PNP regarding legislative proposals that fall into the Council of Ministers' own definition. As a consequence, the French Constitutional situation today is even more complicated given the two-fold definition of legislative acts, the European one based on the rules of procedure of the Council and the national one based on the articles 34 and 53 of the Constitution.⁴ The Senate and the National Assembly point to the EC's restrictive notion of legislative proposals, especially concerning budg-

1 See Sauron, Jean-Luc: 'Le contrôle parlementaire de l'activité gouvernementale en matière de droit communautaire en France', *Revue trimestrielle de Droit européen*, No. 2/1999, p. 196.

2 See Vauzelle, Michel: *Rapport d'information No. 1402 sur le projet de loi autorisant la ratification du traité d'Amsterdam*, Commissions des affaires étrangères, février 1998, p. 27.

3 *Circulaire du Premier ministre du 13 décembre 1999 relative à l'application de l'article 88-4 de la Constitution*, remplaçant celle du 21 avril 1993 et celle du 19 juillet 1994.

4 See Sauron, Jean-Luc, 1999, *op.cit.*, pp. 186-187.

etary documents and agreements between institutions.¹ The inclusion of budgetary documents on the PNP should help to resolve problems of delay. The agreements between institutions have never been transmitted to the Assemblies, even if they are considered as very important by MP's.

3. The PNP Provisions on COSAC

The PNP has been interpreted by the French Parliament as a symbolic recognition of the legal existence of COSAC. The Delegations hoped that the Protocol could be used as an argument to convince the other parliaments to reform the rules of procedure of COSAC. Some senators were in favour of the introduction of majority voting, but the Parliament now considers that such a change would be difficult considering the representativeness of national delegations at COSAC. The position of the two Chambers is that co-operation between national parliaments in Europe does not go far enough. The issue of bilateral relations between assemblies is illustrated by the exchange of documents with the Bundestag and the two British Chambers. They consider that new technologies may help to keep MP's informed about the proceedings of other EU affairs committees.² As for the collective assertion of national parliaments, the two French Delegations hope that COSAC will play a more important part in the future. As organiser of the Versailles COSAC of October 2000, the French Parliament - and especially the National Assembly - developed an original mechanism before the conference. A deadline for submitting contributions and for amendments to the draft conclusions was set. The draft synthesis of the COSAC presidency was sent before the meeting. Such a mechanism was supposed to contribute to the adoption of a consistent text. During the COSAC the National Assembly's President Raymond Forni during the COSAC supported the creation of working groups which could constitute another step towards the institutionalisation of the COSAC. Moreover, French MP's estimate that the PNP allows COSAC to adopt contributions on specific European legislative projects. The two French Delegations hope that the conference will examine the precise projects, especially proposals concerning civil liberties and internal security. However, French MP's do not want to limit the field of the contributions to the subjects mentioned in the PNP.

Finally the PNP provisions on COSAC have not induced a revision of the composition of the Delegation to COSAC. The French Delegation remains to be composed of the President of each parliamentary Delegation and by other MP's representing the main political groups. Contrary to other national parliaments the representativeness of the national COSAC-Delegations is not really a conflictual issue. There is no collective preparation of the COSAC in both Assemblies because texts are hardly ever published

1 Questionnaire established for the Versailles-COSAC of October 2000, Answer to question No. four.

2 Questionnaire established for the Versailles-COSAC of October 2000, Answer to question No. five.

before the meeting. Politically, the Presidents of the Delegations do not want to be compelled to follow the decisions of the Assemblies.¹ After the conference, the Presidents usually give a short account of COSAC during a meeting of the Delegations and short reports with official documents are published. The weakness of the collective preparation and of the reporting is also linked with the fear that other MP's - especially those willing to join the Delegation - would feel excluded.²

V. Conclusions: An Ambitious Parliament without Real Powers?

The role played by the French Parliament in EU decision-making remains ambiguous. The Amsterdam Treaty has been an opportunity to codify previous practices but the adoption of the treaty has not really changed the basic rules of parliament's involvement in EU affairs. The Chambers have not yet fully clarified the goals of their involvement in European affairs. Three different elements may be pointed out.

Their first ambition was to change the national institutional system. Even if the involvement of the French Parliament in European affairs is usually analysed as "an opportunity to recover power"¹ against the Government and the President, it is not sure that the relation between executive and legislative power is so antagonistic. But it seems that since the beginning of the Fifth Republic the unfavourable position of the Chambers has led MP's to be cautious about any additional loss of power. Europe has been an outlet to parliamentary frustration. Indeed formal parliamentary powers - further increased by the Amsterdam Treaty - have become important. The institution of resolutions and parliamentary scrutiny reserves represents a considerable evolution regarding the balance of power of the Fifth Republic. Parliamentary prerogatives are more significant in the European context than in national politics given that the spontaneous expression of the 'rationalised' Parliament about national projects is limited by the rigid framework of the Constitution.

However, the parliamentary assertion should not be exaggerated. From Alain Juppé to Lionel Jospin, the magnanimity of the executive power vis-à-vis parliamentary demands proved that the power of the Parliament is not as important as it may appear at first. Prime Ministers have accepted to implement parliamentary prerogatives only insofar as the establishing of new 'European' powers of the Parliament did not constitute a real threat to them. Hence, Lionel Jospin asks in his 1999 'circulaire' for the development of better tools for information gathering at the governmental level and a better follow-up of the parliamentary resolutions. But in practice it seems that there is a governmental unwillingness to further develop the influence of the Parliament. Thus, the prevailing

1 See National Assembly Civil Servant, interview, 14 November 2000.

2 See Senate Civil Servant, Interview, 27 October 2000.

view is that today the two Chambers have obtained enough institutional tools to intervene and that the reforms of the 1990's went as far as the balance-of-power under the Fifth Republic allowed.² The reform most urgently needed - the transformation of the Delegations in permanent committees - concerns the internal organisation of the Chambers rather than their relation to the executive power.

The second aim of the parliamentary assertion consisted in influencing the governmental European policy by scrutinising EC and EU projects. The two Chambers were not very well equipped to adapt to the logic of 'consensus democracy', which predominates the Brussels stage of the decision-making process. It is true that the conflictual mood and the traditional importance of parliamentary party battles is opposed to the spirit of compromise within EU institutions. However, the relationship between the executive and the legislative powers indicates that this feature should not be overstated. The parliamentary resolutions hardly ever diverge from the governmental position. The comprehensive and profound work done by the Delegations indicates that they have rather succeeded in scrutinising the huge amount of European proposals. Nevertheless, it is still uncertain whether the Parliament is fully adapted to the EC/EU system of governance. The Chambers have concentrated their interest on the Council of Ministers. This focus is understandable insofar as a national parliament will always try to influence its government first. The preference for the Council is also coherent with the intergovernmental perception of the European decision-making process of most French MP's. Meanwhile, the Parliament has neglected other EU institutions, namely the Commission and the European Parliament. The development of the co-decision procedure has contributed to multiply the loci of decision-making. The French Parliament finds it difficult to answer to this dilution even if the Senate has reacted to this challenge by setting up a 'parliamentary representation' at Brussels.³ Finally, the influence of the Chambers on the European policy of their Government is hard to establish and is necessarily limited given the challenges of multi-actor negotiations.

The third dimension of the parliamentary intervention is related to the public debate. The mass of EC/EU-related documents is available on the webpages of the two Chambers. It illustrates the parliamentary will to establish a link between the EU and the interested citizens. However, it seems that the public has not really perceived the positive effects of the 'europeanisation' of the Chambers. MP's are still among the most unpopular of the political leaders. The media do not systematically give an account of their work. The difficulty of the two Chambers to intervene in the public debate is also due to

1 Dubouis, Jean-Louis: 'The European Union : An Opportunity for the French Parliament to Recover Powers ?', in: European Monographs, No. 11/1996, pp. 49-63.

2 The idea of transforming resolutions into compulsory demands is progressively ruled out even by MP themselves. One possible legislative reform would be to give a stronger legal basis to the parliamentary reserves that are only mentioned in a circulaire (Circulaire du Premier ministre du 13 décembre 1999 relative à l'application de l'article 88-4 de la Constitution).

3 See Sénat, Bulletin d'informations rapides No. 727, 25 mai 1999, p. 31.

a lack of political willingness on the part of MP's. Outside the specific context of the two Delegations, MP's find it difficult to adapt to 'EC-culture'. The gap between the minority of representatives involved in the European policy process and the remaining majority is significant. The electoral benefits of a European involvement and the way of 'politicising' Europe are still problematic.

The competition between the three dimensions of the parliamentary assertion in European affairs has enticed several perverse effects. The development of the Parliament vis-à-vis the executive power has been more or less instrumentalised by euro-sceptics. The demand for more prerogatives has sometimes been merged with a more fundamental criticism of the integration process. During the ratification of the Maastricht Treaty and afterwards, the so-called 'souverainistes' used the Parliament as a tribune and as a way of influencing the Government. From the early 1990's until now, the Government's attitude has constantly consisted in privileging the second dimension of the parliamentary involvement - the scrutiny of EC legislation - against the third one - public intervention. From the executive's perspective, the Parliament is preferred as an additional expert rather than as a tribune. Indeed, the association of the Parliament during the preparation of a directive is in the Government's interest. A first examination of a European text by the national parliament may be helpful to discern potential resistance that would be more harmful if the project was already adopted at the European level.

Nevertheless, there is a dramatic problem of legislative implementation deficits in France. Transposition failures are growing to such extent that the French Government today feels obliged to present a kind of 'Enabling Act', that would allow the Government to implement European directives without any implication of the legislator.

This reveals a re-emergence of de Gaullian practices in European policy-making. In such a perspective the scrutiny mechanisms and the broad implication of parliament during the EU-negotiation appear more and more questionable. At the same time one must admit that MP's themselves have sometimes favoured the third dimension against the second one, that is public intervention rather than a real attempt to influence the Government. Thus, many resolutions are still agreed upon without considering their follow-up. After a period of self-assertion against the executive power, the French Parliament has entered in a maturity phase in dealing with European affairs. The Parliament's priority does not consist in creating new procedures but in using the existing ones with a view of associating the scrutiny of European proposals to the intervention on the public debate. If they are still in search of some balance between expertise and voice, the Chambers have decided to be both working and talking parliament in order to develop a position of an interface between the EU and the citizens.

The Parliament of Ireland: A Passive Adapter Coming in from the Cold

Brigid Laffan

I. Introduction: Political Culture and the Political System

The contemporary structure of Ireland's political system evolved within the framework of the 1937 Constitution which provided Ireland with a directly elected head of state, a parliamentary system of government and a judicial branch with a Supreme Court at its apex. The Irish Parliament (Oireachtas) is bicameral, consisting of the Lower Chamber known as the Dáil and the Upper Chamber known as the Seanad. The Lower House is directly elected with 166 deputies and the Seanad has 60 members elected indirectly from a series of electoral panels. The Dáil is the most important Chamber and is thus the main focus of this chapter. The Constitution established the key powers of the Upper and Lower Houses in relation to the appointment and dismissal of governments, law-making and executive accountability. Under the Constitution all powers of government derive from the people who elect a parliament which in turn chooses a Prime Minister (Taoiseach) and a government. The Government is accountable to the Dáil and can only govern, if it commands a majority in parliament. Elections must be held at least every five years, but in practice, a government will rarely choose to govern for the full five years as Prime Ministers prefer to determine the timing of general elections.¹

Political parties, although not mentioned in the Constitution, are the main transmission belts of politics in Ireland. Parties organise and provide structure for electoral competition and government formation. The Irish party system does not reflect the cleavage characteristics of European party systems in general. The two major parties, Fianna Fáil and Fine Gael emerged from a deep split in the nationalist party Sinn Féin that was instrumental in the foundation of the Irish state in 1922. The unresolved nationalist question meant that the Irish party system was frozen around a nationalist cleavage. It was very difficult for smaller parties, notably, the Irish Labour Party to realign politics so that they might command the level of support associated with parties of the left in Europe. In addition to these three parties, there are a number of other small parties with representation in the Dáil, notably, the Progressive Democrats (fiscal conservatives), the Green Party, and Sinn Féin (extreme nationalist). Periodically, the Dáil has a small number of independent deputies who are not affiliated to any political party. Government formation in Ireland was characterised by the dominance of Fianna Fail in a single

¹ See Gallagher, Michael/Coakley, John (eds.): *Politics in the Republic of Ireland*, 3rd edition, London 1999, Chubb, Basil, *The Government and Politics of Ireland*, Longman, 3rd edition, London 1992.

party government with limited periods of alternative coalitions consisting of Fine Gael, the Labour party and other small parties. In the 1990's, coalition governments became the norm as Fianna Fail proved unable to win a majority on its own. The European Union (EU) is not a divisive issue in government formation in Ireland.

II. Relevance of European Integration for the Irish Parliament

The basic features of the Parliament-Executive relationship in Ireland resemble those of the West European tradition of parliamentary democracy. The Government must command a majority in parliament and in the absence of a majority must maintain the confidence of the Parliament. Following an election, the Parliament is the arena where the Executive is authorised to take power. In practice once a government has a majority, it enjoys a high degree of autonomy from the Parliament. Executive power-the power of government- is strong in the Irish system of public policy-making. Put simply, there is a marked concentration of executive power in the Irish system given the unitary nature of the state. The Oireachtas is in comparative terms a relatively weak parliament, although reforms in the 1990's have led to the establishment of a comprehensive Committee system that is altering the working methods of Irish parliamentarians and the role of the Oireachtas. In relation to the Irish Parliament, it has been argued that :

“Parliaments may still be elected by the people, and may even elect governments, but it seems that once a government gets into office it can go its own way largely unchecked by parliament. And even in the context of these generally low expectations of how much control a parliament can really exercise over a government in any country, it has frequently been argued that the Dáil stands out for its exceptional weakness.”¹

The ‘poor performance’ of the Oireachtas is also identified in other volumes.² The weakness of the Irish Parliament has been overcome somewhat in the 1990's. There were a number of reasons, notably parliamentary culture and the traditional role of the Irish parliamentarian, for the poor performance of the Irish Parliament.

The practice and involvement of the Irish Parliament and Irish parliamentarians in EU affairs is determined more by the general role of the Parliament rather than any highly developed idea of how a parliament should be involved in EU matters. That said, the acknowledgement of the role of national parliaments in the European Union since the Treaty of Amsterdam has altered the context within which the Oireachtas responds to EU business.

It is striking that in the two government papers laid before the Houses of the Oireachtas in April 1970 and January 1972 on Ireland's membership of the European Union, there

1 Gallagher, Michael: ‘Parliament’, in: Coakley John/Gallagher Michael, (eds.): *Politics in the Republic of Ireland*, PSAI Press, Galway, 1992, p. 112.

2 See Chubb, 1992, *op.cit.*, p. 204.

was a reference to the potential impact of EU membership on the Constitution, but not on the Irish Parliament. Historically, the Irish Parliament was a ‘talking parliament’ modelled on Westminster rather than a ‘working parliament’ of the continental type. The Westminster tradition privileged debates and question time in the full plenary rather than the Delegation of business to Committees. In plenary, debates undertaken for the purpose of reaching a decision or making progress with legislation was the norm and discussion on broad general topics the exception. Until the reforms of the 1990’s, the procedures and practices of the Dáil were more akin to those obtaining in the British Parliament at the foundation of the state.¹ This meant that Committees were much weaker in the Irish system than in continental European parliaments. However, plenary sessions were much more frequent and less stage-managed than in continental practice.

The role of the Parliament is influenced by the constituency burden carried by Irish parliamentarians. Irish TD’s (Tachta Dala) are elected by proportional representation (PR) in multi-member constituencies by means of a Single Transferable Vote (STV). This generates extensive inter and intra party competition for nominations and seats. Consequently Irish TD’s compete with each other to service their constituencies and are faced with ‘punishing workloads’. They are forced to “spend too much time in their constituencies attending to minor complaints from constituents, leaving them with too little time to deal with important matters of national policy in Dublin”². A sitting TD claims that “the winning of a medical card for a constituent is more valuable to the politician than any finely-crafted or well motivated speech in the Dáil”³. The importance of localism and clientalism in Irish political culture, reinforced by the electoral system, has a major impact on the role of the Parliament and its relationship with the Executive. Individual members of parliament, known as backbenchers, do not see themselves as centrally engaged in legislative politics. The role of parliamentarians and their parties depends on whether they are in government or opposition. In government, the role of the party members is to be loyal and supportive of the Government. Backbencher revolts are not a marked feature of Irish political life. In opposition, the role of party members is to hold the Government accountable and to highlight weaknesses in government policies and practices. Irish parties are capable of controlling their members and a highly developed whip system is very effective in keeping backbenchers in line.

The above synopsis of the relationship between executive power and parliamentary power in Ireland and the relatively weak position of the Parliament altered somewhat in the latter half of the 1990’s. In 1998, the Public Accounts Committee of the Dail sought and was given considerable additional powers by the Dáil in its efforts to investigate the way in which financial institutions had managed what was known as the Deposit Inter-

1 See Dooney, Seán/O’Toole, John: Irish Government Today, Dublin: Gill and Macmillan 1998.

2 Laver, Michael: A new electoral system for Ireland?, The Political Institute, Dublin 1998, p. 1.

3 Sunday Independent, 30 November 1997.

est Retention Tax (DIRT). The Committee investigated the administration of the tax and compelled representatives of the major financial institutions, government departments, the revenue commissioners and former finance ministers to attend and answer questions. The hearings were broadcast live and reported on extensively in the print media. The report had a major public impact. According to the Irish Prime Minister, the work of the Committee:

“has been a quantum shift, a major leap forward, for public accountability in Ireland. This is in line with a new demand for accountability both here in this country and in the EU itself. This is the culture of the future-visible accountability-Being Accountable but also being seen to be accountable.”¹

The experience of the Public Accounts Committee in this investigation may have a more long-term impact on the role of the Irish Parliament and its relations with the Executive.

Relative to other latecomers to the Union, the EU was not a politically divisive issue in Ireland, apart from sensitivities concerning defence and security. EU membership did not lead to splits in Ireland’s political parties, unlike the situation in the United Kingdom, Denmark and Sweden. From the outset, Ireland’s two main political parties—Fianna Fail and Fine Gael—favoured membership of the EU. The Labour Party, which opposed membership in the 1972 referendum, quickly accepted the democratic choice of the Irish electorate but remained vigilant on such issues as neutrality and neo-liberal market integration. It did not take a formal position on the Single European Act in the 1987 referendum but supported the Treaty on European Union (TEU) in 1992. Democratic Left (which dates from 1992 and formally integrated with the Labour Party in 1999), a party further to the left of the Labour Party, opposed the TEU but supported the Treaty of Amsterdam. Of the remaining parties in Parliament, the Green Party and Sinn Féin, are the only two parties to continue to oppose Treaty change in the EU. There has thus been a gradual but sustained acceptance of EU membership across the political spectrum.

Arising from the general political agreement about EU membership in Ireland, the EU has not been a major contentious issue in Irish parliamentary life. Unlike some other parliaments in Europe, the members of the Irish Parliament appear relatively unconcerned about the impact of the EU on the nature and operation of Irish parliamentary democracy. Those parliamentarians who have worked to strengthen the Irish Parliament are motivated by general national considerations and not EU considerations as such. That said, the lead-up to Amsterdam and the implementation of the Amsterdam Protocol on National Parliaments (PNP) led to a heightened degree of parliamentary interest in European affairs, particularly among deputies and senators in the European Affairs Committee.

1 Ahern, Bertie, Taoiseach Speech, 20 October 1999.

EU business impinges on the Irish Parliament in a number of significant ways, notably: law-making - primary and secondary legislation -, and scrutiny of EU business. It does not impinge on the third role of the Parliament, that of appointing or dismissing a government.

III. The Practice of Parliamentary Scrutiny in EU Affairs

The driving idea behind the parliamentary scrutiny mechanisms in Ireland is to hold the Government accountable for its actions in Brussels and to engage in public debate on the big European issues of the day. Because EU Treaty change requires a referendum in Ireland, the political parties are aware of the public dimension of EU politics in Ireland. However, the generally high levels of support for Ireland's membership of the EU means that governments have not had to fight that hard for their EU policies. They can usually rely on an acquiescent parliament and an acquiescent public. The Parliament does not see itself as leading the national agenda on EU issues - that is the business of the Executive.

The Parliament is involved in EU business through:

- legislation both primary and secondary with a European dimension,
- debates on the public finance estimates of government departments,
- the ratification of EU Treaties and the preparation for referenda on the EU,
- parliamentary questions, reports on European Councils, private members' time used to debate EU issues,
- institutional mechanisms that have been established to scrutinise EU affairs.

The Irish Parliament participates in EU affairs as part of the national legislative process, as a forum for public debate and as an arena for the scrutiny of the EU policies and practices of the Government in office. There are a number of different channels available to the Parliament to intervene in EU business.

1. Plenary Sessions

Europe given the Europeanisation of public policy features in a myriad of ways in plenary sessions of the Parliament throughout the parliamentary year. In plenary sessions of the Parliament, EU business is raised in the reports of the Prime Minister following every European Council. From the outset, a practice developed whereby the Prime Minister would make a formal statement to the Dáil following each European Council. Given the growing frequency of European Council meetings, there are usually four parliamentary set pieces each year. This allows for a general debate on the major conclusions of the Council and the consequences for Ireland. The Prime Minister usually sets out the major developments and provides an Irish slant on such developments. The report on the Berlin European Council in April 1999, not unexpectedly, concentrated on

the budgetary impact of Agenda 2000 on Ireland. The objective of the Taoiseach's statement was to highlight the continuing budgetary transfers to Ireland while accepting that there would be a significant reduction in financial flows between 2000 and 2006.¹ Given the importance of the European Council in EU agenda setting, these reports are a useful device to ensure that deputies are aware of the major issues as they evolve on the EU agenda and on the outcome of EU deliberations at the highest level. The leaders of the main opposition parties respond to the statements of the Prime Minister.

The second over-sight mechanism was traditionally the annual debates on the public finance estimates of individual government departments. There was usually considerable reference to developments in Europe during the debates on the estimates of the Ministries for Foreign Affairs, Finance, Agriculture and Justice. The debates were dominated by the interventions of the responsible minister and the main opposition speaker. A practice developed with the extension of the Committee system of the estimates being debated in the relevant parliamentary Committee. For example, the estimates of the Ministry for Foreign Affairs are now debated in the Foreign Affairs Committee. The Minister for Foreign Affairs is *ex officio* a member of the Committee when it is discussing a legal bill or the estimates.

The third way in which the plenary house deals with EU matters is when the implementation of an EU Treaty or EC directive requires a major piece of primary national legislation. In such cases, the law must pass all stages of the legislative process in both Houses of the Oireachtas. The process followed is the normal domestic legislative process of five stages. In 1997, the European Parliament Elections Act, the Central Bank Act, the Europol Act and the Organisation of Working Time Act were enacted as a consequence of EU obligations. In 1998, the European Communities Amendment Act provided for ratification of the Treaty of Amsterdam and the Economic and Monetary Union Act made provision for Ireland's membership of the Euro. Other bills such as the Food Safety Authority Act and the Act dealing with Jurisdiction of Courts and Enforcement of Judgements had a European dimension. All primary legislation is introduced by the responsible minister and scrutinised by the opposition front bench. The vast majority of EC directives enter Irish law by means of secondary or delegated legislation.

The fourth way in which the plenary house deals with EU matters is through parliamentary questions, a well-established part of Irish parliamentary procedure. Individual deputies may put a question for written or oral answer to the Prime Minister or a minister about the conduct of his/her department. Each week when the Parliament is sitting, there is about five hours of parliamentary time devoted to question time. Question time affords Irish parliamentarians the opportunity to put and receive speedy replies to questions. Questions tend to cover the full range of EU public policy and Ireland's involve-

1 See Dail Debates, <http://www.irlgov.ie:80/debates-99/1april/sect3.htm>.

ment. The Prime Minister is frequently asked about visits to other member states and the ‘high politics’ agenda issues. The questions for other ministers tend to be sectoral in nature with a particular emphasis on financial flows to Ireland, the common agricultural policy, Economic and Monetary Union (EMU), duty free, regionalisation and Ireland’s record in implementing EU legislation.¹ The fifth way in which EU issues may arise in plenary sessions is by means of adjournment debates or private members bills.

Box 1: Example of a Parliamentary Question on an EU matter

95. Mr. Ferris asked the Minister for the Environment and Local Government the number of cases being taken against Ireland by the EU Commission arising from non-implementation of EU directives; and if he will make a statement on the matter?

Ministerial Reply:

“Infringement proceedings by way of reasoned opinion under Article 169 of the Treaty on European Union have been notified to Ireland by the European Commission in nine cases in respect of policy areas within my Department’s overall remit. These relate first, to the non-transposition of EU legislation on driving licences, the maximum dimensions of vehicles, emissions from non-mobile road machines and pollution by asbestos; second, to issues concerning the protection of water against pollution by dangerous substances, water quality problems associated with private group water schemes, and compliance with waste legislation, and third to submission of reports on the implementation of water directives.

Proceedings have been initiated before the European Court of Justice on failure to implement Directive 97/68/EC concerning emissions of pollutants from engines in non-road mobile machinery.”

Source: <www.irlgove.ie80/debates-99/5oct99/sect8.htm>

The 1972 European Communities Act required the Government to report twice yearly to each House of the Oireachtas on developments in the European Communities. These reports generally arrived too late for parliament to give serious consideration to the issues they raise. They provide an overview of developments in the European Union (EU) for those deputies committed to tracking EU business. Their relevance has declined somewhat with the increase in web-based information sources on the EU. An individual deputy would receive much more up-to-date information on developments in the EU from the Europe site than from the Government report. The reports tend to be bland documents recording the major developments in different policy areas but do not tease out the Irish negotiating position on different areas of EU policy.

1 See Box 1 for a typical question.

2. *The Committees*

Discussion of parliamentary reform in Ireland has tended to revolve around the issue of parliamentary Committees, not a traditional feature of Irish parliamentary institutions. In 1983, a new government embarked on an experiment in parliamentary reform by establishing 17 select Committees. However, the Committees did not appear to have an underlying rationale or design. Rather they were “an uncoordinated mish-mash of Committees” whose potential was “immediately undermined by their superabundance”.¹ The experience of the 1980’s did however have an impact on Irish parliamentary life.² The Committees provided fora for Irish parliamentarians to investigate and interrogate government policy and Irish civil servants grew accustomed to dealing with parliamentary Committees. During the 1990’s, the experiment became for the first time embedded with the establishment of a comprehensive Committee system that covers the entire gamut of government business. The Irish Parliament now has five standing Committees and ten select Committees. Two of the ten relate directly to Ireland’s membership of the EU - the Foreign Affairs Committee and the European Affairs Committee, both of which date only from the 1990’s. They are joint Committees of both Houses of parliament.

Prior to membership of the EU in 1973, concern was expressed at the impact of EU membership on the ‘law-making role’ of the Oireachtas. The 1972 European Communities Act conferred on ministers the right to make regulations (secondary legislation) that might be required to implement provisions of the EC Treaties and directives. According to Senator Mary Robinson, later Irish President, there was insufficient attention to the consequences for the Irish Parliament of EU membership prior to accession. There was no equivalent of the Study of Parliament Group in Britain that brought out a report in July 1972 on the implications of EU membership for the Westminster Parliament.³ In July 1973, an amendment to the European Communities Act enhanced parliamentary scrutiny by establishing the first watch dog Committee on EU matters. In other words, the establishment of the Committee post-dated Ireland’s membership of the EU. The Oireachtas established the Joint Committee on the Secondary Legislation of the European Communities, as a watchdog Committee to oversee the Executive. The original Committee had 25 members, 18 from the Dáil and seven from the Seanad. Members were appointed according to the numerical strength of the political parties in both Chambers. Committees in the Irish parliamentary system are co-terminus with the life

1 See Arkins, Audrey: ‘The Committees of the 24th Oireachtas’, *Irish Political Studies*, No. 3/1988, p. 94.

2 See O’Halpin, Eunan: ‘Oireachtas Committees: experience and prospects’, *Seirbhís Phoibli*, No. 3/1986, pp. 39, Zimmerman, Jutta: ‘An innovation: backbench Committees’, *Administration*, No. 3/1988, pp. 265-289.

3 See *Irish Times*, 23 January 1973, p. 12.

of the Parliament and must lapse when an election is called. The Joint Committee was re-established after every election until its replacement by the Committee for Foreign Affairs in 1993. Its terms of reference allowed it to examine and report to the Oireachtas on Commission policy proposals, legislative proposals, EC laws, regulations made in Ireland under the European Communities Act 1972, and all other legal instruments that flowed from EC membership. Between 1988 and 1992, the Committee published 26 reports, the largest number of any parliamentary Committee at that time. Since Ireland did not have a strong tradition of parliamentary Committees, the original joint Committee was something of a novelty and contributed in the longer term to an enhanced use of Committees in the Irish parliamentary system. The importance of its role has been emphasised in the following terms: Despite being prescribed by an external institution it has, by its very existence, helped creating a climate conducive to Oireachtas reform. Through diligent habits it has set a new precedent in scrutiny, investigation and deliberation. In particular the second statutory Committee provided an excellent tutorial for its members, who were instrumental in the development of later Committees.¹

Notwithstanding its role, the Joint Committee suffered from a number of constraints that impeded the work of all parliamentary Committees. Its terms of reference were very restricted with the result that it concentrated most of its energies on secondary legislation and did not maintain a systematic overview of the flow of EU policies through the legislative process. Nor could it examine major changes in the European landscape, notably the collapse of communism and German unification, that were certain to shape the Community of the 1990's and Ireland's position in that system. In the work that it actually did, it was hampered by a weakness of both financial and human resources. Neither the members nor the Secretariat of the Committee had the legal or technical expertise to examine many of the complex issues involved in EC law and policies; the many time pressures on Irish politicians allowed very few parliamentarians to develop the kind of expertise required for a thorough examination of EU policies.

In response to these difficulties the Fianna Fáil-Labour Government established a new Joint Oireachtas Committee on Foreign Affairs in the spring of 1993. This subsumed the work of the Committee on Secondary Legislation, and also covered a much broader agenda encompassing the state's foreign relations as a whole. The establishment of a Foreign Affairs Committee brought Irish parliamentary practice into line with other parliaments in Western Europe. The Foreign Ministry responded to the establishment of the Committee by seconding a junior diplomat to the Committee on a permanent basis. The Joint Committee on Foreign Affairs was established as the largest parliamentary Committee with 31 members, 21 members from the Dáil and ten members from the Seanad. Changes in the Committee system in 1993 coincided with but were not directly related to the ratification and implementation of the Treaty on European Union (TEU).

1 See Arkins, 1988, op.cit. p. 93.

Rather the establishment of the Foreign Affairs Committee was seen as a response to Ireland's growing international responsibilities and to the need to modernise the Irish Parliament.

The terms of reference of the Committee established in 1993 allowed the Committee to:

- scrutinise the estimates of the Department of Foreign Affairs and International Co-operation,
- analyse and report on all aspects of Ireland's international relations including its co-operation with developing countries and Ireland's membership of the European Communities
- annually report to both Houses of the Oireachtas,
- send for personal evidence. However, information need not be provided to the Committee if a member of the Government certifies in writing that such information is confidential,
- engage the services of consultants and specialists.¹

Members of the European Parliament (MEP's) from Ireland including Northern Ireland could attend the Committee but could not vote. The Foreign Affairs Committee met once every two weeks and had four sub-Committees. The Foreign Affairs Committee published seven reports between December 1993 and October 1995.

A separate Joint Committee on European Affairs was established in March 1995 as part of the 1994 Programme for Government (Rainbow Coalition), because the work of the Foreign Affairs Committee left it with inadequate time to scrutinise European law and wider EU developments. It was felt that there was sufficient work to justify two separate Committees. Following the establishment of the European Affairs Committee, the Foreign Affairs Committee no longer carried a broad European brief although ambiguity remained concerning the EU's Common Foreign and Security Policy (CFSP). The European Affairs Committee had 17 members, ten from the Dáil and six from the Seanad. It was much smaller than the Foreign Affairs Committee and regarded at that stage as a less prestigious one. Both Committees ceased to exist in June 1997 when the Parliament was dissolved prior to an election and were re-established in autumn 1997 by the new Parliament. The terms of reference of the European Affairs Committee enable it to consider :

- matters arising from Ireland's membership of the European Communities,
- programmes and guidelines prepared by the Commission,
- acts of the EC institutions,
- regulations under the 1972/95 European Communities Acts,
- other instruments necessitated by membership of the Communities,
- matters referred to it by the Houses of the Oireachtas, and
- to represent the Irish Parliament at COSAC.¹

¹ See Dáil Debates, 28 April 1993, pp. 1641-1642.

The terms of reference were altered slightly in July 1999 as a consequence of the Treaty of Amsterdam. The joint Committee participates in the bi-annual meetings of COSAC and hosted a meeting during the 1996 Irish Presidency. The European Affairs Committee meets in plenary session once a fortnight and has one sub-Committee that deals with EC secondary legislation. Ireland's 15 MEP's have the right to attend the Committee and to participate in the discussions, but do not have a right to vote. See Table 19 for an analysis of the powers of both Committees.

Table 19: Powers of EU Related Committees in the Irish Parliament

	Foreign Affairs	European Affairs
Joint Committee	X	X
Members		
Dáil	14	14
Seanad	6	6
Standing Sub-Committees	No	No
Appoint Sub-Committees	X	X
Engage Consultants	X	X
Travel	X	X
Publish Reports	X	X
Send for persons, papers or records	No	No
Take Evidence	X	X
Invite Submissions	X	X
Draft Legislation	X	X
Meet Ministers re. policy/legislation	X	X
Meet Office holders in State Bodies	X	X

It is difficult to judge the effectiveness of the Committees as they are of relatively recent origin and have been established at a time when there is an effort to professionalise and enhance the Committee structure of the Irish Parliament. In a debate in a plenary session of the Parliament, the Chair of the European Affairs Committee underlined the common perception among deputies that Committee work should receive more attention. He claimed that:

“Committee life is not easy. It is outside the limelight and is not the same as speaking in either House. Committees do not get the same degree of recognition in the national media or anywhere else. If the system is to work effectively for the benefit of the State it must be given more recognition. It is not true to say that the work is uninteresting. It may appear to be at first glance but it is serious work, which requires a great deal of commitment. If it does not receive recognition, people will not want to be part of the Committee system.”²

In another debate, an Irish MEP who has a dual mandate, referred to the “minor role accorded to this Parliament in influencing Government policy on EU matters”³. Neither

1 See European Affairs Committee, Terms of Reference, 1997.

2 See <http://www.irlgov.ie:80/debates-00/20 April/sect3.htm>.

3 Proinsias De Rossa, <http://www.irlgov.ie:80/debates-00.13 April/sect5/htm>.

Committee has adequate research and administrative back-up to develop independent thinking on foreign or European issues. The Committees are heavily dependent on briefing papers from the Department of Foreign Affairs, other government departments, and on external consultants. There is some overlap and hence tension between the Committees on areas such as the CSFP. The terms of reference of the Committees allow the Foreign Affairs Committee to request a joint meeting with the European Affairs Committee on matters of common activity.

The Committees have contributed to greater openness and accountability on foreign policy matters. The meetings are usually held in public and successive ministers and officials have attended and given evidence. The Committees have also provided a focus for the attentive public in this domain. A small coterie of deputies and senators has become engaged in foreign policy matters and in relations with the European Union. The Government White Paper on Foreign Policy concluded that “these Committees have significant powers and are important instruments for maintaining the democratic accountability of foreign policy in Ireland”¹. This clearly overstates the case but the degree of parliamentary involvement has strengthened in the 1990’s. The involvement of the European Affairs Committee in the COSAC has exposed Irish parliamentarians to practices in other member states and COSAC is seen as a channel for keeping Irish parliamentarians informed about Europe.

3. The Scope and Timing of Parliamentary Scrutiny

The scope of parliamentary scrutiny in the Irish system has evolved within the framework of Ireland’s parliamentary culture and its specific institutional attributes. Neither the Parliament as a whole nor the relevant Committees seek to impose a negotiating mandate on Irish ministers or officials in EU negotiations. The various devices - debates, question time, reports, and Committee deliberations - are designed to contribute to the debate on Ireland’s relations with the EU and to hold the Government accountable for its actions in Brussels. The focus tends to be on issues of importance to Ireland, notably, Intergovernmental Conferences (IGCs), Agenda 2000, EMU, drugs, the CFSP and specific policy areas. Table 20 provides a detailed analysis of the issues dealt with by the Committee of European Affairs in the period of 1997 to 1999.

1 Ireland, Government White paper on Foreign Policy, Dublin, 1996, p. 333.

Table 20: Analysis of Minutes of the Meetings of the Irish European Affairs Committee (1997-1999)

Areas of Interest	Number of Times Raised	%
Legislative Scrutiny Programme	14	23
EMU	9	15
Various Directives	9	15
EU Enlargement	8	13
Drugs	6	10
IGC/Treaty Change	4	7
Agenda 2000	4	7
Internal Market/WTO	3	5
Asylum/Migration	2	3
Blockade of UK Ports	1	1
CFSP	1	1
Total	61	100

Author's own calculation.

The transmission of EU proposals from the Government to the European Affairs Committee relates directly to the scope of Committee activity in relation to the flow of EU proposals. The Joint Committee receives all of the Commission's legislative proposals, the programmes and guidelines of the Commission, the legislative acts of EU institutions, all national regulations under the European Communities Act and all other instruments that arise from Ireland's obligations arising from EU membership. In addition to EU documentation, different ministries prepare explanatory memoranda for the Committee in areas that fall within their competence and ministers and officials appear before the Committee. Table 21 identifies senior civil servants as important interlocutors of the Committee.

Table 21: Addresses to the Meetings of the Irish Committee of European Affairs (1997-1999)

Attendance	Times	% (rounded)
Minister	1	2
Minister of State	1	2
Senior Civil Servants	12	26
Commissioners	3	7
Commission Officials	2	4
EP President	1	2
Central Bank	1	2
State Agencies	9	20
Employers	2	4
Trade Unions	1	2
Agriculture	2	4
Unemployed	1	2
Pro-Neutrality Groups	2	4
Irish Banks	2	4
Irish Road Hauliers	2	4
Other	4	9

Author's own calculation.

The memoranda are not automatic but must be requested by the Committee. The Committee uses its freedom to ask for further information from ministries on a frequent and continuous basis. The Committee then decides what areas of EU activity it wishes to focus on in any calendar year. It holds oral hearings, which are fully open to the public, and prepares reports for the consideration of the Oireachtas. All of its reports are laid before the full House and five of fourteen have been debated in plenary. Table 22 provides a list of the Committee's reports in the period 1997 to 2000.

Table 22: Reports of the Irish Committee of European Affairs (1998/99)

First Report	Work Programme 1998
Second Report	Treaty of Amsterdam
Third Report	EU Institutional Report and Enlargement
Fourth Report	EMU
Fifth Report	Annual Report 1997-98
Sixth Report	Work Programme 1999
Seventh Report	Review of EU Legislation
Eight Report	Drugs
Ninth Report	EMU Changeover
Tenth Report	EU Legislation-Two Directives
Eleventh Report	EMU
Twelfth Report	Annual Report 1999
Thirteenth Report	Review of EU Legislation
Fourteenth Report	EMU

IV. The Irish Parliament and the Negotiation of the Amsterdam Treaty

Ireland held the Presidency of the Union from July to December 1996 and had thus to manage the IGC negotiations on Amsterdam during a critical period in the lead up to the conclusion of the negotiations under the Dutch Presidency. The Irish Presidency was mandated by the Florence European Council to present a general outline for a draft revision of the Treaties to the Dublin European Council in December. Provision was also made for an informal European Council in October under the Irish Presidency. The personal representatives met weekly over two days during the Irish Presidency and dealt with institutions for two full negotiating sessions. The General Affairs Council dealt with the IGC each month. The Irish Personal Representative, Noel Dorr, who handled the negotiations described his approach as 'successive approximation' whereby the Presidency attempted to increase the level of agreement among the Delegations so that they could agree on the text. Each issue was first dealt with in an 'introductory note' that was then followed up by a paper on the 'suggested approach', which included the actual Treaty text. The Dublin European Council in December 1996 accepted the Irish Draft Treaty as a good basis for further negotiations. The paper included a chapter -

chapter 19 - on the role of national parliaments.¹ During the Irish Presidency, the Committee for European Affairs hosted a meeting of COSAC in Dublin. The responsibility of the host was to make all practical arrangements for the meeting and to draft an agenda. Because the Dublin COSAC was taking place during an IGC, the main focus was on the role of national parliaments in the EU system. At this meeting agreement was reached on a draft protocol on the role of national parliaments in the EU.² This was later reflected in the document submitted by the Irish Presidency to the European Council in December 1996. Chapter 19 proposed the inclusion of a protocol on the role of national parliaments in the EU in the Treaty. The objective of the protocol was to ensure that national parliaments would receive copies of consultation papers and legislative proposals in good time to allow a four-week period between a legislative proposal being tabled and it being placed on the Council Agenda for decision.³ In addition, the protocol would recognise the role of COSAC as a collective voice for the national parliaments. The proposed draft formed the basis of the final agreement at Amsterdam but with a number of changes. First, the Treaty of Amsterdam provided for a six-week period rather than a four-week period between a legislative proposal being made available and placed on a Council agenda for decision. Second, the language of the provisions on COSAC was changed somewhat. The aim of the Irish Presidency was to improve the flow of information to national parliaments and to encourage their greater participation “without creating any new institution or body, without upsetting the balances in the current decision-making procedures and without complicating the Union’s decision-making process”⁴. As the Irish Government was preparing for the Presidency, the Joint Committee on European Affairs drafted a report on “The Role of the Oireachtas in the European Union: Post 1996 Inter-governmental Conference”⁵. This was the first report published by the newly formed European Affairs Committee. It was a stocktaking exercise and suggested that members of the Committee were influenced by the growing debate in Europe about the role of national parliaments. The Committee decided to undertake an analysis of the role of the Oireachtas so that it could

“make suggestions to both Houses as to what might be done to enhance the contribution of the Oireachtas in the European Union and particularly to inform the public and make the Union more open to its citizens”⁶.

A sub-Committee of the full Committee was given the task of preparing a draft report. The report was published in June 1996 as the first report of the Joint Committee on

1 See Intergovernmental Conference: ‘The European Union Today and Tomorrow’, 5 December 1996.

2 See the documentation by Astrid Krekelberg in this volume, document No. 2.

3 See Intergovernmental Conference: ‘The European Union Today and Tomorrow’, 5 December 1996, p. 123.

4 Ibid., p. 123.

5 Joint Committee on European Affairs, *The Role of the Oireachtas in the European Union: Post 1996 Inter-governmental Conference*, Dublin, June 1996.

6 Ibid., p. 5.

European Affairs. In it, there is a comparative assessment of the degree of parliamentary control exercised in each member state. The Danish Parliament is identified as the Parliament with most control, followed by the Austrian, Finnish, German, Dutch and Swedish parliaments. The parliaments that exercise least control are identified in the report as the Belgian, Greek, Italian, Luxembourg, Portuguese and Spanish parliaments. The Irish Parliament is seen as somewhere in the middle with the British and French Parliaments although the Oireachtas does not use a system of 'scrutiny reserves'.¹ The report outlined the debate on the role of national parliaments in the EU with a particular emphasis on the section in the Reflection Group Report, Declarations 13 and 14 attached to the Treaty on European Union and the role of COSAC. The tone of the analysis is one of support for a strengthening of the role of the national parliaments in the EU but no sense of urgency concerning the position of the Oireachtas. Irish parliamentarians were clearly supportive of links and contact in inter-parliamentary fora but were unlikely to exercise a leadership role. In the section dealing with the requirements of national parliaments, there is a list of ten issues identified 'during the course of meetings attended by members of the Joint Committee with parliamentarians from other member states.'² The Irish Parliament is essentially a taker and not shaper of the agenda on the role of national parliaments in the EU.

The report made specific recommendations concerning its role in relation to scrutiny, European commissioners, the Conference of European Affairs Committees and a second Chamber. In relation to these issues, the Joint Committee:

- saw no merit in the creation of a second Chamber,
- supported the idea that European commissioners should appear before the national parliaments of the member states to answer questions in relation to their areas of responsibility,
- expressed strong support for COSAC because it enabled national parliamentarians to compare and contrast methods of parliamentary control and to exchange information about issues of common concern,
- supported the inclusion of a reference to COSAC in the Treaty but wanted COSAC to remain consultative in nature,
- was generally satisfied with the provisions for scrutiny but considered that it needed to establish a more structured and expanded programme of scrutiny, and
- proposed to invite ministers to address the Committee on important issues prior to Council meetings.³

1 See Joint Committee, 1996, *op.cit.*, p. 9.

2 *Ibid.*, pp. 37-38.

3 See *Ibid.*, pp. 44-45.

The Protocol on National Parliaments (PNP) essentially met the concerns of the Joint Committee on European Affairs, as it did not create any additional EU level institutional layer.

V. The Irish Parliament after Amsterdam

The context for the role of the Irish Parliament after Amsterdam was established in 1995 with the setting up of a separate European Affairs Committee. The implementation of the Treaty of Amsterdam coincided with a national election in Ireland and the reformation of the European Affairs Committee in November 1997. There was no direct reference to the Amsterdam Protocol in the terms of reference of the Committee other than the stipulation that members of this Committee “represent the Houses of the Oireachtas at the Conference of European Affairs Committees (COSAC)”¹. However, in July 1999 the terms of reference were amended to allow the Committee to refer proposed EU legislative acts to another Oireachtas Select Committee if the Committee of European Affairs concluded that the issue was of sufficient national importance to warrant further scrutiny. This was seen as enabling the Oireachtas to “take full advantage of the new role of national parliaments outlined in the Treaty of Amsterdam”². The most significant change in the content of the Committee’s work was the establishment of a “revised system of scrutiny of draft European legislation and Statutory Instruments”³. The Committee recruited the services of legal consultants to provide it with an ongoing series of reports on the EU’s legislative programme so that it could choose what it would analyse and follow up on. The consultants provided the Committee with eight reports between September 1998 and December 1998 and twelve reports in 1999.⁴ The consultants filter the vast array of EU legislation and Irish Statutory Instruments (SIs) for the Committee. Usually, the Committee follows up the consultants reports by asking the ministries for further information on particular SIs or draft EU legislation. For example in 1999, the Committee followed up SIs dealing with food contamination and directives or proposed directives on fixed term work, water policy, fisheries and combined transport.

1 European Affairs Committee, Annual Report, 1997-1998, Dublin 1999.

2 European Affairs Committee, Annual Report, 1999, Dublin 2000, p. 4.

3 European Affairs Committee, Annual Report, 1997/98, p. 4.

4 See the European Affairs Committee’s Annual Reports, 1998 and 1999.

VI. Conclusions: Institutional Adaptation to Exogenous Demands

This paper has analysed the role of the Irish Parliament in relation to Europe and Ireland's membership of the European Union. The high degree of consensus about the benefits of EU membership for Ireland together with the relative weakness of the Irish Parliament ensured that there was no great concern about the scrutiny of Ireland's involvement in Europe at the outset. That said, the role of the Parliament in holding the Government accountable and the expansion of secondary legislation as a consequence of EU membership led to the establishment of a new institutional device - the Joint Committee on Secondary Legislation - in the Oireachtas. This in turn contributed to the development of a Committee system in the Irish Parliament in the 1980's which was later rationalised in the 1990's. The 1993 decision to establish a Foreign Affairs Committee and the later decision in 1995 to establish a European Affairs Committee altered the institutional context for parliamentary involvement in EU affairs. The European Affairs Committee found itself developing in the midst of a wider debate about the role of national parliaments and was clearly influenced by its involvement in COSAC. Its first report in 1996 addressed the issue of parliamentary involvement in the light of the IGC negotiations that led to the Treaty of Amsterdam. It supported an enhanced role for national parliaments but one that did not involve further institution building at an EU level. In relation to its domestic role, the Committee put in place mechanisms that have enabled it to pay more attention to EC legislation and consequent national legislation. Moreover, it has concentrated its energies on the big European questions of the day - the Euro, IGCs, enlargement and issues that are of concern to the Irish public, asylum and drugs. The Protocol on National Parliaments attached to the Treaty of Amsterdam was welcomed and led to changes in the terms of reference of the Committee. There has thus been an interaction and intersection of changes in the institutional character of the Irish Parliament and the dynamic of European integration. Just as the EU has been part of the modernisation of the Irish economy and society, it has been an element in the reform and modernisation of the Irish Parliament.

The Parliament of Italy: From Benevolent Observer to Active Player

Federiga Bindi Calussi and Stefano B. Grassi

I. Introduction: The Political Culture and System of Italy

The relationship between European integration and Italy is an odd one. The unification of the continent is seen in a positive historical light: to Italians, an integrated Europe is a somewhat logical continuum of their history, the best way to secure overall peace. During the 'glorious' period of the Risorgimento the claim for a United Europe emerged as a way to free and re-unify Italy. As the EEC started to take its first steps, the Community also tended to be associated with an improved socio-economic life-style. Thus not surprisingly, Italians are - as the Eurobarometer reported along the years - among the most convinced supporters of the process of European integration.¹ Furthermore, as the Italian system was entering in a crisis, the EC began to be perceived as the only chance to bring order into the national system: thus, the demand for supranational structures became also a demand for repairing the inefficiencies of the Italian system. On the other side, the EC at times was used by Italian politicians to legitimise their own actions.² European constraints were in fact often recalled in order to justify otherwise unpopular fiscal and monetary measures.³ Yet, Italy's non-implementation of EC legislation and lack of respect for the obligations arising from the treaties are well known.⁴ "A question of culture" - The Economist defined: "Managers in Italy tend to be more flexible. Rules and regulations (where they exist) are often ignored [...]."⁵ The relationship between Italy and the EC/EU therefore appears as an odd one. This is of course reflected in the institutions and in the procedures regarding European Affairs, as we will have the chance to see in the paragraphs to follow.

1 Yet, when in 1989, in a referendum held on the occasion of the European elections, 89 per cent of the voters expressed their support for the idea of giving a constituency mandate to the European Parliament, a parallel poll revealed that 55 per cent of the interviewed were unsure whether Italy was a member of the EC.

2 See Cotta, Maurizio: 'European integration and the Italian political system', in: Francioni, Francesco (ed.): Italy and EC membership evaluated, London: Pinter Publishers 1992, p. 211.

3 As the headers of leading Italian newspapers show: 'The Twelve ask us tiers and blood' (La Repubblica, 5.5.1992); 'Privatization? It is imposed by the EC' (Corriere della Sera, 3.8.1992).

4 'No week passes without a sentence of the European Court of Justice to Italy' titled full page Italian financial newspaper Sole 24 Ore in 1991 (28.10.1991). The situation has improved in the past years but still has to do so.

5 The Economist (7.12.1991).

1. Attitudes towards European Integration

Except for the period right after the war, all major parties quickly became supporters of the process of European integration. When in May 1947 the Communists (PCI) and Socialists (PSI) were pulled out of government¹, they took on a negative view of Atlantic and European issues, perceived as a form of “submission” to the US. Opposed to this, the Christian Democrats (DC) made pro-European and pro-Atlantic values the main basis of their foreign policy.² De Gasperi's idea was in fact that Italy could better defend its national interests within a policy of European solidarity.³ In addition, the involvement in supranational European Institutions would help strengthening the internal structure of the national political system and the new-born democracy.⁴ European integration was thus seen as a fundamental opportunity for the peninsula. Joining the ECSC was hence essentially political, since there were a number of reserves as to the technical issues. In particular, the steel industry saw the project quite sceptically.⁵ The parliamentary debate was tense and ideological. However, soon afterwards, the socialists started to change their mind. The PSI in fact abstained on the EEC and voted in favour of EURATOM.⁶ The communists, following Togliatti, remained opposed to the EEC until the end of the 1960's.⁷ They revised their opinion when the first communists were appointed to the European Parliament (1969), to then become pro-European at the end of the 1970's, with the direct election of the European Parliament (1979)⁸, when European Federalist Altiero Spinelli was elected as an independent in the electoral lists of the PCI.⁹ As a result, a “de-politicisation of the Italian foreign policy” started to take place: gradually the EC became a non-issue in the Italian political arena. That led to the

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- 1 See Ginsburg, Paul A.: *History of Contemporary Politics. 1943-1988*, London: Penguin 1990, pp. 110-112.
 - 2 See Pistone, Sergio (ed.): *L'Italia e l'Unita' Europea*, Torino, Loescher, 1982, pp.134-135.
 - 3 See Telò, Mario: 'L'Italia nel processo di costruzione europea', in: *Storia del l'Italia Repubblicana*, Vol. 3, Torino, Einaudi 1996, pp. 195-196.
 - 4 See Cotta, Maurizio, 1992, *op.cit.*, pp 206-207. See also Ferraris, L.Vittorio: 'Italian-European foreign policy', in: Francioni, Francesco (ed.): *Italy and EC membership*, London 1992, p. 131.
 - 5 Besides the steel and the 'heavy' industry, in Italy opposition came from the PCI and the Nenni's Socialists. Contrary to this, the car industry was strongly supporting membership. The steel industry and Confindustria (the industrialists association) would convert to Europe only in the mid 1950's. See Telò, Mario, 1996, *op.cit.*, p. 186; Roussel, Eric, Jean Monnet, Paris, Fayard, 1996, p. 531; Gerbet, Paul, *La Construction de l'Europe*, Paris, Imprimerie Nationale, 1983, p. 132.
 - 6 See Telò, Mario, 1996, *op.cit.*, pp. 197-200. The cause of the change was primarily the invasion of Hungary in 1954. Already in 1955 the leader Pietro Nenni had become member of Jean Monnet's Comitè d'Action. PSI then joined the majority supporting the Government in 1958, to enter the Government in 1963.
 - 7 The turning point was represented by the publication of the Memoriale di Yalta after Togliatti's death in 1964. In the Memoriale, Togliatti criticised the USSR. In fact one has to notice that the USSR would officially recognize the EEC as a juridical entity only in 1985 with Gorbachev.
 - 8 See It is interesting to note how Rifondazione Comunista - born from a shift from PCI when it transformed in 1990 into PDS - has re-assumed an anti-European stance.
 - 9 See Spinelli Altiero, *Diario Europeo / III*, Bologna, Il Mulino, 1992.

confirmation of the diplomats' and bureaucrats' leading role in EEC negotiations.¹ Only at times a strong political leadership emerged. That was the case in 1985, at the European Council in Milan (28.-29.6.1985), when the Italian Presidency - against the will of the UK, Denmark and Greece - decided to move on a vote about whether to call for the IGC, which led to the SEA.² This took place once more during the 1990 Italian EC Presidency, when the two concurrent IGCs on the EMU and the political Union had to be prepared.³ The approval of Minister Carli's report on the EMU at the Rome I informal Council, the Rome II Council in December, the bilateral meetings with both Socialist and Christian Democrats leaders⁴ - all this made it possible to find an agreement on the phases of EMU and to call for the IGCs.

Though, it is the Italian dimension rather than the European one to appeal to national politicians, who tend to consider Euro-jobs as (well paid) retirements or interim positions while waiting for good occasion to go back to the national political arena. This, of course, brings in serious consequences for Italy's action at the European level, as the Minister for EC Affairs Mr. Romiti affirmed in 1990: "Until now, EC law has been adopted in Brussels without an Italian action in the preparatory phase...."⁵

Yet, since the 1990's, European politics have at times been used as a tool of political confrontation between coalitions. In March 1994, the legislative elections led to the victory of a center-right wing coalition (Polo), led by Silvio Berlusconi, characterised by nationalist policies⁶ and rather anti-European sentiments.⁷ This, together with the political isolation of the Government⁸, for the first time put Italy aside in the European arena. In 1996, the elections were won by the center-left Ulivo coalition.⁹ The new

1 See Telò, Mario, 1996, op.cit., p. 197.

2 Indeed, both the Socialist Prime Minister Bettino Craxi and the Christian Democrat Foreign Minister Giulio Andreotti lobbied intensively before the European Council and could count on the respective European political links. (Financial Times, 27.11.1991).

3 See Middlemas, Keith: Orchestrating Europe. The Informal Politics of the European Union, London: Fontana Press 1995, pp. 167-168.

4 At the time of the TEU IGCs, six out of twelve of the EC leaders were Christian-Democrats: Andreotti (Italy), Ruud Lubbers (Dutch, President of the Council), Jacques Santer (Luxembourg), Wilfried Martens (Belgium), Constantine Mitsotakis (Greece) and the German Chancellor Helmut Kohl.

5 Sole 24 Ore, 12.4.90.

6 Silvio Berlusconi declared in his first speech to the Parliament that Italy was to play 'a leading role' in the framework of the European Union (Il Sole 24 Ore, 17.5.1994). The Minister for Agriculture, Mrs. Adriana Poli Bortone, affirmed that 'Italy is going to play hard in Brussels' (Il Sole 24 Ore, 16.7.94). Italy opposed Slovenia's association to the EU (Il Sole 24 Ore, 17.7.94 and 31.8.1994) and almost created a diplomatic case following the proposals of the German CDU of creating a two-speed Europe, where Italy was to be in the circle of the 'late comers' (Il Sole 24 Ore, 3.9.1994; Il Popolo, 6.9.1994).

7 The Minister for Foreign Affairs Antonio Martino is the only Italian member of Mrs. Thatcher's Club de Bruges (Il Sole 24 Ore, 24.5.94).

8 Due to the fact that the coalition parties were at the time excluded from the European political families on the one hand, and on the other to the reactions to the presence of Alleanza Nazionale (former MSI) in the Government.

9 See Sole 24 Ore, 17.2.1996.

Prodi government¹ was characterised by a huge effort to relocate Italy into the European arena, in particular focusing on its action in the economic reforms needed to successfully fulfil the EMU criteria. Since then a stop-and-go and sometimes artificial arguing started between the two opposite coalitions about “European values” and “Italian interests” and about which of the two coalitions would be more fit to preserve them.

2. Basic Features of the Italian Political System

The 1948 Republican Italian Constitution - written and approved after the fascist period - is a long (139 articles), rigid, programmatic text, indeed a result of many compromises. The Italian society is a pluralist one, and the Constitution reflects that. It designed weak institutions and strong parties, as it was believed that the system would work because of the strength and the authority injected from outside by the parties. The parties are not directly involved in policy-making, but they appoint the ministers, decide upon under-secretaries, chairmen and members of the boards of any public company or highly important public body, including the appointment of top-executives of public departments.² Furthermore, the Italian Parliament is “a highly polycentric institution not easily amenable to majoritarian decisions and to firm leadership by Cabinet”³. The legislature, in fact is based on equal bicameralism, the Senato (Upper Chamber) and the Camera (Lower Chamber) performing identical functions and sharing the legislative power.⁴ The Italian Parliament has a committee-centered structure and is in many ways a ‘working parliament’. In particular, vertical committees are empowered, under certain conditions, to adopt laws without a vote in plenary. Parliamentary procedures also assign a marginal role in parliamentary works to the Government. On the other hand, opportunities for individual deputies and minor groups to influence the agenda setting and the legislative process are maximised according to a prevailing consociational inspiration. All this tended to shape a recognisable organisational and procedural model whereby the Parliament acts as a legislator and neglects control and scrutiny functions.⁵ In the beginning this was meant to reduce confrontation and incorporate opposition parties in the democratic system. Over the years, it has reduced the Parliament’s per-

1 La Repubblica, Il Sole 24 Ore, 18.5.1996.

2 See Amato, Giuliano: My experience as Prime Minister, speech given at the European University Institute (Florence), in October 1993.

3 Cotta, Maurizio: ‘The centrality of parliament in a protracted democratic consolidation: the Italian Case’, in: Liebert, Ulrike/Cotta Maurizio (eds.): Parliament and democratic consolidation in Southern Europe, London: Pinter Publishers 1990, p. 76.

4 Article 70, Italian Constitution.

5 For a concise and illuminating description of the Parliament’s organisational model and its quantitative and qualitative effects see Cotta, Maurizio: Il Parlamento nella prima repubblica, in: Pasquino, Gianfranco: La politica italiana, Bari, Laterza, 1996, pp. 79-91.

formance and effectiveness.¹ In addition, the pure proportional electoral system produced a very fragmented party system with at least eight national parties represented in parliament at any given time, and very little stability.² Yet, the new electoral system³ introduced for the first time in 1994 seems not to have reduced the number of parties: in the 1996-2000 legislature fragmentation indeed appears to have grown, with some forty different political groups in parliament and an eight-parties government coalition.

The head of government is, as President of the Council, appointed by the President of the Republic. He is allowed to take office only after having obtained the vote of confidence from the Parliament. In theory it is up to him to select the members of the Council of Ministers. However, in practice, the President of the Council is forced to respect the "suggestions" of the parties' leaders. The Council of Ministers - in principle a collegial body - is not an effective center for policy co-ordination: the level of collegiality has usually been extremely low, as were expectations over the Cabinet's role in formulating or reviewing overall sectarian policies, while inter-ministerial competition has always been high.⁴ The mechanism allowing for an easy use of the non-confidence vote further helped in determining a situation in which the Italian government was much weaker than most of its European counterparts. In the words of Giuliano Amato: "[...] Italy is an excellent example of the theory of involution"⁵, expounded by Mancur Olson:

"a vital system that becomes progressively rigid, incapable of correcting its increasing entropy, and unable to keep up with the need of change, is finally destroyed by the impact on its corrupted tissues of newly emerging counter-forces."⁶

This is why the Government recently undertook an important reform according to which the number of ministries will be cut to twelve from the next legislature onwards, while

1 The classical analysis, although now superated by parliamentary practice, is the one made by Di Palma, Joseph: *Surviving without governing, The Italian Parties in Parliament*, Berkeley, 1977. See also Cotta, Maurizio, 1990, *op.cit.*, pp. 55-89 In Italian, the leading work is Predieri, Antonio, *Il Parlamento nel sistema politico italiano*, Milano, Giuffr , 1975. See also Morisi, Massimo, *Il Parlamento tra partiti e interessi*, in: Morlino, Leonardo (a cura di), *Costruire la democrazia*, Bologna, Il Mulino, 1991, pp. 367-445.

2 Normally including the Christian-Democrats (DC), the Liberals (PLI), the Republicans (PRI), the Social-Democrats (PSDI), and, since the early 1960's, the Socialists (PSI). The over 50 Cabinets the Republic had were rather large and unstable, supported for most of the post-war period by four/five party coalitions.

3 According to the new electoral law, in the Camera 75 per cent of the MP are to be elected on an one-single-turn majority system, while the remaining 25 per cent are still to be distributed on a proportional basis. The former electoral law was purely proportional.

4 See Hine, David: *Governing Italy. The Politics of bargained pluralism*, Oxford: Oxford Clarendon 1993, p. 213.

5 Professor of Constitutional law and former President of the Council (June 1992 - April 1993).

6 Amato, Giuliano: *Italy: The Rise and Decline of a System of Government*, *Indiana International & Comparative Law Review*, Vol. 4, No. Winter 1994, pp. 225-230.

the Presidency of the Council's powers as well as its operative tools will be sensibly extended.¹

As for vertical power segmentation, regionalisation was written into the 1948 Constitution but - except for the five "special status" regions (Val d'Aosta, Alto Adige², Friuli, Sicily, Sardinia) - it took until the 1970's to implement partial administrative decentralisation, and even longer to draft regional charters, transfer administrative responsibilities and work out financial arrangements.³ Each regional authority consists of a directly elected assembly (Consiglio Regionale) which enacts regional legislation and elects the executive body (the Giunta) and its President. The same administrative scheme is used at the provincial and at the municipal levels.⁴

3. How European Affairs are organised in Italy

The Italian Constitution does not mention European issues. In fact, when Italy co-founded the Communities, there was no clear idea of what they were to become; hence, they were assimilated to classical international organisations, producing international law. No surprise, therefore, that the main role in dealing with EC issues was given to the Government, and within it to the Ministry of Foreign Affairs (MAE).

Previously divided into six thematic Directorate-Generals (DGs)⁵, in January 2000 the MAE was reformed⁶ and reorganised according to a geographical criteria: today one finds a DG "Europe", and a DG "European Integration" (DGEI). In particular, the latter has the task to ensure - in coordination with the Presidency of the Council - the promotion of Italian positions within the European institutions. In addition, DGEI spreads the information coming from the Permanent Representation of Italy to the EU and the Commission to the other branches of the Public Administration⁷. The Undersecretary

1 Such reforms started in 1996 with the two DD.LL. 30 luglio 1999, No. 300 and No. 303. As concerning the Presidency of the Council see also the DPCM of 15 April 2000. See also Della Cananea, Giacinto: 'Co-ordination of EU policy-making in Italy', in: Kassim H., Peters B. G., Wright, V., (eds.): *The National Co-ordination of EU Policy - The Domestic Level*, Oxford 2000; Paino, Alessandro/Torchia, Luisa: *La riforma del Governo*, Bologna, Il Mulino, 2000.

2 Alto Adige is further divided into two autonomous provinces, Bolzano and Trento.

3 Nevertheless, the twenty regions - which are indeed important organs for the articulation of demands and for public policy implementation - were not given fiscal autonomy. The three tiered structure of elected governments below the national level (regions, provinces and municipalities) is organized following the patterns of the central Government both from a formal and informal point of view.

4 See law 142 of 8.6.1990.

5 Economic Affairs, Political Affairs, Culture, Emigration, Personnel, Co-operation to Development.

6 See *Il Sole 24 Ore*, Stampa, Unità, 24.12.1998.

7 Ministero degli Affari Esteri, Regolamento concernente l'organizzazione e le funzioni degli Uffici dirigenziali generali dell'Amministrazione Centrale del Ministero degli Affari Esteri, 1999.

for Foreign Affairs delegated with European Affairs shall assist the Foreign Minister both in bilateral and multilateral European Affairs meetings.¹

With the above mentioned reform of the Government, the Foreign Ministry will be charged with the coordination of the “external” parts of European Affairs, i.e. the negotiating phase and the institutional relationship with the EU as well as its political and economic external relations. The reforms in fact also aim at increasing the President of the Council’s coordination role in European Affairs both in the pre-negotiating and in the application phases on EC law by referring to the Department for European affairs led by the Minister for European Affairs.

In 1980, a new non-departmental Ministry for the Co-ordination of EC Policies² was created under the Presidency of the Council. However, due to the lack of resources - and to some opposition of the MAE - the coordination task was not effective.³ In 1987, the so-called “Legge Fabbri”⁴ introduced a new Department for the Coordination of EC Policies, again within the Presidency of the Council of Ministers. The aim of the Dipartimento - only operative since June 1990 - was to secure a more effective action, especially with respect to the implementation of EC directives and the completion of the internal market program. It was also supposed to develop better relations with EC institutions, to supervise the correct implementation of EC law and the use of EC funds.

Experiments in such sense have been introduced several times, with little steady success. However, there is yet no formal, hierarchical inter-ministerial coordination on EU topics, as it is for instance the case in Portugal with the Comissão Intermistrial para os Assuntos Comunitarios, or in France with the Secrétariat Général du Comité Interministériel pour les questions de coopération économique européenne (S.G.C.I.). Nor can Italy count on an efficient bureaucracy: Italian bureaucracy is in need of modernization and reluctant to change. Moreover, it is badly distributed, over-staffed in the South, and with little cross-fertilization and transfers between the private and the public sector.

1 Camera dei Deputati, 1996: Governo Prodi. Ministri, Sottosegretari di Stato e segreterie particolari, Roma, p. 27; and Decreto di delega ai Sottosegretari di Stato per gli Affari Esteri, Governo D’Alema, article 1.

2 Ministero per il Coordinamento delle Politiche Comunitarie.

3 Massai, Alessandro: ‘Il coordinamento interno delle Politiche Comunitarie’, in: Quaderni Costituzionali, No. 2/1982, pp. 481-489; Ciriolo, Antonio: Il Dipartimento per il Coordinamento delle Politiche Comunitarie, Lecce, Milella, 1991, Grottanelli de Santi, Giovanni: ‘The impact of EC integration on the Italian form of government’, in: Francioni, Francesco (ed.), 1992, op.cit., p. 186, defined it as the Cinderella of the Italian Ministries.

4 Law 183/87. Its role was further specified by Law 139/90, especially as related to how it should coordinate EC activities of the Government with those of the Public Administration and of the Regions.

II. Parliamentary Practice in EU Affairs

Until the end of the 1990's, the Italian Parliament displayed a "low level of Europeanisation"¹, in terms of structural adaptation, energies devoted to EC law scrutiny, and activism in pressing for a greater role vis-à-vis the Government. The original pattern of parliamentary behaviour showed little variation over the years. Community affairs were assimilated to foreign policy and thus reviewed in both chambers by the committees for Foreign affairs through normal parliamentary procedures. The rules of procedures in fact expressly forbid the standing committees from addressing political resolutions to government on European matters.²

In 1968, the Senate created an ad hoc body, the *Giunta per gli affari delle Comunità europee*, with fact-finding and consultative functions. However, the *Giunta* had a minimal impact on parliamentary activities.

The establishment of specific institutions and procedures for the conduct of EC business took place in the aftermath of the SEA. Between 1987 and 1990 a number of reforms cumulated in a major effort to adjust the domestic EC decision-making structures to the changed Community context, with a view to cope with the expected flood of EC directives for achieving the Single Market.

The mentioned Fabbri Law³ of 1987 and, two years later, the Law La Pergola⁴ provided the basic framework for EC domestic decision-making. Both the Senate (1988) and the chamber (1990) revised their rules of procedure, introducing specific mechanisms for the handling of European affairs. For the first time, standing committees were empowered to express their position on European Commission's proposals in a resolution addressed to the Government. The Maastricht Treaty did not raise a debate on parliamentary sovereignty.⁵ The institutional changes were in fact considered in line with Declaration No. 13 annexed to the TEU.

The resulting organisational setting, which characterised the Parliament until the reforms prompted by the Amsterdam Treaty, is rather simple.⁶

1 See Rometsch, Dietrich, Wessels, Wolfgang: Conclusion. 'European and National Institutions', in: Rometsch, Dietrich/Wessels, Wolfgang (eds.): *The European Union and Member states. Towards institutional fusion?*, Manchester 1996, p. 354.

2 For an account of this phase see Cassese, Antonio (ed.): *Parliamentary Foreign Affairs Committees. The National Setting*, Padova/New York, Oceana, 1982. A wider analysis in Italian is Morviducci, Claudia: *Il Parlamento italiano e le Comunità Europee*, Milano: Giuffrè 1979.

3 For comments see Tizzano, Antonio: 'Sull'attuazione della normativa comunitaria in Italia: la legge 183/87', in: *Foro Italiano*, 1988, IV, col. 219; Del Vecchio, Anna Maria: 'L'attuazione delle direttive comunitarie: nuove linee di tendenza nella legislazione italiana', in: *Foro italiano*, 1988, IV, p. 226ff.

4 Law 9 March 1989, No. 86.

5 See Balducci, Massimo: 'Italy and the Ratification of the Maastricht Treaty', in: Larssen, Finn (ed.), *The ratification of the Maastricht Treaty*, Maastricht 1993, pp. 195-200.

6 For a detailed description of the institutional setting just after the Maastricht Treaty see Guizzi, Vincenzo, Italy: 'A Consideration of the Position of the National Parliaments in the European

Both houses rely on specialised committees to deal with European Affairs. The chamber set up a brand new Commissione speciale per le politiche comunitarie in 1990 at the image of the Senate's Giunta. Structure, membership and functions of the two bodies are similar, with minor differences. They both are ad hoc committees, which are equal to the standing committees in size, structure and functions, but are precluded from having full legislative powers. The Giunta is formed by 24 members and the Commissione Speciale by 48, each of whom at the same time serves as full member of a standing committee. Members are appointed at the beginning of each legislature by the President of the Houses, on the basis of indications of the political groups, to reflect the balance between the political parties in the plenary. Every two years they are renewed, but they can be re-confirmed.

The Giunta and the Commissione speciale elect a Chairman - usually drawn from the majority -, two Vice-Chairmen and two Secretaries, collectively known as the Bureau. The Chairman represents the committee in the relations with other committees and outside the Parliament, convenes the meetings, presides over the orderly conduct of business and has an influential role in shaping the agenda. The two committees are relatively 'open' structures. The Commissione speciale, with the consent of the President of the House, may invite Italian members of the European Parliament to attend its meetings with speaking rights but without the right to vote.¹ The Senate's rules of procedure have a slightly more restrictive standing.¹

The Bureau sets up the calendar of meetings. The Commissione and the Giunta usually meet two days a week. The fact that their members at the same time are members of a standing committee negatively affects attendance at the meetings and the continuity of the proceedings. Committee meetings are closed to the public. However, the minutes of the debates and the relevant documentation under consideration are published shortly after each meeting. In addition, the Chairman may authorize broadcasting of the session for the press and eventual visitors through the internal television channel. As for support services in the chamber, a special service operating within the Research Unit - the Service for Community and International affairs - monitors the evolution of institutional and legislative processes, drafts legal opinions and background documentation. The service is staffed with three higher civil servants, six assistants and three secretaries. An additional administrator supported by six assistants looks after the logistic and proce-

Union', in: Laursen, Finn/Pappas, Spiros, (eds.): *The Changing Role of Parliaments in the European Union*, Maastricht 1995, pp. 151-164.

1 The chamber's rules of procedures provided, in addition, for a periodical meeting of the Commissione speciale with a special Delegation of the European Parliament composed by the members of the Bureau of the Presidency of the EP, heads of EP political groups and President of EP committees at the opening and the end of the rotating presidency of the EC. The provision has been deleted in the reform adopted in July 1999.

dural business of the special committee. The Senate's support staff is comparatively smaller. A single administrator, one assistant and three secretaries, look after the Giunta and help other committees' staff in their handling of European business.

The two specialised committees have horizontal functions. They are vested with a greater role in the area of implementation of EC norms than in the scrutiny of government's positions within European negotiations. The powerful Standing committees have the primary responsibility for reviewing proposals for EC legislation in their subject area. The specialised committees are entitled to receive all EC documents and may adopt resolutions or reports on the institutional aspects of EC activities. They do not have a general function of sifting European proposals and reporting to the standing committees. They may however adopt an opinion on a proposal under examination by a standing committee. In implementing EC law, the specialised committees enjoy a full coordination role. All draft legislation for the implementation of Community directives and the incorporation of regulations into national law as well as proposals for new legislation which fall within the remit of EC competencies are referred to the Giunta and the Commissione with a view to receive an opinion on their consistency with existing EC law.²

While the specialised committees and the standing committees share the power to monitor the Government's conduct within European negotiations, the first ones are solely empowered to review the half-yearly government's report on EC politics. In addition, they review EC legislation after its adoption and, in the chamber, the rulings of the European Court of Justice. Finally, they question ministers on EC legislation draft proposals as well as on general EC policy issues. The committees may also hear high-ranking public officials, with the assent of the competent Minister. Deputies may also avail of normal control and information procedures, such as questions for oral or written answers in order to raise a debate on EC/EU issues. Usually, the two committees have a consensual working style, with low-key conflicts and a non-partisan attitude. The dialogue with the executive takes place in an informal and co-operative atmosphere.

The scope of parliamentary scrutiny includes the whole range of the EC's legislative activity. On the basis of Law 183/187, the Government transmits all proposals of regulations, directives and decisions within thirty days from their reception, as well as the legal acts adopted by the Community institutions, together with a short assessment of their impact on the domestic legal order. Furthermore, Law 86/1989 provides for an enhanced parliamentary access to written information on EC developments. Every six months the Government presents a report on Italy's participation in Community policies to both houses, and, every year, a general report focusing on the progress made by the

1 Attendance of Euro-deputies is limited to a single representative for each political group present in the European Parliament, chosen by common agreement by the President of the Giunta and its European counterparts. See Senate's Rules of Procedure, article 142.

2 See Camera's Rules of Procedure, article 126.c.2; Senate's Rules of Procedure article 23.cc. 2 and 4.

EC towards the achievement of the Internal Market, with special attention paid to the effects of regional policies and to the national management of the EC's structural funds.¹

The Senate's Giunta, the chamber's special committee as well as the standing committees may review draft EC legislation with the Minister being present, and adopt resolutions. In most cases the review of an EC proposal is a one-meeting business. In exceptional cases the debate may be held over one or more supplementary meetings, allowing members to ask for oral or written evidence before deliberating. The scrutiny may end without the committee coming to a formal decision or with the adoption of a resolution, which carries a politically binding value.² When the committees debate resolutions on EU affairs, the Government is present and may propose amendments, ask for the postponement of the vote, or request to defer it to the plenary. The scrutiny procedure is a decentralised procedure in line with the Parliament's overall characteristic as a "working parliament": The plenary cannot debate and vote a resolution when this is tabled in a committee.

The most important innovation introduced in the years up to 1998 is the so-called 'Annual Community Law' (legge comunitaria annuale)³, created with Law 86/1989 (Legge La Pergola). The Annual Community Law provides a specific and systematic method for the harmonisation of domestic regulations to Community norms. It is only partially an instrument for immediate implementation, but rather a device to programme and rationalise the various sets of implementing measures. Each year, before 31 March, the Government submits a bill including all EC directives and regulations in need of national implementing measures adopted in the previous year to the Parliament. The law allows to choose among different techniques for direct and indirect implementation:

- Parliamentary abrogation or modification of existing domestic legislation,
- Delegation of legislative powers to the Government,

1 The report also extends to activities performed by the WEU and the Council of Europe, see article 7 and 8, law 9 March 1989, n. 86.

2 Whereas the Senate rules of procedures, article 143.c.6, expressly states that the Giunta and the committees may vote a resolution at the end of the scrutiny process, describing in detail the structure of the resolution, the Camera dei Deputati article 127 does not refer to a formal parliamentary act, simply indicating that the competent Committees 'may express in a final report their opinion on the opportunity of future initiatives'.

3 The legal doctrine on the Law La Pergola is rather wide. Among the most important comments see Borroni, Laura/Clerici, Roberta/Marzanati, Anna/Mazzoni Honorati, Maria Luisa/Stansfield, Gabriella/Viviani Schlein, Maria Paola: 'Commento alla Legge 9 marzo n. 86', in: *Rivista Italiana di Diritto pubblico comunitario*, No. 2/1991, pp. 523-625; Caretti, Paolo: 'La nuova disciplina della partecipazione dell'Italia al processo normativo comunitario e delle procedure di esecuzione degli obblighi comunitari, dettata dalla legge n. 86 del 1989 alla prova: la prima 'legge comunitaria'', in: *Rivista Italiana di Diritto Pubblico Comunitario*, 1990, pp. 330-350; Guizzi, Vincenzo: 'La legge La Pergola, 86/89. Una impostazione nuova del circuito decisionale e operativo Italia-Comunità', in: *Rivista di Diritto Europeo*, 1990, pp. 3-15.

- authorisation of the Government to adopt regulations in subject areas beforehand regulated by primary sources and
- administrative acts.

The Annual Community Law also provides a strict timing of its presentation, while the rules of procedure of the Parliament regulate the debate, with the aim to approve it within the year. By examining and amending the Government's bill, the Parliament has a synoptic and horizontal control over the introduction of EC legal acts into the domestic legal order. The parliamentary intervention triggers the regulatory power of the central administrations or the regions, which will enact the final regulations according to the guidelines, set by the houses. The system of Annual Community Laws strikes a balance between competing objectives: maintaining the pivotal role of the houses in EC law implementation; increasing flexibility in implementation and ensuring compliance with EC deadlines for implementation.

The involvement of the Parliament with regard to EC legislation was perceived to be necessary since the European Parliament had not yet developed into a full co-legislator at the European level. The national Parliament was seen as a "National-Community Parliament"¹, adding a second task of controlling and monitoring matters of EC competence (as long as the EP is not able to effectively check on the Council) to the scope of duties it naturally has within the national domain². Much of the changes were relatively easy to introduce since the creation of ad hoc bodies did not threaten the standing committees. The functions entrusted to the specialised committees were new ones and did not alter the relationships between the vertical committees. In addition they helped the Parliament in extending its control over European issues. However, the most innovative instrument, the power to ex-ante review of proposals for EC legislation, had to come to terms with a consolidated pattern of the Parliament's behaviour. Thus, the Parliament interpreted it as a negative and defensive power rather than a power to influence the daily elaboration of Italian negotiating positions.

The practice of the 1990's was a mixed one. The Parliament's information on EC business was insufficient and irregular. The government failed to fulfil the duty to transmit the Commission's proposals and forwarded the written reports with significant delays - usually superficial - so that an eventual detailed parliamentary debate would have been meaningless. Not surprisingly, the houses' participation in EC policy formulation was marginal. Parliamentary committees scrutinised few proposals and adopted an even smaller number of resolutions.³ Ex-post review of EC legal acts and of rulings of the

1 This image has been coined by Lippolis in: Lippolis, Vincenzo: 'Il Parlamento nazionale-comunitario', in: Quaderni costituzionali, No. 2/1991, pp. 319-347.

2 This point is raised in particular by Mazzoni Honorati, Maria Luisa: 'La partecipazione parlamentare al processo normativo europeo', in: Rivista Italiana di Diritto Pubblico Comunitario, 1995, pp. 27-40.

3 During the XI (1992-1994) and XII legislature (1994-1996) the Camera dei deputati has adopted eleven resolutions. The Senate had a slightly greater participation. The scrutiny of Commission pro-

European Court of Justice was minimal. The largest part of the work was carried out by the two specialised committees while the standing committees and the plenary remained isolated from the European arena. Only a handful of deputies were active and knowledgeable in European affairs.¹

The Parliament was relatively active in developing formal and informal relationships with other national legislatures, as well as with the European Parliament. The Assises in July 1990, and the first formal meeting of the COSAC were housed by the Italian Parliament in Rome. The standing committees had frequent contacts with their counterparts in the European Parliament, either at bilateral or multilateral level. The meetings, however, usually had little influence on the work of the Italian Parliament. MP's contacts with MEP's were "unsystematic, disorganised and irregular", as bilateral relationships were mainly carried out by political parties, outside the Parliament, through the channel offered by European political parties.²

On the other hand, the introduction of the Annual Community Law proved to be a successful solution. From 1990 to 1995, the adoption of five Community Laws eliminated the backlog and led to a consistent improvement of the share of directives transposed from 81,7 per cent to 90,2 per cent.³

The case of the EC directive on the legal protection of biotechnological inventions may provide a useful example of some contradictory features of the role played by the Parliament in those years.⁴

The Parliament began considering the issue many months before the proposal reached the Council for a final decision. In 1997, the Standing Committee on Agriculture undertook an inquiry that ended in October, asking for the rejection of the proposal⁵. Meanwhile, in August 1997, the European Commission had submitted to the Council and the European Parliament a modified proposal. The Committee for Agriculture of the cham-

posals provided for in article 144.r. has taken place 17 times. In addition article 50 has been activated six times and article 144.5 two times.

- 1 Furlong speaks of a 'small band of European specialists ... (holding) in practice very wide powers subject formally to the scrutiny of the full assembly'. See Furlong, Paul: 'The Italian Parliament and European Integration - Responsibilities, Failures and Successes', in: Norton, Philip (ed.): *National Parliaments and European Union*, London: Pinter Publishers 1996, p. 41.
- 2 As notes Guizzi, 'Really effective contacts between parliamentary groups at the two levels have not yet been established. In the administrative bodies of the national parties there is usually someone responsible for relationship with the federations and European political unions, so that the political circuit is closed: European groups-national parties-national parliamentary groups'. Guizzi, Vincenzo: 'Italy', in: Morgan, Roger, Tame, Clare, (eds.): *Parliament and Parties. The European Parliament in the Political Life of Europe*, New York 1996, p. 135 and p.141.
- 3 Data as of 31/12/1996. Source: XIV relazione sul controllo dell'applicazione del diritto comunitario, in *Gazzeta Ufficiale*, 31.11.1997, p. C 322.
- 4 See Directive 98/44/EC of the European Parliament and the Council of 6 July 1998 on the legal protection of biotechnological inventions in: *Official Journal*, No. L 213, 30 July 1998 pp. 0013-0021.
- 5 See Camera dei Deputati, XIII Commissione Agricoltura, Indagini conoscitive e documenti legislativi, No. 5, *Biotechnologie*, Roma, 1997.

ber passed a resolution calling upon the Government to delay the adoption of the directive, the day before the Council reached a political agreement on a common position on 27 November 1997.¹ On 16 February 1998, the Committee for Social Affairs of the chamber began debating a draft resolution inviting the Government to oppose the directive and requesting a moratorium on the production and use of genetically modified organisms in Europe. While the draft resolution was waiting to be voted, the Council adopted the common position, with the abstention of the Italian government. A couple of weeks later, the Committee for Social Affairs adopted the resolution. On the same day, the Senate passed a motion engaging the Government to request the suspension of the directive and to promote the elaboration of a new directive with more stringent requirements for the patentability of biotechnological inventions². Nevertheless, the Council approved the directive on 6 July 1998, again with the abstention of Italy.³ Later on, the Government decided to intervene in the action for annulment brought by the Dutch Government before the European Court of Justice.⁴ Pending the Court's judgment, the Government, where diverging views existed on the matters, excluded the directive from the annual Community bill and introduced a specific piece of delegating legislation to implement the directive to the Parliament.⁵ The bill met the resistance of a large coalition of parliamentary groups, seeking to force the Government to ask for a re-writing of the directive or to make concessions in the implementing legislation. Parliamentary obstruction is now likely to prevent the timely implementation of the directive, thus leading to tensions with the European Commission.

The case does not only illustrate the in general little input of the Italian Parliament on Italian EU decision-making, but also the lack of coordination in parliamentary intervention. Such a pattern justifies the evaluation of a protracted low Europeanisation of the Italian Parliament.⁶ In the mid 1990's this was widely perceived as unsatisfactory and dysfunctional. Changes at the European level and internal developments provided the

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- 1 Camera dei Deputati, risoluzione No. 8/00025 adopted by the Committee for Agriculture the 26 November 1997.
 - 2 Camera dei Deputati, risoluzione 7/00422, adopted by the Committee for Social Affairs the 10 March 1998; Senato della Repubblica, mozione 1/00095, adopted in plenary the 10 March 1998.
 - 3 The Parliament intervened five times in the process leading to the adoption of the directive. See Camera dei Deputati, La brevettabilità delle biotecnologie, No. 119, XIII legislatura - dicembre 1998.
 - 4 Case C 377/98 R. Kingdom of the Netherlands vs. Council of the European Union and European Parliament.
 - 5 See Senato della Repubblica, No. 4280, D.L. 'Delega al governo per il recepimento della direttiva 98/44/CE sulla protezione giuridica delle invenzioni biotecnologiche', XIII legislatura.
 - 6 Some authors describe the slow adaptation to EU dynamics as a deliberate effort to protect the specific organisational and functional characteristics of the Italian Parliament from the pressures for change coming from the European arena. See Giuliani, Marco: 'Italy', in: Rometsch, Dietrich/Wessels, Wolfgang, (eds.), 1996, op.cit., pp. 105-133. Among the comments in Italian the point is best illustrated by Morisi, Massimo, L'attuazione delle direttive Cee in Italia. La Legge comunitaria in Parlamento, Milano, Giuffrè, 1992.

catalyst for a second and comprehensive process of reforms, which has taken place after the negotiation of the Amsterdam Treaty.

III. The Italian Parliament and the Negotiation of the Amsterdam Treaty

When the Government negotiates an international Treaty, the Parliament is usually informed about the various stages of this process. It rarely has a real say on it, though it can influence the Government's position by adopting resolutions or similar acts. The negotiation of the Amsterdam Treaty falls within this typology: as in previous cases, the definition of the ultimate Italian position(s) were kept in the Government's hands and - within it - of the Foreign Affairs Ministry's.

In view of the IGC, the Italian Government had approved a number of documents.¹ Foreign Minister Lamberto Dini presented the Government's position to the Parliament on 5 December 1995. The key priority was to guide the negotiations on the basis of three principles. Firstly, the IGC was to remedy the gaps and insufficiencies in the Treaty, and, above all, to prepare the ground for the forthcoming enlargements of the Union. Secondly, the Treaty was to strengthen the Union's democratic character by expanding the powers of the EP and the scope of co-decision, as well as the efficiency of its institutional mechanisms. Thirdly, the IGC was to develop the Union's capacity to play a leading, coherent and responsible role on the world stage, to reinforce co-operation in justice and home affairs and to protect the freedom and security of the citizens. On the subject of the national parliaments, Italy considered that their closer association with Union activities would entail the effective application of the declarations annexed to the Maastricht Treaty and a more effective organisation of consultational and informational links between the national parliaments and their European select committees.

The debate that followed in the Camera was harsh. After long discussions, the chamber adopted, on 7 December 1995, five resolutions supporting the Government's position. Five other motions were withdrawn. However, the discussion was only partially devoted to IGC issues, but rather to internal questions. At a four months distance from the legislative elections, the debate offered a clear example of how European issues have at times been tied into national ones.²

1 Italian Government statement of 23 February 1995 on Foreign Policy guidelines; Italian Government statement of 23 May 1995 on the Intergovernmental Conference to review the Maastricht Treaty; Joint Declaration of 15 July 1995 by the German and Italian Foreign Ministers regarding the 1996 IGC, Position of the Italian Government on the IGC for the Revision of the Treaties, 18 March 1996.

2 For instance, the most voted resolution concerned the small industry's problems (!). Another one finally withdrawn was asking 'a stable and authoritative Government, provided with the constitutionally requested necessary consensus' for the Italian Presidency; see *La Stampa*, 8.12.1995; *L'Unità*, 8.12.1995; *Il Sole 24 Ore*, 8.12.1995.

On 1 January 1996, Italy took over the Presidency of the Union. There is no doubt that the landmark event of this Presidency was the opening of the IGC in Turin, on 29 March 1996. However, along the negotiations, the Italian Government maintained its above quoted position, especially with respect to the role of national parliaments. In fact the Foreign Affairs Ministry was reluctant about any further involvement of the Parliament into European issues. However, also because of the pressures of the Italian Parliament, the Government finally came to support the most advanced positions concerning an increased role of the national parliaments. These positions argued for a better information of the Parliament, for establishing a minimum time-limit between the moment in which the assemblies receive a text and its inscription on the agenda of the Council, and for leaving a space for manoeuvring for national parliaments in the formulation of directives. Concerning inter-parliamentary co-operation, Italy expressed its support for an improvement of COSAC as an instrument for the circulation of information and exchange of experiences, eventually expanding its competencies to the discussion of general guidelines concerning fundamental freedoms. However, the Government opposed any kind of institutionalisation and inclusion of COSAC into the Treaties as a third chamber.

As regards the positions of the Italian Parliament, it especially insisted on the transmission of documents by the European Commission to national parliaments. At the XV COSAC meeting in Dublin in December 1996, the President of the chamber's EC Committee, Antonio Ruberti, insisted on the need for national parliaments to receive the documents concerning guidelines and legislative initiatives from the European Commission. He also stressed the need to introduce a minimum time-span to pass between the presentation of such proposals and their adoption by the Council, thus making an important contribution to the elaboration of point three of the final document.

The legislative elections held in April 1996 and the subsequent formation of the Prodi government did not really modify the Italian position in the IGC. However, in a Joint Declaration annexed to the Amsterdam Treaty the new government expressed its disappointment for the results achieved together with France and Belgium as well as its view that further substantial institutional progress was needed before enlargement could take place.

A similar judgement was given by the Italian Parliament.¹ The Camera's Committee for International Affairs in fact recommended the Assembly a "conditional approval" of the Treaty subordinated to the request for further progresses in the political dimension of the Union. In March 1998, the Camera approved a cross-party resolution in which it stressed its discontent concerning the results achieved, while it underlined the will to re-

1 See Camera dei Deputati, Commissione Affari esteri e comunitari, *La revisione del Trattato di Maastricht. Obiettivi e limiti del Trattato di Amsterdam anche in vista dell'allargamento dell'Unione europea*, Indagini conoscitive No. 18, Atti parlamentari, XIII legislatura, Roma, 1999.

launch the process towards Political Union by convening a new IGC.¹ The Amsterdam Treaty was finally approved, with 428 votes in favour, one against, 44 abstentions (Lega Nord) in the Camera, and with the votes of all parties, except for Lega Nord, at the Senate.²

1. The Reforms after the Amsterdam Treaty

From 1998 to 2000 a number of significant reforms took place with regard to the role of the Parliament in European affairs. The first step of the reforms, in fact, dated back to August 1996, when the then ad hoc committee in the chamber was transformed into a permanent committee, named “XIV Commissione - Politiche dell’Unione Europea”.³ Afterwards, the ‘Annual Community law’ 1995-97⁴ and the law ratifying the Amsterdam Treaty⁵, adopted in 1998, marked the start of the reform process. With the first one the Parliament expanded its scope of action in European affairs by obliging the Government to provide the houses with all proposals concerning European affairs. The powers of the parliamentary committees were also specified. With the second law, the provisions of Protocol No. 19 was ‘translated’ into national law, by foreseeing the need to transmit legislative initiatives concerning home and justice affairs. Then, the Annual Community Law for 1998 obliged the Government to merge the various written reports in one single annual document.⁶ Finally, the Annual Community Law for 2000⁷ rationalised the rules on the provision of EU documents to the houses and the regions and introduced an Italian ‘variant’ of the parliamentary scrutiny reserve.

At the same time, legislative reforms were paralleled by changes in the rules of procedure of the Parliament. While in the chamber the procedures concerning European Affairs were significantly revised in 1997 and in 1999⁸, the Senate modified its internal rules in February 2000.⁹

The reforms, which went in parallel with the reform of the Government’s structure for EU policies management, aimed at two general goals. Firstly, to update the instruments for dealing with European affairs in order to promote a pro-active and anticipatory style

1 Allegato A, Seduta 333 del 25/3/1998, A.C. No. 4500 - Sezione 4.

2 In the Senate, the Lega Nord voted against. See *Il Sole 24 Ore*, 4.6.1998.

3 Camera dei Deputati, Amendments to the Rules of Procedures adopted on 1 August 1996.

4 Law 24 April 1998, No. 128.

5 Law 16 June 1998, No. 209.

6 Law 5 February 1999, No. 25.

7 Law 29 December 2000, No. 422

8 Camera dei Deputati, Deliberazione del 27 luglio 1999, Modificazione degli articoli 44, 118bis, 126, 126bis, 126ter e 127-ter del Regolamento della Camera dei Deputati, pubblicata in *Gazzetta Ufficiale* 30 luglio 1999, No. 177, p. 19-20.

9 See Senato della Repubblica, Proposta di Modificazione del regolamento d’iniziativa dei senatori Coviello, Zecchino, Brienza e Bratina, 14 maggio 1996, Doc. II, No. 3, XIII legislatura. See also Giunta per gli Affari delle Comunità europee, Relazione su attività e competenze della Giunta, Doc. XVI, No. 2, 27 giugno 1997, XIII legislatura.

of policy-making and to establish a closer link between the negotiating and implementing phases of the EC policy-making cycle. Secondly, to modify the Parliament's philosophy in dealing with European affairs by introducing the issues of quality and of coherence in legislation along the lines of the OECD guiding rules on the quality of legislation.

In fact, the changes partly followed the path set by the post-SEA reforms, modernising existing structures, partly introducing innovative concepts and instruments under the influence of the ideas elaborated within international settings such as the OECD and European inter-parliamentary fora such as the COSAC. In particular, the Italian Parliament took an active part in the work promoted by the Conference of Speakers of European Parliaments on the issue of the quality of legislation.¹

All in all, the re-organisation of the role of the Parliament in EU affairs aimed at:

- the revision of the institutional setting, at least in the chamber,
- the reinforced access to EU information,
- the modernisation of the rules allowing for scrutiny of EC legislation proposals and for a political control over the Government's action within European institutions and
- the introduction of a policy for enhancing the quality of implementing legislation.

2. The Unfinished Transformation of Specialised Committees

One of the objectives of the reforms was to transform the originally ad hoc-committees for European affairs into standing committees as to make them the central focus and engine for all parliamentary activities linked to EU affairs. That happened in the chamber in 1996.² As a consequence, the former Special Committee for Community Policies is now the XIV Standing Committee and its members cannot be members of any other permanent committee.³

The declared aim of the reform was to raise the political profile and the authority of the committee and to facilitate the meetings. However, the upgrading to a Standing committee hasn't yet had a noticeable impact on the duration and frequency of meetings. So far,

1 The Speaker of the Italian Chamber of Deputies, Luciano Violante, co-ordinated the Conference's working group on the quality of legislation. For an account of the ideas figured out by the working group see the document 'The complexity of legislation and the role of Parliaments in the era of globalization' adopted by the Lisbon Conference of Speakers the 21-22 May 1999. The reflection has been further refined during the following Conference of Speakers held in Rome the 22-24 September 2000.

2 See Camera's Rules of Procedure, article 22.

3 See Camera's Rules of Procedure, article 19, cc. 3-7.

the committee meets two or three times a week, which is still less than other standing committees.¹

As far as functions are concerned, the committee now has a competence of its own in “institutional” activities of the EU and may conduct the primary examination and final adoption of bills implementing EC law² or domestic new legislation in those areas.

On the contrary, in the Senate, although many proposals for reform were also presented, the Giunta still remains on an ad hoc status. Yet, the present legislature witnessed an impressive increase in its activity, in terms of the number of meetings, of questions deferred to its scrutiny and of bills examined as for their compatibility with EU law.³

Thus, there is a clear unbalance between the two chambers. One of the crucial differences lies in the powers of the two committees as related to the Annual Community Law. Hence, the XIV Committee coordinates the other vertical committees and is charged with the principal examination of the law before it is approved by the plenary. In the Senate, it still is the Committee for Constitutional Affairs that needs to be assigned this role.⁴

3. Parliamentary Access to Commission Initiatives and Technical Information

A second objective of the reforms was to enhance parliamentary access to Community proposals for new legislation and to supplementary technical information.

On the basis of the Amsterdam Protocol, Law 128 of 24 April 1998 expanded the scope of parliamentary scrutiny as to cover all proposals for EU legal acts, including those tabled within the second and third pillars, and all proposals for consultation documents, such as European Commission white and green papers and its annual work program.⁵

Furthermore, the law ratifying the Amsterdam Treaty⁶ included a provision reproducing the first part of the Protocol on the role of national parliaments, extending it as to include “all proposals for measures to be adopted under Title VI of the TEU”, thus encompassing the proposals brought about by member states, which represent a large share of the issues discussed within the Third Pillar. Finally, the various provisions on EU documents’ transmission to parliament were rationalised and replaced by a single

1 In the XIII legislature (up to July 2000) the Committee has met 618 times, for a total of 337,15 hours. It thus still meets comparably less than other permanent committees (See *Notiziario della Camera dei Deputati*, No. 40, XIII legislatura, luglio 2000).

2 See Camera’s Rules of Procedure article 126, as modified the 27 July 1999.

3 From 1996 to date, the Giunta held 234 meetings in comparison to the 27 held in the previous Parliament (1994-1996). In November 2000 the Giunta had examined 882 bills, almost the same number of the bills examined in the previous four legislatures. Source: Senate of the Republic.

4 See Camera’s Rules of Procedure, article 126 ter.

5 Should the Commission’s proposal be substantially modified during the EC legislative process, the law requires the Government to forward the modified text, so that the Houses may adjust their scrutiny.

6 Law 16 June 1998, No. 209.

and comprehensive provision with Law 422 of 29 December 2000 (Annual Community Law for 2000). On the basis of Art. 6, the President of the Italian Council of Ministers, or the Minister for European Policies on his behalf, has the duty to transmit all EC/EU consultation documents and proposals for legislation to the houses, including proposals tabled within the second and the third pillar, accompanying them with the provisional timetable for their adoption by Community institutions.

Enhancing the Government's delivery of technical information to the Parliament was the second objective of the reforms in this area. In fact, in scrutinising EU draft acts, the Parliament may not avail of a back-up comparable to the one provided to government by administrative departments. Rather than seeking to produce autonomous analysis, the Parliament should be able to demand key information from the Government and check their accuracy and significance. Traditionally, the Parliament does not receive any additional written information from government departments on the EU draft legislation's estimated impact on public administration, business and citizens or on compliance costs. The reforms were designed to introduce such a practice, yet without setting a clear duty up for the Government. The new rules of procedure of the Chamber of Deputies envisage the possibility for standing committees to demand the information necessary for carrying out the pre-legislative evaluation from the Government.¹ However, the standing committees are not empowered to request impact analysis with regard to proposals of Community acts. Article 13 of Law 128/1998 requests the Government to accompany the transmission of EU acts already adopted with a short assessment of the internal regulations to be amended in order to implement them. However, such information is functional to future implementation rather than to the scrutiny of EU proposals in their earliest stage of discussion.

Since one of the reasons for the Government's failure to provide technical information lies in the fragmentation of the various departments, the gradual implementation of the reforms that have enhanced the coordination role of the Presidency of the Council of Ministers should help the Government to produce usable and concise technical information. Accordingly, units operating within the Presidency of the Council are entrusted with the task of preparing regulatory impact assessment of the EU draft legislation² and consulting organised interests and regions.¹

1 As provided for in article 79, par. 4 and 5. This is also possible on request of a minority of Committee members.

2 Article 5 of the Law 8 March 1999, No. 50 requires that regulatory impact assessment (RIA) is carried out, initially on a trial basis, with regard to draft measures adopted by the executive and ministerial and inter-ministerial regulations. In addition, parliamentary committees may request a report including the RIA for the draft measures and bills which they are considering in order to carry out the preliminary legislative scrutiny from the Government. article 6 of the *Direttiva Legislativa* 30 July 1999, No. 303, extends this operational methodology to the consideration of EU legislation, empowering the Department for Legal Affairs of the Presidency of the Council of Ministers to carry out, in co-operation with the Department for Community Policies, 'the preliminary analysis of the internal economic and legal situation and the evaluation of the estimated impact of Community regula-

Thus, progress on the Government's side appears to be a crucial variable for the evolution of an effective parliamentary scrutiny in the future.

At the same time, the houses have dedicated a particular attention to the development of their own capacity to accede to and process EU documentation and technical information. Both houses have access to EU documentation via the Internet. In addition, the services of the bodies specialised in European affairs produce dossiers containing key information on the legal context and the objectives of the European Commission's proposals under scrutiny. In order to facilitate the selection of the most important pieces of EU legislation and their insertion in the committees' agenda, the Service for Community and International relations of the chamber constantly monitors the EU legislative process and highlights the proposals of major legal and political importance in the subject area of each standing committee. The chamber has also opened a parliamentary office in Brussels, housed within the building of the European Parliament.

The long-standing issue of EU documents' transmission to the Parliament now seems close to a solution. After a long and reiterated set of parliamentary requests², the Government, as from September 2000, has started to supply the documents provided for by the Amsterdam Protocol and the relevant internal legislation. First practice shows minor dysfunctions, such as duplications or delays in transmission, which are hopefully to disappear after the initial start up-period. However, the responsible Department for Community policies is not yet able to organise the provision of supplementary technical information because of the fragmentation of administrations involved.

4. Scrutiny of EU Draft Legislation

A third major objective of the reforms was to reinforce parliamentary input in the earliest stage of the EU decision-making process. Protagonists looked favourably to the methods of detailed scrutiny of the EU draft legislation in other member states. Law 128/1998 states the power of parliamentary committees to review the EU draft legislation and to adopt politically binding resolutions, thus reinforcing the pre-existing provisions. However, the procedure of the scrutiny of European documents is rather concise

tions on the domestic system", also referring to proposals under discussion within Community institutions. Those tasks are further confirmed by article 16, c. 2, of the DPCM 15 April 2000, 'Ordinamento delle strutture della Presidenza del Consiglio dei Ministri'.

- 1 On the basis of the Direttiva Legislativa, 30 July 1999, No. 303, the task of consulting organised interests and the regions with a view to elaborate the national position on EC legislation is entrusted to the Department for Community Policies operating within the Presidency of the Council of Ministers.
- 2 Still in July 2000 the Chamber expressed strong criticism for the Government's failure to implement the provisions set in the Amsterdam Protocol and in the internal relevant legislation and reiterated the invitation to ensure a timely and complete transmission of the EU draft legislation as well as proposals concerning the Schengen Agreement. See Motion No. 1-00439, adopted the 10 July 2000 and

compared with the carefully articulated ones adopted by the UK or the French Parliament.

The rules of procedure seem to consider parliamentary scrutiny as a one-time process, with the tabling of a resolution, debate and final vote in sequence. Thus, major weaknesses contain three aspects.

Neither the specialised committees nor the EU's committees' Chairmen or the Bureau are empowered to carry out a systematic sifting of proposals of major political or legal relevance. In theory, parliamentary committees should examine the complete flood of European draft legislation. In practice, they risk being unable to keep up with the development of European legislative process, since the consideration of all documents deposited by the Government is not realistic given the pressure of domestic activity. The matter - so far irrelevant, since the Government rarely transmitted proposals to the Parliament - is now coming to the fore as a crucial point in the future organisation of scrutiny.

Secondly, notwithstanding the six week period provided by the Amsterdam Protocol, the timetable of the standing committees' business is far from being synchronised with the calendar of the legislative process within the EU institutions. In the chamber, committees are to conclude the scrutiny of Commission's proposals within thirty days from their reception. The 1998 rules on planning the agenda include the timing of the adoption of the EU draft legislation as one of the elements to be taken into account in the committees' timetable. Anyway, the two provisions receive little implementation in practice, and there is no guarantee against the risk that a draft EU proposal is adopted before the scrutiny is completed while the resolution awaits to be time-tabled for vote. The planning of the Senate's calendar is not even subject to similar requirements. At any rate, the precondition for a full guarantee of parliamentary prerogatives would lie in the introduction of a system of "scrutiny reserve". In early 2000, the former President of the XIV Committee, Mr. Ruberti, raised the issue, proposing that the Parliament should receive all proposals for EU legislation and have a minimum period of 45 days counting from their effective reception¹ for expressing its position or clearing the proposals. After that period, failing a parliamentary resolution, the Government should be able to express its consent to the proposal in the Council. At first, the Government's response was lukewarm. After a long debate, Art. 6 of Law 422 of 29 December 2000 introduced a more flexible version of the principle. The government has to communicate the date expected for the adoption of each piece of the EU draft legislation transmitted to the Parliament. If the houses have not expressed their opinion before the date indicated or, in case of postponement, before the meeting of the Council, where the proposals are to be adopted, the Government is free to make a decision.

resolutions 6-00129 and 6-00130 adopted the 26 July 2000 by the plenary of the Chamber of Deputies.

1 That, in case of delays due to governments lack of transmission, may be longer than the six week period provided for in the Amsterdam Protocol.

Lastly, parliamentary practice does not reveal a frequent use of post-Council evidence sessions with the relevant Ministers in order to obtain information on the outcome of negotiations or on the follow-up given to parliamentary resolutions, when adopted.¹

Parliamentary practice still shows a persistently low level of scrutiny activity. During the XIII legislature the chamber reviewed eleven proposals of EU legislation, amongst which ten were scrutinised by the Committee for EU policy. This confirms the crucial role played by the XIV Committee and the inertia of vertical committees overwhelmed by the pressure of domestic business. Indeed, in the same period, 33 resolutions on EU issues were adopted by other standing committees and 35 by the plenary.² These data highlight an increase in the attention considering European affairs. Yet, it is interesting to note that a significant part of this increased attention has been channelled through procedures other than formal scrutiny, most of all through oral hearings. In fact, deputies as well as ministers find oral evidence procedures speedier than formal scrutiny and more suitable to an informal and co-operative exchange of views. In many cases, therefore, hearings on EU proposals have replaced legislative scrutiny. During the XIII legislature, different ministers made 32 appearances before the chamber's standing committees.³

Existing rules prevent representatives of private interests or organisations from appearing before the committees on EU matters. Thus, the committees turned to a wider use of inquiries as a vehicle for access to outside sources of expertise and to exchange views with business and trade unions, NGOs and other organised interests. Usually, inquiries are launched without reference to a single proposal for EU legislation. Rather, they deal with broad issues which remain on the EU agenda for a longer period of time or aim at evaluating the implementation of existing regulations in order to suggest amendments or new initiatives.⁴

1 Yet, the rules of procedures of both Houses state that parliamentary committees may 'request the Ministers to submit oral or written evidence on the implementation of laws or on the follow up given to resolutions, motions or orders of the day voted by the House or accepted by the Government'. See article 143.c.3 of the Camera's Rules of Procedure and article 46.c.2 of the Senate's Rules of Procedure.

2 Source: Camera dei Deputati, Osservatorio sulla legislazione, Rapporto sullo stato della legislazione, II/1999. Data as at the 30 June 1999.

3 Hearings were also organized with European Commissioners, members of the European Parliament, the Governor of the Bank of Italy and the Director of the special co-ordination Unit for the management of structural funds.

4 At the Chamber, major inquiries concerned the 1996 Intergovernmental Conference, the national management of structural funds and the quality of the internal legislation implementing EU directives. The Senate's Giunta carried out 3 inquiries on Agenda 2000, the role of regions in the preparation and implementations of EU rules, the reform of CAP. An inquiry on the drafting of the European Charter of Fundamental Rights was jointly conducted with the Chamber.

5. Review of the Government's EU Reports and of the European Commission's Program

The government's written reports have been a traditional, yet modest, source for parliamentary control over EU policies. Article 10 of the 1998 Community Law¹ has merged the pre-existing variety of written reports in a single annual report, covering both a retrospective on EU policies in the preceding year and a summary of government's standing on future EU activities. The government is now to present the report to the houses by 31 January, jointly with the annual Community bill. Such rationalisation of government's obligations has been the precondition for a further re-organisation of parliamentary procedures in the chamber. The new rules - in place since July 1999 - have devised a carefully articulated procedure for the parallel examination of the two documents, according to a sequence of phases and subject to mandatory time-limits. All standing committees are involved in the consideration of the two documents in their subject area. The Camera's committee for EU policy has a stronger coordination role and reports to the Assembly. The procedure ends with a joint debate in plenary on the general lines of the Annual Community Law and on the guidelines for future activity of the Government. Then, the plenary votes on the bill and on resolutions tabled with regard to the annual report. As from 2000 onwards, the chamber adds the examination of the European Commission's Annual Work Program to the consideration of the annual report. This aims at enhancing the Parliament's ability to identify future issues in the EU system.²

Overall, these innovations are intended to create a "Community session", i.e. a specific time-lapse in the first semester of the year where the Parliament concentrates on European affairs, with an overall view over trends in EU policy-making and on policies to be implemented.³ The emphasis on plenary debates, in comparison to the committee-centered scrutiny of single proposals, aims at attracting a larger attention on European issues of more general relevance of both the media and the public.

The consideration of the European Commission's Work Program is also an opportunity for inter-parliamentary co-operation. The committee for EU policy, integrated by rapporteurs of the standing committees, held a hearing of Italian members of the European Parliament as part of its evaluation of the document. Finally, the whole procedure was devised to end before the meeting of the European Parliament for the approval of the

1 Law 5 February 1999, No. 25.

2 The procedure, introduced on a trial basis in March 2000, follows the one laid down for the annual report, involving the Standing Committees, the Committee for EU policies and the plenary, thus ending with a vote on resolutions (See for an example resolution No. 6-00125, adopted by the plenary of the Camera dei Deputati the 6 March 2000).

3 The model is the Budgetary session where, in the second semester of each year, the Parliament examines the budget and sets guidelines for future economic legislation.

Commission's Program, so that the resolution(s) adopted by the national legislature might be taken into account by Italian MEP's.

6. A Special Feature: The Schengen Committee

One should also mention the activities of the "Parliamentary Committee for the control of the application of the Convention implementing the Schengen Agreement and for monitoring the EUROPOL National Section". The Schengen committee was established in March 1997.¹ It is a bicameral body composed by ten senators and ten deputies² and empowered to mandate the negotiating stance of Italian representatives within the Schengen governing bodies. In addition, it reviews the activities of the Europol National Section.³ The committee is a unique experience in the European context together with the SubCommittee created by the Dutch Tweede Kamer. Furthermore, it has an interesting twofold originality with respect to the domestic system for control over EU affairs: it is a joint committee, and has a binding power instead of a consultative one. The committee's main task is to scrutinise all proposals for acts to be adopted by the Executive Committee of the Schengen Agreement, and to express, within fifteen days, a legally binding opinion for the Government. A system of scrutiny reserve is provided. Failing a parliamentary opinion, after the expiry of the two weeks period, the Government may express its consent to the adoption of the acts.

The government also presents an annual report on the implementation of the Schengen Convention and on the activities performed by the EUROPOL National Section. Since its creation, the Schengen committee examined 109 acts, in 90 per cent of the cases expressing a positive opinion, sometimes adding suggestions for improving the text.⁴

After the incorporation of the Schengen Agreement within the TEU, a debate is open within the houses on whether to discontinue the committee, incorporating its tasks in the various vertical standing committees or, on the contrary, to expand its role as the unique parliamentary body exercising a binding and global control over the elaboration of all EU policies related to the establishment of an area of security, freedom and justice.

7. Quality of Legislation and the Re-organisation of Implementing EU Law

The introduction of Annual Community Laws has brought a structural improvement in Italy's performance in adapting to EU obligations.

1 On the basis of the Law ratifying the Schengen Agreement, Law 30 September 1993, No. 388.

2 Committee members are appointed by the Presidents of the two Houses in proportion to the parties' strength in the plenary.

3 On the basis of article 6, Law 23 March 1998, No. 93.

4 The Committee has adopted a negative opinion in two cases. Source: Secretariat of the Parliamentary Committee for the control of the Application of the Schengen Agreement.

Recent statistics confirm the progress in the transposition of EC law. In 1998, Italy had implemented 96.1 per cent of the directives regarding the Internal Market, jumping from the last to the ninth position in the scoreboard prepared by the European Commission.¹

Within the context of a general improvement in implementation, it is interesting to note that a significant share of infringement procedures by the European Commission against Italy relates to incorrect implementation or to inconsistency of national legislation with Community standards rather than to outright failure of enacting internal measures. This points out that the relationship between the Italian legislator and the Community law has found an equilibrium in terms of implementation, but that the problem of quality of implementing legislation is now emerging.

Accordingly, several measures have been introduced by the Parliament to enhance the quality of legislation and ensure greater coherence between domestic and EU regulations. The chamber introduced the evaluation of the consistency with EC legislation as one of the mandatory parameters to be considered by standing committees when conducting the pre-legislative evaluation on domestic bills. At the same time, the opinion of the committee for EU policies on the consistency of internal legislation with EU norms has been given a greater weight.²

The chamber has also included the 'Community bill' among the instruments to be evaluated by the Committee for Legislation, an hoc body established in 1998.³ The committee provides the other standing committees with 'neutral' advice concerning the quality of legislation, on some categories of bills or schemes of governmental regulations: this is in certain cases obligatory, in others it can happen on a request of a minority of members of the committee. Its opinion may only be overruled by a vote of the plenary. The impact of the committee is still to be fully assessed. However, it could play a significant role in fostering parliamentary attention to the issue of the quality of legislation and in avoiding major inconsistencies in transposition.

As regards the simplification of legislation, the most noteworthy innovation is the shift from fragmented initiatives to an organic and periodical program within the framework of the annual simplification law introduced with Law No. 50 of 8 March 1999.⁴ The

1 See Single Market Scoreboard No. 5, 2 November 1999.

2 In short, this means that the Standing Committee may overrule a negative opinion issued by the Committee only after having obtained a vote in their favour from the plenary. See Circular on the remit of Standing Committees, issued by the President of the Chamber of Deputies the 16 October 1996.

3 Composed of ten deputies, chosen by the President of the Chamber on an equal proportion between the majority and the opposition, chaired in turn by each member article 16-bis, Camera's Rules of Procedure.

4 Community Laws contain a clause authorising the Government to issue a consolidated text reorganising the legislation resulting from the directives transposed by the law itself. For an account of the legal uncertainties of such a solution and of the relevant practice see Lupo, Nicola: *Il riordino nor-*

system, adopted for the first time in 1999, envisages that each year the Government presents both houses with a program of simplification and reorganisation of the existing legislation in a set of areas listed therein. On the basis of the guidelines set by the Parliament, the Government adopts - within a fixed timetable - consolidated texts which repeal obsolete provisions, amend and coordinate the norms, and systematically identify legislative rules, administrative regulations and relevant EU legislation regulating the same subject. Parliamentary committees monitor the enactment of consolidated texts. In adopting their guidelines for the first annual simplification program, the committee for EU policies and the Senate's Giunta have called upon the Government to select priority areas where implementing legislation needs urgent rationalisation and to promote further simplification at European level.

8. Participation in COSAC's Activities

The Italian Parliament takes an active part in COSAC meetings. Participation to common debates helped Italian deputies to share best practises and information on other partners' experiences in EU scrutiny, thus influencing and promoting last years' reforms.

However, the Italian Parliament does not favour a development of COSAC into a body scrutinising all Council activities. The Schengen committee has repeatedly requested to be included in the Italian Delegation since the Amsterdam Treaty expands COSAC tasks to the examination of proposals in relation to the establishment of an area of freedom, security and justice, or regarding fundamental rights. So far, however, the proposal has not been accepted and the Italian delegation is composed by representatives of the Bureau of the specialised bodies of both Houses of Parliament.

IV. Conclusions: An Awakened Parliament?

The years following the Amsterdam Treaty have been a period of significant reforms for the Italian Parliament, after a decade of inertia. Compared to the large and global effort of reform undertaken after the SEA, the Amsterdam-period reforms are scattered in a number of different acts. Yet they have a unitary direction and constitute, altogether, a deep and meaningful upgrade of the way the Italian Parliament deals with European affairs.

Indeed, the Amsterdam Treaty acted as a catalyst for reforms. Though, the second effort for the 'Europeanisation' of parliamentary structures was not solely due to the Amster-

mativo nelle leggi comunitarie tra buone intenzioni e occasioni mancate, in *Rivista Italiana di Diritto Pubblico Comunitario*, No. 3, 1998, pp. 965-1001.

dam Treaty, but it could rather be traced back to the combined influence of two sets of variables of a more general nature, an exogenous and an endogenous one.¹

Among the exogenous variables one could recall the process towards matching the Maastricht criteria for EMU which forced Italy into reforms and modernisation. This came in a time in which the political and institutional systems were severely under pressure due to the crises that had started in 1992.² They significantly affected the Parliament and led to a number of changes in terms of parliamentary personnel, the logic of action and behaviours, including a first attempt to break the past consensual style of policy-making towards the introduction of majoritarian principles. These attempts also inspired the reform of the chambers' standing orders in 1997.

The pro-European standing of the largest part of the Italian political parties was not altered in substance, though 'Europe' often came to be used as a matter of litigation between coalitions. Although the 'European' issues often hide domestic questions, the overall result has been an increased attention on the EU policy-making and on the relationship between Italy and the Union in particular. Thus, for the first time, the idea began to emerge that the Union is a dynamic entity, whose output is indeed the result of the member states' input. This general environment influenced the way the Parliament perceived its role vis-à-vis EC legislation and decision-making.

The reforms having taken place just recently, it is difficult to determine their actual impact on EC/EU decision-making. What needs to be stressed is a qualitative change in the Parliaments' role. The post-SEA Parliament was essentially a sovereign legislator, the central institution within the national political arena, 'temporarily' extending its oversight over supranational processes because of the weakness of the European Parliament. The post-Amsterdam Parliament is aware of being an institution embedded in a larger polity, organised through different levels of government. Thus, the Italian Parliament tries to assume the role of a forum coordinating the impact on the domestic system of the regulations produced by various rule-making and power centers at the European, the national (government, administrations, independent authorities) and the regional levels.

1 The combined influence of endogenous (systemic crisis) and exogenous (European) variables is stressed by all the relevant literature on the Europeanisation of Italy during the mid nineties. See Di Palma, Giuseppe, Fabbrini, Sergio and Freddi, Giuseppe, (a cura di): *Condannata al successo? L'Italia nell'Europa integrata degli anni novanta*, Bologna: Il Mulino 2000; Ferrera, Maurizio, Gualmini, Elisabetta: *Salvati dall'Europa?*, Bologna: Il Mulino 1999; Giuliani Marco, *Europeanisation and Italy*, paper prepared for the Annual Conference of the European Community studies association, Pittsburgh, 2-5 June 1999.

2 See Pasquino, Gianfranco: 'No longer a Party State? Institutions, powers and the problems of Italian reform', in: *West European Politics*, No. 1/1997, pp. 34-53; Bardi, Luciano: 'Antiparty sentiment and party system change in Italy', in: *European Journal of Political Research*, vol. 29, 1996, pp. 345-363; Bardi Luciano/Morlino Leonardo: 'Italy: tracing the roots of Great Transformation', in: Katz, Richard/Mair, Philip: *How parties organise*, London 1994, pp. 242-277.

In order to adjust the Parliament's functions to the spreading of legislative powers among different levels, a number of innovative concepts were explored by the legislature: systematic scrutiny of EU proposals to influence the Council's decision-making from the preparatory stage onwards; contribution to policy coherence between policies undertaken at national and European level, and efforts for a greater quality of legislation.

Paradoxically enough for a founding member of the European Communities, the Italian Parliament is surely classifiable as a latecomer in the European arena. Having failed to adapt to the TEU in the early 1990's, the Parliament was in the position to adjust to the further changes introduced by the Amsterdam Treaty with innovative ideas and widely ranging reforms.

There is thus an evident willingness of the Parliament and of the two specialised committees to play a more active role in EC/EU decision-making. So far, however, this has only partially been translated into actual reforms.

The 1998-1999 reforms are in fact an unfinished business. There are many areas where scrutiny needs improvement.

Firstly, there is a clear imbalance between the two houses. While the chamber has a standing committee on EU affairs, the Senate still has an Ad hoc-committee.

Secondly, effective parliamentary control over EU business is based on co-operation with the Government. However, while the Executive has only recently started to officially transmit EU documents comprehensively to the Parliament, it is still unable to provide timely and useful supplementary technical information.

Thirdly, internal procedures for scrutiny could be improved by introducing a system for sifting and a practice of pre- and post-Council evidence sessions with the minister responsible of negotiations.

Fourthly, the two specialised bodies still devote most of their work to considering draft domestic legislation and its compatibility with EU norms, thus often examining minor questions in detail. In addition, their opinions have little impact on the work of the other standing committees. This task could be suppressed, thus freeing valuable committee time for the scrutiny of EU proposals for legislation.

Although any analysis should bear in mind that the lapse of time is too short to fruitfully assess the impact of reforms, a first evaluation suggests that parliamentary practice in EU affairs shows little improvement with regard to draft EU legislation, but a larger increase in overall parliamentary attention to EU business. So far, this has been channelled through political rather than by formal scrutiny procedures. Given the issue of access to Commission proposals being solved, a further increase in parliamentary attention on EU draft legislation and a larger use of scrutiny procedures are foreseeable.

'Europeanised' and active deputies are still a minority, but interest in the European dimension of policy issues is widening. There is a large participation in the web of inter-parliamentary fora and contacts with the European Parliament at bilateral and multilat-

eral level. The Government has to take parliamentary input into account on a growing number of issues.

The Parliament is no longer a 'benevolent observer' of EU integration, which keeps its domestic bargains separated from the EU arena. Nor is it yet a fully active player. Indeed, it could be seen as a moving beast at a stage of 'medium Europeanisation'.

Yet, a more effective and enhanced role of the Parliament. In mid November 2000, the Italian Council of Ministers approved a bill reorganising the participation of parliament in EU decision-making. The Government proposes three changes:

Firstly, transmission of EU-related documents from the Government to the Parliament could be further rationalised and extended. Secondly, a specific form of a parliamentary scrutiny reserve could be introduced, enabling the Government to ask for a postponement of the vote at the stage of COREPER in order to seek for clearance by the Parliament¹. Finally, the Government could be enabled to implement EC directives outside the Annual Community Law-system through statutory acts in areas previously disciplined by law, whenever the directives have been approved by the co-decision procedure, or the Italian Parliament has already issued an opinion in the preparatory stage.² Meanwhile some of the points dealt with in this reform bill meanwhile have found a solution with the changes introduced by Law 422/2000, adopted in December 2000.

The Italian Parliament's engagement for a greater role in European affairs also extends to the debate on the future democratisation of the EU. The Italian Parliament believes that the primary response to the democratic deficit lies in a clear solution of the issue of the political identity of the Union and, consequently, in a different balance between the Commission, the Council and the European Parliament³. National parliaments - the institutions at the juncture between domestic and European systems - are called to contribute to the application of the subsidiarity principle on a substantial level.

According to the Parliament's proposal, this could be organised in two ways. Firstly, national parliaments should contribute in shaping the EU legislative agenda, in drafting the Commission's annual legislative program and in reviewing its actual implementation through the scrutiny of the annual Commission report on the implementation of the principle of subsidiarity.⁴ Secondly, national legislatures should share a 'constitutional role' with their governments, undertaking the elaboration of ideas, principles and values for the reform of the Union, expressing the will of European citizens to the institutional future of the European Union.

1 The Parliament would then have three days to adopt an opinion on the text.

2 See Consiglio dei Ministri No. 35 del 10 novembre 2000, press communiqué.

3 See Senato della Repubblica, Giunta per gli Affari delle Comunità europee, Relazione su Legittimità democratica e riforma delle istituzioni dell'UE, Doc. XVI, No. 9, 20 maggio 1999.

4 See speech by the President of the Chamber of Deputies, Violante at the Conference of Speakers of EU Parliaments, Vienna, and speech by the President of the Senate, Mancino at the Conference of the Speakers of the EU Parliaments, Rome, 22-24 September 2000.

The Italian Parliament has not yet reached a fully accomplished effective organisational and functional model with regard to EC/EU decision-making. A number of new developments are to be expected in the near future. However, the road towards a greater and more active parliamentary presence in the European arena, no matter how many delays or obstacles there will be, seems to have been taken.

The Luxembourg Chamber of Deputies: From a Toothless Tiger to a Critical Watchdog?

Danielle Bossaert

I. Introduction: The Socio-Political Framework

In Luxembourg, the smallest member state of the European Union, there is broad consensus among the public, political parties and interest groups on the pro-active attitude of the Government towards the further deepening of the European integration process. This committed pro-European attitude is, for example, illustrated by the fact that during the IGC 2000 Luxembourg, together with its two Benelux partners Belgium and the Netherlands, strongly supports the idea of strengthening the “closer co-operation” clause in the Amsterdam Treaty¹ in order to prevent the EU from developing into an “advanced free trade area”². The most ambitious future objectives of Luxembourg’s European politics include strengthening the social policy by establishing minimal social standards, encouraging a more efficient Common Security and Foreign Policy, further communitising the third pillar (Justice and Home Affairs) as well as consolidating Luxembourg’s position in the EU institutions and decision-making process.³ The result of this broad consensus on these priorities is that EU affairs have never been a subject of heated debates in the smallest EU member state. Membership is considered a necessity and perceived as the best way to overcome the dependence of the small domestic market and to strengthen its presence and visibility at European and international level.

The Luxembourg consensus democracy⁴ is characterized by cabinet stability and durable governments which provide effective policy-making and which can rely on a widespread popular support. This durable executive as well as the existence of a coordinated interest group system which aims at compromise and concertation⁵ make it difficult for the Parliament to develop a profile of its own. The executive body is by far the most

1 Memorandum Benelux about the IGC and institutional reforms, Luxembourg 1999, p. 1-2.

2 With regard to enlargement of the EU without a thorough reform of the institutions and decision-making processes, the Prime Minister of Luxembourg, Jean-Claude Juncker, dreads the ‘disastrous specter of a free trade area’. See Agence Europe, 13 December 1999, p.4.

3 Chambre des Députés, Compte rendu des séances publiques, No. 14/97-98, Bill 4381 on the approval of the Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts, signed in Amsterdam, 2 October 1997, pp. 3303-3375.

4 See Lijphart, Arend: *Patterns of Democracy*, Yale: University Press 1999. According to Lijphart a consensus democracy is characterized by proportional representation, a dominant executive, a multi-party system and power-sharing in multiparty coalitions, pp. 3ff.

5 *Ibid.*, p. 3.

dominant and ‘visible’ actor in the decision-making process - a fact which is furthermore underlined by the unitarian, centralised state structure. An important advantage of this strong executive predominance and of the flat hierarchy is that important political and economic decisions can be taken more quickly than in its much larger neighbours. In comparison with the Government, the national Parliament - the *Chambre des Députés* - has a rather low profile. National parliamentarians rarely appear in the media and debates in parliament are never considered to be of real importance. The members of government, such as the Prime Minister and Minister of Finance Mr Jean-Claude Juncker, or the Minister of Foreign Affairs, Lydie Polfer, are well known by the public, while this is not at all the case with most of the national *Députés*, whose opinions about EU issues are hardly noticed or known among the public. This image and visibility problem also reflects the low profile of the Luxembourg Parliament as a body that controls the executive, particularly where it involves European affairs, as we will see later.

The low profile of the *Chambre des Députés* is mainly related to specific characteristics of the Luxembourg semi-professional Parliament, such as for example its limited capacities¹ and its traditionally weak role in national history. The 60 parliamentarians can only rely on a very small administrative apparatus with a minimum of academic staff (about one scientific staff member per *Député*), a fact which makes the Parliament very dependent on the central administration. Because of this scarce reservoir of human resources, it is - according to some parliamentarians - nearly impossible to develop an in-depth knowledge of European affairs. For such a small administration, whose civil servants have to be generalists rather than specialists, it is much more difficult to implement the increasingly specialised EU legislation than for a large and highly specialised administration.

Moreover, one has to consider that the time of the Luxembourg *Député* is limited by the fact that besides being a parliamentarian, s/he often practises a profession or is mayor or juror in a big or small city (up to 50 per cent of them). Of course, this concurrent holding of mandates also explains why it is not popular or profitable to deal with European affairs in depth, all the more when considering that for their re-election *Députés* need to rely on a stable local electorate. This means that they have to dedicate part of their time to local issues and problems.

These characteristics of the Luxembourg political system explain to a large extent why the Parliament has such a low profile compared to the Government, also where it concerns European affairs. An efficient control of the Government is moreover hindered by the fact that the political opposition is disproportionately represented in the 19 parliamentary committees. It is a general rule in Luxembourg that the rapporteur and the chairman of the committees belong to the same political party as the Minister concerned. So, the organisational structure of the committees corresponds to the ministerial

1 The staff of the Luxembourgish Parliament amounts to 44 civil servants.

structure. In this context, a necessary measure which would make the controlling function of the Parliament more efficient and which was raised by the opposition party in parliament recently, is the strengthening of the position of the political opposition in the committees, particularly as regards the budget policy, by setting up a permanent budget committee chaired by the political party in opposition.

The problem of size is also relevant when considering that the 19 parliamentary committees constitute quite a heavy workload for the 60 Députés, who are quite often member of up to three Committees at the same time. They are supposed to become 'experts' in very different fields such as agriculture, transport, environment, education, etc. Accordingly, it is difficult for the small, semi-professional Parliament of Luxembourg, where each Committee is composed of about 11 members only, to develop extensive expertise and to acquire a thorough knowledge of the administration.

II. Practice and Evaluation of Parliamentary Activity in EC/EU Affairs

The above mentioned examples clearly illustrate the limited capacities of the Luxembourg Parliament, which of course also have an impact on the role of the Chambre des Députés as a body controlling the Government.

Compared to the other EU member states the scrutiny procedure in the Grand-Duchy is highly informal; it is not laid down in any legally binding text and even the 'Règlement de la Chambre' does not include any provisions about the involvement of the Parliament in EU affairs. So, the policy regarding information provided to the Parliament depends to a large extent on the Government and on the personality and policy style of the responsible ministers. In Luxembourg the low degree of formalisation and institutionalisation of the political decision-making processes cannot only be seen in the interaction between the Government and the Parliament, but even characterises the functioning of the whole political system. This is undoubtedly also due to the fact that relations within a small democracy are very close: the members of the political elite know each other very well and, where possible, they look for solutions that are consensual.

According to an unwritten law under the former government formed by the Christian Socials and the Socialists (1984-1999), the Minister of Foreign Affairs, Jacques Poos, regularly informed the Committee on Foreign and European Affairs¹ of the agenda of the European Councils, the positions proposed by the Luxembourg government and their repercussions at national level, and the progress of negotiations during the IGC.² Under the new coalition government of the Christian Socials and the Liberals (since June 1999), the new Minister of Foreign Affairs, Lydie Polfer, whose party strongly

1 This Committee meets at least once a week.

2 See Chambre des Députés, *Compte rendu des séances publiques*, No. 3/94-95, Debate on the organisation of work regarding European affairs, p. 675.

pushed for more effective parliamentary scrutiny mechanisms under the former government, has recently begun to establish more regular¹ and extensive contacts with the Committee on Foreign and European Affairs. However, so far parliamentarians from different political parties have considered this practice as insufficient and continuous efforts are being made to arrive at a stronger institutionalisation of this policy. An option often discussed in this context is to improve the exchange of information on EU affairs between the specialised parliamentary committees, which can draft an opinion on EU directives, and the relevant ministries. The different ministers, such as for example the Minister of Finance, only rarely brief the committee on Financial affairs about the follow-up of, for instance, the taxation dossier, which is vital to Luxembourg's national interests.

In comparison with its EU neighbours, Luxembourg's parliamentary scrutiny mechanisms are characterised by a very low degree of institutionalisation. The Parliament does not have constitutionalised scrutiny reserve powers and can only urge the minister responsible not to adopt a directive. Moreover, as stated above, the 'Règlement de la Chambre des Députés' contains no specific regulation on the involvement of the Parliament in the EC/EU decision-making process, which says a lot about the very limited parliamentary control of the Government's positions on EU affairs. In order to gain a better insight into the current co-operation between the Government and the Parliament in EU affairs, a closer look should be taken at the existing procedure and its practical application. Firstly, the existing procedure, which is not legally binding, is laid down in a rather general guideline with no fixed time limits. The different steps can be summarised as follows:

- 1) All legislative proposals are submitted to the Working Committee of the Parliament immediately after the European Commission has transmitted them to the Minister of Foreign Affairs. The Parliament is kept informed of the time schedule for the examination of the proposals by the European institutions, their implications for national law and the amendments made by the European Parliament.
- 2) The working Committee provides the proposals to the Committee on Foreign and European Affairs and to the appropriate specialised technical committees, which examine the documents carefully. The Committee on Foreign and European Affairs has a close look on all documents regarding the treaties and institutional questions, whereas the technical Committees are responsible for all basic documents such as the European Commission's white papers falling in their field of competence as well as for all the legislative proposals to be transposed into national law. In order to speed up the scrutiny process, these documents are classified as follows:

1 See Chambre des Députés, Compte rendu des séances publiques, No. 2/99-00, Topical debate on the Intergovernmental Conference and on enlargement, p. 194.

- a. purely technical documents of no political, economic, legislative or financial interest,
 - b. documents for which the procedure has already advanced too much to justify the Committee's position on them,
 - c. documents deserving examination (case A), and
 - d. documents on which the Committee on Foreign and European Affairs decides to deliver an opinion (case B).
- 3) If the Committee decides to examine a proposal (case A), it will establish contact with the minister concerned and this procedure may lead to the drafting of a report or an opinion. If the Committee decides to adopt an opinion (case B), it will have to forward it to the Government in good time, i.e. taking account of the negotiation deadlines at EU level. The Committee will then be kept informed of the progress of negotiations and the Government may have to appear before the Parliament on its request. It may also organise hearings with members of the Government and its administration about the impact of the proposal on national legislation. The examination is concluded by the publication of an opinion or a report, sometimes followed by a public debate. In each case the adoption of a resolution or a motion during a public debate will be possible.¹

This procedure was adopted in 1994, mainly under pressure from similar and often further reaching developments in the other EU member states, the main objective being more structured co-operation with the Government. In the mid-nineties, this topic figured high on the Parliament's agenda and there was even a debate dedicated entirely to the future organisation of work regarding EU affairs. During this discussion, parliamentarians from all political parties severely criticised the lack of transparency and information on the part of the Government as well as the Parliament's insufficient involvement in EC/EU legislation. In this context, the green political party suggested increasing transparency by publishing the names of the civil servants who represent the Grand Duchy at the meetings of the working groups and within the Committee of Permanent Representatives (COREPER) as well as the agenda and the minutes of these meetings.² A major point of criticism in the debate of 1994 was that Luxembourg was falling behind the developments in most other EU Member states, where the Constitution forces the Government to take more account of the Parliament's considerations. However, so far these efforts have not led to a stronger institutionalisation in the form of a more legally binding procedure. Even the guidelines of 1994 have been implemented insufficiently: In day-to-day business, the influence of the Chambre des Députés is still very weak in that neither the Committee on Foreign and European Affairs nor the specialised technical committees are actively involved in the process of drawing up EC/EU legisla-

1 See <http://www.europarl.eu.int/natparl/cosac/en/coms/lux.htm>.

2 See 'Bausteine für ein anderes Europa', Déi Greng zur Regierungskonferenz 2000, p. 5.

tion. There is no institutionalised parliamentary scrutiny regarding the preparation of Luxembourg's positions on EU matters, and the role of the legislative is more or less limited to agreeing or not agreeing to decisions taken at European level. Even though the Parliament may give its opinion, the Government is not obliged to take it into account. This powerful position of the executive is also illustrated by the fact that it is under no legally binding obligation to inform the Parliament.

The rather weak influence of the Parliament in the EC/EU legislation process can be explained by the fact that

- the profile of the legislative as a controlling body is traditionally quite low,
- EU subjects are not controversial at all in Luxembourg, which of course does not stimulate the demand for stronger scrutiny mechanisms, and
- the Parliament's administrative and scientific capacities are very limited compared to those of the administrations and parliaments of larger member states.

So, for the 60 Députés, each of whom has, on average, one scientific employee at his/her disposal and who have to sit on 19 technical committees, coping with the growing and increasingly complex EU legislation is a very demanding task. In other EU Member states stronger demands have recently been made by all political parties, mainly under pressure from similar developments, to introduce measures favouring more efficient control of EU matters, such as a more systematic provision of information to the Parliament regarding the progress of negotiations on EU dossiers before final decisions are taken.¹ Of course, this would also involve a more active dialogue between the legislative and the executive about the official Luxembourg negotiation position. According to the coalition agreement of June 1999 between the Christian Socials and the Democrats, the Government indeed seems to be slightly concerned about the limited involvement of the Parliament in the EC/EU legislation process. Consequently, a proposal has been made to improve the exchange of information with the Chambre des Députés to the effect that in future the competent ministry should keep the specialised technical committees informed of the progress of negotiations on important EU directives.¹ The possible introduction of this measure must be interpreted as a first important step to set up a more structured dialogue between the executive and the legislative and to strengthen the role of the specialised Committees as a body controlling the executive. Nevertheless, the Luxembourg Parliament's path from toothless tiger to critical watchdog of the Government still seems to be long.

III. The Luxembourg Parliament and the Negotiation of the Amsterdam Treaty

¹ See Codex 4/99, *Le mensuel juridique et politique du Luxembourg*, p. 37 et seq.

In the 1996/1997 IGC the major concern of the main political actors was to safeguard Luxembourg's status quo position in the decision-making bodies and to be duly represented in the European Parliament. All the national position papers written by the political parties² strongly defended Luxembourg's seat in the European Commission and its 6 seats in the EP. Equal representation in all the EU institutions was a sacred principle which could not be touched. Against this background, the discussion on the future role of the European Parliament and the national parliaments in the EU was of minor importance and hardly noticed by the public. The most important national position paper on this topic was the Goerens report on "The Role of Parliaments in the European Union of Tomorrow"¹. The report's main purpose was, to stimulate the debate within the political parties and the Parliament, and to provide the Government with concrete ideas during the IGC. What was unique about this report was that the Christian Social Prime Minister, Jean-Claude Juncker, gave Charles Goerens, a European deputy from the then political party in opposition, the Liberals, the opportunity to voice his ideas on parliamentary scrutiny in EC/EU matters.

In comparison to the Protocol on the role of the national parliaments of the Treaty of Amsterdam, the report of Mr Goerens went far beyond. Against the background of a rather informal scrutiny process in Luxembourg, Mr Goerens favoured a more regulated and binding involvement of national parliaments in EC/EU affairs by strengthening the obligations of governments and the European institutions vis-à-vis the parliaments. He supported the idea of a better exchange of information and more committed cooperation between the national parliaments and the European Parliament. In this context he proposed concrete measures such as the organisation of meetings on specific topics, e.g. combating fraud and EMU, a debate on the Commission's legislative programme at each autumn session of COSAC, the possibility for MEP's to attend committee meetings which concern their national parliament, and the possibility for MEP's to ask questions of the appropriate ministers, as is the case in Belgium.

One of his most original ideas was the inclusion, into the European Treaties, of a charter containing minimum obligations of governments towards the national parliaments, such as an obligation to inform the national parliaments before a decision is taken at EU level or the right of each national parliament to be informed of all proposals relating to the three pillars of the Treaty on European Union. Each EU proposal should be accompa-

1 See Governmental declaration made by M. Jean-Claude Juncker, Prime Minister, Ministre d'Etat, on 12 August 1999 in the Chambre des Députés, p. 5.

2 See Aide-mémoire of the Luxembourg government regarding the 1996 Intergovernmental Conference, Luxembourg, 1995; CSV (Chrëschtlech Sozial Vollekspartei), Pour une Europe démocratique et efficace, Position de la CSV en vue de la Conférence intergouvernementale de 1996, Luxembourg, 1995; PD (Demokratesch Partei), Le Parti démocratique et la conférence intergouvernementale de 1996, Luxembourg 1995; POSL (Lëtzebuerger Sozialistesche Arbëscherpartei), Le POSL face aux défis de la Conférence intergouvernementale de 1996, Luxembourg 1995.

nied by an explanatory note from the Government outlining the justification for the proposal in question and its impact on national legislation. According to the report, the most significant measure, which would considerably increase the power of national parliaments, was the right to institute proceedings before the European Court of Justice, when an EU act exceeds the Union's powers. The incorporation of these measures into the Treaty would lead to more equality between the national parliaments of the member states in the field of parliamentary scrutiny. Although his report asked for more efficient and harmonised parliamentary control in the EU member states, it did not approve the Danish model which involves a binding mandate of its Committee on European Affairs, because of its blocking effects on the European integration process. Moreover, with regard to the involvement of the European Parliament in the EC/EU decision-making process, the report supported the extension of the co-decision procedure to all areas in which the Council decides by qualified majority, and the reduction of the number of procedures to three: co-decision, assent and consultation. Another idea put forward by Mr Goerens was the strengthening of the European Parliament's and the national parliament's control powers with regard to the Second and the Third Pillars of the TEU by extending their right to information.

At national level, the Goerens report not only served as a consultative report for the Government during the IGC, but was also the most important basis for the discussions within the political parties. As the parliamentary debates on the 1996 Intergovernmental Conference² illustrated, many of the ideas expressed in the report were taken over in the statements of the Députés from the different political groups. For instance, the right of the national parliament to institute proceedings before the European Court of Justice was supported by the Christian Socials, the Liberals and the Socialists, while a proposal to include the parliaments' right to information in the Treaty was put forward by the Liberals, the Socialists and the Green party. In addition, all parliamentary groups (Christian Socials, Liberals, Socialists, Green party and ADR³) were in favour of reforming the European Parliament by simplifying the decision-making procedures in general and extending the co-decision procedure. These ideas on the EP's future role can also be found in the official Luxembourg memorandum for the 1996/97 IGC, while the Benelux memorandum proposes, among other things, closer participation of the European Parliament in the decision-making process as regards the second and the third pillars.⁴

1 See *Le rôle des parlements dans l'Union Européenne de demain*, Report by Mr Charles Goerens to Mr Jean-Claude Juncker, Prime Minister, Luxembourg 1995.

2 See *Chambre des Députés, Compte rendu des séances publiques*, No. 13/94-95, Debate on the 1996 Intergovernmental Conference, p. 3294-3343.

3 In the party system of Luxembourg, the 'Aktiounskomite fir Demokratie a Rentegerechtgheet' is the most 'nationalistic' party.

4 See Memorandum of Belgium, the Netherlands and Luxembourg on the 1996/1997 IGC, p.8.

As these examples illustrate, there was great convergence between the Government, the political parties and the parliamentary groups where it concerned the future role of the European Parliament and the *Chambre des Députés*. They agreed that in general the exchange between these legislative bodies should be more extensive and that national parliaments' right to information should be given a more binding effect. In this context, the Christian Socials proposed closer co-operation between the national parliaments and the European Parliament in the field of fraud.¹ Another concrete example is the proposal made by the Socialists to insert a clause into the Treaty to the effect that the national parliaments must have sufficient time to communicate their opinion on a legislative proposal before the Council proceeds to the first reading.²

However, besides these general agreements, small differences persist. The most far-reaching ideas have been put forward by the political opposition parties. For instance, in launching the idea of taking over the binding mandate of the Danish Parliament, the Green party went even the Goerens report. Compared to the other political actors, the Greens are also very progressive regarding the EP's future role in that they have been the only political party to propose an extension of the EP's right of initiative.³ Likewise, the ADR is of the opinion that national parliaments should have the right to partly or completely suspend a European directive if they think that a problem can be better solved at national level.⁴

Regarding the future institutional architecture at European level, only the Liberals consider it useful to upgrade the role of national parliaments by creating a two-Chamber system. According to their proposal⁵, the legislative branch in the EU should comprise, on the one hand, an assembly of peoples, which is similar to the EP and, on the other hand, a senate with delegates from the national parliaments. In contrast to this proposal, the other Luxembourg political parties are of the opinion that the creation of an additional institution would only complicate the decision-making process and change the present institutional balance between the Council, the Commission and the European Parliament, which they want to maintain. In this context they are generally very reluctant to strengthen the role of the EP, because such a process could weaken the strong role of the Commission as well as the Council's legislative powers. Consequently, during the IGC, a major concern of Luxembourg was to extend the Commission's right of initiative, mainly to the second and the Third Pillars of TEU. This view is also reflected in their position papers for the IGC which hardly contained any proposals about the strengthening of the EP's role in these fields. Only the Christian Socials demanded that the EP should be informed systematically of all initiatives in these two areas, while its

1 See CSV, *Pour une Europe démocratique et efficace*, p.3.

2 See POSL, *Le POSL face aux défis de la conférence intergouvernementale de 1996*, p. 13-14.

3 See *Chambre des Députés*, n°13/94-95, p. 3318-3319.

4 *Ibid.*, p. 3323.

5 *Ibid.*, p. 3323.

powers should be increased only in the case of further communitarisation. The paper of the Liberals displayed even more reluctance with regard to this issue in that they are convinced that an extension of the EP's power would not solve the problem of the democratic deficit.

IV. The Luxembourg Parliament after Amsterdam

So far, the Protocol on the role of the national parliaments of the Amsterdam Treaty has not been discussed in the Luxembourg Parliament. However, this passive attitude towards the developments taking place at European level does not imply that members of the Luxembourg Parliament are not in favour of stronger involvement of the national legislative powers in the European decision-making process. For instance, recently the vice-chairman of the Committee on Foreign and European Affairs, Ben Fayot, drew up some proposals together with his Belgian counterpart, Herman de Croo¹, and his Dutch counterpart, Michiel Patijn², to make the COSAC (Conference of European Affairs Committees) more effective and to strengthen its role. At a meeting of these three parliamentarians in Brussels on 3 April 2000, they reached agreement on the following points: First of all, they emphasised that the COSAC was first and foremost a body that should debate and advise on the state of democracy in Europe. At each meeting the COSAC should discuss, on the basis of a report written by the chairman of the COSAC, the proper functioning of the European institutions, the application of the principle of subsidiarity and measures to reinforce the democratic legitimacy of the Union and to bring the European construction closer to the citizens. Secondly, priority should be given to issues that concern the creation of an area of freedom, security and justice. Hence, they believe that the national parliaments would have the last word as regards the legislation and control in these areas.

The Chambre des Députés appoints the members of COSAC on a proposal of the political parties. The COSAC Delegation³ does not report on the conclusions of COSAC meetings in the plenary meeting of the Chamber.

In the Grand Duchy, COSAC is mainly seen as an important forum where ideas and experiences are exchanged, and even as a learning forum, particularly where it concerns the different mechanisms used in the EU member countries to control the actions of their governments in European affairs. The importance of such a body for Luxembourg

1 President of the Chamber of Representatives of Belgium and Chairman of the Advisory Committee on European Affairs.

2 Chairman of the European Affairs Committee of the Dutch Second Chamber.

3 The COSAC Delegation includes a parliamentarian from the Christian Social Party, one from the Socialist Party, one from the Liberal Party, one from the Green Party and one from the ADR.

should not be underestimated: A country as small as Luxembourg does not always have the capacities required to develop sufficient expertise in all areas.

V. Conclusion: The Silence of a Loyal Parliament

The Amsterdam Treaty has not led to major changes in the highly informal character of the Luxembourg Parliament's involvement in EC/EU affairs, although the Government now informs the Committee on Foreign and European Affairs more regularly on issues and EC directives of vital national interest. However, it seems that this new development is also due to the change of Government in June 1999 and the coming into power of the Liberals.

Furthermore, the demands made by the *Chambre des Députés* for more efficient involvement in the decision-making processes at European level have become stronger over the past few years. They mainly focus on more extensive and more detailed information to be provided by the Government to the specialised parliamentary committees about EU directives as well as IGCs. Nevertheless, at the moment it would be misleading to speak of effective parliamentary control of EU affairs in the case of Luxembourg. In this context it should be considered that there is no procedure which includes a timetable and is legally binding on the Parliament and the Government, that a more regular exchange between the Committee on Foreign and European Affairs and the Ministry of Foreign Affairs was institutionalised only recently and that the executive cannot be forced to take into account the opinion expressed by the Parliament. Consequently, the leeway of the Luxembourg government in the EC/EU legislation process is considerable - compared to other EU Member states - and the *Chambre des Députés* is currently fighting to be informed correctly about the progress of negotiations on EU directives.

This very limited involvement of the Luxembourg parliament in EC/EU affairs is increasingly criticised by the various political parties, but so far no major breakthrough - apart from a growing awareness of this lack of control - can be observed. The example that illustrates this situation is the recent failure of the proposal made by the Parliament regarding a more detailed procedure with a timetable. According to a civil servant of the Parliament's administration, the deadlock regarding this issue should also be seen in the light of the heavy workload of the central administration and the time constraints of the comparatively small number of civil servants dealing with EU affairs.

Overall, the low profile of the Parliament as a control body in European affairs can be mainly explained by the specific characteristics of the Luxembourg political system as well as by the limited capacities of the central administration and the *Chambre des Députés*. However, with the increasing transfer of competences from the national level to the European level, one can observe even in the Parliament of the Grand-Duchy a growing awareness among the *Députés* that national politics are closely interlinked with European politics and that it is becoming increasingly difficult to separate them.

The Parliament of Austria: A Large Potential with Little Implications

Barbara Blümel and Christine Neuhold

I. Introduction: The Political System of Austria

1. Austrian Interests and Views on EU Affairs

Although the debate about Austrian membership in the European Union (EU) has a long tradition, it took forty years until concrete negotiations for EU membership could eventually be taken up. Subsequent to World War II Austrian EU membership was seen as incompatible with legal and political obligations resulting from Austrian neutrality. Some members of the Austrian Government, however, did aim for co-operation with the European Community (EC), even EC membership, but the restrictive neutrality policy advocated by the (then) Secretary of State, Bruno Kreisky, dominated Austrian foreign policy at the end of the 1950's. Austria therefore became a member of the European Free Trade Association (EFTA) in 1960. Under the leadership of the People's Party¹ Austria tried to intensify the links with the European Economic Community (EEC) by undertaking endeavours in the years from 1963 to 1967 to conclude a 'Treaty of a special kind'² with Brussels, which was eventually vetoed by Italy in 1967.³ A new door in Austrian integration policy was opened at the beginning of the 1970's, subsequent to the conclusion of the South Tyrol-package, the demise of de Gaulle and the planned enlargement of Great Britain, Denmark and Ireland. The EC and the EFTA members agreed in 1972 on the implementation of a Free Trade Zone for industrial and commercial goods for the time span of 1973 to 1977.⁴ The Luxembourg Declaration, the assumption of office of Commission President by Jacques Delors, and the endeavours of the EC member states towards intensifying the European integration process by promoting projects such as the Single European Market, gave rise to a more intensive debate on Austrian EC membership. The Europe-application⁵ of 1985 brought forward by the People's Party - that aimed for quasi-full membership in the EC while preserving Austrian neutrality - failed, however, to find support in the Austrian Nationalrat in 1985.

1 Österreichische Volkspartei (ÖVP).

2 'Vertrag besonderer Art'.

3 Italy put in its veto due to an attack of South Tyrol activists at the Italian/Austrian border.

4 See Schaller, Christian: 'Österreichs Weg in die Europäische Union - E(W)G/EU Diskurs in Österreich', in: Dachs, Herbert/Gerlich, Peter/Gottweis, Herbert (eds.): *Handbuch des politischen Systems Österreichs. Die zweite Republik*, Vienna: Manz'sche Universitäts- und Verlagsbuchhandlung 1997, pp. 53-67.

5 'Europa-Antrag'.

In the course of the 1980's the People's Party strengthened its profile as the 'European party' as opposed to the Social Democrats¹, which were split into one wing adopting a more pro-integrationist stance and those who met a possible Austrian EC membership with scepticism based on reservations as regards to the possible jeopardy of Austrian neutrality. Subsequent to Delors' initiative of creating a European Economic Area (EEA), the EC advocates pushed for an Austrian application even before the summer of 1989 and the taking up of negotiations for the European Economic Area.² The fact that the Social Democrats eventually could be lured into submitting an application for membership, was based to a great extent on a favourable opinion of the social partners of 1 March 1989. The Government then decided officially on 17 April 1989 to apply for EC membership, a decision, which had to be supported by a two thirds majority by the Nationalrat and the Bundesrat. This support was achieved after intensive consultations within the political parties.³ The application for membership was forwarded on 17 July 1989.

The referendum, which was conducted in June 1994 as a pre-condition to enable Austria's accession to the EU, was exceptionally positive: 66 per cent of the Austrians voted in favour of EU membership.⁴ From extensive analysis conducted on the voting behaviour one can distil three important, partly overlapping, lines of conflict:

- a socio-demographic line of conflict: Younger voters and men welcomed the accession to a much greater extent than older voters and women,
- a socio-economic line of conflict: people with higher education and material position welcomed Austria's accession as opposed to those with a relatively low level of education and economic standing,
- a conglomerate of lines of conflict across the political spectrum: 75 per cent of the declared Liberal voters, 73 per cent of the supporters of the Social Democrats and only 66 per cent of the supporters of the People's Party voted for EU accession, whereas 57 per cent of the Freedom Party⁵ and 42 per cent of the Green voters spoke out against accession.⁶

The positions of (some of) the political parties towards the European integration process changed somewhat over the past decades. Whereas the Social Democrats, as shown,

1 Sozialdemokratische Partei Österreichs (SPÖ).

2 These negotiations started in 1989.

3 On 29 June 1989 175 members of the Nationalrat supported the respective resolution against the votes of seven MP (Social Democrats; People's Party; Freedom Party vs. Grüne Alternative (Greens). The Bundesrat supported the resolution with unanimity. (See Schaller, Christian, 1997, op.cit., p. 57).

4 In Sweden and Finland 52.2 per cent and 57 per cent respectively voted in favour of EU membership. In Norway 52,5 per cent of the people spoke out against EU accession.

5 Freiheitliche Partei Österreichs (FPÖ).

6 See Schaller, Christian, 1997, op.cit., p. 61. See here also for example Luif, Paul: 'Der Weg zum 12. Juni: 1955, 1957, 1962, 1972/73', in: Pelinka, Anton (ed.): EU-Referendum. Zur Praxis direkter

adopted a more pro-European stance during the 1980's, the Freedom Party transformed - interestingly enough - from the first party demanding an accession to the EC in the 1960's to a political force at least rhetorically opposed to the EU. The People's Party favoured an accession to the EU right from the outset. A less clear-cut picture must be drawn when looking at the Green Party. Although some members were in favour of accession, the majority opposed Austria's way into the EU and campaigned heavily against it. After the referendum on Austrian EU membership, the Greens decided to unite their forces to work for a reform of the EU from 'within'. The fifth party being present in parliament at the conclusion of the accession negotiations in 1994 was the Liberal Forum, which split off from the Freedom Party in 1993. Being a liberal party it pushed strongly for accession.

Today, only the Freedom Party questions Austria's EU membership substantially. It launched a petition for a referendum to prevent Austria joining the EURO-zone in 1997. Only four per cent of the registered voters supported this quest. Since February 2000 the People's Party and the Freedom Party form the Austrian Federal Government. This does not imply that the representatives of the Freedom Party support EU integration full-heartedly. However, it led to a somewhat more differentiated rhetoric at least by most government members.¹

The support of the public for Austria's membership in the EU has declined since June 1994 from almost 67 per cent to 60 per cent in March 2000. The figures reflect that even after the measures of the other 14 EU member states imposed against Austria for six months the majority of the population supported and supports their country's accession to the EU.²

2. The Austrian Framework for Parliamentary Involvement in EU Affairs

Federalism has a long tradition in Austria, where the federal principle is a basic feature of the Constitution. Even long before Austrian accession to the EU it became clear that the political sub-units, the Bundesländer, would have to be granted participatory rights on European level, which would go beyond those provided by the Committee of the Regions, in order not to deviate too far from their domestic role. The involvement of the Länder was not only laid down in the 1994 amendment of the Federal Constitution³ but in a special agreement between the Federation and the Länder.⁴

Demokratie in Österreich, Schriftenreihe des Zentrums für angewandte Politikforschung, Bd. 6, Vienna, 1994, pp. 23-48.

1 See Der Standard, 20.4.2000.

2 See Profil, 6.3.2000.

3 See article 23 d.

4 Agreement between the Federation (Bund) and the Länder as regards to the rights of Länder and municipalities to be involved in matters concerning the European integration process, Federal Law Gazette (Federal Law Gazette) No. 775/1992.

On this basis the Bundesländer have introduced legal provisions. The implementation is regulated in a somewhat different way in each Land; six out of nine provinces have passed regulations on the constitutional level. All of the respective Provincial Constitutional Laws contain the following provisions: establishment of respective Committees on EU matters, the obligation of the provincial government to provide information and the right to pass a binding opinion on EU matters. However, the Länder of Upper Austria, Salzburg and Tyrol do not see the provincial parliaments but the Integration Conference of the Länder as the main forum to deal with EU matters. On the other hand, Carinthia, Lower Austria and Vienna created Committees on EU matters and information is exchanged informally between the provincial government and the respective parliaments.¹

The procedure of involving the Länder on the European level is similar to that of the Nationalrat, but their rights are more limited. The Länder must be informed in detail on all projects in the framework of the EU which affect their sphere of competence or which could be of interest to them. One of the most important features of regional participation is the right of the Länder to give an opinion on such proposals. The Austrian Government is subsequently bound by this opinion during negotiations at the European level.² It may only deviate for “compelling reasons relating of foreign or integration policy” and must come up with a justification for this deviation within eight weeks.

Representatives of the Länder can also take part in negotiations on the European level. If issues are discussed that fall into their sphere of legislative competence, the Government delegates a Länder official to the Austrian Delegation. This Delegate must however act in concertation with the Government representative.

One may also not forget to mention that the second parliamentary Chamber, the Austrian Bundesrat, which consists of representatives of the Länder, may also issue opinions on EU affairs. Given that EU proposals would lead to changes of the Austrian Constitution, where the Bundesrat would have to give its assent on the domestic level, departure from a Bundesrat opinion is only legal for compelling reasons of foreign and integration policy. The fact that the interests of the Länder often diverge as regards to EU policies, due to their differing economic and legal background, has led to difficulties in the practical political process. Binding opinions of the Länder are subsequently more of an exception than the rule.

A main hurdle the Länder also face is to keep up with the pace of EU negotiations and not at last the geographical distance between them has led to major delays when trying to draft a common regional standpoint. The inclusion of Länder representatives in the Austrian Delegation to the Council is also exceptional. It therefore becomes apparent

1 See Unterlechner, Josef: Die Mitwirkung der Länder am EU-Willensbildungs-Prozess. Normen - Praxis - Wertung, Vienna 1997, pp. 107-108.

2 Five out of the nine Länder must give their support.

that the Länder are faced with a plethora of practical problems when participating in EU affairs, which limit their efficiency.¹

3. Basic Features of the Parliament-Government Relationship

The Austrian Constitution stipulates very concisely that the legislative powers are carried out by the Nationalrat together with the Bundesrat.² When analysing the activity of the Nationalrat in more detail, one will find that its functions within the Austrian political system can be summarised as follows.

3.1. The End-Formulation in the Legislative Process

An analysis of the legislative initiatives reveals that these are to a large extent government bills³ submitted to parliament.⁴ A main characteristic of these bills is that they are normally drawn up by that part of the bureaucracy that is involved in the implementing process of the respective matter and therefore has experience with similar legal provisions. In addition, they are normally also scrutinised by other actors such as ministries and interest groups. Looking at the figures for the years from 1994 to 1996 one can note that these legislative proposals were to a large extent met by little resistance by the Austrian Nationalrat: 63,1 per cent of these government bills were adopted without changes. On a conclusive note one can say that the Nationalrat has, so far, to a large extent given its blessing to the proposals put forward by the Government. It is interesting to note that under the new Government coalition of the People's and the Freedom Party the trend is notably shifting from government bills to independent motions⁵, a path that might be chosen to circumvent the involvement of the social partners.⁶

1 See Falkner, Gerda: 'How Pervasive are Euro-Politics? Effects of EU Membership on a New Member State', *Journal of Common Market Studies*, Vol. 38, No. 2/2000, pp. 223-250, with further references. See also Leitner, Christine/Neuhold, Christine: 'The Intermediate Level of Government and Administration in Austria', in: Larsson Torbjörn/Nomden, Koen/Petiteville, Franck (eds.): *The Intermediate Level of Government in European States: Complexity versus Democracy?*, Maastricht 1999, p. 301f.

2 Article 24 of the Austrian Federal Constitution.

3 'Regierungsvorlagen'.

4 During the XX. legislative period (1996-1999) the data shows that 71 per cent (423) of the legislative proposals were government bills, 19 per cent (116) initiatives, nine per cent (54) committee initiatives and one per cent (3) initiatives brought forward by the Bundesrat. (See Schefbeck, Günther 53/1999, p. 18.) Between 1994 and 1996 62 per cent of the legislative proposals were government bills, 29 per cent were initiatives and nine per cent were other forms of proposals such as petitions (Volksbegehren) and initiatives brought forward by the Bundesrat.

5 'Selbständige Anträge'.

6 This observation could be made when looking at the motions put forward in the XXI. legislative period. The Parliament itself initiated an examination process concerning six independent motions and one concerning a government bill. (XXI. legislative period: Industrial Committee: 48 + 49 I der Beilagen; Committee on Cultural Affairs: 126/A; Bautenausschuss: 129/A; Committee on Social Af-

3.2. Partial Participation in the Process of Implementing EC Law

According to the Federal Constitution¹ both the Nationalrat and the Bundesrat are enabled to forward resolutions². Parliamentary resolutions, which have to be supported by a majority of the Nationalrat can be regarded as a 'wish-list' to the Executive. Furthermore the Nationalrat has the competence to decide on the budgetary law³ and grants discharge for the budget. The Nationalrat also has to give its consent to the conclusion of State Treaties and has, as shown below, rather extensive controlling powers within the realm of EU affairs. One of the most powerful control mechanisms over the Government is the vote of censure whereby not only members of government can be asked to step down, but this can lead to the demise of the entire government. Another political instrument with less 'dramatic' consequences is the motion of no confidence, which is nevertheless only resorted to in exceptional cases.⁴

3.3. Control of the Implementing Process

The classical controlling instruments consist of written questions and urgent questions⁵ that can be brought forward by five members of parliament, the question-hour and the Committees for inquiry. The number of written questions has increased dramatically from 2.365 in 1983-1986 to 6.738 in 1996-1999.⁶ The reason for the increase is that these questions aim to obtain information which are not only related to a specific issue, but to examine a larger topic, where the responses collected can subsequently be used as material for other political activities.⁷

3.4. A Forum of Political Debate

Given that the political fora such as the Austrian Council of Ministers, the governments of the Bundesländer and the social partners meet behind closed doors, it is of utmost importance that the plenary of the Nationalrat (and the Bundesrat) performs as an open tribune where current political themes are discussed publicly.

fairs: 19/A, 123/A, 130/A, 131/A) (Information received from the Parlamentsdirektion on 28 June 2000).

1 'Bundes-Verfassungsgesetz' (B-VG).

2 'Parlamentarische Entschlüsse'.

3 'Bundesfinanzgesetz'.

4 The number of these motions of confidence varied from two (1971-1975) to 14 (1990-1994).

5 'Dringliche Anfragen'.

6 See Bundespressedienst (ed.): Österreichisches Jahrbuch 1999: Die Arbeiten des Nationalrates und des Bundesrates, Vienna 2000, pp. 17-84, p. 74.

7 See Fischer, Heinz: 'Das Parlament', in: Dachs, Herbert/Gerlich, Peter/Gottweis, Herbert (eds.), 1997, op.cit., pp. 99-121.

The parliamentary groups are organised along party lines and follow a rather strict system of party discipline. Since 1945 a rigid division of powers between the Austrian Socialist/Social Democratic Party and the Austrian People's Party largely dominated the Austrian political system. The two parties have ruled Austria since World War II, either in coalition, or what might even be described as a "collusion", with the country's institutions and posts shared out proportionally between the two ruling parties.¹ The role of the opposition was traditionally rather weak; a trend which has been reversed gradually since the mid 1980's. Since 1986 a "de-concentration" of the party system is notable, where the two bigger parties could only unite two thirds of the votes as opposed to more than 90 per cent in the 1970's.²

Since the mid 1980's the number of the relevant parties has risen from three to five, when the Greens (1986) and the Liberal Forum (1993) became established parties within the Austrian Parliament. The main factor contributing the end of the dominance of Social Democrats and the People's Party was, however, the rise of the Freedom Party. The strength of this party increased dramatically, obtaining less than five per cent of the votes in 1983 and 21.9 per cent in 1995. In the last elections to the Austrian Parliament (3 October 1999) the Freedom Party could even boost 27.2 per cent of the vote, marginally more votes than the mainstream Conservatives, subsequently becoming the second strongest party in the Austrian political arena.³ These election results reflect most pointedly that the traditional loyalties between voters and parties have been dissolved to a considerable extent. The "diversity" of the Austrian political arena was reduced due to the fact that the members of the Liberal Forum did not manage to obtain four per cent of the vote to be re-elected.

The Austrian President, who has the constitutional right to nominate the Federal Chancellor, and subsequently to his proposals the other members of the Government, appointed the head of the Social Democrats, Viktor Klima, to take up government negotiations, following the recent election.⁴ For more than a hundred days Social Democrats and the People's Party negotiated with the goal in mind to form a joint government once again. Only when these coalition negotiations failed the People's Party subsequently formed a coalition with the far right-wing Freedom Party under Jörg Haider.⁵ That led the USA and Israel to recall their ambassadors from Austria and European governments

1 See International Herald Tribune, 5./6.2.2000.

2 In 1945 the two parties could unite 94.4 per cent, in 1970 93.1 per cent, in 1983 90.8 per cent, in 1990 74.9 per cent and in 1995 66.4 per cent of the votes. See Müller, Wolfgang, C.: 'Parteiensystem, Politische Bewegungen', in: Dachs, Herbert/Gerlich, Peter/Gottweis, Herbert, et al., (eds.), 1997, op.cit., pp. 215-235.

3 The Social Democratic Party has 65 seats the People's Party and the Freedom Party 52 seats and the Greens send 14 members to the national parliament subsequent to the 1999 elections.

4 See article 70 of the Austrian Federal Constitution.

5 Haider resigned as head of the Freedom Party in late February 2000.

to begin downgrading relations in protest to Haider's anti-immigration policies.¹ The (other) 14 EU member states suspended bilateral relations with the Austrian Government² due to the inclusion of the Freedom Party. However, they have acted on an inter-governmental basis, outside the Treaty framework. In mid September 2000 the EU-14 suspended their bilateral sanctions against Austria on the basis of the so-called report by the wise men Martti Ahtisaari, Jochen Frohwein and Marcellino Oreja.³

4. The Institutional Framework in European Decision-Making

Since Austria's accession to the EU the competences of the Austrian Parliament and here especially those of its Main Committee⁴ were strengthened - as regards to foreign policy issues and the participation of the Nationalrat and of the Bundesrat in European affairs.⁵ There are several so-called constitutional acts, which played an important role on Austria's path to the EU. The Federal Constitutional Law on the Accession of Austria to the European Union⁶ was put before the people in the referendum on accession. By way of this law the competent constitutional organs were empowered to conclude Austria's Accession Treaty to the EU.

The modus of parliamentary participation concerning EU matters was laid down in the so-called EU-Begleit-Bundesverfassungsgesetz which was passed by the Nationalrat on 15 December 1994.⁷ By way of this amendment, the Austrian Federal Constitution establishes a system, which allows for participation of the Nationalrat and the Bundesrat in EU affairs. Articles 23e and 23f of the Constitution confer the following main competences to both the Nationalrat and the Bundesrat:

- information rights, where the competent member of the Federal Government has to submit - without any delay - information about all projects within the framework of the European Union to the Nationalrat and the Bundesrat⁸, and
- the possibility to present binding opinions to the Federal Minister.⁹ The legal character of the binding opinions is comparable to that of a resolution - however, an opinion contrary to a resolution is legally and politically binding.¹

1 See Financial Times, 6.3.2000.

2 This provision was first included in a communiqué issued by the Portuguese Presidency at the beginning of February.

3 The text of the report can be downloaded from the Austrian Government's homepage: <http://www.austria.gv.at>.

4 See article 54-55 of the Austrian Federal Constitution. See also Neisser, Heinrich: 'Parlamentsreform und EU-Beitritt', in: Gerlich, Peter/Neiser, Heinrich (eds.): Europa als Herausforderung. Wandlungsimpulse für das politische System Österreichs, Vienna 1994, pp. 336-337.

5 See article 50-55 of the Austrian Federal Constitution.

6 See EU-Beitritts-Bundesverfassungsgesetz, Federal Law Gazette No. 744/1994.

7 See Federal Law Gazette No. 1013/1994.

8 See Urbantschitsch, Wolfgang: National parliaments in the European Union - the Austrian experience, Graz 1998, p. 46.

9 See *ibid.*, p. 13.

The Nationalrat and the Bundesrat have the right to present binding opinions on issues falling not only into the first, but also the Second and the Third Pillars of EU law.² The chosen system follows broadly the path of its “legal predecessors”, i.e. to the participation of the provinces and municipalities concerning EU matters, which was established before Austria’s accession to the EEA.³ In case the Federal Minister departs from a binding opinion, s/he must report this to the EU Main Committee. So far this possibility was resorted to merely once in connection with the very first binding opinion. As the respective legal provision in the rules of procedure of the Nationalrat was not in force at that time, the Government did in fact report back to parliament, but no further action was taken. Now the obligation to report to parliament is actually enshrined in the rules of procedure of the Nationalrat. This report would have to be distributed among all members of the Nationalrat, although it would not be public. Furthermore, the respective report could be put on the agenda of the EU Main Committee, which would then be free to examine it. Up to fall 2000 this procedure was, however, not implemented in the practical political process.

These provisions grant the Austrian Parliament with rather extensive competences as regards EU affairs, at least, on paper. A number of authors consider the Austrian stipulations as some of the most-far reaching when compared to other EU member states.⁴

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- 1 See Neisser, Heinrich: ‘Die Mitwirkungsbefugnisse des Nationalrates im Entscheidungsprozess der Europäischen Union’, in: Schäffer, Heinz/Berka, Walter/Stolzlechner, Harald/Werndl, Wolfgang (eds.): Staat - Verfassung - Verwaltung, Vienna 1998, pp. 339, 349.
 - 2 See Morass, Michael: ‘Österreich im Entscheidungsprozess der Europäischen Union’, in: Tálós, Emmerich/Falkner, Gerda (eds.): EU-Mitglied Österreich, Vienna 1996, p. 38.
 - 3 See Khol, Andreas: ‘Demokratieabbau durch EU-Regierungsgesetzgebung?’, in: Österreichische Parlamentarische Gesellschaft (ed.), 75 Jahre Bundesverfassung, Vienna 1995, p. 276; Körner, Margit: ‘Das EU-Begleit-Bundesverfassungsgesetz - die Mitwirkung der Parlamente von Bund und Ländern bei der Schaffung von neuem EU-Recht’, in: Khol, Andreas/Ofner, Günther/Stirnermann, Alfred (eds.), Österreichisches Jahrbuch für Politik 1994, Vienna, 1995; pp. 515ff.; see also Neisser, Heinrich: ‘Parlamentsreform und EU-Beitritt’, in: Gerlich, Peter/Neiser, Heinrich (eds.): Europa als Herausforderung. Wandlungsimpulse für das politische System Österreichs, Vienna 1994, pp. 43-69.
 - 4 See Morass, Michael, 1996, op.cit., p. 37, Falkner, Gerda: ‘Österreichische Politiknetzwerke und EU-Mitgliedschaft: Ergebnisse und Trends’, in: Falkner, Gerda/Müller, Wolfgang C. (eds.): Österreich im europäischen Mehrebenensystem, Vienna 1998, p. 231; Informationsbüro des EP für Österreich, Das Europäische Parlament und Österreich, Vienna, 1999, p. 17.

II. The Practice and Evaluation of Parliamentary Scrutiny in EU Affairs

1. The Nature of Parliamentary Scrutiny

The perceived democratic deficit of the European Union and the fear of being a ‘toothless tiger’ within the Austrian decision-making process on EU affairs were the driving forces behind the quest of the Nationalrat and the Bundesrat to ensure a rather strong role for themselves. Furthermore the (then) Federal Government did not have the two thirds majority in parliament, which was the precondition to pass the Constitutional Acts on Austria's accession to the EU. Two opposition parties - the Greens and the Liberal Forum - had to be convinced to vote in favour of the changes, and the provisions to strengthen the Parliament's position with regard to EU matters were part of the compromise, not to say trade off.¹

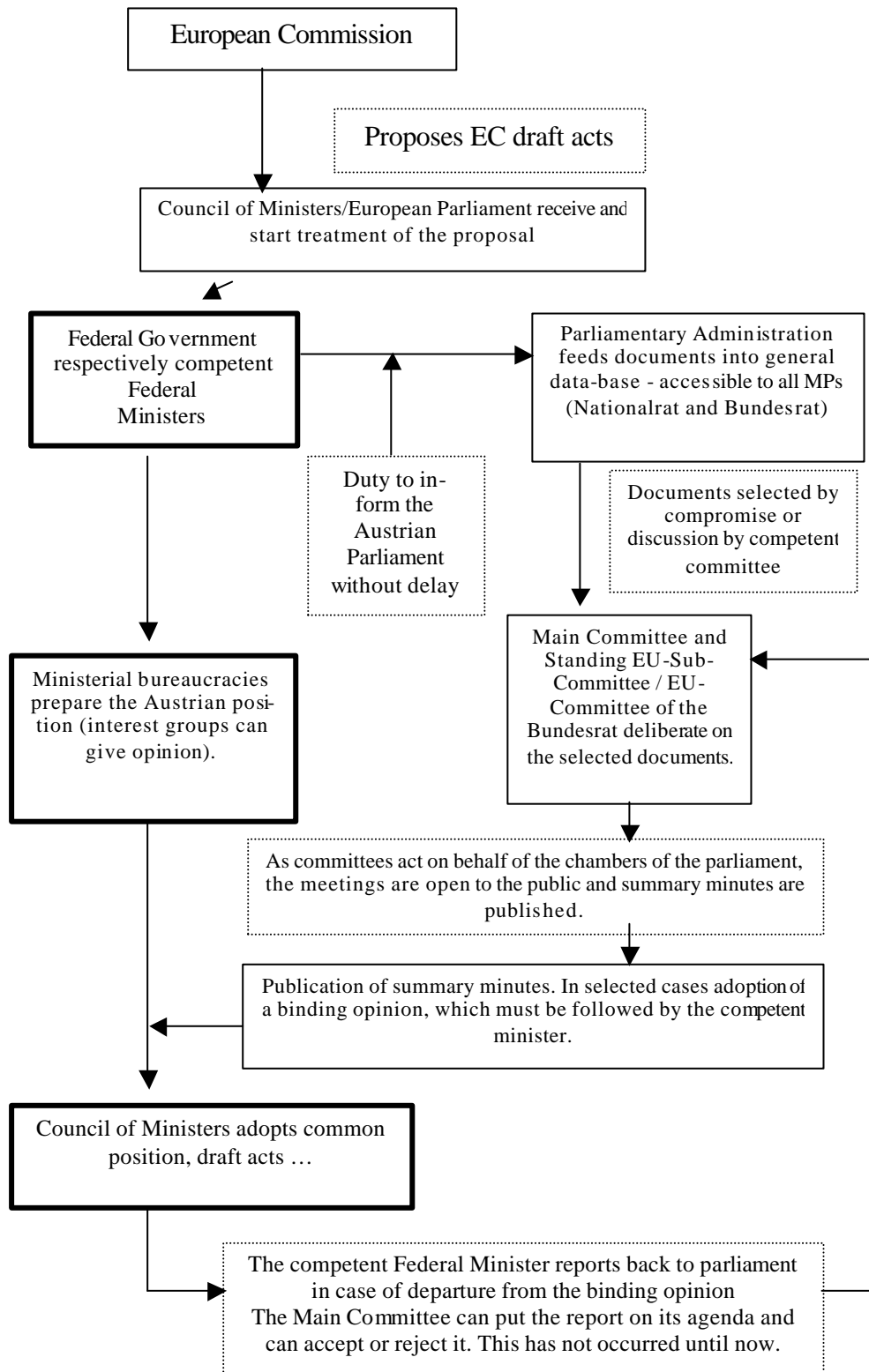
2. The Institutional Setting of Parliamentary Scrutiny

Just like other parliaments in Europe the Austrian Parliament has diverse possibilities - i.e. interpellation, urgent question, debate on matters of topical interest - to control the work of the Government ex-post. Additionally, the Nationalrat - and to a lesser extent - the Bundesrat have increasingly become fora for far-reaching and even controversial debates on foreign policy.² However, the Austrian Parliament has also secured the possibility to fulfil the exercise of ex-ante control. The rules of procedure of the Nationalrat, as adapted in 1996, provide detailed rules on the parliamentary participation in EU decision-making. Note that European Union affairs are discussed on Committee level as the EU Main Committee and a specialised Standing Sub-Committee are in charge of fulfilling this duty on behalf of the Nationalrat. The Sub-Committee only came into existence in 1999, as in the former legislative period no compromise could be found as to who should be the chairperson to such a Committee.

1 See Khol, Andreas, 1995, op.cit., pp. 275ff., Fitzmaurice, John: National parliamentary control of EU policy in the three new member states, *West European Politics*, 19 (1), 1996, p. 91; Wohnout, Helmut: Die Mitwirkungsrechte des österreichischen Parlaments an der Willensbildung in der EU, *Die Union, Vierteljahresschrift für Integrationsfragen*, 1/1999, p. 71f.

2 See Neisser, Heinrich, 1998, op.cit., p. 339.

Figure 9: The Process of Parliamentary Scrutiny in EC/EU Affairs in Austria



Both Committees have the possibility to pass a binding opinion.¹ There is no duty of the Committees to report separately to the Nationalrat when a binding opinion is passed. The opinion must be transmitted immediately to the Federal Chancellor, the Minister on Foreign Affairs and the competent minister.

Similar rules are in place for the Bundesrat.² The relevant reform to the rules of procedure of the Bundesrat were, however, only passed in 1997.³ Previously the President's Conference of the Bundesrat agreed to conduct negotiations on EU affairs only if one parliamentary group or the members of the Bundesrat of one province put forward a respective demand. To create a relevant forum for discussion, the Bundesrat elected the members of the Committee on European Affairs in February 1995. As this Committee did not have the possibility to pass a binding opinion, such matters were referred to the plenary, which then had the possibility to pass a binding opinion on the respective matter. This rather complicated mechanism was based on the fact that Article 23e of the Federal Constitution of 1994 provided that the respective Committee only had the right to discuss the matter, whereas the plenary of the Bundesrat was given the right to pass an opinion. In 1996 an amendment to the Constitution⁴ gave the Committee on European Affairs the possibility to pass a binding opinion similar to the EU Main Committee of the Nationalrat.⁵

Apart from the EU Main Committee and the Standing Sub-Committee, which deal with EU affairs the rules of procedure of the Nationalrat foresee the possibility to install a further Committee. This Committee would - according to the current composition of the Nationalrat - have five members: the chairman of the Standing Sub-Committee on matters of the European Union and one representative of each parliamentary group. This Committee would be obliged to fulfil the task of a 'fire-brigade': given that the minister negotiating on the European level was bound by a binding opinion this Committee would function as a consultative body in parliament with the aim of enabling a compromise at Council level.⁶ Formally this Committee must, however, not speak on behalf of the Standing Sub-Committee.⁷ Up to this point in time, this Committee has met once to scrutinise the results of Nice Intergovernmental Conference.⁸

1 See section 31d of the rules of procedure of the Nationalrat.

2 See Körner, Margit, 1995, op.cit., p. 522.

3 See Federal Law Gazette I No. 65/1997.

4 See article 23e, para. 6 of the Austrian Constitution.

5 See section 13a para. 2 of the rules of procedure of the Bundesrat; Kerle, Ines/Müller, Christian, Das österreichische Parlament und die europäische Integration. Die Praxis des EU-Hauptausschusses und des EU-Ausschusses des Bundesrates seit dem Beitritt Österreichs zur EU, Wien, 1999, p. 17.

6 See Neisser, Heinrich, 1998, op.cit., p. 351.

7 This passage of the rules of procedure is considered to be soft law. Wieser, Bernd: 'Zur schwierigen Umsetzung der parlamentarischen Beteiligung an der innerstaatlichen Willensbildung in EU-Angelegenheiten: Das Komitee gem. § 31 e Abs 3 GOGNR', Österreichische Juristen-Zeitung, 3/1998, pp. 81-93.

8 See Parlamentskorrespondenz, 1 December 2000, No. 719.

3. The Scope of Parliamentary Scrutiny

3.1. Quantitative Analysis

According to the constitutional provisions and the respective stipulations of the rules of procedure of the Nationalrat and the Bundesrat all documents connected to the EU are submitted to the Parliament without any pre-selection or co-ordination by the competent government ministers. No explanatory abstracts are to be included, as there is no duty to submit additional information. The Government has agreed, however, to submit cover pages which contain basic information concerning the respective document, but this has not led to a substantial change as these papers are considered not to be very informative. Given the number of documents submitted to parliament, one can easily imagine that this causes severe difficulties to select the material of relevance.¹ Some even argue that it is the "idea of the bureaucracy to flood parliament with documents, until it is unable to breathe."²

Table 23: Number of EU-documents Submitted to the Austrian Parliament

XIX. Legislative Period: November 1995-13.1.1996	17.968
XX. Legislative Period: 14.1.1996-28.10.1999	75.958
XXI. Legislative Period: since 29.10.1999 (as of 21.6.2001)	34.428

Source: Parlamentsdirektion

One has to note, however, that in some cases the Parliament receives the same document two or even three times, as for example different language versions are submitted and different ministries dealing with the same issue submit the same document. Around 70 per cent of the incoming documents come from the Council, 20 per cent from the Commission, seven per cent of the Permanent Mission of Austria in Brussels and the Federal Ministries, and one per cent from the European Parliament, the European Court of Justice and the Court of Auditors, respectively. Around 20 per cent of the documents submitted by the Council and the Commission are agendas.³ All incoming documents are inserted into a data-base, which is accessible via Intranet to the parliamentary groups and employees of the parliamentary Administration. A large bulk of the documents are submitted by the Federal Ministries, but also directly by EU institutions or by the Austrian Permanent Representation in Brussels. The Austrian Parliament recently created a special e-mail address in order to speed up the submission of EU documents as well as to minimise the bureaucratic burden by not having to scan this substantial number of documents.

1 See Urbantschitsch, Wolfgang, 1998, op.cit., p. 47-48, Wohnout, Helmut, 1999, op.cit., pp. 74, 78.

2 See Falkner, Gerda, 1998, op.cit., p. 232.

3 See Kerle, Ines/Müller, Christian, 1999, op.cit., p. 4.

During the course of 1996 to 1999 one document was transmitted to parliament dealing with the role of national parliaments in the EU's legislative process. This was an introductory note submitted by the Presidency to the Conference of the Representatives of the governments of the member states of 9 September 1996. However, this document was not put on the agenda of the EU Main Committee. There were no documents concerning COSAC and the EP's Neyts-Uttenbroeck report of 1997. The resolution by the European Parliament (EP) drawn up subsequent to this report was not even transmitted to the Austrian Parliament.

3.2. The Number of EC/EU Documents Considered by Parliament

Between the end of 1995 and the beginning of 1996 92 documents were on the agenda of the EU Main Committee.¹ From 1996 to 1999 33 meetings took place and 155 documents were on the agenda. So far nine meetings were held during the XXI. Legislative period, which started on 29 October 1999 and 25 documents were discussed.² Up to June 2001 the Sub-Committee on European Affairs met eight times and discussed 22 documents. The topics considered range from environmental issues, health, animal protection, EUROPOL, data protection, Economic and Monetary Union (EMU), Eastern enlargement and employment to general preparatory discussions before Council meetings.

Within the Nationalrat a so-called preparatory group³ decides by consensus as to which documents should be discussed during the meetings of the EU Main Committee.⁴ It can be said that the so-called 'Klubsekretäre'⁵ fulfil this duty instead of the heads of the respective parliamentary group. Interestingly enough it is mostly the opposition parties that propose the EU document to be discussed during the EU Main Committee meeting; only in a selected number of cases of Members of Parliament (MP's) of the Government parties were active in such matters.⁶ With regard to the topics selected to be discussed, matters were chosen which are regulated at the federal level and were seen as especially important for the Parliament's participation.⁷ In the Bundesrat the 'Klubsekretäre' prepare the Committee meetings which deal with the opinions reached by the President's Conference.⁸

1 See *ibid.*, p. 4.

2 Source: Parlamentsdirektion as of 14 June 2001.

3 'Vorbereitungskomitee'.

4 See Parlamentsdirektion 1997, p. 10, Urbantschitsch, Wolfgang, 1998, *op.cit.*, p. 43.

5 These are for the most part lawyers that deal with preparatory work.

6 See Fischer, Heinz: 'Die Demokratisierung der EU aus Sicht des österreichischen Parlaments', in: Leicht, Anton (ed.): Regierungskonferenz 1996. Wohin steuert die EU?, Vienna 1996, pp. 167-178.

7 See Wohnout, Helmut, 1999, *op.cit.*, p. 75.

8 See Präsidialkonferenz des Bundesrates; Kerle, Ines/Müller, Christian, 1999, *op.cit.*, p. 17.

3.3. Documents Produced after Consideration of EC/EU Documents

The EU Main Committee and the Committee on European Affairs of the Bundesrat may decide on a so-called opinion, which is legally and politically binding. In the Nationalrat, 18 such opinions were passed during the XIX. legislative period; 13 during the XX. and until June 2001 three during the XXI. period. The Standing Sub-Committee on European Affairs passed two opinions until June 2001. The topics of binding opinions vary from issues such as BSE, to animal protection, from employment policy to EMU, from biotechnological inventions, traffic issues to international relations. Security, agriculture, asylum and neutrality were also topics under consideration.

Until the beginning of 1999 the Committee on European Affairs of the Bundesrat met eleven times and discussed 24 EU documents. The Bundesrat passed one opinion so far (concerning EUROPOL, 10 December 1996).¹ The Committee on European Affairs also passed a resolution concerning the Intergovernmental Conference (IGC)² and the Agenda 2000.³ During the XXI. legislative period of the Nationalrat the Committee met five times so far.

3.4. Public Access of Documents, Debates and Outcomes

The position of the EU Main Committee - when dealing with EU matters - differs somewhat when compared to other Committees. Despite the fact, that the EU Main Committee can vote to bring EU matters before the plenary by drawing up a report, the place to discuss EU matters is normally the Committee itself. This is also the reason why meetings of the EU Main Committee and the Sub-Committee on EU matters are open to the public and written records are published.⁴ However, these records are only composed of extracts of the debate.⁵ Summary minutes were available for the first time for the sitting of the EU Main Committee on 4 October 1996. Previously the meetings of the EU Main Committee on European projects had been confidential as any other Committee meeting. However, even prior to 1996 the text of the binding opinions was often published in the literal sense by the press service of the parliamentary administration.⁶ The rules of procedure of the Bundesrat contain similar provisions as regards to openness and transparency.⁷ During the XX. legislative period for 26 out of 33 sittings

1 See *Parlamentsskorrespondenz*, 10.12.1996, No. 738.

2 On 29 February 1996 and 17 November 1997 respectively.

3 See Kerle, Ines/Müller, Christian, 1999, *op.cit.*, p. 21.

4 This is true since the reform of the rules of procedure of the Nationalrat in 1996.

5 See section 31c Para. 6 of the rules of procedure of the Nationalrat.

6 *Parlamentsskorrespondenz*. See Kerle, Ines/Müller, Christian, 1999, *op.cit.*, p. 12; personal communication.

7 See section 13b Para. 9 of the rules of procedure of the Bundesrat.

summary minutes were produced by the EU Main Committee of the Nationalrat and five by the Bundesrat.

It has to be pointed out that there is only little interest by the public to attend Committee meetings.¹ Furthermore, it is not possible for the EU Main Committee to transfer EU documents to specialised Committees. The EU Main Committee may decide, however, to bring certain matters before the Nationalrat. Generally, there is also the possibility of a so-called general debate² at the beginning of each specialised Committee meeting and EU matters may be part of the discussion. The composition of the EU Main Committee can change according to the competence of the members regarding a certain matter.³ This possibility was resorted to several times.⁴ However, as around 70 percent of the laws dealing with economic matters are directly or indirectly influenced by EU-regulations, it will be necessary to strengthen the European perspective even in the work of the specialised Committees.⁵ There are 28 members to the EU Main Committee, when dealing with EU matters: ten Social Democrats, eight representatives of the Freedom Party and the People's Party respectively as well as two Green members.⁶ The Standing Sub-Committee on EU affairs has 14 members: five Social Democrats, four representatives of the Freedom Party and the People's Party respectively and one Green member.

The organisation of the Committee meetings is not the duty of a single Committee secretary but is divided between the parliamentary administration and the parliamentary groups. On the one hand approximately 400 employees are working in the parliamentary administration, where about 50 have a university degree, mostly in law. Basically always two academics of the parliamentary administration are in charge to secure a smooth order of events during Committee meetings with regard to the provisions fixed in the rules of procedure. On the other hand, there are around 200 MP assistants. Each of the 183 MP's has the right to employ an assistant - however, most MP's decided to "share" MP assistants in order to secure a decent salary for them. If a MP is delegated to the EU Main Committee dealing with EU matters his/her assistant is in the practical process also responsible for preparing these meetings. Furthermore, there are members of the political group staff specifically dealing with EU affairs.

1 See Urbantschitsch, Wolfgang, 1998, op.cit., p. 44.

2 'Allgemeine Aussprache'.

3 See Neisser, Heinrich, 1998, op.cit., p. 352; Parlamentsdirektion 1997, p.11.

4 See Schefbeck, Günther: 'Verhandlungsökonomie - EU-Mitwirkungsrecht - Ausschussöffentlichkeit. Zur Reform der Nationalratsgeschäftsordnung', Wiener Zeitung - Beilage Parlament, No. 31 (October)/1996, pp. 8-11, p. 10.

5 See Nowotny, Ewald: 'Europa und wir', Wiener Journal, September 1998, pp.10-11, p. 10; Wohnout, Helmut, 1999, op.cit., p. 79.

6 The composition of the committees is regulated in the sections 30 and 32 of the rules of procedure of the Nationalrat. Following the system of D'Hondt each parliamentary group gets the right to send a specific number of representatives to the committee. In smaller committees the system according to Shapley is used.

3.5. The Timing and Procedural Features of Parliamentary Scrutiny

Originally the agreement was reached that the EU Main Committee should meet at least twice a month - on Tuesdays- to discuss EU matters. However, this intention was only put into practice immediately after accession. In 1995 the EU Main Committee met 17 times on EU matters. In 1999 the number decreased to six and three meetings took place in the first six months of the year 2000. Furthermore, one can see that instead of passing a binding opinion on a matter, the MP's and/or parliamentary groups find "informal" ways to communicate their point of view.¹ During the XX. and the XXI. legislative period 38 meetings of the EU Main Committee were held, dealing with projects of the European Union.² The EU Committee of the Nationalrat met on average for 165 minutes. The EU-Committee of the Bundesrat lasted 134 minutes on average. The Sub-Committee should meet once a month.³ Two parliamentary groups may request an additional meeting, but only if their demand is well-founded. So far the Sub-Committee on European Affairs met five times and discussed 13 documents.

3.6. The Implications of Parliamentary Scrutiny

Subsequent to the experience encountered when submitting the first opinion concerning the directive on the conditions for the transport of animals, which led to a sub-optimal result (both concerning the issue as such and concerning Austria's stance within the Council) as the Nationalrat gave no room for manoeuvre to the Federal Minister, the opinions are formulated in a way to give the Government representative the chance to negotiate a compromise. In the notable case of the transport of animals the Federal Minister for Agriculture had to comply with a binding opinion, which stated that he had to block any Community legislation that would lead to a lowering of Austrian standards. At the end of the day, the directive was not only adopted against the Austrian vote, but contained provisions, which were even less stringent than a proposed compromise solution. Although the Federal Minister tried during the Council meeting in February 1995 to re-consult the EU Main Committee in the quest to get it to review its opinion, he reportedly could only get in touch with the night-watch of the Parliament.⁴ After this in-

1 In 1996 ten such meetings were held, in 1997 and 1998 nine respectively. However, one must take into account that due to the General Elections held in October 1999, the frequency of all committee meetings decreased. See Scheffbeck, Günther: 'Die XX. GP im Spiegel der Statistik', Teil II, Wiener Zeitung - Beilage Parlament, No. 54 (December)/1999, pp. 15-19, p. 18.

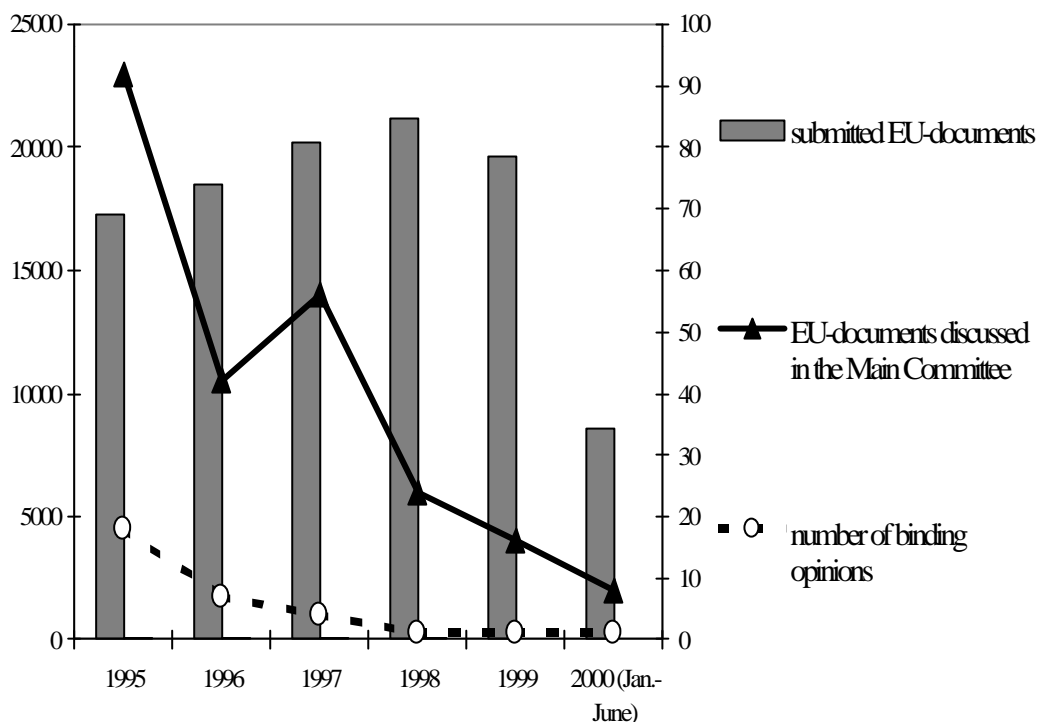
2 33 meetings were held in the XX. legislative period and six in the XXI. (as of 15.9.2000).

3 Originally it was planned that the Sub-Committee should meet every two weeks (See Khol, Andreas, 1995, op.cit., p. 285).

4 See on this issue Urbantschitsch, Wolfgang, 1998, op.cit., pp. 54-56.

cident rather soft formulations like "the minister shall work towards" or "make a strong effort" are used.

Graph 5: Treatment of EU Documents in the Austrian Main Committee



Source: Kerle, Ines/Müller, Christian, *Das österreichische Parlament und die europäische Integration. Die Praxis des EU-Hauptausschusses und des EU-Ausschusses des Bundesrats seit dem Beitritt Österreichs zur EU*, Wien 1999, p. 15; Parlamentsdirektion.

There are also positive examples however, for instance the unanimous vote on a binding opinion concerning the Council Regulation No. 2092/91 on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs. This time a compromise was reached to clarify the Austrian position and to leave enough room of manoeuvre for the Federal Minister.¹ It became clear that the Austrian Parliament must not exercise its right to binding opinions in such a way that government ministers are 'handcuffed'. Some lawyers even argue that a rigid mechanism used by the Parliament to bind the Austrian representative in the Council could be seen as

¹ See Schäffer, Heinz: 'Österreichs Beteiligung an der Willensbildung in der Europäischen Union, insbesondere an der europäischen Rechtssetzung', *Zeitschrift für öffentliches Recht*, 1996, pp. 3-73, p. 62; *Parlamentskorrespondenz*, 7.3.1995 and 16.5.1995.

conflicting with EU regulations.¹ As Heinz Fischer, President of the Nationalrat, observed:

“The system works, if the positions formulated by the different countries indicate trends and priorities but do not lay down the negotiating positions until the last full-stop and comma.”²

There is a general recognition that a balance must be found between the need for ensuring a ‘parliamentary imprint’ and securing a reasonable degree of negotiating flexibility for ministers.³ But it is also important for the Parliament itself that its possibilities of participation are optimised. Margit Körner, then employee in the parliamentary Group of the People's Party⁴, argued:

“If this model can be implemented by way of agreement between the political parties and if one can agree on a strategy, whereby the Parliament is not paralysed, then the position of the Parliament also after Austria's accession to the EU would be protected to a great extent.”⁵

One may also stress the fact that the role of the Parliament in the national decision-making process on EU matters and the possibility even to bind Federal Ministers is based on the principle of democratic legitimacy.⁶ Furthermore, the participation of the Parliament can also be considered as strengthening the Austrian representative in the Council as he or she has the opinion of the Parliament to fall back on¹.

III. The Austrian Parliament and the Negotiation of the Amsterdam Treaty

During the negotiation process leading up to the Amsterdam Treaty the EU Main Committee met and dealt with some of the provisional Treaty provisions, but did not specifically discuss the future role of national parliaments within the framework of the EU. The perception seemed to prevail that the (supervisory) competences of the Austrian Parliament, which are far-reaching when compared to other member states, could be left untouched.

In its basic position of 26 March 1996 for the Intergovernmental Conference the Federal Government stated that the fundamental source of democratic legitimacy was based on

1 See Öhlinger, Theo: ‘Die Mitwirkung des Bundesparlamentes sowie der Länder in Österreich an der Entstehung von Europäischem Recht’, *Zeitschrift für Gesetzgebung*, 1996, pp. 57-74, p. 70-71.

2 Original: ‘Das System funktioniert dann, wenn die Positionen, die in den einzelnen Ländern formuliert werden, Tendenzen und Prioritäten angeben, aber nicht ein Anbinden der Verhandlungspositionen auf Punkt und Beistrich sind.’ (Fischer, Heinz: *Demokratisierung der EU*, pp. 177-178).

3 See Fitzmaurice, John, 1996, *op.cit.*, p. 92.

4 See Khol, Andreas, 1995, *op.cit.*, p. 279.

5 Original: ‘Kann dieses Modell einvernehmlich zwischen den Fraktionen im Parlament umgesetzt werden und kann man sich auf eine Vorgangsweise einigen, die das Parlament nicht lahmlegt, dann würde der Stellenwert des Parlaments auch nach dem EU-Beitritt größtmöglich gewahrt.’ (See Körner, Margit, 1995, *op.cit.*, p. 523).

6 See Morass, Michael, 1996, *op.cit.*, p. 39.

the links established between national parliaments and the representatives of the respective member state in the Council. Subsequently the importance of the national parliaments' involvement in the integration process had to be enshrined in the Treaty. It was, however, to be left to the member states to decide on the form that this participation should take. Every national parliament should receive clear and complete information on the legislative proposals drawn up by the Commission. One way of achieving this would be by the stipulation of strict deadlines. The view put forward by the Austrian Government was furthermore that the relations between national parliaments should be complementary and not competitive. In this quest the co-operative structures should be maintained and developed. Any attempt to establish a Chamber consisting of national parliament representatives should be opposed.²

The Amsterdam Treaty itself was brought to parliament via a government bill³ and was discussed in the Constitutional Committee. Prior to passing the Amsterdam Treaty⁴, the Parliament passed a Federal Constitutional Law on the Amsterdam Treaty⁵ with great resemblance to the EU-Beitritts-Bundesverfassungsgesetz. As the Amsterdam Treaty was not considered a comprehensive change⁶ of the Austrian Federal Constitution, no referendum was held.⁷

The plenary discussions of the Nationalrat dealing with the Amsterdam Treaty focused mostly on security issues (neutrality and Common Foreign Security Policy).⁸ The question of the relationship of the European Parliament and its interaction with the national parliaments was, however, on the agenda of the Bundesrat, which focused the role of the Landtage.⁹ During the session of the Bundesrat in July 1998 criticism was brought forward that although the Protocol on National Parliaments (PNP) mentions the parliaments of the member states - which would without doubt include the Landtage - in the practical political process the EP apparently only subsumes the national parliaments of the member states under this notion.¹⁰ The Landtage therefore depend on the Federal Government to provide them with information and opinions, facing great time-delays. To circumvent these problems in the future the Bundesrat pleaded for an inclusion of

1 Personal communication, February 1999.

2 See Austrian Delegation: 'Regierungskonferenz 1996. Österreichische Grundsatzpositionen', 26.3.1996, p. 12.

3 XX. legislative period, government bill No. 1211 I der Beilagen.

4 See Federal Law Gazette III No. 83/1998.

5 See Federal Law Gazette I No. 76/1998.

6 'Gesamtänderung'.

7 See Europäisches Parlament/Generaldirektion Wissenschaft: Die Ratifikationsbedingungen für den Vertrag von Amsterdam. Arbeitsdokument. Politische Reihe W-30, Brussels, 1997, p. 20. In the case of the Amsterdam Treaty article 50 of the Federal Constitutions applied.

8 See minutes of the 130. plenary sitting of the Nationalrat during the XX. legislative period, 18 June 1998.

9 Parliaments of the provinces (Länder).

10 See minutes of the 642. plenary sitting of the Bundesrat, 2.7.1998, pp. 40-41.

the Landtage into the co-operative process between the EP and the parliaments of the member states.¹

IV. The Austrian Parliament after Amsterdam

The introduction of the PNP in the Amsterdam Treaty did not affect the situation prevailing in the Austrian Parliament as regards to EU matters.² This can be explained by the fact that the changes introduced by the Protocol were to some extent already practice in the Austrian Parliament long before the enforcement of the Amsterdam Treaty. The rules prevailing in the Austrian arena go beyond the PNP insofar as the Parliament possesses scrutiny rights vis-à-vis the Austrian Government as regards to all three Pillars. The then Federal Chancellor Viktor Klima even held the opinion that the Austrian Parliament even has more rights than laid down in the PNP.³

The Austrian Government provides the Parliament, as mentioned above, not only with the basic documents, but with cover sheets, which are, however, not very informative, the explanation being that the drawing up of memoranda would be time-consuming and lead to a certain pre-selection process. The provision on timing in the PNP is implemented in such a way that documents are forwarded “without delay” to parliament.⁴

The President’s Conference of the Nationalrat took a basic decision as to how the Austrian Delegation to COSAC should be composed. As usual at COSAC, the Delegation may have six members. It was agreed that in principle two representatives of the Social Democrats (one of whom is the leader of the Delegation) and a representative of the then four other parliamentary groups (People’s Party, Freedom Party, Liberal Forum and Greens) should be present. After the General Elections of October 1999 the Freedom Party and the People’s Party delegate two members respectively. The Green member of the Delegation only has observer status. It is up to the parliamentary group as to who will be nominated - a member of the Nationalrat or a member of the Bundesrat. However, the personal composition of the Delegation varies greatly as the parliamentary groups nominate their representative each time a meeting is scheduled. Furthermore, the Bundesrat is rarely represented in the Delegation. The Bundesrat criticised that the Committees on EU matters of the Landtage have no access to COSAC and depend on the information given to them by the Bundesrat⁵ or the Government.

1 This information is passed onto the Landtage by the governments of the provinces.

2 Information of the Parliamentary Administration.

3 See introductory note given by Prime Minister Viktor Klima to the Conference of the Presidents of the EU-Parliaments in Vienna; *Parlamentsskorrespondenz*, 1.12.1998, No. 778.

4 See Article 23e of the Federal Constitution.

5 Statement by the President of the Bundesrat Jürgen Weiss (People’s Party); see *Parlamentsskorrespondenz*, 1.7.1999, No. 365, p. 2.

It is important to note that the COSAC does not fall within the sphere of competence of the EU Main Committee or the respective Sub-Committee on EU matters but into that of the Committee on Foreign Affairs. The Chairperson of this Committee is frequently the leader of the COSAC Delegation.

Before each COSAC meeting a questionnaire is passed to all member parliaments. In Austria, these are handled by the parliamentary administration, which also deals with the respective summary reports after the COSAC meetings. These documents are not open to the public as only the members of the Delegation get a copy.

Given these circumstances it comes no surprise, that the process of “Cosociation” can not be observed in Austria up to now. Scrutiny of European legislation is mainly carried out by the European Parliament and the national parliaments. In the Austrian Parliament COSAC is considered to play a supplementary role mainly as a platform for information exchange.

V. Conclusions: The Limits of Constitutional Safeguard Clauses

At least in the past the Austrian party system was considered as one of the least fragmented in Europe.¹ The Social Democrats and the People's Party largely dominated the Austrian political arena until the mid-eighties with the opposition parties only playing a marginal role. It was only until the rise of the Freedom Party during the 1980's, the foundation of the Greens and eventually the Liberal Forum that the two actors gradually lost in importance. Until the end of the 1970's Austria was considered as the country with the least fluctuation of voters between the two ‘grand’ parties.²

Building on constitutional provisions the political system is based on the close co-operation between the Executive and the Legislative: the Government needs the trust and assent of the Nationalrat and depends on the Nationalrat in so far as the latter approves the budget. It is the Parliament that by way of parliamentary resolutions puts forward special guidelines for the activity of the administration. On the other hand the activity of the Government affects the Nationalrat substantially, a fact that is not only reflected in the importance of governmental bills, but also in the dominance of the Government as regards financial and personal resources. Members of government principally have the right to take part in the sessions of the Nationalrat and its committees and to take the floor under privileged circumstances.³ The important role of the Executive in the decision-making process becomes even more salient when looking at the Austrian decision-making process with regard to European affairs: the Parliament is ‘showered’

1 Based on the categories of Lijphart, Arend: *Patterns of Democracy*, Yale: University Press 1999.

2 See Müller, Wolfgang, C.: ‘Parteiensystem, Politische Bewegungen’, in: Dachs, Herbert/Gerlich, Peter/Gottweis, Herbert (eds.), 1997, op.cit., pp. 227ff.

3 See Fischer, Heinz, 1997, op.cit., p. 116.

with information, but does not have the resources to respond within the very stringent time limits prevalent at European level and is not involved at the initial stages of the national decision-making process.

Austrian policy is made on two levels: by the political parties and by the social partners, where since the end of the 1970's the first gained in importance to the detriment of the latter. However, the corporatist structures - the crucial Austrian interest groups - are still of great importance, especially in their core area of labour law and labour market policy. Given their role on the national level, it comes as no surprise that the social partners were also granted specific participatory rights within the EU decision-making process.¹

The Austrian federal state is based on constitutional provisions, which stipulate that the state functions are to be shared between the Federation and the Länder.² The repartition of competences in the political process and the role of the Bundesrat reflect however, that the federal principle does not have large practical implications. On the European level, the Länder are even face more difficulties in following EU negotiations than the Austrian Parliament.

The Austrian Constitution provides the legal basis for a large bulk of decisions taken on the national as well as on the European level, but does not always adequately reflect the actual political developments, the 'living constitution'. One notable example is the social partnership, which played and still plays an important role in shaping the practical political process, but where no reference is to be found in the Constitution.

When examining the role of national parliaments within the European arena, one can conclude that on the whole the Austrian Parliament cannot be described as a 'winner' of the European integration process. The fact that Austria was outvoted in the issue of animal transport made apparent that a number of aspects cannot be controlled by national parliaments as many decisions in the Council are taken by qualified majority. Even if unanimity is required for certain issues and in theory the Parliament could succeed to impose its standpoint not only on the Government, but also push it through within the European arena, the sheer volume of documents transmitted to the Austrian Parliament prevent this in practice.

The Amsterdam Treaty did not alter the role of the Austrian Parliament in EC/EU affairs. This can be partly attributed to the fact that some of the provisions introduced for national parliaments were already parliamentary practice before the Treaty came into force. During the negotiations leading up to the Amsterdam Treaty the role of national parliaments within the European framework was not specifically discussed.

When comparing the two position papers the Austrian Government put forward for the Intergovernmental Conference 1996/97, one finds that the position was somewhat ex-

1 See Falkner, Gerda, 2000, op.cit., p. 238ff.

2 See article 2 of the Austrian Federal Constitution.

panded between May 1995 and March 1996.¹ Contrary to the first paper, the Government stressed in its second memorandum the necessity of providing national parliaments with comprehensive information on Commission proposals. The importance of inter-parliamentary structures such as the COSAC was also underlined.

Neither the Government nor the administration have an interest in stronger scrutiny powers for the Parliament in EU affairs. The Government values any leeway it has to adapt and even changes its position to developments and pressures of negotiations on the European level. The administration seems to see the strategy of 'drowning' the national parliament with information as a way of not only to keep it informed, but seems to expect that the Parliament will be unable to select the most important issues for parliamentary opinions.²

One also has to stress that although the Austrian stipulations on parliamentary involvement in EU affairs might be considered as far reaching, they are designed in a way that the members of parliament come in at the end of the EU decision-making process on the national level. They are not implicated in the generation of a national 'standpoint', but are only involved when an issue is present in the Austrian Council of Ministers. By then, however, the national position is usually already well designed and there is little room for change.

The Austrian case is a rather good example for the discrepancy between legal provisions and practical implications. Democracy cannot be enforced by constitutional provisions, but must become an intrinsic and pivotal feature of the decision-making process.

1 See Austrian Delegation: 'Leitlinien zu den voraussichtlichen Themen der Regierungskonferenz 1996', 30.5.1995 and Austrian Delegation: 'Regierungskonferenz 1996. Österreichische Grundsatzpositionen', 26.3.1996.

2 See Falkner, Gerda, 2000, op.cit., p. 231f. For a study in the field of environment devoted inter alia to this topic, see Steiner, Gerhard/Trattnigg, Rita: 'Sektorstudie Umweltpolitik', in: Falkner, Gerda/Müller, Wolfgang C. (eds.), 1998, op.cit., pp.139-173.

The Parliament of the Netherlands and the European Union: Early Starter, Slow Mover

Ben J.S. Hoetjes

1. Introduction: The Netherlands in EU

1. Public opinion: From Captive Audience to Positive Indifference

The involvement of the Dutch in European integration dates back to the 1950's, and therefore there is a relatively long-term data about the Dutch attitudes towards Europe. At the level of general public opinion, recent comparative research has shown a long-standing 'loyalty' of the Dutch public towards European integration.¹ Compared to the other EU member states, the Netherlands together with Luxembourg show the most stable public attitude towards European integration. Over the years, the Dutch have been warmly in favour - again, compared to other member states - of European integration, although in the 1990's pro-EU- support slightly decreased. Whereas e.g. France and Italy saw a sharp increase in EU-support during the 1960's, and a gradual decrease in support occurred in Germany, France and Belgium during the 1980's and 1990's, the Dutch public opinion has remained remarkably stable. The recent slight decrease in EU-support has brought the Netherlands closer to the other member states in terms of EU-support and EU-scepticism.

As in other member states, a distinction should be made between the general public attitude and the elite. In the Netherlands, this distinction, until the 1970's, was closely linked to the system of 'pillarisation'.² For the general public, European integration was a good cause, which was to be entrusted to the experts and the elite. Ordinary citizens were quite willing to leave politics to the elite of their 'pillar'.³ Voter turnout at elections was very high, due to the legal obligation to show up at the polls - voting was a 'citizen's duty'. Within the political elite, there was hardly any disagreement about European integration, and the integration process itself was highly technical and specialised. The general public accepted its role as a 'captive audience' without demurring.

During the 1960's, things started to change, as elsewhere in Europe. Relations between the voters and the elite, and relations within the elite became less predictable. New parties emerged - anarchist, leftist-liberal, progressive - and the role of the floating voter in

1 See Janssen, J.I.H., *Publieke steun voor de Europese Unie - analyse van de publieke opinie in 12 lidstaten 1952-1998*, Maastricht, 2001, p. 135.

2 See Lijphart's concept on consociational democracy.

3 These pillars are e.g. Catholic, Protestant, Socialist or Liberal-Conservative.

elections became more important.¹ During the 1970's, political discussion radicalised and became more and more antagonistic, especially in fields with a high moral content, e.g. disarmament, third world, and environment. The Netherlands became less pillarised and more polarised.

Remarkably, however, this change did not affect European integration and EU membership. In the relationship between the citizens and the elite, European integration remained a highly technical, specialised, and politically un-interesting field. It was left in the hands of elite specialists - with a general attitude that it was a good thing for the country. Notions about integration were very vague. There was, at least, the implicit assumption that Dutch identity and Dutch political institutions would remain in place, and that the integration process would deliver considerable benefits, especially in economic terms.² During the 1980's, with the decline of ideology and political involvement among the public at large, European integration became a matter of 'positive indifference'. Little or no questions were asked, and knowledge about the EU decreased among the general public. The end of the Cold War brought a subsiding of ideological controversies, a blurring of distinctions between left and right, and the possibility of new coalitions in Dutch politics - even without the Christian-democrats as the indispensable 'balancers'. Among the public at large, interest in politics decreased dramatically. Only very close-to-home issues, like safety in the streets, disasters, plagues and accidents or very personal material interests³ are still able to attract people's attention.

Gradually, European integration came to be criticised as 'too costly', 'wasteful', 'un-democratic' etc. Business circles remained quite positive about the EU, but in other circles, positive indifference was replaced by controversy, or negative indifference. Voting turnout at the 1999 EP-elections reached an all-time low of less than 30%.

2. *Political Parties*

The political parties in the Netherlands, broadly speaking, have supported European integration over the years. Nevertheless, there are some interesting and important differences. The Christian-democrats, especially the Catholics among them - the Christian-democratic Party was formed in 1979 by a merger of the Catholic Party KVP and two protestant parties ARP and CHU - have been the strongest supporters of European inte-

1 See Andeweg, Rudy A.: Dutch voters adrift - on explanations of electoral change 1963-1977, Leiden, 1982.

2 See Hoetjes, Ben J.S.: 'The Netherlands', in: Rometsch, Dietrich/Wessels, Wolfgang (eds.), The European Union and member states - towards institutional fusion? Manchester/New York, 1996, pp. 155-184; Hoetjes, Ben J.S.: Het tussenbestuur en het buitenland - de Nederlandse provincies en Europa, Den Haag, 2000; and Hoetjes, Ben J.S.: 'The Netherlands - a former founding father in search of control', in: Wessels, Wolfgang/Maurer, Andreas/Mittag, Jürgen (eds.): Fifteen into one? The EU and its member states since the TEU, Manchester, 2001.

3 Like e.g. the stock exchange, career openings, private business etc.

gration from the 1950's onward. Also, the Conservative-liberals (VVD) have a record of long-standing support for EU from a market and business perspective. Kurt Schumacher's dictum 'when I see EEC, I see three C's - Capitalists, Cartels and Catholics - ', seems to hold at least for two-thirds in the Netherlands.

The Social-democratic party PvdA had its second thoughts about European integration during the 1950's. Not only was there a suspicion about international capitalism, as voiced e.g. by Kurt Schumacher, but also a concern about wasting money. The social-democratic prime minister Drees, in 1957, shortly before signing the Rome treaties, is known to have sighed 'there goes our good Dutch money'. Mansholt, the Dutch Social-democrat who became President of the European Commission and Agriculture Commissioner, and who was a staunch supporter of European integration, for a long time was a loner in his own party. It took until the 1970's before European integration was more widely accepted in the Dutch Labour Party.

The - small - leftist-liberal party, originating in the 1960's (Democrats-66), has had a strongly internationalist orientation from the start, and fully supported European integration throughout the years.

Strong reservations and criticism towards European integration one finds among the Orthodox-Calvinist parties, on the one hand, and more recently also on the left. The Orthodox Calvinist parties, considering themselves as the representatives of the Dutch national traditions, Dutch identity and the national conscience, have always distrusted European integration as a vehicle of Catholic dominance and a threat to small countries' identities. Nevertheless, they actively participate in European integration, e.g. in EP-elections, and their MEP's are known as hard-working, serious and reliable partners, in spite of their critical views. Also, they have been quite successful in representing specific Dutch interests, e.g. in the transport and shipping sector.

On the left side of the political spectrum, there are the Greens (Groenlinks, i.e. a merger of the Communist Party, the Pacifist Socialist Party and the Progressive-radical Christian Party) and the Socialist Party (former Maoist, revolutionary Marxist).

The Greens are increasingly shifting their stands and their image from radical opposition to 'potential government party'. Their highly critical views in international politics (Cold War, environmental degradation, world capitalism) are gradually softening, including a more positive attitude towards European integration.

The Socialist Party, however, has made anti-EU-criticism into a major platform issue - e.g. resisting the introduction of the Euro. It appeals to the fears of the 'small citizen' or entrepreneur being trampled by big business and globalisation, and it presents the values of solidarity, workers' rights and social protection as the 'antidote' against individualism, materialism and globalisation. This remarkable mixture of radicalism, socialism and populism has produced an outspoken anti-EU-stand - at least, for the time being.

3. *The Dutch Political System*

3.1. *Executive-Legislative Relations*

Overviewing the basic features of the Dutch political system, one can characterise it, first of all, as a parliamentary system. The executive (i.e. the Government) is selected by the legislature, and depends on the confidence of the legislature.¹ The head of state (the Queen/King) does not have a political responsibility and his/her political role is severely restricted. The real leader of government is the prime minister, who is politically responsible towards parliament.

The executive-legislative relation, however, is not one of clear legislative dominance. Unlike the United Kingdom, the Netherlands' government does not consist of MP's but is recruited from various sources - parliament, political parties, the public service, the private sector, universities etc. This, by itself, creates a certain distance between parliament and the executive, which is not just 'a committee from parliament'.

Also, the weakness of the Dutch parliament in organisational terms, - staffing, research facilities, resources etc. - compared to the Government has given the executive a clear dominance in the development of legislation, in spite of formal parliamentary supremacy. Parliament has not been able to compensate for this weakness. It tries to re-assert itself, however, in a different way, i.e. by means of high-publicity activities, e.g. parliamentary inquiries into dramatic policy failures, disasters etc. Also, individual MP's strongly focus on publicity profile, i.e. bringing the news headlines into parliament (debates, questions to ministers etc.).

Another problem in executive-legislative relations in the Netherlands springs from coalition politics. Since there is no single dominant party in parliament, governments have to be based on coalitions - most often two- or three-party coalitions - and compromises on policy issues. This by itself restricts the freedom of political manoeuvring for MP's, individually as well as for party fractions. Since the 1980's, moreover, the policy programmes for incoming coalition governments are put on paper in the form of 'regeerakkoorden' - agreements between government and the parties concerning the policy programme. These agreements are intended to stabilise executive-legislative relations until the next elections, but in practice severely reduce parliamentary influence. Most attempts to discuss policy issues and problems in parliament are squashed in an early stage by government invoking the 'regeerakkoord'.

1 See Lijphart, Arend: *Patterns of Democracy. Government Forms and Performance in Thirty-Six Countries*, New Haven/London, Yale University Press 1999, p. 119.

3.2. *The Party System*

The Dutch party system, i.e. the actual life of politics, has been characterised as relatively fragmented.¹ In government, one finds at least two parties, and in parliament, nine or ten, of which three are relatively large (Liberals, Social-democrats, Christian-democrats) and the others relatively small (Leftist liberals, Greens, Socialists, Orthodox Calvinists). The distinctions among the parties, in the past, followed religious as well as socio-economic cleavages, but since the 1960's, post-materialist values (e.g. participationism) have become increasingly important in party formation.² After the end of the Cold War, party distinctions have become much less clear. The Labour Party seems to have deleted the word 'socialism' from its political vocabulary, accepted the market and private business as politically correct, and increasingly recruited private sector representatives (especially consultants) for party leadership. Among the Conservative-liberals, notions of socially responsible business practice gained ground, stressing the importance of social values in the private as well as the public sector. The Conservative-liberal party VVD, i.e. the old protagonist of the free market, gained much strength, and is widely expected to become the largest party in the 2002 Parliamentary elections. The ideological distinctions among and between the Christian-democrats, Social-democrats, Conservative and leftist liberals decreased to such an extent, that new coalitions could be formed. In 1994, for the first time in 75 years, a government without Christian-democrats was formed, i.e. a Social-democrat, Conservative and leftist liberal, the 'purple coalition' (PvdA, VVD, D '66). In 1999, after a clear electoral success, it continued with the same parties and the same prime minister.

Table 24: The Composition of the Dutch Second Chamber

Political groups / Parties	1994	1999
Labour Party (PvdA)	37	45
Christian-democrats(CDA)	34	28
Conservative Liberals (VVD)	31	39
Leftist Liberals (D66)	24	14
Greens (Groen Links)	5	11
Religious Party SGP	2	3
Religious Party GPV	2	2
Religious Party RPF	3	3
Socialist Party (SP)	2	5
Elder Peoples' Parties (AOV, Unie 55+)	7	0
Total	150	150

Source: www.idea.int

1 See Ibid., pp. 76-77.

2 See Ibid., p. 81.

3.3. *The Distribution of Power*

In terms of distribution of governmental power, the Dutch system is rather paradoxical. Sometimes it has been considered semi-federal¹ because of its 'sociological federalism', i.e. its long-standing tradition of the Dutch government to recognise, subsidise and offer delegated powers to private associations representing the major religious and ideological groups in society, the 'pillars' of consociational democracy. Coalition politics, i.e. the inability of a single group to dominate the system, strengthened this tradition. Especially at the central level, in central government, this 'semi-federalism' has allowed individual ministries to develop a large sphere of autonomy, a specific clientele constituency in society, and a specific subculture. Since no (prime) minister has been able to dominate or 'steer' the others, central government in the Netherlands looks like an archipelago of autonomous islands, connected to each other - these connections are quite important and, in some cases vital e.g. the connection with the ministry of Finance, but without effective common direction. The co-ordination of ministries to a certain extent depends on the political strength of the prime minister. Since his organisational resources are limited - his ministry of General Affairs is little more than a Prime Minister's Secretariat - other ministries with co-ordinating roles (Finance, Interior, Foreign Affairs, Economic Affairs) are even more important for the (lack of) inter-ministerial co-ordination. In recent years, the minister of Finance has taken an increasingly dominant co-ordinating role in the central archipelago of thirteen ministries.

In vertical terms, i.e. in the relationship between central government and provincial/municipal government, there is also a strong tradition of consultation and consensus-seeking. The provinces and municipalities have a constitutionally guaranteed sphere of autonomy. Substantially, however, i.e. in terms of finance, personnel and organisational resources, taxation powers, or actual decision-making, the center clearly dominates e.g. financing some 90 per cent of the provincial and municipal budgets.²

It can be argued, therefore, that the Dutch system is characterised by a strong decentralist culture (tradition, norms, values, politico-administrative 'reflexes' and language) but also by a central dominance, especially towards provinces and municipalities. The question, who dominates the center, however, is much more difficult to answer.

3.4. *Dutch Bicameralism*

This paradox of centralism and quasi-federalism is also reflected in the Dutch parliament. There are two Chambers, the Second Chamber (150 members, elected by direct, universal franchise every four years) being the dominant Chamber in political terms.

1 See Ibid., p. 191.

2 See Hoetjes, 2000, op.cit., pp. 11-15.

The First Chamber is indirectly elected (via the provincial assembly elections, 75 members, four-year term) - in fact, it is a reminder of the confederal Dutch Republic of the 17th and 18th century -, and although its powers are much less than the Second Chamber, it has considerable political relevance. It is actively involved in the legislative procedure - it can reject, but not amend, legislative proposals -, and the political weight of its members sometimes has considerable impact. Since the First Chamber's impact is less than e.g. the U.S. Senate or the German Bundesrat, the Dutch system has been categorised, comparatively, as 'medium-strength bicameralism'¹. Nevertheless, the First Chamber should not be over-estimated: its membership is a part-time job (1 day a week), its self-image and role perception is the role of 'the Chamber of second thoughts', following the Second Chamber's agenda rather than taking its own initiatives. Not surprisingly, there is a recurrent discussion about abolishing the First Chamber, because of its low 'surplus value' (*Mehrwert*) for the political decision-making process. The Dutch political culture, however, combines a radicalism in its words with a cautiousness and moderation in its actions. Old traditions like the First Chamber, therefore can survive for a surprisingly long time.

3.5. *The Constitutional Frame*

This also holds for the Dutch constitution. It can be changed by two-thirds majority of both Chambers of Parliament. The Dutch state had its first constitution in 1795 (the Batave Republic), the previous political system had been based on a treaty of Confederation (the Union of Utrecht of 1579). In 1814, after the defeat of Napoleon, the Kingdom of the Netherlands was created with a new constitution. This constitution was amended on several occasions, e.g. at the secession of Belgium in 1839, but its major revision took place in 1848, when parliamentary supremacy was established. This 1848-Constitution was revised thirteen times in a thorough way. Out of the 142 articles of the present Constitution, none has escaped one or more amendments. The last major overhaul took place in 1983. Nevertheless, the structure of the Constitution has remained in place from 1848 to the present day.

Judicial review is absent in the Netherlands. Legislation e.g. by municipalities can be challenged as being contrary to higher legislation. Also, preliminary court rulings can be given to prevent a case in the European Court of Justice. However, there is no constitutional court or a judicial competence to take up issues of constitutionality.

1 See Lijphart, 1999, op.cit., p. 212

3.6. Interest and Intermediary Groups

The role of interest groups in the Dutch political system, for a long time, has followed the lines of a quasi-corporatist, 'pillarised' system. Each 'pillar' - Catholic, Protestant, Liberal, Socialist - was a 'society within Dutch society' with its own organisations in the social, cultural, economic and political field. At the elite level, these pillars were brought together by means of representation, power-sharing, consensus and compromise - the rules of this 'consociational democracy' have been analysed e.g. by Lijphart. Parallel with, and intertwined with parliamentary representation of the political parties, an elaborate system developed of official consultations of interest groups by the Government. Advisory bodies representing, and bringing together, the different interest groups could be given co-responsibility for government policy or even delegated legislative powers. This quasi-corporatist system developed most strongly in the field of agriculture, and to a less extent, in the socio-economic field (wage negotiations, socio-economic policy).

With the decline of pillarised society since the 1960's, discussion and doubt arose about the legitimacy and the effectiveness of quasi-corporatism. In agriculture, for example, the reforms of the EU-CAP further eroded the support among the farmers' organisations to be co-responsible for agricultural policy. In 1995, the corporatist structure in agriculture was dismantled, and the farmers took more and more distance from government. Nevertheless, the habits of consultation and compromise have remained alive. In the socio-economic field, for example, informal agreement between trade unions, employers and government in the early 1980s formed the base of a new, and more flexible economic policy in the 1980's and 1990's, based on flexibility, market orientation and moderated wage increase. This so-called 'polder model', basically a consociational mechanism in a post-pillarised society, provided the interest group underpinning for Dutch socio-economic policy. It shows, how the legacy of consociational democracy in the Netherlands is still very much alive - in virtually all fields of policy.

II. Government and Parliament in EU Decision-Making

1. General features: Supportive Co-operation

The involvement of government and parliament in the decision-making process, including decisions concerning European integration, hinges on two basic elements: legislation and control. Parliament, as the representative of the Dutch people, decides about legislative proposals (which, in most cases, are presented by the executive), and in the implementation of laws. Parliament has the right, and the task, to control the actions of the executive, which has the obligation to provide the necessary information for that

purpose. The executive, i.e. the ministers, are responsible vis-à-vis Parliament. The Head of State forms part of the executive, but is not politically and publicly responsible. For the Dutch parliament's effectiveness, therefore, it is vital that all government policy is translated into legislation, whether budget laws, framework laws, or any other laws. The confidence of Parliament in the executive can only be tested in the process of legislation and legislative control. In the parliamentary debate about legislative proposals or policy actions related to the implementation of laws, parliament can e.g. express its views not only by rejecting a government proposal, but also by motions of disapproval or censure which implies a dismissal of a minister or cabinet.¹

In this context, it is quite important to note, that the Dutch constitution (Art. 92) allows the entrusting of legislative, executive or judicial competencies to international organisations. This article was adopted in 1953, shortly after the founding of the European Coal and Steel Community (ECSC). At that moment, and also in 1958 (EEC), 1986 (SEA) and 1992 (TEU) the Dutch Constitution has given priority to international law, i.e. European law, not only on an ad hoc basis, but on a '*Kompetenz-basis*'. Legislative decisions, made according to European law, are therefore directly legally binding for Dutch citizens without any intervention by the Dutch legislature - more specifically, the Dutch Parliament. Legislative competence has been 'delegated' to EU-institutions. The role of parliament in EU affairs, therefore, is more restricted than in national legislative affairs.

Nevertheless, the Dutch parliament has a number of competencies and tasks concerning European integration, all of them based on the principle of executive responsibility, concerning EU-treaties, legal acts of the EP and the Council of Ministers, consent in third-pillar matters (Co-operation in Justice and Home Affairs, CJHA) and implementation of EC/EU-law.

Concerning all treaties, including EU-treaties, Dutch law prescribes that the Government negotiates and signs them, but they can enter into force only after parliamentary approval. This approval can be given explicitly, i.e. by means of a law (Law of Approval), or by tacit approval, i.e. by not starting the explicit approval procedure - the choice is up to Parliament itself.

Concerning EP and Council of Ministers' decision-making, the role of the Dutch parliament is rather complicated from the perspective of ministerial responsibility. First, if the Dutch minister is overruled in the Council, he can be held responsible by the Dutch Parliament for the way he defended the Dutch views, but hardly for the ultimate EP/Council decision. Secondly, in the preparation of EP/Council acts, the so-called A-points agreed upon in COREPER at civil servants' level are very often formally decided upon in a different Council than the one corresponding to the substantial policy field of the A-point. For parliament, therefore, two ministers can be held responsible for the

1 See DelGrosso, Nicky Y.: Parlement en Europese integratie, Deventer, 2000, Chapter 3, pp. 47-74.

decision that was taken. Thirdly, in controlling COREPER, Council or EP/Council decisions afterwards - by requesting information, explanation and discussion - the Dutch Parliament will inevitably have to take the views and interests of other member states - the EU as a whole -, into account, and will therefore have to move beyond its own mandate, i.e. representing the Dutch people, and the Dutch people only.

In the field of CJHA and under the Schengen agreement the Dutch Parliament was and is involved in a very early stage of the decision-making process. Draft decision proposals from the Schengen Executive Committee, which have a binding legal effect for all participants and which have a political importance in spite of their administrative nature, have to be submitted to Parliament before decision-making. Only after parliamentary approval, by both Chambers - explicit or tacit approval -, the Dutch minister can offer further co-operation in the Schengen decision-making procedure. The Maastricht Treaty extended this procedure to the broader area of CJHA. When it was decided under the Amsterdam Treaty, that Schengen, and more of CJHA, would be shifted to the first EC treaty pillar, this was no sufficient reason for the Dutch Parliament to do away with this right to preliminary consent. It was, and is, felt that the weakness, or even absence, of parliamentary control of decision-making at the EU-level in CJHA necessitates a tighter, early stage control by the national parliament. Nevertheless, this preliminary consent is rather awkward from a Dutch constitutional viewpoint. It is the only topic of international relations and foreign policy, where Parliament takes such a strong stand towards the Government, participating in decision-making in such an early stage. Also, it would raise very difficult questions, if a minister would participate in decision-making without parliamentary pre-approval. The priority of EU-law and the constitutionally recognised powers of the EU (Art. 92) would be at odds with a minister's responsibility towards parliament. In practice, however, this test has never been taken.

In the implementation of EC/EU-law, the Dutch Parliament is involved according to the national rules of legislation - there are no specific procedures on this topic. To the extent that EC/EU-law requires (adaptation of) national legislation, the Government will take the initiative and offer its proposals to Parliament for approval - as usual. Often, Parliament is hardly aware of the 'European origin' of the proposal. Aside from this, the Government reports to Parliament about the progress or backlog of EC/EU-implementation on a three-monthly basis.

If the implementation of EC/EU-law requires new decrees instead of laws, the usual procedure is followed as well. The draft decree is sent to Parliament for reaction and comment, and after the term for reaction has expired, the decree will enter into force.

2. Strong Support, Weakening Control

In general terms, then, European integration since the 1950's has made the Dutch parliament less and less a legislator, and more and more a controller. From the beginning, parliament was involved, especially the Second Chamber, but its initial role focused on

the general political strategy - it offered strong support for the Government's attempts to create a federal Europe. A motion accepted by the Second Chamber in may 1948 (by van der Goes van Naters and Serrarens) urged the Government to commit itself to a federal Europe as a major goal of its foreign policy.

During the 1960's, the discussion between Government and Parliament took place within the general debates about the Annual budget and about the general Annual reports by the ministry of Foreign Affairs about the progress of European integration. Discussions, after initial enthusiasm, became shorter and shorter (e.g. single rounds), and dealt with the past rather than the future policy.

In the mid-1970's, Parliament had its first debate with the prime minister about the European Council meetings. Only in the late 1970's, procedures were developed to discuss the agenda of the Council's meetings in the Committees of the Second Chamber: The ministry of Foreign Affairs took the initiative to send General Council Meeting agendas to the Foreign Affairs Committee, Agriculture and Environment followed soon. Other Second Chamber Committees (Economic Affairs, Social Affairs, Transport) were much slower to ask for the Council agendas of 'their' ministers.

It took until the Single European Act in the mid-1980's, before the need to control and participate in EC-decision-making became apparent for the Dutch Parliament.

In October 1986, the Second Chamber decided to install a Standing Committee on European Community Affairs; in 1994, it was changed into a General Committee on European Affairs, and given the explicit task to control EU affairs.

The First Chamber had established a Committee on European Co-operation much earlier, in 1970, but its role had been both broader - dealing not only with the EC/EU, but also with the Council of Europe, the WEU etc. - and much less intensive - leaving the field of political discussion and responsibility to the Second Chamber.

3. The Involvement of the Parliament in European Integration

It can be argued, that the way in which the Dutch Parliament is involved in EU-decision-making, is mainly determined by national reflexes. The procedures for its EU-involvement are based on its constitutional power to control and supervise the executive. The motive for parliamentary involvement in European integration is the desire to control all national government representation in international organisations - basically, a national reflex rather than an intrinsic interest in EU affairs. For a similar reason, parliamentary control of Council meetings and agendas is fragmented - and therefore, weak - rather than co-ordinated and based on a strategy or vision concerning European integration. For the Dutch Parliament, acting on the Dutch domestic political scene, controlling an individual minister is more important than developing a broader view on the position of the Netherlands in EU. Much parliamentary involvement takes the form of ex-post-discussions about EC/EU-decisions rather than anticipatory strategies for the future.

Only in the field of CJHA, a more 'European' motivation seems to operate, i.e. the desire to make up for the absence of EP-control of decision-making, for the sake of democracy in EU.

3.1. The Organisation of the Parliament

How is Dutch parliamentary involvement in EU affairs organised? In the Second Chamber, both plenary meetings and Committee meetings are devoted to EU-issues. For the approval of international treaties, including EU-treaties, a plenary debate takes place. Thus, both the Maastricht Treaty and the Amsterdam Treaty were debated in plenary session. The preparation of the debate was entrusted, by the Second Chamber's presidium, to the Committee on EU affairs.

Also, the meetings of the European Council are discussed afterwards with the prime minister in plenary session. This happened for the first time in 1978, but only since the beginning of the 1990's a regular procedure has been developed. Before the European Council meetings, an 'annotated agenda' is sent to the Second Chamber, which forms the basis for discussion between the minister of Foreign/European Affairs - in practice, the State secretary for European Affairs - and the Committee on EU affairs. After the European Council meeting, a written report is sent to the Second Chamber, and debated in plenary session.

Thirdly, there are the Annual budget debates (in September, concerning the next years' budget Law). Since the EU affects several ministries' budgets (Foreign Affairs, Agriculture, Finance etc.), EU-issues can be discussed under several budget chapters. In practice, however, only the debate about the Foreign Affairs budget paid some attention to EU-developments. In 1988, the Second Chamber requested a more coherent, cross-ministerial reporting by the Government about EU-consequences for national policy. The ensuing report proved useful in the 'Europe 1992-preparation' for the internal market, but did not strengthen the Chamber's plenary discussion about European integration. In 1998, therefore, it was decided to devote a separate plenary debate to the Annual government document called 'the state of the European Union', i.e. the EU-agenda from the Dutch perspective. This document provides both the financial and policy implications of EU-membership for the Netherlands, as well as the policy intentions and financial perspectives for the near future. The plenary debates about the 'state of the EU' have not yet developed a fixed pattern: In 1999 it was combined with the debate about the European Council meeting, in 1999 there was a separate plenary debate, where the Dutch MEP's were also giving speaking time.

Fourthly, the plenary meeting is involved, when a specialised Committee, in casu the Committee for EU affairs, feels unsatisfied about its discussion with the minister and wants an explicit statement on the matter by the Second Chamber as a whole. A so-called 'two-minute-debate' can be requested: Every speaker is given only two minutes for his/her statement, and such a debate will usually result in a motion by the Second

Chamber. In EU affairs since 1986, only 20 motions were put forward in this way, out of which only seven were accepted.¹ Five of these accepted motions restricted themselves purely to a request to the Government 'to give content to its European policy' - leaving the Government all possible room to manoeuvre. Strikingly, in the debate several MP's expressed the desire to 'prevent Danish situations' ('Deense toestanden', i.e. an extremely narrow government mandate in EU affairs).

All in all, the plenary meeting of the Second Chamber is involved in EU affairs on a regular basis, i.e. at least every six months. The First Chamber's plenary session restricts itself to the debates about the EU-treaties - prepared by its Committee on European Co-operation - and the Dutch legislation implementing EC/EU-law. In its debates, moreover, legal arguments are often more important than political considerations.

3.2. Committee Scrutiny in the Shadow of EU Efficiency

More important, then, are the Parliament's Committees. In the Second Chamber, this is the General Committee on EU affairs (GCEU). In 1985 an inquiry was made by the Second Chamber's presidency, into the effectiveness of the Chamber's involvement in EC-affairs. It was concluded, that parliamentary control of EC-decision-making was weak and highly fragmented. A Standing Committee on EC-affairs was put into place in 1986, although there was much doubt and controversy about the risk of 'doublures' and conflicts of competence with other Committees (e.g. Agriculture) and fear of 'Danish situations' (see above). In 1988, after an evaluation on the Committee's practice, it was decided to keep the Committee in place. In 1992/1993 the Maastricht Treaty forced the Second Chamber to re-think its internal organisation. It was proposed by some to do away with specialised EU-committees altogether, since EU is 'everywhere' - others stressed the need to co-ordinate the Dutch parliamentary control of EU affairs. Especially after the approval of the Maastricht Treaty, the Dutch Parliament should equip itself to play a more active role in EU affairs. It was decided to install a 'horizontal Committee', i.e. a Committee dealing with a field which regards (almost) all ministries. This General Committee for EU affairs was installed in 1994, for a period of four years, i.e. one session of the Second Chamber. It was given the task to co-ordinate and to provide information about EU affairs to the other Chamber Committees. In the long run, it should make itself superfluous, and it should never become another separate 'pillar' in the Second Chamber. Nevertheless, after the 1998-elections the GCEU's mandate was extended for another four years. The Committee itself, in a self-evaluation, stated that 'without its activities, the necessary attention for EU affairs in the other, Standing Committees would virtually disappear,' and 'that the Netherlands, like the other mem-

1 See Ibid., p. 191.

ber states, needs a Standing Committee on EU affairs.¹ Until 2002, however, the Committee will retain its present status - it is to be expected that a re-organisation and strengthening will take place soon afterwards.

The activities of the General Committee, in spite of its relatively weak status, are numerous: It draws attention to EU affairs by sending relevant documents to individual MP's and the Standing Committees; also, it sends out a weekly 'bibliographical newsletter' (attenderingsbulletin) indicating the newest publications, especially from sources outside the national government. It initiates meetings about EU affairs, inviting other Committees for inter-Committee meetings on EU affairs. It co-ordinates EU-involvement by linking different specialised, but EU-related topics in the wide stream of information, which comes to the Chamber. For this purpose, it collaborates closely with the 'political groups' specialists' on different topics, because they play a key role in the Standing Committees, and they are needed to make cross-Committee links.² It also calls the State secretary for EU affairs to account for his actions, other than second pillar, which are the competence of the Foreign Affairs Committee. It prepares the plenary debate about the approval of EU-related treaties. It is in charge of international contacts, i.e. with the Dutch MEP's, with COSAC, with the European Parliament, parliaments and parliamentary EU-committees in other member states and future member states, and, finally, it offers support and facilities for the improvement of parliamentary involvement in EU affairs. For example, by stimulating research and publications in this field.

The membership of the General Committee is 25 (plus 25 substitute members). They have to be member of the Second Chamber, so the Dutch MEP can only indirectly participate in the Committee's work. Only if the pre-1979 double-mandate would be reinstated, they could be full members. About half of the GCEU's members also belong to the Standing Committee on Foreign Affairs, and a much smaller number (4 and 2 respectively) 'double up' with the Standing Committees on Agriculture and Economic Affairs.

The Chairman of the GCEU plays a very important role for its effectiveness. Its first Chairman was one of the 'midwives' of the Committee in 1994, its second Chairman, Patijn, is a former State secretary for European affairs, and highly experienced in dealing with the EU-institutions. The third Chairman, Te Veldhuis, entered in the summer of 2001.

The procedures of the Committee, given its modest status, are quite simple: Organising meetings, bringing other Committees together on a regular, but non-compulsory basis, and sending out EU-related information in a structured way to Committees, individual

1 See Ibid., pp. 81-82.

2 Note that the General Committee has no competencies in this regard other than to advise, inform and support.

MP's and the Chamber presidency. Only towards the State secretary of European Affairs, in first- and third-pillar matters, it can call the executive to account for its actions.

The staffing of the Committee is very modest. A staff of five civil servants, assisted by 3 secretaries, forms the Bureau for International Policy, serving both the Standing Committees on Foreign Affairs and Defence, and the GCEU. Together with the 'Griffie Interparlementaire Betrekkings', which serves both the First and the Second Chamber and the, even smaller, staff of the First Chamber's Committee on European Cooperation it is likely to be merged and strengthened in the near future.

3.3. The Roles of Individual Members of Parliament

Aside from the GCEU, it should be noted that individual MP's and party groups can also play an important role in keeping parliaments' attention for European integration alive. Individual MP's have the 'question right', i.e. to pose written or oral questions to individual ministers on any topic they think important. Since European integration does not score well in public opinion polls, an individual MP is not very likely to question a minister on EU affairs, unless s/he can cater to a specific constituency, e.g. the farmers, by doing so. Political group discipline¹ restricts parliamentary 'solo-ism', however.

Nonetheless, individual MP-ambitions do play an important role, but rather in the context of Committees and political groups. It was suggested, for example, that the unwillingness of existing Standing Committees to leave their field to the new GCEU in 1986 and 1994, had to do with the unwillingness of individual MP's to lose their status as party spokeswo/man in a Standing Committee, if it lost out to the EU-Committee.

3.4. The Role of Parties and Political Groups

More important, however, are the organised efforts within political groups concerning EU affairs, to develop and co-ordinate party viewpoints.

The Labour Party PvdA-group, after the 1994 elections, organised itself topic-wise in 'cluster-groups'. For EU affairs, however, this formula was soon abandoned, and in 1995 the 'co-ordination group Europe' was established. In this group, which meets every month, the EU-specialist members of the Second Chamber, the First Chamber, and the Dutch Labour MEP's meet to discuss the broad lines of EU-developments and to co-ordinate views.

The Conservative liberal VVD-group does not have a special internal EU-structure, since the topic/policy field-related group committees pay regular attention to EU affairs. Also, the weekly group meeting on Tuesday morning is always attended by a VVD-member of the European Parliament.

1 See the comments on the 'regeerakkoorden' mentioned earlier.

The Christian-democrats in the Second Chamber have a horizontal group-committee on European Affairs, which is composed of members of the other group committees. It meets every two weeks, and at least the EU-spokespersons attend these meetings, further attendance depending on the topics on the agenda. Aside from this, the CDA-group organises 'specials' concerning important EU-developments, attended by all CDA-group members.

The leftist liberal D '66-group is organised according to the same principle as the Second Chamber Committee offices. European integration falls under the cluster 'international policy' - covering EU matters, foreign policy, defence and development cooperation -, but EU affairs are also discussed in other cluster groups, eg. spatial planning and countryside, socio-economic policy or finance. The D '66 MEP's attend the weekly group meetings on Tuesday morning, and a special party officer (not MP) is in charge of liaison between the D '66'ers in the Second Chamber and the EP.

Smaller groups, like the Orthodox Calvinist RPF, GPV or SGP operate under a very high workload, and therefore co-ordinate on a more informal basis. The SGP also decided to invite an EP-group assistant to come to The Hague one day per month, to act as a resource person and thus raise the EU-awareness and expertise in the Second Chamber's group.

The EU involvement of the Second Chamber thus revolves around the GCEU, the Standing Committees, and the political groups with their specific and different EU arrangements.

3.5. EU Policies in the First Chamber

In the First Chamber, the above mentioned Standing Committee on European Cooperation is the focus of its EU involvement. It co-operates with the Standing Committee on Foreign Affairs in the preparation of EU-related debates. Also, it is in charge of recruiting and briefing the Dutch delegation to COSAC, and of the overall relations between the Dutch Parliament and the European Parliament.

Next to this Standing Committee, however, in 1999 a Special Committee was established for CJHA-Councils, to enable the First Chamber to keep a closer look on the third pillar affairs.¹

4. Distance in a Small Circuit

In the relations between MP's from both Chambers and government officials, there is a considerable formal distance. An MP considers her/his role as quite different, or even antagonistic, towards government officials - and vice versa. A certain formal and public

1 See the comments on pre-approval of draft decisions mentioned earlier.

distance is kept. Nevertheless, the informal circle of EU-experts and specialists in politics and administration is relatively small. Meetings organised by the European Movement, Institutes for International Relations or political science associations provide an opportunity for informal contact. Also, the same persons over the years can be seen in different roles as civil servant, member of parliament or the executive.

5. The Substantial Scope of Parliament's Involvement

Parliamentary involvement in EU affairs, in principle covers all fields, since the Maastricht Treaty has put virtually all fields of government policy on the EU-agenda in one way or another. The EU-related documents processed by Parliament therefore are very numerous and varied in content, but they can be broadly categorised in different groups.

Firstly, and this is the most important category, there are the EU-related documents made available to Parliament by the Government. Documents provided from other sources (e.g. EU-publications, Internet-online documents) can play a role as a 'back-up' for Parliament to build a 'second opinion', independent from the national government. But most attention is paid to government-provided documents.

The ministry of Foreign Affairs, more specifically the Secretary of state for European affairs, and his staff (Directorate European Integration) is the provider of most, if not all, Government documents concerning EU matters.

These, again, can be subdivided. There are the official texts of treaties, the agendas of the European Council meetings (annotated briefly to indicate the Dutch views), the numerous 'fiches' to be dealt with in the Councils of Ministers - since 1991 they are all sent to the Chamber -, the Councils' agendas, the reports of Councils of Ministers' meetings, the draft decisions for the CJHA-Councils, and since 1998 there is the Dutch EU-overview on 'the State of the EU'. Finally, there are the three-monthly reports from the ministry of Foreign Affairs about the state of the Dutch implementation of EU-law.

In the handling of these documents, the GCEU plays an important, but mostly informal role. Government sends the EU-related documents to the Presidency of the Second Chamber, which refers them to the General Committee.

The General Committee channels the documents to the Standing Committees and to individual MP's for whom it considers them as relevant. Not only does this imply a division and splitting up of the 'stream of information', but also an attempt to link up different specialists and Standing Committee dealing with EU-matters.

Since the General Committee hardly has a formal competence, however, the real selection of documents takes place in the other - twelve - Standing Committees of the Second Chamber.

The Government's 'fiches', for example, are only 'monitored' by the General Committee. Since every 'fiche' indicates which ministry is primarily responsible for the negotiations on the topic, the Standing Committee corresponding to the responsible ministry receives the 'fiche' from the General Committee. The GCEU, on top of this, selects

specific 'fiches' which it thinks are highly important. It adds a brief annotation and asks the Standing Committee to pay special attention. A Standing Committee, however, can either follow or ignore this advice, since it does not have any formal status.

Selection, scrutiny and attention paid to EU-related documents, therefore is ultimately in the hands of the Standing Committees. They differ greatly in this respect: Agriculture and Justice are quite active, but, for example, Education hardly pays any attention to EU affairs.

After the Second Chamber has dealt with an EU-related topic, its decisions and views are put into writing in the minutes of the Chamber - the 'Handelingen der Tweede Kamer' (HTK). Separate, special documents concerning EU affairs have not been produced by the Dutch Parliament. This reflects both the limited resources with regard to staffing, research and publication facilities, and the relatively low priority of EU affairs for the Chamber. In one case, a research project was contracted out by the General Committee.¹

For the dissemination of Parliament's views on EU affairs - and other topics -, different media serve to make both the debates and all parliamentary documents available to a wide public audience. Aside from the independent journalists, catering to newspapers, radio and TV on a daily basis - e.g. the daily TV-programme 'Den Haag vandaag' -, parliament has its own TV and radio-station with permanent live reporting of debates, plus an internet site providing all documents to the public.

6. Timing, Management and Procedures

Timing, management and procedure of parliamentary handling of EU affairs, again, depends on the topic. Treaties, and overall policy views are dealt with in plenary debate, and are prepared by the General Committee. 'Fiches', on the other hand - i.e. the bulk of EU-decision-making, are handled mainly by the Standing Committees.

The GCEU meets every two weeks to decide on procedure, i.e. on the way the EU-related documents which have been received by the Chamber and by the Committee, are to be handled. Although this meeting hardly deals with policy content, it is highly important for the role of the Committee vis-à-vis the Standing Committees and the plenary session.

Aside from this, two procedural initiatives are worth mentioning. Firstly, in 1995 the GCEU proposed to streamline the Chambers' discussions with the ministers preceding the EU-Council of Ministers meetings by concentrating all relevant Standing Committee meetings. This proposal was accepted, and since 1996/1997 every Thursday after-

¹ See Wolters, Menno (red.): *De vierde macht in de vierde bestuurslaag - een onderzoek naar de ambtelijke voorbereiding in Nederland van de politieke besluitvorming in de Europese Unie*, Den Haag, 1995, p. 111.

noon the General Committee calls all Standing Committees who will have an EU-meeting next week, for consultation with their ministers. In fact, this so-called 'Europa-overleg' is a concentrated series of (brief) Standing Committee meetings concerning EU-matters, and it is presided by either the Chairman of the Standing Committee in question or by the Chairman of the GCEU. This formula enables the Second Chamber to link up the dossiers of different EU-Councils of Ministers, and it also provides a clear reference point on the parliamentary agenda to call the Government as a whole - not only the individual ministers - to account for their actions in EU decision-making. The results of this initiative, it seems, were rather mixed - in terms of attendance, duration, co-ordination and attention. In the beginning, the meetings were sometimes cancelled at the last moment - indicating a lack of interest on the side of MP's and Standing Committees. During the last two years, interest and attendance have improved considerably. The timely organisation of the meeting's agenda still forms a - technical - problem.

Another initiative regards the involvement of the Dutch MEP's in the work of the Dutch parliament. The General Committee, as mentioned above, can only have Dutch MP's as full members. There is a clear desire, to improve contacts with the EP, and one option for the future Committee, after 2002, would be to become a mixed Committee of Dutch MP's and MEP's.¹ For the time being, the Second Chamber in 1999 ordered an inquiry into the possibilities to involve the MEP's closer in the Chamber's work. In that same year, Dutch MEP's also officially attended a plenary meeting of the Chamber and were given speaking time - this was the Annual plenary debate about 'the state of the EU' in the context of the general discussions of the 2000-budget on 30 September 1999. Since then, the Dutch MEP's have been given speaking rights in Commission meetings - both the General and the Standing Committees - and once a year in the plenary debate about 'the State of the EU'. The desire to strengthen the link between the Dutch and the European Parliament is clear, but in formal terms, the possibilities seem to be very limited.

7. The Impact of the Dutch Parliament's Participation in EU Affairs

Parliamentary actors in the Netherlands in general operate from a domestic political perspective. This, by itself, implies that European integration does not attract their attention automatically. Only if media attention - briefly - focuses on EU matters, there is a chance for an MP to bring up 'the EU' as a topic of political discussion, and then only as a sideline of the debate e.g. about swine fever, foot-and-mouth-disease etc., where the EC/EU is considered mostly as the scapegoat and sometimes as a paymaster. The fact, that European integration has penetrated more and more areas of domestic politics, has not changed this attitude. Rather, on the contrary, those who want to raise the priority of, and attention for EU affairs, find themselves increasingly confronted, outnum-

1 See HTK 22590, 5, p. 21; and HTK 21427, 101, p. 24.

bered and 'smothered' by those who prefer to play the national political and publicity game without being disturbed by outside forces like the EU. In the Second Chamber, the small group of 'Europeanists' in e.g. the General Committee often find themselves rowing against the political mainstream. EU matters exist, but it is hardly welcome and a potential disturbance in national politics. Attendance and attention for EU-meetings in Parliament is, thus, rather low.

Still, those who are convinced of the EU's importance and therefore participate actively, feel that the impact of the Dutch Parliament is much too weak, but that they themselves, on an ad-hoc basis are quite often able to have a considerable impact, both on the Government's viewpoints and on Dutch MEP's. This has to do with the small group, the informal contacts, and also with the Dutch governmental habit of extensive consultation - dating back to the times of consociational democracy. The major worry of the 'Europeanist' MP is the lack of interest among their colleagues, and the additional strength of the executive in virtually all ministries because of 'Brussels'. A strength which is not counterbalanced by parliamentary interest and activism, and therefore puts national parliamentary democracy at risk.

A striking example of this was a recent debate in spring 2001 in the Second Chamber, where the Minister of Justice, Korthals, expressed the desire to abolish the pre-approval of CJHA-draft decisions, arguing that the proper role of the Dutch Parliament was in the implementing stage of EC/EU-law. His argument was fiercely countered by MP Verhagen, pointing at the absence of parliamentary control in CJHA at the EU-level, but the bluntness of the Minister was quite striking.

III. The Dutch Parliament and the Amsterdam Treaty

1. The Preparation and Ratification of the Treaty

The Dutch EU-presidency, which produced the treaty of Amsterdam, was prepared with great care and cautiousness by the Dutch Government - if only to prevent a repetition of the Maastricht 'Black Monday'. The Second Chamber was extensively briefed about the progress of the negotiations, especially the GCEU, and the Standing Committee on Foreign Affairs. Plenary discussions took place before and after the Amsterdam summit. The Dutch Government also took the initiative to add the Protocol on the role of national Parliaments (PNP) to the Amsterdam treaty.¹ Parliament, on its part, left the Government all room to manoeuvre, and did not put any obstacles in its way.

The plenary debate about the Amsterdam Treaty in the Second Chamber was prepared by the GCEU, which provided a list of more than 400 questions in march 1998. Gov-

ernment took four months to prepare an answering note. It refused, however, to have a separate debate about the PNP, since it had already discussed this topic some years before. In fact, in 1996 it sent the Chamber a note, arguing that EU developments did not necessitate stronger powers for the national parliament, but rather for the EP - at least in the first pillar.²

The Chamber nevertheless approved the Treaty in November 1998. In a way, the debate proved to be a kind of anti-climax. After the 'Amsterdam-euphoria' and parliamentary praise for the Dutch presidency, Parliament was left behind without tangible results for its own powers in EU decision-making. Further discussions were either postponed, or pre-empted by referring to past discussions - none of which has been very fruitful.

2. The Dutch Parliament after Amsterdam

Reactions on the Amsterdam Treaty PNP were thus rather inconclusive in the Dutch case - if anything at all. It is therefore not clear how, and when, the Dutch will implement the specifics of the PNP. A proposal has been put forward to amend the constitution, and to insert an article stating that 'government and parliament together commit themselves to promote European integration', but this amendment has not yet been debated. With the development of an EU-military identity, some MP's have opened the debates about possible expansion of parliamentary involvement in the second pillar. The PNP-commitment on time to be made available by the European Commission and the Council to inform the national parliaments - the six week period - has not yet been implemented in the Dutch case.

The Dutch delegation to COSAC did not change because of the PNP. It is recruited via the First Chamber's Standing Committee on European Co-operation, but it is held in very low esteem: Not a few MP's have explicitly called the COSAC 'useless meetings'. The interest in COSAC and its future competence, e.g. with regard to the room of freedom, security and justice, subsidiarity and fundamental rights, is therefore very low.

Nevertheless, as we have seen above, there is an extensive discussion in the Netherlands concerning revision of working mechanisms of the EU-Committee for two reasons: Hence, its mandate ends in 2002 and either has to be extended or changed. Moreover, there is an increasing concern among the Second Chamber's presidency, the small core of members of the GCEU, and some political group leaders (e.g. the Christian-democrats) about the decline of parliamentary influence at the EU level as well as at the national level, due to EU-mechanisms. After 2002, organisation and staffing of the EU-related Committees both in the First and the Second Chamber are very likely to be streamlined and dove-tailed to make Dutch parliamentary presence in Europe - with

1 See HTK 25181, 2 (note), 3 (debate).

2 See DelGrosso, 2000, op.cit., p. 87.

regard to EC/EU affairs in general, the second CFSP/ESDP and the third pillar, COSAC, and the EP - more efficient and effective.

IV. Conclusion: Towards another Awakening?

The Amsterdam Treaty, even though it was a 'product of Dutch soil', did not alter the role of the Dutch Parliament. In fact, the Single European Act in 1986, and the Maastricht Treaty of 1991 had given a much greater shock to the Dutch Parliament.

Also, in terms of the strategies and positions of the major national political parties in EU affairs, 'Amsterdam' did not bring about substantial change. The explicit commitment to a federal Europe had been silenced in Maastricht, and the modest results of Amsterdam were applauded as 'the best one could get'.

Concerning the overall role and self-image of the Dutch Parliament in EU affairs, it can not be considered, and does not consider itself, an important actor in EU decision-making. It has shown an early interest and support for European integration, lost its interest in the 1960's and 1970s, and awakened after 1986. An early starter, and a late awakener. Nevertheless, at the start of 2000, parliamentary awareness of the relevance of European integration seems to be growing. There is a desire to play a more important role, and e.g. to intensify contacts with the European Parliament, but strong national reflexes among most MP's will have to be overcome.

The Dutch constitution does put some limits to parliamentary involvement in EU decision-making - e.g. the Dutch Parliament represents the Dutch people, and the Dutch people only -, but on the other hand it explicitly leaves room for the development of the European Union as a level of Government.

There is an awareness that EU decision-making will have to become a part of the Dutch constitutional order - rather than an EU-Constitution being superimposed on the Dutch legal order.

The recent changes made in the Netherlands to strengthen parliamentary participation are only very modest attempts, and small steps toward strengthening legitimacy and democratic accountability in the multi-level-system called EU. They can be a useful, albeit modest, contribution to an ongoing debate.

The Parliament of Portugal: Loyal Scrutiny and Informal Influence

Ana Fraga

I. Introduction: The Relevance of European Integration for the Portuguese Parliament

1. Historical Background

After the Revolution of 1974, the first democratic elections of 1975 led to a Constituent Assembly that approved the Constitution of 2 April 1976.¹ The second democratic elections of 1976 formed the first 'normal' legislature (1976/80) that had six cabinets, the first of which, formed by a socialist minority, asked formally for the accession to the European Economic Community in 1977. The negotiations started in that year, the accession took place in 1986.

This was a period of democratic consolidation. There was no political stability (between 1976 and 1987 there were ten governments), and parliamentary practice had little efficacy.² All the MP's were concerned with the need of a new legislative framework that complied with the new constitution and the Parliament had a pre-eminent legislative role captivating the attention of the media with very lively discussions.

In terms of attention to European matters, which were not of major concern,³ the Bureau of the European Parliament decided to create a delegation of 18 members to ensure permanent contacts with the Portuguese Parliament.

In 1979 the Assembleia da República also created a delegation of 17 members to participate in meetings with this delegation. In February 1980 the Committee on European Integration was created by a decision of the Conference of the Leaders of Parliamentary Groups of the Assembleia da República.

Since then and until 1987, when the Committee on European Affairs was created, the Committee on European Integration held regular contacts with the European Parliament, with other national parliaments, with the Government and with representatives of all sectors of the economic, political and social life about the negotiations for the accession.

1 See the English version of the Constitution of the Portuguese Republic in <http://www.parlamento.pt>.

2 Leston-Bandeira, Cristina: 'The role of the Portuguese parliament: Towards a Legitimation Institution', paper presented in Workshop 11: European Parliaments: Rediscovering, Refocusing or Reinventing?, ECPR, Manheim Joint Sessions, 1999.

3 Magone, José: 'The Portuguese Assembleia da República: Discovering Europe', *Journal for Legislative Studies*, No. 3/1995, pp. 151-63.

The most part of the parliamentary activity in relation to the EEC was done by this Committee.¹

After the accession, the Committee on European Affairs, one of the standing committees,² adopted the first law of “review and evaluation of the Portuguese participation in the European Communities”: Law 28/87. This law was subject to two amendments, the first in 1988 by Law 111/88, and the second in 1994 by Law 20/94.

2. The Political Framework

The political government-related instability did not correspond to a party instability or a fragmentation of the party system.³ Since 1975 one could say that there were four main parties with parliamentary assent - from left to right: the Communist Party (Partido Comunista Português - integrated in the Communist and Allies Group of the European Parliament), the Socialist Party (Partido Socialista - integrated in the Socialist Group of the European Parliament), the Social Democratic Party (Partido Social Democrata - integrated in the European People’s Party of the European Parliament) and the Christian Democrats (Centro Democrático Social-Partido Popular - integrated in the Union for Europe of the European Parliament).⁴

From 1976 to 1985 the PS formed three governments (one in coalition with the CDS and one in coalition with the PSD), the PSD formed another three (always in coalition with the CDS) and there were three presidential governments.

The PSD (with former Prime Minister Cavaco Silva) was in government from 1985 - the date of the signature of the Accession Treaties - until 1995, the first cabinet (two years) with a relative majority and the next two cabinets with an absolute majority. From 1995 until now the PS (current Prime Minister: António Guterres) is in government with a relative majority. The last elections were held in October 1999.⁵

1 In 1977 there were eight plenary sessions in which the EEC was mentioned, in 1978 only two, in 1979 just one, in 1980 again two, in 1982 only one, in 1984 there were four and in 1985 there were seven (this was the year of the signature and ratification of the accession Treaty). From 1976 until the first amendment of the Constitution in 1982, no provision was related to the EEC. See the constitution articles related to the EEC/EU in: Fraga, Ana, The ratification of the Amsterdam Treaty- Portugal, Paper presented for the Seminaire on the ratification of the Amsterdam Treaty, IUE, Florence, online paper, http://www.iue.it/LAW/amsterdam/internal/Fraga_portugal.pdf, 2000.

2 The number of the Standing Committees is decided on in each legislature of four years and varies around 12 to 14.

3 According to the criteria established by Lijphart, Arend, Patterns of Democracy, Yale University Press, 1999, p. 74.

4 The electoral system is proportional following the d’Hondt method. The candidates are elected by district lists. In spite of this there is a tendency to majority governments and the concentration of powers.

5 The results were: 115 MP’s for the PS, 88 MP’s for the PSD, 15 MP’s for the CDS-Popular Party, 13 for the PCP (plus two from the Green Party that had a coalition for the elections with the PCP) and two for the Left Block (Bloco de Esquerda - a new coalition formed by several very small left wing

The two main parties - PS and PSD - are in favour of the European Union and have identical opinions with regard to it. The PCP is in favour of Portugal's integration in the EU but against further steps in the development of the EU. The CDS-PP changed its Bureau almost two years ago. The current Bureau is more pro-European but also against further steps in integration.

The Portuguese public opinion, in general, is in favour of the EU integration, not only because of the structural funds that helped the economic development of the country but also because of the idea that Portugal gained a say in an international framework that gathers big European countries. This is especially important if one takes into account the geo-strategic shift that was made after losing the colonies in 1975. Furthermore the accession to the EEC during the consolidation of the Portuguese democracy is a variable background that people bear in mind.¹

3. The Institutional Framework

Portugal is a unitary state² with a semi-presidentialist system, distributing the political responsibility of the Government between the Parliament and the President of the Republic, both of these being elected by direct universal suffrage. The President of the Republic appoints the Prime Minister bearing in mind the results of the legislative elections.

The Assembleia da República has the main function of approving laws and controlling the executive mainly by approving the executive programme³ and the state budget. Any party can present a motion of censure to the Government by which, in case of being approved, the Government is dismissed by the President. The executive can also present a motion of confidence that has the same effect if rejected by a majority of MP's. These instruments show that the Government is politically accountable before the Parliament.⁴

The above mentioned parliamentary instruments are the ultimate means of accountability of the executive, but behind them there is a continuous parliamentary control of the

parties). This means that a vote can result into a strike because the number of socialist MP's is equal to the number of the MP's in the opposition.

- 1 Magone, José: 'European Integration and the construction of Portuguese democracy', paper presented at Portugal, Southern Europe and European Integration, ISCTE/Universidade Católica, 9-10 Maio 1997.
- 2 There are two autonomous regions, Madeira and Azores, with their own legislative assemblies and executives but with limited power.
- 3 If not the Government is dismissed by the President.
- 4 Braga da Cruz, Manuel/Lobo Antunes: 'Revolutionary transition and problems of parliamentary institutionalization: the Case of the Portuguese National Assembly', in: Liebert, Urike/Maurizio Cotta (eds.): *Parliament and Democratic Consolidation in Southern Europe: Greece, Italy, Portugal, Spain and Turkey*, Pinter 1990, p. 154.

executive conduct revealed by the debates in plenary or in committees, written questions (requerimentos) and inquiry committees.¹

In terms of European decision-making, the Treaties² are negotiated by the Government³, approved by the Parliament⁴ and ratified by the President⁵. The Parliament can control the negotiation of international instruments only by means of asking information of the executive, which can be done either orally in plenary sessions or in committees or through written questions put to the Government.

The Constitution also provides the basic procedural outlines for the transposition of an EC legal act. According to the Constitution the Assembleia da República has the general legislative competence. On some subjects this competence is exclusive⁶ and on others partially exclusive⁷.

This means that on matters of exclusive legislative competence only the Parliament can adopt legislation.⁸ On matters of partially exclusive competence the Parliament can adopt a law that delegates legislative powers on the Government (clearance), which then can adopt a decree-law following the orientations of the delegation law. On any other matters the Government can adopt decree-laws. There is no hierarchy between law and decree-law. The possibility given to the Government of presenting a proposal of law on all the subjects and of adopting a decree-law leads some scholars to defend that there is a de facto legislative predominance of the Government upon the Parliament.⁹

The decree-laws can be called to the parliamentary appreciation and be amended.¹⁰ If this happens after the amendment introduced by the Parliament the previous decree-law assumes the form of law of the Parliament. If the subject of an EC directive falls under articles 164 or 165 of the Constitution the Parliament must adopt a law. There is already one judgment of the Constitutional Court that stated the unconstitutionality of a decree-law of transposition because this transposition should have been made by a parliamentary law.¹¹ The Constitution was last amended by constitutional law 1/97,¹ which was

1 Vitorino, António: 'O controlo parlamentar dos actos do Governo', in: Batista Coelho (org.): Portugal, O Sistema Político e Constitucional, Lisboa, ICSUL, 1989, pp. 369-86.

2 There is no constitutional distinction between the European Treaties and international treaties or conventions.

3 Constitution article 197.1.b.

4 Constitution article 161.i.

5 Constitution article 135.b.

6 Article 164.

7 Article 165.

8 The initiative belongs to MP's - 'projects of law' -, and to the Government - 'proposals of law'.

9 About the de facto legislative predominance of the Government in opposition to the de jure predominance of the parliament, see Sousa, Marcelo Rebelo de: 'A Elaboração de Decretos-Leis Avulsos', in: 'A Feitura das Leis' I, INA, 1986, p. 160 and Miranda, Jorge: 'O Actual Sistema Português de Actos legislativos', in: Legislação, No. 2, INA, Oeiras, 1991, p. 18.

10 Article 169.

11 Acórdão do Tribunal Constitucional No. 184/89, Diário da República, I Série, No. 57, 9 March, 1989.

enforced in 5 October 1997. There is a new paragraph 9 to article 112, stating that the transposition of EC directives must be done by law or decree-law. The distinction relies only in the subject as mentioned above - some subjects can only be object of legislation by law of the Parliament.²

There are no accurate figures for the transposition by law or by government measures (decree-law and other instruments). The majority of transpositions is made by government measures. In very few cases this was done by law of the Parliament.

The Parliament can only control the quality of the transposition measures adopted by the Government by calling the decree-law to appreciation and amendment. There is not a parliamentary systematic control of the quality of transposition measures and the cases of amendment of a decree-law are sparse. In the last legislature (1995/99) 39 decree-laws were appreciated by parliament but none of them were related to the transposition of EC directives. The parliamentary process of legislation is not the better way for speeding up the transposition. In general terms and in comparison with the Government process, the parliamentary process is complex and slow. The draft law is presented to the Speaker who admits it and sends it to the competent Standing Committee for report. The latter's report is presented to the plenary and voted in general terms. Afterwards, the draft text is considered by the same Standing Committee for appreciation and for possible amendments. The final text is then voted in plenary.

The Parliament is actually more concerned with the process of decision-making of European legislation than with the process of transposition. In general terms, if directives do not leave much room of manoeuvre for the transposition it is considered to be more important to influence the negotiations for their adoption than to control the transposition which in those cases is only a technical question.

This leads to the importance of the ex-ante control and the relation between the Government and the Parliament during the negotiation of Community acts that is ruled by the Constitution and Law 20/94.

The 1992 amendment to the Constitution introduced two new paragraphs - article 163, ex-166.f - stating that the Parliament had specific competences in relation with other organs to review and to evaluate the participation of Portugal in the process of the EU construction. Furthermore the Government has a political competence to submit information concerning the general process of the EU integration to the Assembleia da Rep-

1 The revision of the Constitution maybe ordinary - after five years of the last revision, which is approved by a majority of two thirds of the MP's -, and extraordinary - within the delay of the five years, which can only be approved by a majority of four fifths.

2 See about this new amendment Miranda, Jorge: 'Revisão Constitucional de 1997: Sistema de actos legislativos', Legislação, No. 19/20, INA, Oeiras, 1997, pp. 63-93; Pinheiro, Alexandre Sousa, e Mário João de Brito Fernandes: Comentário à IV Revisão Constitucional, AAFDL, Lisboa, 1999; and Fraga, Ana: 'O controlo parlamentar dos actos do governo na execução do direito comunitário', relatório para o seminário 'Le contrôle du pouvoir réglementaire dans les Etats membres de l'Union', Departamento de Direito, Instituto Universitário Europeu, Florença, 1999.

ública in due time. In the 1997 amendment to the Constitution a new alinea was introduced - article 161.n - stating that the Parliament had a power to give its opinion, as provided by law, on matters that are pending before the institutions of the European Union and that have a bearing on the Assembleia's exclusive legislative competence.

In general terms, Law 20/94 states that the Government must transmit all draft secondary legislation of binding nature arising from the European Treaties, draft agreements and conventions between member states and all other drafts considered of importance to Portugal to the Parliament. This is meant to include all three pillars.¹

The Government also has to inform the Committee on European Affairs of the activities of the EU regularly, and there should be two plenary sessions with the presence of the Prime Minister for the two European Council Summits in each year. Furthermore, the Government must present an annual report in the first quarter of each year on the participation of Portugal in the European Union,² which is appreciated by the Committee on European Affairs and by all other Standing Committees in order to prepare the debate in plenary. The Committee on European Affairs is also the only standing committee that can present draft resolutions to the plenary.

Analysing the development of the legal framework of the parliamentary participation one can say that there was a decrease in the involvement of the Parliament from the first law of review and evaluation - Law 28/87 (approved when the PSD had a cabinet supported by a relative majority) - and the following Laws 111/88 and 20/94 that were approved during the PSD cabinets supported by absolute majorities. This tendency was somewhat compensated by the constitutionalization of the main subject of the law - the duty of the cabinet to inform the Parliament and the general competence granted to the Parliament to review, evaluate and deliver its opinion on EU affairs.

But more important than the legal framework is the way in which the Parliament and the Government applied these rules.

II. The Practice and Evaluation of Parliamentary Scrutiny in EU Affairs

Portuguese MP's raised their awareness with regard to their participation in the upstream process of EU law-making rather late. The main problem consists in the fact that, by Constitution and by the European Treaties, it belongs to the Government to negotiate and adopt European legislation within the Council of Ministers. Therefore, the national parliament is not directly involved in this process. The only way to link it with

1 See the English version of this Law in <http://www.parlamento.pt>. See also about all the parliamentary work related to the approval of this Law, Portugal, Assembleia da República, Comissão de Assuntos Europeus, Portugal na União Europeia - Lei de acompanhamento e apreciação, Lisboa, 1994.

2 Preview on article 2. paragraph 3 of the Law 20/94.

European issues at the Council of Minister's table is by establishing a specific relation to the Government.

With the Maastricht Treaty this was recognized in Declaration no. 13, which states that the governments have a duty to inform their parliaments in due time. With the Amsterdam Treaty this was also reinforced in the Protocol on National Parliaments, which states a period of six weeks between the presentation of a proposal from the European Commission and its adoption by the Council so that the national parliaments have time to appreciate it.

Long before the Maastricht Treaty there already was the feeling in the Portuguese Parliament that MP's should be informed of all European draft documents as shown by the adoption of Law 28/87. However, there have been several problems in the implementation of the laws on parliamentary review and evaluation of EU affairs, either from the part of the Parliament or from the Government counterpart.

The main problems of the parliamentary intervention are related with time,¹ complexity,² legitimacy,³ and specialization.⁴ But the main theoretical problem in Portugal concerns the balance between efficiency and democracy, between leaving enough room for the Government to conduct the general EU policy and being responsible for it in the eyes of the electors and having some parliamentary control over the Government and make it accountable. It is this balance that is in stake when choosing the degree of parliamentary intervention.⁵

All these problems affect the parliamentary intervention in all member states but the respective parliaments have surmounted them in different ways choosing different models according to the political cultures, parliamentary traditions, size and resources of their member states. One can point out the mandatory model - followed by Denmark -, the systematic scrutiny model - followed by the UK (House of Commons) and France - and the information and informal influence model - followed by several member states including Portugal.¹

The most useful factors for explaining the variations are: the political system (executive-legislative relation - repartition of competencies), opinion on European integration and the composition of governments (minority/coalition/majority). Other factors can be

1 The parliamentary procedure for appreciation of EU questions does not keep pace with the European rhythm of decision-making.

2 The European legislation is by large very technical and does not allow the Parliament to understand their political implications for the country - the Government, with its administration, here has a huge informational advantage over the Parliament.

3 If the Parliament relies only on the information given by the Government, where is its added value?

4 European legislation is not an external affairs question but should be dealt with as an integral part of the national legal system requiring the involvement of the entire parliament, namely of all the standing committees.

5 Fraga, Ana: 'Parliamentary Scrutiny of the EU Decision-making: Wanting more power...a struggle for what?', in: National Parliaments and the EU-Stock-Taking for the Post-Amsterdam Era, 13 October 1999 Helsinki, Eduskunnan Kanslian Julkaisu 1/2000, pp. 23-25.

added like the conceptions of sovereignty (whether derived from the people or the Parliament), conceptions of the legitimacy of the EU (whether derived from the member states or from the European Parliament), party relationships (whether consensual or adversary), political culture, time of accession, country size, definition of a national position (strong or keep up with the others). All these factors contribute in some extent to the choice of a model and one cannot argue that only one factor has explanatory value.²

In Portugal there are several explanations for following the model of information and informal influence. The lack of parliamentary tradition (suppressed for almost 50 years) and the predominance of the executive, the consensus on the EU of almost all the main parties and of public opinion, the existence of an absolute majority for the first nine years of EC membership, the scarce technical parliamentary resources³ and the low visibility of the parliamentary activity related to EU affairs⁴ contributed to a very soft parliamentary intervention. Furthermore, the institutional and procedural mechanisms required for a strong intervention - EU affairs are technical, complex and time consuming - represent a very high cost to a very low benefit. Hence, the intervention has no immediate results or might have no results at all, the media coverage is very low, and EU affairs win no votes in national elections. Consequently, in the Portuguese Parliament there are not so many reasons to make parliamentarians run.

1 Ibid.

2 See Fitzmaurice, John: 'National parliaments and European policy-making: The case of Denmark', *Parliamentary Affairs*, 76, 1976, pp. 281-292; Herman, Valentine: 'The European Parliament and the National parliaments: Some conclusions', in: Herman, Valentine/Van Schendelen, Rinus, *The European Parliament and the National parliaments*, Saxon House 1979, p. 268; Judge, David: 'The Failure of National Parliaments?', in: Hayward, Jack (ed.): *The crisis of representation in Europe*, Frank Cass 1996, p. 82; Pahre, Robert: 'Endogenous Domestic Institutions in Two-Level Games and Parliamentary Oversight of the European Union', in: *Journal of Conflict Resolution*, No. 1/1997, pp. 147-174; Bergman, Torbjorn: 'National parliaments and EU Affairs Committees: notes on empirical variation and competing explanations', in: *Journal of European Public Policy*, No. 3/1997, pp. 373-387; Wiberg, Matti/Raunio, Tapio: 'Does Consensus lead to Ignorance? National Parliaments and the Legitimacy of EU Governance', paper presented at the ECPR Mannheim Joint Sessions of Workshops, 26-31 March 1999; Raunio, Tapio: 'Always One Step Behind? National Legislatures and the European Union', in: *Government and Opposition*, No. 1/1999, pp. 1-23; Raunio, Tapio: 'Parliamentary Scrutiny of EU Decision-Making: Comparing National Systems', report prepared for the Seminar National Parliaments and the EU - Stock-Taking for the Post-Amsterdam Era, Eduskunta, Helsinki, 13 October 1999.

3 Until 1993, there was only a secretary and a graduated official for the Committee. Since 1993 there are one secretary and two graduated officials (the other Committee that also has two officials is the Committee of Constitutional Affairs). The staff works for the Department of Committees. Each political group represented in the Committee has one assistant that works for the respective MP's.

4 In general, EU affairs are debated in the plenary session of Friday morning, the least important plenary day. Only when the Prime Minister comes to the plenary to discuss EU affairs, which happens twice a year, the session occurs on a Thursday afternoon. Moreover, instead of going to the Parliament before each Summit the Prime Minister invites the leaders of the parties with parliamentary representation to his office.

Even though informal influence can achieve some results in specific areas, it is not used as an instrument to orchestrate opposition to the Government. Instead, it needs to be seen as a way to reinforce the position of the 'national interest' as expressed by the executive during the negotiations.

In practical terms the model referred to is translated in the work of the Committee on European Affairs in the following terms:

For each legislative session - starting in September and ending in July - the Committee establishes a working programme, choosing several main subjects, e.g. Economic and Monetary Union, Agenda 2000, social cohesion etc. that it intends to deal with and prepares public auditions, symposiums or hearings with academic researchers, representatives of trade unions and business associations and any other associations that are concerned by the subject, the European MP's and meetings with the Government members responsible for that subject. Between 1992 and 1999 107 meetings were held. Each meeting lasts two to three hours on average. The Committee's working program forms the basis for a report that is presented to the plenary session, sometimes with a motion of resolution that needs to be approved by the plenary. Frequently this is done in cooperation with other standing committees responsible for the specific areas.

During the session there are several - monthly - meetings with the Secretary of State for European Affairs and the Minister for Foreign Affairs, so that the Committee can be informed of all the recent developments of the Union. When a specific subject to be discussed involves another member of the cabinet, the meeting is held with this minister.

Sometimes there are external inputs - from citizens via petitions, non-governmental organizations, the media, the trade unions, etc. - to the Committee, claiming their attention to a specific problem. This was the case for the EC chocolate directive, the Auto-Oil package directives and the textile free trade agreements.

During each session there are also two COSAC meetings that are generally prepared according to the COSAC presidency's draft agenda. The Assembleia's delegation is composed by the Chairman of the Committee on European affairs,¹ two MP's from the biggest party in Government, two from the second biggest party and one from the smallest party in rotation.

Finally there is the process of appreciation of the annual report about the participation of Portugal in the European Union, coordinated by the Committee on European affairs, that also involves all the other Standing Committees. The process is object of a report and a resolution approved in plenary session. This very appreciation process started in 1994 and there were six resolutions until 1999.

The described model does not guarantee that the Parliament achieves to appreciate all the draft EU acts in a systematic way. But in specific questions of relevant national in-

1 The Chairman always belongs to the party that forms the Government.

terest it can influence the position of the Government or even reinforce the latter's position during negotiations in the Council of Ministers. From 1992 until 1999 only seven documents were formally delivered to the Committee by the Government. However, the Committee has produced reports and resolutions on the IGC that led to the Amsterdam Treaty¹ on Economic and Monetary Union, on the Agenda 2000 and on the Auto-Oil Directive. Although there is not a systematic transmission of the documents by the Government, the general opinion of the Committee is that all the documents are available via the internet and online access to EU-resources. If an individual MP wants to produce a report on some specific subject s/he can do it anyway.

III. The Negotiation of the Amsterdam Treaty

1. The Parliamentary Procedure

The Government presented the Amsterdam Treaty to the Parliament through the proposal of resolution no. 118/VII² on 10 August 1998. Proposal 118/VII was distributed to the Committee on European Affairs, which asked a report to five Standing Committees: the Committee of Constitutional Affairs, the Committee of Foreign Affairs, the Committee of Defence, the Committee of Economic Affairs, the Committee of Social Affairs and the Committee of European Affairs also asked an opinion to the Regional Assemblies of Madeira and Azores.

For the preparation of its report - distributed through its Chairman -, the Committee of European Affairs held hearings with academic scholars, experts, ancient ministers, journalists and Government members on 15 September, 30 September and 20 October 1998. Finally the report of the Committee was approved on 21 December 1998.³ The Portuguese Parliament then approved the ratification of the Amsterdam Treaty on 6 January 1999.

The parliamentary review of the process that led to the ratification of the Amsterdam Treaty started before the IGC with meetings with the Secretary of State of European Affairs and the personal representative in the Reflection Group.

Even before the Reflection Group started its work in June 1995 the Portuguese Parliament presented a report on 29 December 1994 that was approved together with a draft resolution containing some main guidelines for the amendment of the Treaties. This was

1 Report from 29 December 1994 and Resolution No. 21/95, 8 April 1995.

2 The reference in roman numbers refers to the legislature. Each legislature has four legislative sessions, starting on the 15 September and ending on the 15 June (with possible prorogation). Some legislatures were shorter because the parliament was dissolved.

3 Portugal, Assembleia da República, Comissão de Assuntos Europeus, Relatório sobre a Proposta de Resolução No. 118/VII que aprova para ratificação o Tratado de Amesterdão (anexos os relatórios das outras Comissões), 21 December 1998.

mainly due to the presentation of the German CDU/CSU report of September 1994 - the so-called Schäuble-Lamers paper - that launched the discussion in the Portuguese Parliament.

The Resolution no. 21/95 of 8 April 1995 listed five broad principles, which were unanimously accepted:¹

- The enhancement of the Portuguese language. Spoken by 200 million people around the world, it spreads Portuguese culture and other lusophone cultures but also European culture as a whole.
- The enforcement of the principle of equality among member states and of the principle of non-exclusion from the 'core'. The revision of the Treaty must be approved unanimously, with a clear refusal of any 'hard core' in the decision-making bodies, based on co-optation methods.
- The strengthening of the role of national parliaments and intensification of their co-operation with the European Parliament, namely through the COSAC in order to enhance the democratic nature of the European construction and increase the transparency of its institutions.
- The maintenance of social and economic cohesion as a structural component of European Union deepening and enlargement.
- The consideration of hypotheses of positive variable geometry, based on the ability and willingness of each member state.

The Resolution also stated that its purpose was to strengthen the bargaining position of the Portuguese Government at the 1996/97 IGC. It called for the re-evaluation of the institutional balance of the Union, while keeping its unitary structure, with decision-making bodies encompassing the entire range of Community competencies in this framework, and it accepted increased powers of the European Parliament. Finally it recommended further hearings on the IGC as a means to promote the idea of Europe as an essential interest of Portugal.

During the IGC the Committee held monthly meetings with the Secretary of State of European Affairs, several meetings with ministers and regional assemblies, MP's, representatives of the civil society, such as management confederations and labour unions, non-governmental organisations, associations and universities. The Parliament also participated in several conferences open to the citizens about the future of the European Union.

This is to say that as the Parliament had a good review of the work of the IGC - in opposition to what occurred with the Maastricht Treaty -, there were no surprises as to its results, and the ratification process was facilitated.

1 See an English version of the Resolution and a summary of the report in: Portugal, Assembleia da República, Comissão de Assuntos Europeus, Acompanhamento Parlamentar da Revisão do TUE na CIG 96, Vol. I, Lisboa, 1995, pp. 347-352.

2. *The Amsterdam Referendum and Its Failure*

During the debate that occurred upon the ratification of the Maastricht Treaty - mainly after the results of the Danish referendum - several opinion leaders asked for a referendum upon the Maastricht Treaty. Until then the possibility of a referendum, in general terms, although allowed by the constitution, had not had many supporters. The Government party (PSD) was not in favour of a Maastricht referendum and argued that the Constitution did not give the possibility of a referendum upon an international Treaty. This was a polemical doctrinal issue, even more because the Constitution was amended in 1992. The main protagonists of the referendum were the opposition parties.

After the legislative elections of 1995, in which the Government and the leader of the PSD changed, the four main parties favoured referenda in general terms as well as a referendum upon the new EU Treaty.

Hence, the 1997 amendment of the Constitution allowed a referendum upon important questions of national interest inserted in an international agreement.¹ The Government² and all the three opposition parties presented draft texts for the referendum question.³ By consensus between the PS and PSD, the Resolution 36-A/98, of 29 June was approved with the following question: "Do you agree with the continuation of Portugal's participation in the European Union construction in the framework of the Amsterdam Treaty?"

According to Constitution article 115.8 and articles 26 and 29.1 of Law 15-A/98 of 3 April that regulated the referenda, the President was obligatorily required to ask the Constitutional Court if the referenda proposals were constitutional.

The Constitutional Court⁴ in its judgment no. 531/98 of 29 July 1998 decided with eight votes in favour and five against that the proposed question was unconstitutional because it violated article 115.6 of the Constitution that states: "Each referendum shall deal with a single subject; the questions shall be formulated in objective terms, and clearly and precisely and so as to permit an answer of yes or no...". In general terms, the Court maintained that it would be difficult for the citizens to understand what could be the result of a negative answer to the referendum question, even with a referendum campaign.

When the Constitutional Court decides that a text is unconstitutional, according to Constitution article 279 the President should veto it and send it back to the organ that ap-

1 Article 115, No. 5.

2 Proposal of Resolution 71/VII.

3 Projects of Resolution 69/VII - PCP, 91/VII - PSD, 94/VII - CDS-PP.

4 As stated in Constitution article 222, the Constitutional Court has 13 judges, ten nominated by the Parliament and three chosen by the first ten. Six members of the Court must be judges and the others must have a law degree.

proved it. In this case the Parliament could have changed the question so that it would not have not suffered from unconstitutionality or confirm it with a majority of two thirds of the MP's.

Neither of these two possibilities occurred. This can be explained with two reasons. The first concerns the assumption of all parties that the Amsterdam Treaty did not have the same importance as the Maastricht Treaty. The second concerns the results of the first referendum held in Portugal since the revolution, on 28 June 1998, dealing with abortion. After aggressive campaigning by both sides of society, the referendum was held with an abstention of 68,1 per cent. As a consequence, politicians reconsidered the usefulness of a referendum on the Amsterdam Treaty. On 29 June 1998 the referendum question upon the Amsterdam Treaty was approved in parliament. Given the poor turnout of the first one, some politicians now argued against the referendum on Amsterdam. However, the question on Amsterdam was already on the Parliament's agenda of the day, and there was not much time to think about it.

3. Political Issues at Stake

On 6 January 1999, the Portuguese Parliament adopted the ratification of the Amsterdam Treaty with 205 votes in favour and 24 votes against. The 205 votes in favour were those of the Socialist Party - PS (112), the Social Democratic Party - PSD (88) and the Popular Party - CDS-PP (5 - only the Bureau Group voted in favour). The 24 votes against were given by the Communist Party - PCP (13), the Green Party (2) and by 9 MP's of the CDS-PP.

The most relevant political issue of the parliamentary debate was the internal division of the CDS-PP between those in favour of its current leader Paulo Portas, who voted in favour of the Treaty, and those in favour of the party's ex-leader Manuel Monteiro, who voted against the Treaty. This division became clear during the vote on the Amsterdam Treaty. Nine MP's were against the new orientation of the Bureau Group and the more pro-European parliamentary group. One of them was ex-leader Manuel Monteiro who returned to parliament only to make a plenary intervention of ten minutes about this issue. Almost all of the attention during the debate was concentrated on him. Two days earlier he had presented a book on the Amsterdam Treaty pointing out the dangers of further integration in the third pillar. Apart from the intervention of Manuel Monteiro, the media reported only briefly that the Amsterdam Treaty was approved by the Parliament.

Public opinion was not very interested in this subject. The Amsterdam Treaty did not result in any kind of specific information campaign for the citizens. The media reported vaguely on the evolution of the IGC and the signature of the Treaty.

Some institutions, as the Parliament, the Secretary of State of European Affairs, Universities and Centers of European Information held conferences where the citizens could participate, but in general only the elite and university made use of this opportunity.

All in all, the Amsterdam Treaty did not generate controversial issues for the Portuguese civil society, as the Maastricht Treaty had with EMU. During the ratification period, the two referenda about the abortion and the regions deserved all the attention of the citizens, as well as the Euro in the last month of 1998.

At the level of the political and academic elite the debate about the ratification of the Amsterdam Treaty coincided with the question of the reform of the structural funds inserted in Agenda 2000. This was patent in the plenary speeches of 6 January 1999 with some speakers from the opposition parties arguing that the Government was not leading this process in the best way.

The issues of the new Treaty highlighted at the conferences and in the parliamentary reports were the communitarisation of the third pillar (especially the extradition policy), the insertion of a chapter on employment, the closer co-operation-clause and the reinforcement of the role of the national parliaments. The view of most MP's was in favour of upgrading the role of national parliaments vis-à-vis their governments and not as a collective body intervening in the EU decision-making process, therefore against an European Senate. For the MP's of Madeira and Azores the consecration of a new statute for the outer-most regions in article 299.2 was an issue demanded during all IGCs since 1987.

What was also highlighted was the lack of major substantive modifications, everyone agreeing that it was a minimalist reform, especially in institutional terms.

IV. The Portuguese Parliament after Amsterdam

The Portuguese Parliament did not react to the introduction of the Protocol on National Parliaments in the Amsterdam Treaty. This can be explained by the information and informal influence model chosen by the Assembleia da República for which Law 20/94 and the existent constitutional provisions were sufficient.

Some scholars¹ stated that, after the Constitution amendment of 1997², Law 20/94 should be amended to give more powers to the Parliament, namely the obligation to produce an opinion whenever a draft EC/EU act would have repercussions on the exclusive competences of the Parliament.

Accordingly, the CDS-PP presented draft Law 625/VII on 19 February 1999 to amend Law 20/94. The main proposals were

- the obligation of producing an opinion whenever the subject of the EC/EU act was related to the exclusive competences of the Parliament,

1 Namely Miranda, Jorge, *Manual de Direito Constitucional*, Tomo V, Coimbra Editora, p. 178.

2 Note that the amended article 161, alinea n) states that the Parliament has a 'power to give its opinion, as provided by law, on matters that are pending decision within the institutions of the European Union and that have a bearing on their exclusive legislative competence.'

- the possibility of holding parliamentary hearings in Committee with the candidate proposed by the Government to the European Commission and about all the nominees to political functions and high posts of the European administration, and
- the establishment of a maximum delay between the request for a report from the Committee on EU affairs to other Standing Committees in order to comply with the deadline of six weeks provided in the Protocol.

The Committee on EU affairs produced a report stating that the debate upon the revision of Law 20/94 should be open but that this specific draft Law should be rejected.¹

In 1999 the PS presented a package of draft laws, inserted in the framework of the parliamentary reform - dealing with several subjects like the rules of the Parliament, the statutes of MP's, the organization of parliamentary services, the inquiry committees, etc. -, in which draft Law 228/VIII of 7 June 2000 is included. This draft presents the following as major alterations to Law 20/94:

- the reinforcement of the technical support to the Committee,
- the information provided by the Government about the Portuguese personalities nominated for all the high political and administrative posts in the European institutions,
- the evaluation of the European budget,
- the creation of a group of MP's and MEP's that can adopt common positions on relevant political questions,
- the obligation to appreciate the legislative program of the European Commission, and
- the introduction of an annual report made by the Committee on EU affairs upon the conclusions of the COSAC about the functioning of the EU institutions, the application of the principle of subsidiarity and the measures to reinforce the democratic legitimacy of the EU.

This draft law, as all the others, can only be discussed in the next legislative session of 2000/2001.

Until now, as the scope of Law 20/94 covers the obligation of the Government to send all drafts of EC/EU acts to the Parliament, there were no debates about the documents excluded from this obligation, namely of documents falling under the CFSP pillar, documents concerning the entry into closer co-operation, documents prepared by member states for the European Council or documents falling under the procedure of the 'Protocol on the integration of the Schengen Acquis into the framework of the European Union'. Furthermore, as the obligation to send the documents has not been fulfilled, the debate is centered on the information given in informal ways, according to the informa-

1 The draft Law 625/VII was published in: Documentos da Assembleia da República II Série A, nº 39, of 25.2.99. The Report of the Committee on European Affairs was published in Documentos da Assembleia da República II Série A, No. 57, of 29.4.99. The discussion and vote in plenary session were published in Documentos da Assembleia da República I Série, No. 79, of 30.4.99.

tion and informal influence model referred to in chapter II about the practice of parliamentary scrutiny.

The Protocol on National Parliaments did not induce a revision of the composition of the Parliament's delegation to COSAC that is decided by the Committee on European Affairs in the items above mentioned. However, in the XXIII COSAC of Lisbon (29/30 May 2000) there was the concern of approving a contribution in the terms of the Protocol and acting according to the new rules approved at the XXII COSAC of Helsinki.¹ There is no discussion in the Parliament on revising the working mechanisms of the Committee on EU affairs regarding the frequency of meetings (normally once a week, with a duration of two hours) and specific competencies. Instead, there are greater concerns about the little success of trying to involve all the Standing Committees in this work until now.

V. Conclusions: The Limited Effects of Amsterdam

The Amsterdam Treaty - both the negotiations and the result - did not alter the role of the Portuguese Parliament in EU affairs. However, for the first time there was an effective parliamentary review and evaluation of the IGC, which did not occur during the IGCs for the Maastricht Treaty. Neither did Amsterdam alter the basic positions of national parties with regard to the EC/EU.

The aforementioned model of information and informal influence followed by the Portuguese Parliament is not a perfect one nor does it ensure a complete involvement of all the MP's in EU affairs. It is a realistic model, which takes the circumstances of being a small parliament in a country with a young parliamentary tradition and a pre-eminent position of the Government in the political arena into account. The Parliament is not considered an important actor in EC/EU decision-making. Nevertheless, it tries to constitute the liaison between the European institutions and the citizens. Although the Parliament does not appreciate all of the EC/EU acts, it ensures some involvement of the citizens' representatives in those that are appreciated.

The MP's are already conscious of the importance of reforming the image of the Parliament in general and in EU affairs. This is due to the fact that, in spite of the absence of immediate results, a strong intervention of the Parliament can be a way to increase the involvement of national citizens in the European Union. This can only be achieved if national parliaments are themselves involved in EU affairs but also, and mainly, if they promote the citizens' intervention in their work. The parliamentary intervention in

¹ See the contribution of the XXIII COSAC (and all the work of this COSAC) and the new rules of COSAC approved in Helsinki in www.COSAC.com.

EU affairs is not an end by itself but a way to reinforce the citizens' involvement in the EU, and this is the only carrot that makes parliamentarians run.

The Parliament of Sweden: A Successful Adapter in the European Arena

Hans Hegeland

I. Introduction: The Political System of Sweden

The Swedish path to EU membership was complex. Due to Sweden's policy of neutrality, membership was ruled out during the era of the cold war. But the road to membership opened up when the cold war ended.¹ Faced with a changed international system, Swedish reappraisal of membership proceeded rapidly. Rather suddenly, the Social Democratic Government proposed membership in October 1990 as part of an economic crisis policy package.² The membership and the European Union (EU) itself came to be understood mainly as an economic project rather than a peace project.

Sweden joined the EU in 1995 after a fairly narrow yes vote in the referendum in November 1994.³ The major political parties, both on the right and the left of the political spectrum, favoured a yes. This view was shared by the main interest groups, which play an important role in the corporatist political system. The message from most of those who favoured Swedish membership was that the co-operation in the EU was intergovernmental and took place among sovereign nation states. Referring to the reasoning behind the decision of the German Constitutional Court on the Maastricht Treaty, the Swedish Parliament, the Riksdag, stated that the transfer of power was not unconditional. This approach still persists, and one aspect of this view is that the national chain of democracy is the most important channel for political influence and legitimacy, in other words the role of the national parliament is crucial.

The first words in the Swedish Constitution (adopted in 1974) are "All public power in Sweden proceeds from the people". The Riksdag is, according to the Constitution, "the foremost representative of the people". Thus, power rests with the people, who delegate it to the Riksdag. The Government must enjoy the confidence of the Riksdag, and the Riksdag can always declare that it does not have confidence in the Government, which would mean that the Government must resign. Legislative and financial powers rest with the Riksdag, as well as the power to monitor the Government. The idea of division

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- 1 See Kite, Cynthia: *Scandinavia faces EU: debates and decisions on membership 1961-1994*. Umeå Department of Political Science, Umeå University 1996.
 - 2 See Gustavsson, Jakob: *The Politics of Foreign Policy Change. Explaining the Swedish Reorientation on EC Membership*, Lund: Lund University Press 1998.
 - 3 52.3 per cent voted yes, 46.8 per cent voted no. 0.9 per cent returned blank ballots. Turnout was 83.3 per cent, which was higher than in previous Swedish referenda, but 3.5 percentage points lower than the turnout in the general election held in September 1994.

of powers, such as judicial review, is hardly seen at all in the Swedish Constitution. However, EU membership has strengthened the role of the courts.¹

Swedish voters are among the most critical when it comes to the EU. They think that the co-operation within the EU should be limited and that the national political institutions should play the most important role. Confidence in national political institutions may not be high among the electorate, but it is at least higher than it is for the European Parliament and the European Commission. Actually, the EP and the Commission enjoy the lowest confidence among some 20 institutions ranked by the electorate.² The fact that Sweden is a unitary state may make it more difficult for voters to construe the political reality as consisting of different geographical levels, even if there is quite much local independence in the nearly 300 municipalities. Regional identity is, in a European perspective, low. The opposition towards the EU has, however, been strongest outside the major cities.

Turnout in the two EP elections in Sweden (1995 and 1999) has been around 40 per cent, compared to more than 80 per cent in general elections. The two political parties that are negative towards the EU, the Left Party and the Green Party, have done better in the EP elections than in the general elections. The ruling Social Democrats have done badly in the EP elections.

In 1996, Swedish MEP's were more inclined than MEP's from any other member state to see national parliaments as the locus of legitimacy, rather than the European Parliament.³ The negative view of the EP is partly explained by the fact that half of the Swedish MEP's at the time of the survey were generally skeptical about the EU. The outcome of the 1999 EP election means that fewer MEP's hold an EU-negative view. However, members of the Swedish Riksdag are also more inclined than other national parliamentarians to focus on the national parliament rather than the EP as the source of legitimacy of the Union.

The Government Offices have grown as a result of EU membership. From 1993 to 1999 the number of employees increased by 28 %, from 3 500 to 4 500.⁴ The Ministry for Foreign Affairs is in many ways the ministry most affected by EU membership.⁵ In the handling of EU matters in the Government there has been a movement towards a more central role for the Prime Minister's Office since 1995, partly because the political co-

1 See Algotsson, Karl-Göran: Sveriges författning efter EU-anslutningen. Stockholm: SNS 2000.

2 Holmberg, Sören/Weibull, Lennart: 'Förtroendet faller' in: Holmberg, Sören/Weibull, Lennart (eds.): Det nya samhället. SOM-undersökningen, Göteborgs universitet, SOM-institutet, 1999, p. 27-42.

3 See Katz, Richard S.: 'Representation, the Locus of Democratic Legitimation and the Role of the National Parliaments in the European Union', in: Katz, Richard S/Bernhard Wessels (eds.): The European Parliament, the National Parliaments, and European Integration. Oxford: Oxford University Press 1999, p. 29.

4 Source: Report on how the Riksdag evaluates the effects of its decisions.

5 See Ekengren, Magnus: Time and European Governance. The Empirical Value of Three Reflective Approaches. Stockholm, University of Stockholm, Department of Political Science, 1998.

ordination of EU matters was not satisfactory to begin with. The Foreign Ministry still plays a central role, but the changes in the organization of the Government Offices have aimed at a more co-ordinating role for the Prime Minister's Office. Still, there are more people at the Foreign Ministry than at the Prime Minister's Office dealing with EU matters and there is still some lack of political co-ordination in the Government Offices.

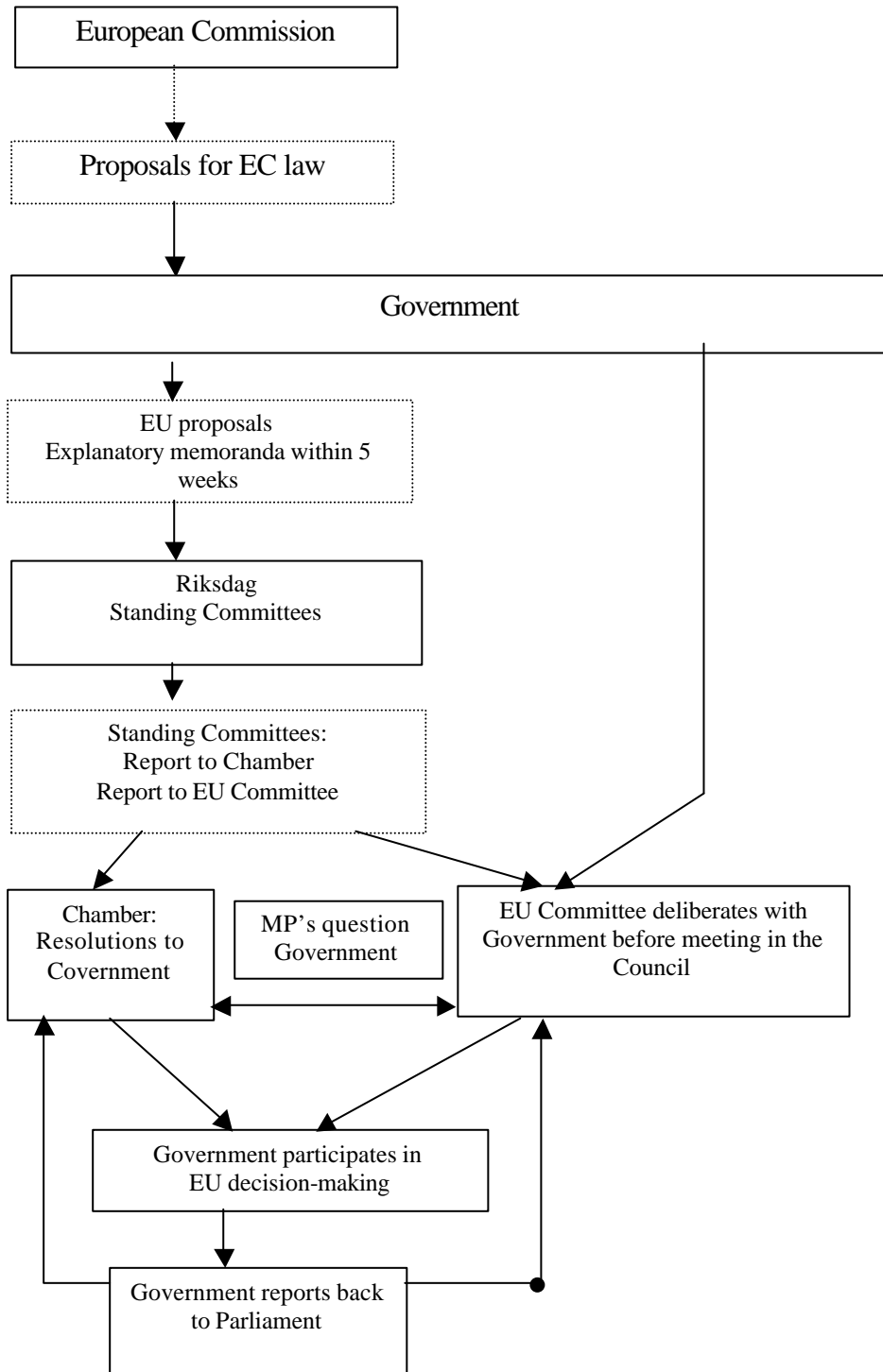
II. The Practice and Evaluation of Parliamentary Scrutiny in EU Affairs

The central role of the Riksdag in the Swedish political system could be seen during the EU membership negotiations, when there were close contacts between the Government and the Riksdag. The Moderate Government was eager to keep in close touch with the Social Democratic opposition, whose support for the eventual negotiating outcome would be necessary should there be a yes in the referendum.

Part of the national preparations for the membership concerned the relationship between the Government and the Riksdag. It was stated that it is the Government that represents Sweden in international relations, such as the EU, and that the Riksdag could hold the Government accountable for its actions in accordance with the general principles of parliamentarianism. However, this was considered to be insufficient and new means were to be used to ensure that the Riksdag could exercise an active and real influence over Swedish EU policy. The intergovernmental view of the EU underlined the importance of the national parliament.

The unicameral Riksdag has 349 members from seven political parties. Party cohesion is very high. As in most parliamentary systems, the Government has, as long as it is tolerated by the Parliament, a strong position. The Government presents more than 100 bills a year, and all MP's have an opportunity to present their views on Government proposals. During a few weeks in the fall, when the Riksdag resumes its work after the summer there is also a right for all MP's to submit motions (private members' bills) on whatever they choose. All proposals are subject to scrutiny in one of the 16 standing Committees, organised according to different policy areas, and the proposals are also subject to a decision in the Chamber. The standing Committees prepare the matters for decisions in the Chamber. The EU Committee does not have that role and cannot propose that the Chamber make a certain decision. Rather, the EU Committee deliberates with the Government on matters that will be dealt with at the meetings in Council of Ministers the following week.

Figure 10: The Swedish Parliament in EC/EU Decision-Making



EU matters are occasionally treated as “normal” Riksdag matters, for instance when an EC directive requires legislation by the Riksdag. However, there are also specific ar-

rangements for EU matters, especially for the stages before a decision is made in the Council of Ministers. The basic rules are found in chapter ten of the Riksdag Act (Standing Order of the Parliament). The model and how it works in practice is described in this section and an overview is also given in the following figure.¹ The Government should keep the Riksdag continuously informed about developments in the EU. The Riksdag receives, through the Government, approximately 800 documents in the COM series every year, including proposals for EC law as well as Green and White Papers. Approximately 30 documents in the SEC-series are also sent to the Riksdag every year. In the Riksdag, the EU documents are not formal matters in the sense that bills or motions, (private members' bills), are. According to the Riksdag Act, the standing Committees should follow EU matters within their area of competence. In the following table, the number of EU documents distributed to each standing Committee is shown. Documents, mainly resolutions, from the EP are included as well as explanatory memoranda from the Government.

Table 25: EU Documents to Each Standing Committee

Committee on	Total	Total %	1995/96	1996/97	1997/98
Foreign Affairs	1 082	30 %	414	331	337
Agriculture and Environment	1 073	30 %	406	352	315
Industry and Trade	619	17 %	246	193	180
Transports and Communications	521	15 %	180	195	146
Finance	484	14 %	199	145	140
Labour Market	304	9 %	90	120	94
Taxation	293	8 %	129	66	98
Health and Welfare	215	6 %	95	73	47
Education	214	6 %	72	88	54
Constitution	199	6 %	71	50	78
Civil Law Legislation	194	5 %	75	67	52
Justice	144	4 %	56	55	33
Social Insurance	128	4 %	45	51	32
Cultural Affairs	121	3 %	56	38	27
Defence	82	2 %	39	25	18
Housing	66	2 %	33	21	12
Total	3 563		1 351	1 114	1 098

Author's own calculation.

The Committees on Foreign Affairs and on Agriculture and Environment each receive 30 % of these EU documents. The Committees on Defence and Housing receive the smallest number of documents.

1 See also Hegeland, Hans /Ingvar Mattson: 'Another Link in the Chain: The Effects of EU Membership on Delegation and Accountability in Sweden', p. 81-104 in: Bergman, Torbjörn/Damgaard, Erik (eds.): Delegation and Accountability in European Integration. The Nordic Parliamentary Democracies and the European Union, London: Frank Cass. Also in the special issue of The Journal of Legislative Studies, No. 1/2000. The text is also based on an evaluation in the Riksdag, on how it deals with EU matters.

The Government should produce explanatory memoranda for all new important Commission proposals. The memoranda should describe the proposal and its implications for Sweden. The Government should also give an account of its own view of the proposal. The memoranda may concern issues in the second and Third Pillar as well as First Pillar issues. The Riksdag receives approximately 100 explanatory memoranda every year. The following table shows the number of explanatory memoranda distributed to each standing Committee in the period 1995-1998. During that period, a memorandum could be assigned to more than one Committee, which is not the case since fall 2000.

Table 26: Explanatory Memoranda to Each Standing Committee

Committee	Total	Total %	1995/96	1996/97	1997/98
Agriculture and Environment	101	29 %	35	37	29
Transport and Communications	73	21 %	34	20	19
Industry and Trade	72	20 %	30	24	18
Foreign Affairs	56	16 %	23	11	22
Finance	34	10 %	10	12	12
Taxation	31	9 %	14	6	11
Civil Law Legislation	25	7 %	6	10	9
Labor Market	19	5 %	5	6	8
Health and Welfare	18	5 %	9	5	4
Social Insurance	13	4 %	4	5	4
Constitution	11	3 %	3	2	6
Cultural Affairs	9	3 %	6	2	1
Education	8	2 %	2	3	3
Justice	6	2 %	3	2	1
Defence	4	1 %	1	1	2
Housing	2	1 %	1	1	0
Total	353		134	107	112

Author's own calculations.

As can be seen in the table, the Committee on Agriculture and Environment receives the largest number of explanatory memoranda, followed by the Committees on Transport and Communications and on Industry and Trade. The Committees on Defence and Housing receive fewest explanatory memoranda. The memoranda are not formal Riksdag matters, and normally no specific action is taken. However, a Committee may take an initiative and propose that the Chamber make a resolution, which has occurred concerning support to Swedish egg producers for instance. A Committee may also send its views in writing to the EU Committee, which has happened twice so far, both cases during 2000. The Committee on Agriculture and Environment submitted a report to the EU Committee on a White Paper on food safety in April 2000. The Committee on Constitutional Affairs submitted its view to the EU Committee on the Commission proposal on public access to EU documents in November 2000.

Since 1997, the explanatory memoranda have been distributed to all MP's, but it is likely that they will only be distributed to the Committee concerned in the future - MP's have no shortage of documents to study! The explanatory memoranda are public and are published on the web site of the Riksdag. The EU Committee stated in a questionnaire

in connection with COSAC in Paris in October 2000 that it would be good if all national parliaments published as much material as possible on the Internet.

The Government should present the explanatory memoranda to the Riksdag within five weeks of the proposal being presented by the Commission, but this time limit is not always adhered to. In fifty cases during 1998, only half of the explanatory memoranda had been submitted within 60 days of presentation of the Commission proposal. There have also been instances where important Commission proposals have not been subject to explanatory memoranda. However, as a result of these findings, both the Government and the Riksdag will probably follow the selection of proposals more carefully in the future. The memoranda have become better over time. For instance more memoranda nowadays contain the views of the Government. However, improvements can still be made.

Matters under consideration in the EU may also be treated as formal Riksdag matters, for instance when the Government presents its policy in a certain area such as communications or in law bills. EU matters are also brought up in individual MP' motions. For instance, an MP may demand that the Government pursue a certain policy in the EU. Among other reports, the Government presents an annual report on developments in the EU in the previous year, which is approximately 500 pages long. This report also gives MP's and standing Committees an opportunity to present their views. "EU" is mentioned in half of the approximately 300 reports presented by the standing Committees each year. The Committees have the right to receive any information the Government may possess on EU matters, including secret information, and in this way the Committees are in a stronger position than they are on national issues, where no such right exists. Often, representatives of the Government inform a Committee orally on developments in the EU.

The Riksdag may adopt resolutions when it considers formal Riksdag matters, and approximately 100 resolutions a year are adopted. Between 5 and 10 a year concern EU matters. Most of these resolutions concerned EU matters at the national level, such as distribution of regional funds. There is a tendency that, once the Riksdag makes a resolution on matters at the EU level, the resolution concerns a matter on which there is national unanimity, such as transparency in the EU or the fights against drugs and child pornography.

Two of the resolutions which urged the Government to act in a certain way in the EU concerned matters on which the Government eventually did not achieve the benefits sought for. The Riksdag wanted more support from the EU for some Swedish farmers. The Swedish Government acted as the Riksdag demanded, but in both cases the eventual EU decision was not in line with the position of the Riksdag. These cases are very clear examples of the Swedish perception of the democratic deficit: the national parliament has the power to demand that the Government should act in a certain way in the EU, but the Government cannot force the EU to act in that way.

The Committee on European Union Affairs plays a central role in the Riksdag when it comes to EU matters. The Government informs and consults this Committee before each meeting in the Council of Ministers, and the Committee may ask for consultations regarding other EU matters as well. The EU Committee has some 40 meetings a year. Each meeting lasts approximately two and a half hours, in other words the Committee meets for 100 hours a year. The Government sends material to the Committee before each meeting. Normally, the members of the Committee receive the material on a Monday night, but complementary material is often sent during the week. Meetings take place on Fridays, and it may be difficult, especially for small parties, to find time to discuss the issues internally during the week. On the other hand, most issues return and are discussed several times in the Committee.

It is the minister in person who should appear in the Committee, together with his/her assistants, and in approximately 80 % of the cases the minister is indeed present. In other cases s/he may be ill or travelling. The minister starts by telling the Committee what happened at the previous meeting of the Council. The members may ask questions. Then the minister goes through the agenda of the next Council meeting and focuses on important issues. The members may present their views, and the chairman then summarizes the discussion. The deliberations are made public by a shorthand verbatim record, normally published two weeks after the meeting in the Committee. Some minor parts may be secret, but most of the shorthand record is public and available on the Internet. After the Council meeting, the Government should send a written report to the Committee and the Riksdag within five working days. The time limit is not always adhered to, but almost all reports are eventually submitted to the Committee.

Members of the Committee on European Union Affairs, who are often senior MP's, are also active members of Standing Committees. The Committees most concerned with EU matters have several members who participate in the EU Committee as well. The only Committees that lack representation in the EU Committee are the Committees on Defence and Housing. The contacts between the EU Committee and the Standing Committees take place mainly through the political parties, not least because the parties nominate MP's from the relevant Standing Committees to the EU Committee. EU Committee members from parties that have only a few seats in the EU Committee keep in touch with their party colleagues in the different standing Committees. The EU Committee, like the Standing Committees, is composed of 17 members proportionally elected according to the distribution of seats in the Riksdag. However, more than 40 MP's, including deputy members of the Committee, actively follow the work in the Committee. The Committee has a staff of some eight people, which is approximately the same as each of the Standing Committees.

The members of the EU Committee receive some 10 000 pages a year. Most of the material focuses on Council meetings, although other parts of the EU are covered as well. Different ministries submit most of the material, but the secretariat of the Committee also encloses information from the Internet and from different databases. A large part of

the material is published on the Internet. The quality of the material has improved since 1995, and it contains roughly the same information as the corresponding material in Denmark and Finland. However, the Committee continuously follows up the material and may ask for supplementary information when needed.

The mandate the Committee gives the minister is politically, but not legally, binding. It is thus expected that the Government act in accordance with the views of the Committee. The Government may try to get in touch with the Committee if something important happens during the EU meeting. For instance, during the European Council in Cannes in 1995, a Minister called the representatives of the political parties to make sure that he had their support as a new, previously unknown, proposal was presented by another Member State.

The Government may find it necessary to deviate from the standpoint of the Committee, but must then give an account of its reasons for doing so. It is then the EU Committee and the Riksdag that decide if the reasons are good enough, in other words the normal parliamentary control mechanisms are used. The Committee on Constitutional Affairs may criticize the Government and the Riksdag may even force the Government to resign.

Most of the time, the Government does not meet a majority in the Committee against a proposed standpoint. This is in many ways similar to the preparation of bills, where the Government normally gets its way. However, there are signs that the Government does not meet as much opposition in EU matters as in national issues.¹ So far, the Committee has opposed the view of the Government on only a few occasions. However, the issues are seldom clear-cut, and the Government may well adjust its views before it comes to the Committee. In one case, the Government did not act in the way a majority in the EU Committee urged. The issue concerned a program for tourism (Philoxenia). The Government voted yes in the Council in spite of a no from a majority in the EU Committee. The Committee on Constitutional Affairs criticized the Minister responsible. After that criticism the Minister in question has listened carefully to the advice of the Committee. In another case, the Committee thought that a Council resolution on education did not state clearly that education should primarily be dealt with at the national level. The Minister came back to the Committee before the meeting in the Council, and he also had contacts with the political parties outside the formal Committee meetings. The Committee agreed that it would be able to accept the resolution if the Government succeeded in including a statement in the resolution referring to the relevant Treaty article. The Government achieved this objective, and a statement of that kind was included in the resolution.

1 See Lindgren, Karl-Oskar: 'EU-medlemskapets inverkan på den svenska parlamentarismen' in: Statsvetenskaplig Tidskrift, vol. 103, 2000.

Neither of these issues was perhaps very important in itself, but the Committee signalled to the Government that the Committee did not want EU co-operation to concern issues that the Committee thought should primarily be handled at the national level. It should be noted that in both these cases it was not a minister but a state secretary that first met the Committee, and since a state secretary has less room for manoeuvre than a minister, a compromise could not be reached at the Committee meeting.

The Prime Minister regularly deliberates with the EU Committee before meetings in the European Council. The form of the deliberations before Council meetings in the second and Third Pillar is the same as for First Pillar meetings.

When an EC-directive is to be transposed into national law, the matter is treated as other law bills and there is no role for the EU Committee. The matter is prepared in a Standing Committee, e.g. the Committee on Agriculture and Environment if the directive concerns environmental issues. Of 113 bills in 1998/99, 33 (or 30 per cent) concerned implementation of EC law in one form or another. Another 19 (or 17 per cent) were in other ways related to the EU.¹

MP's may put written questions to ministers. Of approximately 1 000 questions a year, between ten per cent and twelve per cent concern EU matters. MP's may, for instance, ask about the view of the Government on specific Commission proposals. Interpellations may also be put forward. Of some 350 interpellations a year approximately 15 % concern the EU. The Government may inform the Chamber about different issues and from 1995 to the beginning of 2000, 29 of 58 occasions of this kind of information have concerned the EU.² For instance, the Prime Minister informs the Chamber after meetings in the European Council.

Two main political dimensions in EU matters have dominated in the Riksdag during the first years of Swedish membership. The EU "positive - negative" dimension contains the Left Party and the Green Party on the "negative" side, and the other parties, albeit to varying degrees, on the „positive" side.³ It can be noted that the Left Party and the Green Party are comparatively active in EU matters, and they have also been positive towards a stronger role for the Riksdag in EU matters than the other parties have. The other dimension is the traditional - single issue based - left-right dimension, which dominates deliberations about matters discussed at the ECOFIN meetings, for instance. This dimension is also the most important one in national politics, as it has been for 80 years.

1 Source: material from evaluation of the Riksdag and the EU.

2 Source: material from evaluation of the Riksdag and the EU.

3 There are signs that the non-socialist political parties and the Left Party and the Green Party share a skeptical view of EU integration - and especially supranational decision-making - on areas such as education.

III. The Swedish Parliament and the Negotiation of the Amsterdam Treaty

The Riksdag and its members were involved in issues concerning the IGC in several ways. A Commission of Inquiry, consisting of MP's, was set up; the Government presented - after an explicit request by the Riksdag - a report that was closely scrutinized in the Riksdag and in its standing Committees; the Committee on EU Affairs met representatives of the Government almost every week during the IGC; and, finally, the Riksdag approved the Treaty.

When it came to developing positions for the IGC, it should be remembered that Sweden had not been a member of the EU for much more than a year when the IGC started in March 1996. The Government was criticized for not focusing on institutional issues but rather marginal issues such as youth issues and consumer policy. However, the three main priorities for the Government were employment, the environment and openness.¹

The Swedish Government presented its views in a report to the Riksdag in November 1995. The Government stated that Sweden should work for a continued important role for the European Parliament in the EU. The complexity and number of decision-making procedures should be reduced in order to further efficiency and to make the procedures more comprehensible for the citizens. It was noted that the EP did not propose that it should have the right to initiate EC laws, which was also the standpoint of the Government. Measures to give the EP a stronger role in controlling - but not deciding upon - the finances of the EU should also be considered.

The role of the national parliaments in the decision-making process should be strengthened, according to the governmental report, since this role is of fundamental importance for the democratic legitimacy of the EU co-operation. Each state has its procedure for the relationship between government and parliament, and decisions about these procedures should continue to be made at the national level. It is of great importance that the union works in a way that facilitates good relations between governments and parliaments in the member states. Measures that facilitate the role of the national parliaments should thus be considered. The national parliaments should be given increased possibilities to influence the work in the EU, above all by having more time to examine the different issues. Reforms at EU level should thus not focus on increasing the collective role of the national parliaments and making them a player, but on creating conditions which facilitate consultations between each national parliament and its government.

Regarding the Third Pillar, the Government noted that the role of the EP was less salient than in the First Pillar. The decisions in the Third Pillar concern matters that are of great importance for the fundamental rights of citizens and their personal security. Therefore

¹ See Johansson, Karl Magnus/ Svensson, Anna Carin: 'Sweden Negotiating the Amsterdam Treaty: Constrained, but Constructive?' in: Laursen, Finn (ed.): *The Amsterdam Treaty: National Preference Formation, Interstate Bargaining, Outcome and Ratification*, Odense: Odense University Press 2001

the decisions should be made in forms characterized by openness and under conditions which make it possible for the EP to present its view on the decisions made by the member states. The EP should have more access to proposals for binding decisions, thereby enabling the EP to present its views on the proposal within a certain time.¹

In the debate in the Riksdag, all political parties agreed that there was a need to create better opportunities for the national parliament to exercise influence. That view is linked with the general view that the main link for legitimacy for the EU should go through the nation-state and not through the EU institutions. The Left Party and the Green Party suggested that the national parliaments should have the right to initiate EU decisions, but the other political parties claimed that the national parliaments should act primarily through their governments. The political parties and individual MP's could, of course, also use other ways to promote issues they found important. The Riksdag supported the idea of making Green Papers from the Commission easily available for national parliaments.²

During the IGC, the Government informed and conferred with the EU Committee almost every week. It was mainly Sweden's chief negotiator, a State Secretary at the Foreign Ministry, who met the Committee. At these meetings, the State Secretary first gave an account of the IGC developments since his last meeting with the Committee, and then there were discussions about the issues that would be dealt with at the next IGC meeting. There were almost 50 meetings of this kind in the Committee during 1996 and 1997, and there were also deliberations with representatives of the Government in some Standing Committees, especially the Foreign Affairs Committee. The IGC was also discussed in the EU Committee when IGC matters were dealt with in the General Affairs Council. During the concluding negotiations in Amsterdam in June 1997, there were telephone conferences between the Swedish negotiators and the Committee. There was also information and debate in plenary sessions about various aspects of the IGC on several occasions.

In many ways, the contacts with the Committee during the IGC resembled the contacts between the Government and the Riksdag during the Swedish membership negotiations a few years earlier. The Government was apparently keen to have support from the Riksdag, and the Government also said after both negotiations that the close contacts with the Riksdag had been a great help. Members of the Committee also claim that the Government handled the contacts with the Riksdag in a very good manner, and not even members who are normally critical of the information from the Government have complained.³

1 Skr. 1995/96:30, 2001.

2 Bet. 1995/96:UU13 p. 34.

3 This statement is made on basis of interviews with 12 members of the Committee. See Hegeland, Hans: Riksdagen, Europeiska unionen och demokratin, Lund, Department of Political Science, 1999, p. 103-104.

The Dublin COSAC draft protocol from October 1996 was touched on at a meeting in the EU Committee a few days after the Dublin COSAC meeting. The Committee thought that the draft dismissed the idea that the national parliaments should act collectively through COSAC like a second Chamber. Representatives of the Government said that they would use the COSAC conclusions against that idea. According to the Government, the French Government was the only one which pursued that role for the parliaments.

It was often stated in the Riksdag during the IGC that COSAC could not represent the national parliaments. Before the Swedish membership of the EU, the role of the representatives at COSAC was also discussed and it was said that statements should be regarded as coming from the members as representatives of their political parties and not of the EU Committee as a parliamentary organ.

The European Parliament's Neyts-Uytterbroeck report on relations between the EP and the national parliament was distributed to the members of the EU Committee.¹ Before the EP adopted the report, there was a meeting between the EP Committee on Institutional Affairs and representatives of the national parliaments. Two Swedish MP's participated, and they reported in the EU Committee that there was support in the EP for more openness in the EU. The report was also mentioned in a written statement from the Committee on the role of COSAC. Actually, that statement was the first one in writing from the Committee to the Government, a sign in itself that the question of the relationship between the national parliaments and COSAC was considered to be important.² The statement took as its starting point the proposal from the Dutch presidency on the protocol on national parliaments. It was noted that the Dutch proposal was in many ways similar to - and on some points softer than - the Dublin COSAC draft protocol. In the statement from the Committee it was suggested that a sentence from the Dublin COSAC draft protocol should be included, saying that COSAC's "conclusions will be offered as suggestions and would not seek to bind any delegate or Delegations". This view was reflected in the final protocol ("Contributions made by COSAC shall in no way bind national parliaments or prejudge their position"), and the Swedish Government claimed that this explicit statement made it possible for the Government to accept the protocol.

The possibility of contacts between standing Committees in the national parliaments and the European Parliament was also mentioned in the EU Committee during the IGC.

1 The Neyts-Uytterbroeck report was also distributed to the secretariats of the Standing Committees in August 1997. However, the report was probably not distributed to many members of the Standing Committees (on the other hand, over 40 MP, who also were members of standing Committees, received the report in their capacity as members of the EU Committee).

2 There have been a few other written statements after that, for instance on the importance for national parliaments to receive papers on Third Pillar issues in sufficient time.

During the Swedish presidency in the first half of 2001, a number of standing Committees in the Riksdag will host that kind of meeting.

The composition of the Delegation to COSAC did not change as a result of the Protocol on National Parliaments. The Delegation of six MP's is still proportionally formed. The two largest parties, the Social Democrats and the Moderate Party, sometimes let the minor parties take one of their seats in the COSAC Delegation.

Since the Riksdag already received the documents mentioned in the Protocol on National Parliaments (PNP), no particular measures were taken as a result of the Protocol. The only measure apart from approval of the Treaty was an amendment to the Swedish law of accession to the EU, through which the Amsterdam Treaty (with its annexes and protocols) applies in Sweden.

The main Swedish approach during the IGC was that the EU is not a parliamentary system, and nor should it become one. The Swedish position was that the role of national parliament is very important, but the new powers of the EP were welcomed. However, the Liberal Party tends to be more positive than the other parties towards giving more powers to the EP.

IV. The Riksdag after Amsterdam

There has not been any change in routines specifically due to the Protocol on National Parliaments. The Riksdag still receives EU documents (and explanatory memoranda on important proposals), and all issues that will be discussed at a Council meeting are subject to debate in the Committee on EU Affairs.

For the Riksdag, it is more important that there is enough time between Coreper and the Council meeting than it is to have a rule about six weeks between proposal and decision. The discussions in the EU Committee during the 1996-97 IGC on the role of national parliaments therefore often focused more on the time period between Coreper and the Council meeting than on the six-week-period. The Riksdag has noted that there is agreement in the EU that at least one full week should pass between Coreper and the Council meeting.

A broad internal evaluation of how the Riksdag deals with EU matters was conducted during 1999/2000. Generally, the system with pre-Council screening in the EU Committee is considered to function well. This means that these routines will continue. One advantage is that the EU Committee gets a broad overview of all EU matters, since it covers all three pillars and all meetings in the Council.

There is quite a lot of activity in the Standing Committees on EU matters, but the Standing Committees do not wholly fulfil the role intended. They are advised to fit EU matters into their schedules. Further proposals include closer and more systematic planning of open information from the Government in the Chamber and an annual EU debate in the Chamber.

The fact that the Government is accountable to the Riksdag is underlined by a proposal for a new rule in the Standing Orders of the Riksdag saying that the Government should account for its actions in the EU. To some extent, this already happens today, but a more formal regulation underlines the obligation of the Government to provide such information.

Regarding the Amsterdam Treaty, it is noted in the report that the new rules for the co-decision procedure imply that the EU decision-making process is likely to go faster, which stresses the importance of following issues at an early stage, i.e. before the Commission presents its formal proposal. The Riksdag should thus focus on Green and White Papers.

The general rules governing the relationship between the Riksdag and the Government in EU matters are also applicable to issues in the second and Third Pillar. This system should continue, according to the report.

In fact, it could be claimed that the Riksdag has gained new insights into these areas thanks to EU membership. Previously, the Government could negotiate matters with no or very limited input from the Riksdag. Now the Government must inform and consult with the Riksdag on issues which earlier were the prerogative of the Government. This applies both to many traditional foreign policy issues as well as things like conventions discussed in the Third Pillar. On the other hand, the EU-negative parties tend to claim that Sweden does not pursue any foreign policy of its own any more but simply adjusts to the policy of the EU. Thus, Sweden, including its parliament, has lost control over its foreign policy, according to this view.

In an internal memorandum, the Ministry of Justice calls attention to the fact that the European Parliament has gained insight into Third Pillar issues thanks to the Amsterdam Treaty. In light of that, it is emphasised that the Government should continuously and as early as possible keep the Riksdag informed. According to the memorandum, it cannot be accepted that the European Parliament is better informed than the Riksdag.

In the evaluation mentioned above, there are requests that the Government supplies more information about the work in the Commission. This refers both to the expert Committees preparing proposals on EC laws as well as the comitology.¹ Further, the Government should give an account of directives not yet implemented into Swedish law in the annual EU report to the Riksdag.

The Amsterdam Treaty introduces a new kind of decision in the Third Pillar, framework decisions. In the Swedish political system, framework decisions are considered international agreements and not supranational decisions. This means that the Riksdag must approve them before the Swedish Government votes in favour of them if they concern

1 The focus on the Council this far in the Riksdag is mirrored by a similar focus in the Cabinet Office. Thus, one could say that the Government and the Riksdag have focused on the most acute matters, i.e. 'sharp' decisions and have not really been able to follow the work in the Commission to a satisfactory degree. This will probably change during the next few years.

matters that fall within the scope of the Riksdag, (unless they are covered by earlier parliamentary decisions). This implies that if a law must be changed due to the framework decision, the Riksdag must have approved the matter.¹ According to the Government, this procedure means that Sweden runs the risk of losing influence in the negotiations, since Sweden must wait for a parliamentary decision before the Government may accept the framework decision. The Government has appointed a parliamentary commission of inquiry to consider whether forms that allow the Riksdag to give its approval in advance more explicitly than under the present regulation should be introduced.

In 1997, the EU Committee was given the right to organize open hearings, a right the Standing Committees have had since 1988. The Committee has organized five open hearings. The rules state that there should be "exceptional reasons" if the Committee is to organize an open hearing, a demand that is not placed on the Standing Committees. However, this extra demand is likely to be abolished, and one reason for that is that experience has shown that there are more overall issues, such as Agenda 2000, IGCs, and the charter for fundamental rights.

The EU Committee focuses on matters dealt with on the Council agenda, but there has been a development in praxis that means that other issues are also covered. There is broad support in the Riksdag that this broader praxis, which includes matters such as IGCs and Schengen, should continue.

Contacts with the European Parliament go mainly through the party groups. All political parties have close contacts with their MEP's, but the Moderate Party probably has the most developed contacts, since the party is internally united on most EU issues and is the largest opposition party. A majority of the political parties in the Riksdag thinks that the MEP's should not have the right to participate in debates in the Chamber in the Riksdag. However, the Liberal Party would like them to have the right to do so in specific EU debates. One reasonable way of construing the discussions on this issue is to realize that the MEP's would like a national arena, while the MP's do not want competition in what they could describe as their own arena. MP's and MEP's are also said to have different mandates, and these mandates should not be confused. However, some Swedish MEP's participated and asked questions in an open hearing arranged by the EU Committee in the fall of 2000 about the IGC. There was also a meeting afterwards between the MEP's and the EU Committee, and it was decided that there should be a meeting of that kind every year.

The Government is not the only source of information for the Riksdag. Internet and material from the Finnish and Danish parliaments are also used. During the Swedish

1 Thus, the Government presented a bill and the Riksdag approved the signing of the first framework decision, on counterfeiting of the Euro, before the Government approved the decision in the Council (bill. 1999/2000:85, report 1999/2000:JuU20).

presidency in 2001, the Riksdag will have a representative in the European Parliament in order to gather information.

V. Conclusions: EU Membership Matters for an Influential Parliament

The Riksdag has become far more involved in European matters thanks to EU membership. One sign of this is that the obligation of the Government to inform and consult with the Riksdag about EU matters is likely to be regulated in the Constitution and not only by the Riksdag Act.¹ One reason for regulating these matters in the Constitution is that experience shows that EU matters are often dealt with by the Riksdag.

The Riksdag had good insight into the 1996/97 IGC. Since IGCs are not 'EU matters' in a strict sense, but rather international negotiations, one could say that the Riksdag has gained insight into this kind of negotiation compared with the situation before EU membership. On the other hand, one could say that this is simply a natural development, since IGCs are so important. However, it was not obvious from the outset that the Riksdag would have all this insight.

The Riksdag is becoming better and better at following EU matters and is fairly good at the matters it chooses to pursue. The ongoing deliberations in the EU Committee mean that almost all important issues are discussed several times. The Government probably tries to pre-empt criticism from the Riksdag and therefore adjusts its positions in advance.

However, there are several limitations. Before an issue is dealt with at a Council meeting, it will have been discussed in a working group and in COREPER. If a country changes its position at Council level, it will lose the confidence of the other member states. This means that the Riksdag should make its views known to the Government before the issue is discussed at ministerial level, but there are no routines that ensure that this happens for all matters. Furthermore, the Riksdag is not constantly in session. MP's need to have time to be in their constituencies, but this may mean that there is simply no time for EU matters when the opportunities for influence are the greatest. A long-term perspective is necessary to avoid such situations. The Amsterdam Treaty implies that the EU decision-making process will be faster, which underlines the necessity to follow issues from an early stage.

The Riksdag did not have all routines for dealing with EU matters in place from the very start of the Swedish EU membership. Some papers were not delivered, information was sometimes late and the Government did not always present its views. There are still

¹ The political parties agree that the Constitution should be changed in this way, and after the next general election in September 2002, this is likely to happen. A change of the Constitution must be decided both before and after a general election in order to be valid.

gaps, but the Riksdag receives better information now and also finds more and more information on its own.

The Riksdag is making an effort to strengthen its role. There are definitely good chances that it will succeed as both the Riksdag and the Government get more used to working with EU matters. There is a movement towards more long-range planning, not least among the standing committees. The formal conditions for a very active Riksdag are there, and ultimately it is only the Riksdag itself that can decide if its formal powers should be used. With a growing awareness of how much the EU influences important issues, the chances that these opportunities will be used increase. Still, there are quite a few things to do before the Riksdag has the same role in EU matters as it has in national issues. The problem is that few issues are 'national' nowadays. Thanks to EU membership, the Riksdag has more opportunities than before to influence issues decided at the European level.

The Parliament of the United Kingdom: From Supportive Scrutiny to Unleashed Control?

*Caitríona A. Carter*¹

*I. Introduction: The Socio-Political Framework of the United Kingdom*²

The current United Kingdom (UK) Labour Government, elected with a large majority in May 1997, holds a clear ‘pro-Europe’ manifesto commitment. Its strong unequivocal EU policy stance is new, both for the UK and for the UK Labour Party. In the first instance, neither the Labour Party nor the Conservative Party were initially keen to join the (then) European Communities in the 1950’s. In the second instance, the Labour Party was against the terms of UK membership negotiated in the 1970’s. Moreover, since joining “both parties have [...] been internally divided on the issue”³. A recent interpretation of MP’s political attitudes to Europe, however, would suggest that today the dissident wings of the two main parties are decreasing in number. And, that the two main parties have ‘crossed positions’ since the 1975 referendum⁴:

“On almost every issue the picture is much the same: the majority of Labour MP’s - often a large majority - adopt what, for want of a better term, can be described as a pro-European, euro-enthusiastic stance; the majority of Conservative MP’s - and often a large majority - adopt a sceptical position.”⁵

The current political situation in the Houses of Parliament vis-à-vis the EU is thus historically specific. There is a ‘pro-Europe’ Labour Government with a very large majority in the House of Commons. Opposition Conservative MP’s are, for the most part, ‘anti-Europe’ (and voted against the Treaty of Amsterdam).⁶ However, a large propor-

1 The author would like to thank Simon Bulmer and Andrew Scott, along with the editors, for their comments. The author would also like to thank officials interviewed, without whose help and co-operation such research would not have been possible.

2 Some of the information used in this chapter is drawn from interview material. Except where otherwise indicated, ‘interview material’ refers to interviews of parliamentary officials in both Houses of Parliament conducted by the author on 15 June 2000, for the purposes of this chapter. Other information is drawn from research conducted within an ESRC-funded research project entitled ‘Devolution and European Policy-Making in Britain’ (ESRC Ref. L327 25 3024). Some of the material is derived from work undertaken by fellow researchers on that project: Simon Bulmer, Martin Burch, Patricia Hogwood, Andrew Scott.

3 Norton, Philip (ed.): *National Parliaments and the EU*, London: Frank Cass 1996, p. 94.

4 See Cowley, Philip: ‘Europe’ in the House of Commons, in: Scully, Roger/Glees, Anthony (eds.): *Brunel University European Affairs Unit, Discussion Paper Series, No.99/5*, 1999, p. 21.

5 *Ibid.*, p. 1.

6 *Ibid.*, pp. 21-22.

tion of Liberal Democrats (who are also opposition MP's) are 'pro-Europe' (and vote with the Government on EU issues). In short, the UK appears to be undergoing a changed political climate as far as the EU is concerned.

Against this political backdrop, one of the first manifesto commitments fulfilled by the incoming Labour Government was to improve parliamentary oversight of the European Union's (EU)'s decision-making processes.¹ This it did in November 1998, through the introduction of a number of key reforms to the scrutiny procedures operating in both Houses of Parliament. Parliamentary oversight of EU business is now subject to an advanced set of procedures in the UK. A new government appears to have heralded a new approach to scrutiny. This approach - which is to encourage the effective involvement of national parliaments in the EU governance system - is also manifest at EU level. During the 1996/1997 Amsterdam Treaty negotiations, the UK Government initiated key elements of the Protocol on National Parliaments (PNP), attached to the Treaty on European Union (TEU). These elements apply to all member states' parliaments, with an expectant outcome of a strengthened parliamentary dimension to the aggregate EU decisional system.

It is unwise, however, only to consider the broader political debate on 'Europe' in the Houses of Parliament when assessing both Houses' overall attitude to scrutiny procedures.² For, even in the past, with more 'reluctant' UK governments in power, the approach taken vis-à-vis scrutiny of European legislation has always been very constructive.³ Indeed, even in the 1992 Parliament, where dispute over EU issues accounted for 40 per cent of the rebellions on all issues⁴, the House of Commons European Legislation Committee reported that "the British [scrutiny] system in fact compares extremely well with others in the Union"⁵.

That the scrutiny system was comparatively well-developed even in the mid-1990's under the Major (Conservative) Government is confirmed by other comparative studies: for example, in 1996 Rometsch and Wessels concluded that the UK Parliament displayed a high degree of Europeanisation.⁶ Moreover, many of the recent reforms made by the Labour Government emanate from proposals made by the UK European Committees in reports written during the 1992-97 Conservative Government. This is also true with regard to reform at the EU level. The 1996/1997 Intergovernmental Confer-

1 I am using the term 'EU' to refer to all activities of the EU. The term 'EC' is used to refer specifically to matters falling under the European Community Pillar of the Treaty on European Union.

2 European matters are also addressed within general parliamentary procedures. This chapter is solely concerned with the specific scrutiny procedures.

3 See Norton, Philip: 'The UK: Political Conflict, Parliamentary Scrutiny', in: Norton, Philip (ed.), *National Parliaments and the EU*, London: Frank Cass 1996, p. 95.

4 See Cowley, 1999, *op.cit.*, p. 16.

5 House of Commons, Select Committee on European Legislation, 27th Report Session 1995-6, 'The Scrutiny of European Business' HMSO paper 51 xxvii 18-07-96, point 16.

6 See Rometsch, Dietrich/Wessels, Wolfgang (eds.): *The European Union and Member States: Towards Institutional Fusion?*, Manchester: MUP 1996, p. 356.

ence (IGC) process - leading to the Treaty of Amsterdam - began under a Conservative Government. Even though it finished under a Labour Government, which ultimately negotiated and signed the PNP, many of the key ideas for reform of Council of Ministers' rules were ideas generated within previous European Committees established under the Conservative Government.

In the UK experience, therefore, the 'nature' of parliamentary scrutiny is not solely linked to a specific Government's European policy. Alternative accounts for the development of a strong scrutiny system must be sought. One possible approach is to adapt broader analytical constructs deployed in political science literature on parliamentary control of the executive. For, scrutiny is a form of parliamentary control of the executive, embedded in executive-legislative relations; and

“parliamentary control of the executive [...] depend[s] on the nature of executive-legislative relationships, including the type of cabinet in office and the prevailing patterns of interaction between parliamentary and governmental actors”¹.

According to Judge, it is primarily the nature of executive-legislative relations which is the key determinant to a national system's form of scrutiny:

“From the outset [...] existing patterns of national legislative-executive relations came to imprint themselves upon the wider patterns of national parliamentary activity at the EC level.”²

This view is shared by others. For example, Norton argues that the UK parliamentary response to EU membership and the creation of its scrutiny procedure in 1974 was determined by a combination of national “Constitutional, political and practical factors”³. What was witnessed in 1974 was a parliamentary response in keeping with the doctrine and symbolism of parliamentary sovereignty (even if parliamentary rules of implied repeal are contested within the EC system):

“Given its historic role as a law-effecting body, it was difficult for many parliamentarians to accept a passive part in the process by which measures of public policy were approved.”⁴

As such, a strong parliamentary response to EU membership was in keeping with UK Constitutional tradition. In the creation of the original House of Commons Committee, it is argued, the doctrine of ministerial responsibility - a UK Constitutional convention - was simply extended to the procedure of parliamentary control of ministers within the EC Council of Ministers.⁵

1 Damgaard, Erik: Representation, Delegation and Parliamentary Control, Paper presented to the workshop on 'Parliamentary control of the Executive, ECPR Joint Sessions of Workshops, Copenhagen, April 14-19 2000, p. 7.

2 Judge, David: 'The Failure of National Parliaments?', in: Hayward, Jack (ed.): The Crisis of Representation in Europe, London: Frank Cass Ltd., 1995, p. 82.

3 Norton, 1996, op.cit., p. 103.

4 Ibid., p. 103.

5 See Judge, 1995, op.cit., p. 85.

However, such an account of events does not tell the whole story. For, in what Judge acknowledges as a “paradox”¹, the European Scrutiny Committee (ESC)² in the House of Commons was in fact given a very different kind of parliamentary control function than that held within parliament. Parliament had powers of scrutiny over secondary legislation - an ex-post control function - which enables the holding of a Minister to account where necessary. By contrast, the ESC was given powers of ex-ante control - control of the pre-legislative phase of the policy process:

“The procedures adopted by the House in 1974 allowed MP’s to consider pre-legislative proposals for EC directives, while parliament remained systematically excluded from the pre-legislative stage of UK domestic legislation.”³

Moreover, the decision to utilise the committee structure as the institutional setting for parliamentary scrutiny, as distinct from the Chamber, was as a result of practical considerations, rather than “a natural consequence of existing practice”⁴. Indeed, neither the House of Lords nor the House of Commons made great use of permanent committee structures at this point.⁵ So, even though UK parliamentary adaptation to EU membership appears to be within the Constitutional norm prior to membership, one may question the extent to which joining the EU created a new institutional setting and a new set of executive-legislative relations at the domestic level.

A study of recent developments in the UK parliamentary European scrutiny system thus re-opens the broader debate on the implications that multi-level governance holds for national constitutions and parliamentary control of the executive at national level. A number of related questions emerge. How far does the evolving EU governance system affect ‘state’ parliament/government relations and the broader nature of (national) parliamentary control - a ‘Europeanisation’ of parliamentary practice? Can specific systemic change at the EU level (e.g. the new PNP) facilitate further (independent) increase in parliamentary control at the domestic level? The UK experience indicates that the critical starting point in addressing these issues is not to rehearse the well-known ‘democratic deficit’ argument and the conclusions this draws with respect to national government/parliament relations. Rather, we should ask why and how are parliaments now seemingly adapting to EU membership and what impact does this have at the national level? Arguably, this is more than a mere change of emphasis. It forces a re-evaluation of why and how ‘nation state’ institutions change over time in response to an evolving system of multi-level governance.⁶

1 Ibid., p. 86.

2 Formerly European Legislation Committee.

3 Judge, 1995, *op.cit.*, p. 86.

4 Norton, 1996, *op.cit.*, p. 104.

5 See Norton, 1996, *op.cit.*, p. 103.

6 For further discussion of perspectives on multi-level governance see Pierre Jon/Stoker, Gerry: ‘Towards Multi-Level Governance’, in: Dunleavy/Gamble/Holliday/Peele (eds.): *Developments in British Politics*, London: Macmillan 2000, pp. 29-46.

This chapter will consider both the internal (national) reform of UK parliamentary procedures and the role of the UK in the 1996/97 IGC process, leading to reform at the EU (supranational) level. The aim is to explore the evolving method of UK parliamentary scrutiny and the role that the European integration process, and inherent within that the IGC process, has had in influencing UK parliamentary culture.

II. Practice and Evaluation of Parliamentary Scrutiny

Parliamentary scrutiny in the UK was significantly reformed in 1998. Reform is rooted in three distinct (but overlapping) processes. The first is the form of integration undertaken in the 1990's and the process of European integration itself. Since the establishment of the UK European Committees in 1974, little was done to amend their original powers and functions in a changing Union. The entry into force of the Treaty on European Union (TEU) in 1993, however, crystallised thinking on national parliamentary scrutiny procedures. It was acknowledged that the external context had altered, not least because of the nature of Union that this Treaty gave rise to:

“Twenty-three years of United Kingdom membership have seen fundamental changes in the Community [...]. And yet the system suggested by the Foster Committee has remained essentially unchanged.”¹

The evolution of the European Committees in the UK was quite distinct in this regard by comparison with the experience of the original six member state countries. In other member states, the Single European Act (SEA) and its accompanying Single Market Programme (SMP) were pivotal in provoking an institutional response at the national level.² In the UK, the SEA and the SMP had limited effect of that kind. The move to Qualified Majority Voting (QMV) in the Council of Ministers, although considered a major turning point as far as the EC system of governance was concerned (and the role of national parliaments within that system) did not result in major internal reform. The main changes made to the 1980 Resolution were to extend its coverage to include elements of the new co-operation procedure, such as the new ‘common position’ to be attained in the Council of Ministers.³

Over the period of 1994 to 1998, the European Committees in the House of Commons and the House of Lords conducted a comprehensive review of their respective procedures and issued a number of reports outlining proposed changes.⁴ The prospect of fi-

1 House of Commons, 27th Report, 1996, points 3 and 4. Sir John Foster - First Chair of Select Committee on European Legislation appointed 21 December 1972.

2 See Norton, Philip: ‘Conclusion: Addressing the Democratic Deficit in National Parliaments and the EU’, in: Norton, 1996, op.cit., p. 178.

3 See Judge, 1995, op.cit., p. 87-88.

4 See House of Commons, Select Committee on European Legislation, 24th Report, The 1996 IGC: The Agenda; Democracy and Efficiency; The Role of National Parliaments, HC 239-I and II (1994-

ture Treaty reform at the EU level acted as a catalyst in this regard. The IGC held as one of its main objectives to increase transparency of EU decision-making procedures and to reconnect the EU to the people(s) of Europe (in part) through the democratisation of the institutional framework.¹ The expectation that the IGC would review Declaration 13 which set out the role for national parliaments in the EU as part of its overall remit is apparent in the reports. The principle of subsidiarity is highlighted in this regard. The process of deepening integration thus strengthened claims at the national level for a stronger and more effective scrutiny procedure. On interview, this was expressed as a changed attitude in the country that encouraged 'engagement' with Europe rather than "pretending it's not there"². Arguably, the election of the new Labour Government in 1997 was central to this overall shift in approach within the UK.

The second process which determined reform of UK parliamentary scrutiny processes during this period is that of domestic Constitutional reform. The new Labour Government of 1997 held a manifesto commitment to reform the UK Constitution. The central pillars of such reform were the modernisation of the House of Commons and reform of the House of Lords, and devolution - the creation of new territorial institutions in Scotland, Wales and Northern Ireland.³ A review of scrutiny of European matters was considered a key element of that reform process:

"It was clear to us from the outset that no attempt by us to seek to modernise the procedures and practice of the House could progress very far without a thorough examination of the way in which the House scrutinises European business."⁴

The concept of the 'modern' Parliament endorsed a clear understanding that the Parliament had responsibilities in terms of parliamentary control of the executive which

5) 17-07-95; House of Lords, The 1996 IGC, 21st Report, 1994-5, HL Paper 105; Response of the Secretary of State for Foreign and Commonwealth Affairs to the ELC 24th Report, Cm 3051, November 1995; House of Commons, Select Committee on European Legislation, 27th Report, Session 1995-6, The Scrutiny of European Business, HMSO paper 51 xxvii 18-07-96; House of Commons, Select Committee on European Legislation, 28th Report, The Role of National Parliaments in the EU, HC 51-xxvii (1995-6), 18-07-96; Response of the Secretary of State for Foreign and Commonwealth Affairs to the ELC 28th Report: Cm 3440, October 1996; House of Commons, Select Committee on European Legislation, 1st Special Report, The Scrutiny of European Business: The Government's Reply to the 27th Report from the Committee in Session 1996-96, HC 140; House of Commons, Select Committee on European Legislation, 13th Report, The Draft Protocol on the Role of National Parliaments, 10-02-97.

1 See also De Burca, Grainne: 'The Quest for Legitimacy in the European Union', in: *Modern Law Review*, Vol. 59/1996, pp. 249-376.

2 Interview material.

3 For discussion see Dunleavy/Gamble/Holliday/Peele: 'Introduction', in: Dunleavy/Gamble/Holliday/Peele, 2000, *op.cit.*, pp. 1-9. According to Dunleavy et.al., the shape of the 'new' emerging polity in the UK has three major structural features: first, and with regard to the EU, the issue of the single currency; second, the programme of Constitutional reform; and third, the radical reconstruction of the party system and the possibility of a fundamental political realignment.

4 House of Commons, Select Committee on the Modernisation of the House of Commons, 7th Report, The Scrutiny of European Business, 15-07-98, point 2.

stemmed from the supranational (EU) policy process - that the Parliament was not only involved in the nation state policy system.

The third process which is relevant to any discussion of parliamentary scrutiny in the UK is the process of devolution. This has entailed the creation of new parliamentary and Assembly institutions in Scotland and Wales respectively (and Northern Ireland), and two new European Committees with powers of scrutiny of European legislation.¹ A system of 'asymmetric scrutiny' can now be seen to be evolving within Britain, whereby the EU scrutiny process is subject to both vertical and horizontal arrangements between national and sub-member state institutions, and takes place within two distinct models of devolution: a legislative model (Scotland) and an executive model (Wales). This is discussed in detail elsewhere.² The role of the devolved, or third-level, assemblies in the process adds another layer to the overall system, such that it is now incorrect to refer to UK parliamentary scrutiny without incorporating in that definition the role of the sub-member state Committees. A new system of multi-level governance is thus emergent in the UK which will be significant in the future development of UK parliamentary scrutiny.³

1. The Nature of Parliamentary Scrutiny

The definition of 'scrutiny' in the UK has developed over the years. Today, the term includes a number of functions: sifting of documents; reporting on and clearing of documents, debating the political and legal importance of documents, conducting substantial inquiries, debating matters of principle and policy of documents, publishing detailed reports, and placing EU issues and information in the public domain. The Committees in the two Houses have their own rules and terms of reference which define their respective (different) relations with the Government. The overall procedure is concerned with two aspects of parliamentary control of the executive - 'influence' and 'accountability'. Ex-ante influence as a control function refers to influence over the content of legislation before decision is reached in the Council of Ministers. Accountability as a

1 The Standing Orders for the Northern Ireland Assembly have created a new 'Committee of the Centre', which holds powers in respect of European Affairs. This Committee replaces the Standing Committee on European Affairs and the Standing Committee on Equality, Human Rights and Community Relations.

2 See Carter, Caitriona A.: 'Democratic Governance Beyond the Nation State: Third-Level Assemblies and Scrutiny of European Legislation', in: *European Public Law*, No. 3/2000, pp. 429-459.

3 This chapter is only concerned with the national level of this system. With regard to the effect devolution holds for parliamentary scrutiny at national level, this has yet to materialise. Devolution holds a couple of considerations for the procedure of scrutiny within the House of Commons. Questions of timing and information sharing between parliaments become significant. In addition, the reform of the House of Lords has resulted in the creation of a new Constitutional Committee which may have resource implications for sub-Committee E and may attract prestigious members away from the European Committee. However, it is too early to predict the precise effects a new kind of membership will cause.

control function is present both ex-ante in the sense that a minister's policy position should be cleared prior to negotiation and ex-post in that ministers can be called to explain negotiated policy outcomes.¹ The overall system incorporates both formal and informal procedures and generates information of both a public and private nature.

Influence is achieved through the scrutiny processes. Accountability is achieved through the scrutiny reserve resolution which operates in both Houses. In the House of Commons², ministers are constrained from giving agreement in either the Council or the European Council to any proposal for EC legislation or to any major decision under the intergovernmental pillars of the TEU "which is still subject to scrutiny... or which is awaiting consideration by the House"³. The Resolution may be waived for exceptional reasons: for example when the proposal is trivial, or when the ESC has given its agreement to waive it. Otherwise, the minister may agree to a proposal which is still subject to scrutiny or awaiting consideration in the House if she/he decides that there are 'special reasons' which necessitate such agreement.⁴ Reasons under this category must be explained to the ESC or the House 'at the first opportunity'⁵. The ESC views its primary role as one which ensures that "the Government complies with undertakings to Parliament"⁶. Accountability of the executive to its legislature thus has as its foundation the rules governing the ESC's role in monitoring the Government and the actions of UK ministers in the Council of Ministers.⁷

The House of Lords, too, has recently adopted its own scrutiny reserve, specific to the nature of scrutiny conducted in this House. A document will be deemed not to have been cleared by the Select Committee when it "is still subject to scrutiny" or when the Select Committee has "made a report to the House for debate, but the debate has not yet taken place"⁸. The authority of the Committee's powers are thus clarified.¹ Similar conditions apply with regard to the over-riding of the reserve. In short, the same principle applies both in the House of Commons and in the House of Lords.

A final observation pertaining to the nature of UK scrutiny concerns the underlying aspect of scrutiny, one of legitimising EU policy outcomes (and indeed the EU system of governance as a whole). Both Committees have, from time to time, made claims as to their role in this respect:

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- 1 There is also a form of scrutiny of secondary legislation - i.e. scrutiny of the implementation of EC law. This procedure is not discussed in this chapter.
 - 2 See House of Commons, Resolution of the House of 17 November 1998, Votes and Proceedings, p. 1250. See also Carter, Caitriona A.: *Third-level Assemblies*, 2000, pp. 440-441.
 - 3 House of Commons, Resolution of the House of 17 November 1998, Votes and Proceedings, 1(a) and (b).
 - 4 See House of Commons, Resolution of the House of 17 November 1998, Votes and Proceedings, 4(a) and (b).
 - 5 Ibid.
 - 6 The European Scrutiny System in the House of Commons: A Short Guide, November 1998, p. 9.
 - 7 Carter, 2000, op.cit., p. 440.
 - 8 House of Lords Resolution, 6th December 1999 (1).

“scale and distance will always mean that National Parliaments are the primary focus of democratic legitimacy in the Union. They are closer to the citizen, and have a special part to play in providing the responsiveness and democratic control that the Union needs”².

Importantly, there are differences between the House of Commons and the House of Lords in terms of their democratic mandate, in that the House of Lords is not a directly elected body. As we shall see below, the type of scrutiny conducted by the House of Lords - which involves in-depth public inquiries and interviews of a broad civic nature - bestows its reports with a quality of legitimacy different from that claimed by the House of Commons. The Government’s programme to reform the House of Lords, by introducing the election of some of its members, clearly will have an hitherto unknown impact on this dimension of the scrutiny process. What is certain is that the Government is keen to retain the House’s role in European Affairs.

2. The Institutional Setting

Scrutiny is conducted in Committee in both the House of Commons and the House of Lords in a complementary fashion. Both Houses have created ‘European’ Committees with specific remits. In the House of Commons, use is also made of other specific Committees such as the Public Accounts Committee, the Public Administration Committee, and the Environmental Audit Committee. Both Houses also make use of the floor for plenary debates.

2.1 The House of Commons

The main scrutiny Committee in the House of Commons is the European Scrutiny Committee (ESC). This was formally called the European Legislation Committee but the name was changed during the modernisation process in 1998. The Committee has 16 members and is served by a staff of 16 officials. Of the 16 members nominated for the current parliamentary session, ten are Labour, four Conservative, one from the Scottish Nationalist Party and one Liberal Democrat. The Committee is chaired by Jimmy Hood, MP (Labour). In the past, the ESC has been chaired by a member of the Opposition Party, to ensure ‘independence’ of the Committee. This is not the case this time. On interview it was reported that, due to ‘party political reasons’, the whips’ expectations were not followed by the Select Committee causing ‘eyebrows to be raised’. As such, the appointment is considered ‘controversial’ and one which breaks with tradition.

The ESC’s relations with the Executive are determined by its remit which is to examine EU documents¹ and to report its opinion on the legal and political importance of a

1 See House of Lords SCEU Special Report 1999-2000 HL, 12.

2 House of Commons, ELC, 13th Report, point 2.

document (including its opinion on any matters of ‘principle, policy or law’ which might be affected); to make recommendations for the further consideration of a document (for example, by referring a document for debate to the European Standing Committees or to the Floor of the House of Commons²) and to consider any issue arising from the consideration of a document or set of documents.³

The European Standing Committees were created in 1989 to 1990 to allow more time for debate on EU matters than plenary sessions on the floor of the House permitted⁴ and in the light of the extensive legislation to be enacted under the aegis of the SMP.⁵ These Committees proceed by debate, rather than inquiry, including question and answer sessions with invited ministers. There are currently three European Standing Committees with different subject areas: Committee A considers documents referred to it by the ESC on agriculture and fisheries; Committee B considers documents on social security and home affairs; and Committee C considers trade and industry. They have 13 permanent members, but all MP’s may attend and non-permanent members may move amendments.⁶

During the debate on the modernisation of the House, the ESC proposed the creation of five Committees. This had been a long standing aim of the ESC and was related to the need to achieve specialisation in EU affairs. This was not adopted by the Government, who argued in part that there were simply not enough Opposition MP’s to fill five Committees. This remains a matter of disagreement between the ESC and the Government. There have been other problems associated with the European Standing Committees, however. Indeed, for many they are viewed as a weakness in the overall scrutiny procedure.¹ The key problem to date has been non-attendance of members. There is disappointment attached to this. The Standing Committees were created with the hope that they would be an “exciting new development a real alternative to a debate on the

1 I am using the term ‘EU’ here to include both EU and EC documents. The use of the term ‘EC’ in the text refers explicitly to legislation under the Community pillar of the TEU.

2 See Standing Order No. 119 on the European Standing Committees. Recommendations for debate on the floor of the House of Commons are made sparingly. Documents are recommended for debate by the ESC, but such referral must have the approval of the Government. If the Government accepts, the document is ‘de-referred’ from the Standing Committee. During preliminary discussions on the modernisation of the House, the ESC suggested a reversal of the presumption underlying the procedure, so that a document referred by the ESC would stand referred unless the Government took action to reverse the recommendation: HC, Modernisation Committee, 7th Report, 1998: Appendix 1, Memorandum by the Select Committee on European Legislation, The House’s Scrutiny of EU Business, point 61. This suggestion was not however taken up by the Modernisation Committee: see HC, Modernisation Committee, 7th Report, 1998, point 29.

3 See Standing Order No.143 (I) (a)(b)(c).

4 See Armstrong, Kenneth/Bulmer, Simon: ‘United Kingdom’, in: Rometsch/Wessels, 1996, op.cit., p. 274.

5 See Judge, 1995, op.cit. pp. 87 et. seq..

6 See House of Commons, Modernisation Committee, 7th Report, 1998, point 21 (3); HC, Modernisation Committee, 7th Report, 1998: Appendix 1, Memorandum by the Select Committee on European Legislation, The House’s Scrutiny of EU Business, point 72(c).

floor”². But, a high workload coupled with the lack of compulsory attendance has meant that these Committees have not fulfilled such expectations. To attempt to remedy this, recent developments include greater co-ordination between the ESC and departmental select Committees to encourage awareness and, in so doing, attendance.

2.2 *The House of Lords*

The House of Lords has a specialised Committee system, headed by the Select Committee on the European Union (SCEU). This Committee was established in 1974, and it is now considered one of the senior Committees in the House.³ As a prestigious Committee, members of the House are keen to serve on it. Membership is on a volunteer basis - career strategy is not a factor in the House of Lords (as it is in the House of Commons). Members who express a wish to serve on this Committee will do so if they want to do the work and have a reasonable knowledge of the subject matter. At the present time the SCEU has 20 members, and is chaired by Lord Tordoff (Lib.Dem.). In common with the ESC, the Committee’s title was changed in 1998 to reflect the changing nature of the EU. The SCEU is served by a number of subject area sub-Committees: Economic and Financial Affairs, Trade and External Relations (A); Energy, Industry and Transport (B); Common Foreign and Security Policy (C); Environment, Agriculture, Public Health and Consumer Protection (D); Law and Institutions (E); Social Affairs, Education and Home Affairs (F). During the reform of the House of Lords, the former sub-Committees C and D were merged to create one new Committee looking at agriculture and environment. This also created space for the Committee to scrutinise matters under the CFSP pillar. Members of the SCEU are shared across sub-Committees. In addition, other members of the Lords can be co-opted onto sub-Committees. According to a recent House of Lords briefing, around 70 Lords are involved at any one time in the work of the Committees: this means that about 10 per cent of the membership of the House is involved with scrutiny of EU business⁴.

The role of the House of Lords’ Committee is different from that of its equivalent in the House of Commons. Its terms of reference are to “consider EU documents and other matters relating to the European Union”. It conducts substantial inquiries, examining witnesses and publishing detailed reports. It is less procedural in its function, concentrating on the ‘big issues’, rather than a textual examination of documents.⁵ Frequently, groups of documents are considered as part of a wider inquiry. Its relations with the

1 Interview material.

2 Interview material.

3 Interview material.

4 House of Lords, Briefing, January 2000; or House of Lords Web Site at: <http://www.parliament.uk> - see ‘Remit and Organisation of the Committee’.

5 Interview material.

Government are thus different from those of the ESC and this (in part) stems from the different nature of its terms of reference.

3. The Scope of Parliamentary Scrutiny

The distinction between 'high' and 'low' politics was maintained for a long time with regard to the kind of parliamentary control exercised. This has now changed. Post-Maastricht a difference emerged in the scope of scrutiny between the two Houses. The House of Commons' scrutiny and scrutiny reserve was limited to the EC pillar, as was, technically, the House of Lords'. During this period, however, the House of Lords "laid claim to" Third Pillar issues. On interview, it was reported that, in the 1990's, the House of Lords began to look at key issues raised in the area of Justice and Home affairs. Non-Governmental Organisations, such as 'Statewatch', furnished the SCEU with documents and information, alerting them to relevant developments at EU level. The Committee began a process of writing to the Government requesting further documents, requests to which the Government at times responded. At this stage, the Government had no clear rule as to which documents should be made available to the SCEU. This process all came to a head when the then Home Secretary, Michael Howard, refused to commit the UK to a decision in the Council of Ministers, stating that he could not agree 'because there was a parliamentary scrutiny reserve on the proposal'. From then on, the SCEU behaved as if a scrutiny reserve now existed in respect of Justice and Home Affairs, thereby extending its powers in Third Pillar matters.

During the Major Government (1992-1997), the House of Commons' ESC published a series of reports arguing that "both intergovernmental pillars should be brought formally within the House's European scrutiny system"¹, and that the scrutiny reserve should be extended to cover all EU matters.² The Major Government rejected these proposals.³ However, as part of its modernisation programme, the new Labour Government accepted the ESC's suggestions and extended both the scope of influence and accountability in both Houses. Powers were extended to include scrutiny of matters falling under EU Common Foreign and Security Policy, and EU Police and Judicial Co-operation in

1 House of Commons, ELC, 27th Report, 1996, point 83.

2 See House of Commons, ELC, 27th Report, 1996, point 85.

3 See *ibid.*, point 76: 'The Government's response thus fell short of the Lords recommendations by - in practice excluding the CFSP pillar - by the (apparent) exclusion from the JHA arrangements of documents that would need to be implemented by secondary legislation'. The Government also rejected the extension of the scrutiny reserve to CFSP and JHA - reasons given by the Government are listed in the Report - for example, there is a reference to the need to ensure 'speed in decision-making'.

criminal matters, and the scrutiny reserve was also extended. This regularised the system in both Houses.¹

In addition, and also as part of the modernisation programme, the definition of the type of EU document to be scrutinised was broadened. According to UK resolutions, an agreement or proposal includes pre-legislative documents, ministerial agreements to common positions within all EC parliamentary decision-making procedures (and at all stages of such procedures), final enactment agreements within the Council, agreements on soft law and, finally, political agreements (including agreements within the European Council)²: As such, “the definition of ‘European Union documents’ adopted by both Houses [...] extends beyond the matters mentioned in paragraphs 1 and 3 of the protocol”³.

3.1 The House of Commons

The ESC considers 900 to 1000 documents per year. These are sent to the Committee by the relevant Whitehall department. Each document is accompanied by an Explanatory Memorandum (EM) and a Regulatory Impact Assessment (RIA). The EM must be sent by the Whitehall department within ten working days of deposit of a document with the ESC. The EM will provide the factual and legal background on an EU document, where ministerial responsibility lies, and the Government's view.⁴ In this manner, the EM does not merely perform an informational function. Rather it establishes the department's (and government's) public policy position on the document under review.⁵ As such, it is a key element of the scrutiny process: “The EM is signed by a Minister, and constitutes the Minister's evidence to Parliament”.⁶

The ESC also expects to receive the Council of Ministers' text, with full information from the Government about the state of play at EU level, i.e. where conflict is likely to ensue, which elements will be agreed by the Council and so forth.⁷ The Cabinet Office has been extremely helpful with regard to this. The key difficulty from the ESC's perspective is the fact that the Council meets in private. Importantly, other member states' negotiating positions are not provided.

1 The substantive benefits of change with regard to the House of Lords have been presented in an article published by the Legal Advisor to the Committee. He argues that there have been substantive benefits in the changed procedures and the significance of the public policy discussed under the third pillar. See Kerse, Christopher Stephen: ‘Parliamentary Scrutiny of the Third Pillar’, in: *European Public Law*, No. 1/2000, pp. 81-101.

2 See Carter, 2000, *op.cit.*, p. 436.

3 Kerse, 2000, *op.cit.*, p. 99.

4 For a complete list of the contents of an Explanatory Memorandum see ‘The European Scrutiny System in the House of Commons: A Short Guide’, November 1998, pp. 13-14.

5 See Carter, 2000, *op.cit.*, p. 438.

6 *The European Scrutiny System in the House of Commons: A Short Guide*, November 1998. p. 14.

7 Interview material.

The ESC itself produces information of both a public and a private nature. Private notes are produced by the ESC on an 'in confidence' basis, and can constitute its communication to the UK Ministry.¹ The ESC also produces a public report on a weekly basis setting out its deliberations, including its advice as to whether a document or elements of a document are of legal or political importance.² This is published on the internet. Information is also sought from other parliamentary Committees. New informal arrangements have recently been put in place for exchanges of documents between Committees. The new Standing Orders now give power to the ESC to ask for a formal opinion from departmental Committees on a particular document. Although these procedures have not been used much, where they have been used, this has had a qualitative impact. Departmental select Committees can and have produced opinions on EU documents which are then debated in the European Standing Committees - a good example given on interview was in reference to a debate on a White Paper on environmental liability where the Environmental Audit Committee raised a number of technical issues of policy substance not raised by the ESC. On a day to day basis, there is an exchange of information between the ESC and departmental Committees. On the whole, EU matters are being shared across Committees: "part of integrating EU affairs into the consideration of the House as a whole rather than it being regarded as a ghetto issue"³.

Europeanisation is evident in that this is considered as a two-way process - that departmental Committees are kept abreast of EU developments and the ESC is able to more readily assess the impact on UK policy.

3.2 The House of Lords

The House of Lords also considers around 1000 documents per year, deposited as they are in the House of Commons with an accompanying EM expected within ten working days. About 250 documents are referred for scrutiny by the sub-Committee⁴, with only 20-30 each year being subject to detailed examination. The sub-Committees take oral and written evidence from government departments, EC institutions and other interested relevant organisations and individuals, drawing on a wide range of interest from within the national and European community.⁵ In-depth reports are drafted by the sub-Committees, and approved before publication by the Select Committee.⁶ The reports published by the Lords Select Committee are thus quite different from ESC reports. The

1 See Carter, 2000, op.cit., p. 439. See also for full discussion of information sharing.

2 House of Commons, Select Committee on Procedures, *The Procedural Consequences of Devolution*, 4th Report, 1998-1999 HC 185, 24.05.99: Appendix 18, Memorandum by the Clerk of the House, Annex, point 13.

3 Interview material.

4 House of Lords, Briefing 2000, p. 3.

5 See House of Lords Briefing, January 2000, p. 2.

6 See House of Lords Briefing: January 2000, p. 3.

Lords' reports are extremely detailed and well-researched reports into the substantive, as well as the political, issues raised by a document or series of documents. They are highly regarded reports with sophisticated policy analysis. This provides another good example of the complementarity of the scrutiny systems between the Houses.

4. The Procedural Features of Parliamentary Scrutiny

The process of scrutiny is ongoing, and corresponds to the EU policy cycle: “the [House of Lords] Committee’s work on the Convention shows quite graphically that scrutiny is not a once and for all experience”¹.

4.1 The House of Commons

The ESC meets on a weekly basis on a Wednesday. The main work of the ESC is to sift documents; decide which ones should be subject to scrutiny and which ones should be debated in the Standing Committees. This role of sifting has developed considerably over the years and it would be a mistake to describe the Committee today as it has been in the past as a mere ‘sifting’ Committee.² Importantly, the ESC reports on and clears some documents from scrutiny. Not all documents are debated. The ESC can clear the document without referring it for debate. Indeed, it is precisely this function of assessing the importance of a particular document, and whether it necessitates debate, which enables the ESC to scrutinise legislation.³ An extra degree of objectivity exists in the ESC by comparison to other select Committees and this is understood as being related to the procedural aspect of the Committee. The ESC does not debate merits of documents - this debate takes place in the Standing Committees and on the Floor of the House. As a result, members of the ESC can have widely different views on European issues, but the overall view is often one of consensus.⁴ On the whole, officials expressed confidence in this aspect of the scrutiny procedure.

The European Standing Committees debate documents. Debates last for one hour and then there is a question and answer period with a minister present. All in all proceedings last on average two and a half hours. As a result of the modernisation process, more than one minister can now attend the question/answer period and the statement and answer period with the minister(s) can be increased by 30 minutes at the discretion of the Chair.

Scrutiny of the outcome of negotiations is also now subject to special procedures in the House. The ESC has powers to call a minister before it to elaborate upon and account

1 Kerse, 2000, op.cit., p. 95.

2 See Judge, 1995, op.cit., p. 86.

3 See Carter, 2000, op.cit., p. 436.

4 Interview material.

for the UK negotiating position taken in Council. These ex-post scrutiny sessions are held in public: proceedings are published in the ESC's weekly report.¹ This is a relatively new procedure, which is bedding down.

4.2 The House of Lords

The Lords' sift is conducted on a weekly basis by the Chair and Clerk of the SCEU, along with other sub-Committee clerks, and with specific input from the legal advisor to the SCEU and his/her assistant. The Lords' sift has evolved over the years. Today, the SCEU no longer has to approve the sift, which is officially delegated to the Chair. Committee approval was considered inefficient and was changed a few years ago. The accelerating pace of legislation was given as a key factor in the streamlining of procedures.² Criteria for sifting stem from the SCEU's terms of reference and are subject to change over the years.³ The nature of scrutiny conducted in the House of Lords and the specificity of its procedural aspect determines, to a certain degree, what can and what can not be scrutinised. The sift is geared towards identifying subjects which "have a long shelf life" and will have future importance - e.g. the Charter of Fundamental Rights; the EU Food Authority; E-Commerce; merger of EU and the Western European Union.⁴

5. The Timing Features of Parliamentary Scrutiny

Both the Commons and the Lords Committees have expressed concerns with regard to timing. When reporting in 1996, one of the key conclusions made by the ESC was that: "The scrutiny process in both Houses needs information and time"⁵.

The external EU/EC framework within which scrutiny is conducted necessarily sets the pace and timing of scrutiny. The new 'six week period' which must now exist between the publication of a proposal by the Commission and the date when it is placed on a Council agenda for a decision has not had any noticeable impact. The main challenge which remains for national Committees, as far as the UK is concerned, is the speedy

1 See House of Commons, Resolution of the House of 17 November 1998, Votes and Proceedings, 1(a) and (b), p. 33.

2 Interview material.

3 A good example of the flexibility of the system was given on interview in relation to matters falling under the former JHA pillar. No agreed criteria had been set between the Government and the Select Committee on what should be deposited, so the Committee developed its own test.

4 Interview material.

5 House of Commons, ELC, 27th Report, point 63.

response required by the later stages of the co-decision procedure.¹ These challenges are discussed further in Chapter IV below.

Not all time constraints stem from the external framework, however. To ensure a rapid response, the Committees must receive ‘timely’ and ‘accurate’ information from the Government. That the Government does not always fulfil this expectation was one of the central arguments made by the ESC in its report to the Modernisation Committee during the process of modernisation of the House of Commons. Such is the degree of seriousness with which this is regarded by the ESC, that failures of this nature are fully documented in a ‘black book’. Examples of failures include:

“30 June 1997: John Battle signs an EM on renewable sources of energy that is evidently out of date: ‘The Presidency hopes that the draft Resolution will be adopted shortly’. In fact, it had been adopted three days before (DTI)”: “Tessa Blackstone’s letter of 30 June to Lord Tordoff is said to be copied to the Chairman of ‘the Commons Select Committee on the European Communities [sic]’. It is actually sent to the Clerk of the Select Committee on Education and Employment (DfEE)”; 13 October 1997 “Helen Liddell writes on settlement finality and payment systems, saying that she is enclosing an unofficial text. No text is enclosed (HMT); 28 October 1997 “Barbara Roche writes to Committee to say that ‘for administrative reasons’ a Scrutiny Reserve has been raised (on a document where a request for information has been outstanding for 20 months) [...] but gives no explanation of the delay (DTI).”²

Lists of failures such as these were presented to the Modernisation Committee and are annexed to its final report. In 1997, some 100 failures are listed as a “selection” of failures in this regard.

As in the House of Commons, timing is “crucial” for effective scrutiny in the House of Lords. However, the different nature of scrutiny being conducted here throws up different issues with regard to both timing and information. In the main, the routine of keeping the Government up to the mark is left to the House of Commons: the House of Lords does not keep a ‘black book’, for example. But, in cases of ‘flagrant abuse of the system’, the SCEU will become exercised. On interview, one example given was receiving a letter from the Home Office noting a key proposal, which had in fact already been agreed to.³ In such cases, the SCEU will write a letter, expressing its concerns. With regard to information flow in the House of Lords, too, therefore, “the experience in the UK has, from time to time, been one of delays in obtaining documents”⁴.

Despite these difficulties, officials from the two Committees in the both Houses have recently detected a greater understanding in Whitehall as to what scrutiny is all about.

1 This is also the case for sub-Member State scrutiny. Interviews with parliamentary officials (UK, Scotland): 15.04.99, 18.02.00.

2 House of Commons, Modernisation Committee, 7th Report, 1998: Annex G, 1997. The people mentioned here were all junior ministers in their respective departments at that time. DTI is the Department of Trade and Industry, the DfEE, Department of Education and Employment, and the HMT, Her Majesty’s Treasury.

3 Interview material.

4 Kerse, 2000, *op.cit.*, p. 99.

After the TEU, and as a result of the efforts in the House of Commons, a change is noticeable. In particular, reports written post-TEU by the previous Committee stressed the need to ensure a standard of professionalism, getting documents to parliament on time, and provision of sufficient information on which informed decisions can be made. These kinds of suggestions inspired the new change in approach now beginning to operate within Whitehall.¹ Officials also mentioned the role of the previous Leader in the House of Commons, Tony Newton, who took a clear interest in European issues. Recently, therefore, there has been a tightening of information flow generally between departments and a willingness to 'get it right'. Civil servants are now taking Europe seriously, although this still varies between departments.² On interview, it was stressed that one of the Committee's 'great allies in this is the Cabinet Office' with its coordinating role to ensure that the Government's business passes smoothly in Brussels and "prevent blood on the floor because the minister has been held to account"³. A key question is whether in the new political climate there is any noticeable difference in failure rates. The answer seems to vary from department to department and the priority given to EC matters within a particular policy area.⁴

6. The Implications of Parliamentary Scrutiny

The question on the effect scrutiny has for the Government is difficult to answer. In discussions on the rules for clearing a document under the Scrutiny Reserve Resolution, it has been reported that "the occasions on which the Government might be defeated in ESC would be very rare"⁵. It is perhaps better to consider more closely the nature of the effect on the Government as far as the UK is concerned. With a Government of a small majority, the Committee is perhaps likely to have more effect in terms of its influence, although this is difficult to quantify. A better way to approach the question on the implication of scrutiny for the Government is in terms of the types of accountability present in the system - and the quality of the scrutiny reserve. One quality of accountability is concerned with public embarrassment. Direct influence is achieved through an expression of a strong public and embarrassing voice; someone constantly 'breathing down their necks', prepared to ask vociferously for information and to humiliate if fre-

1 Interview material. Interview parliamentary officials (UK), 15.04.99.

2 Interview material.

3 Interview material.

4 See also Armstrong, Kenneth/Bulmer, Simon: 'The UK: Between Political Controversy and Administrative Efficiency', in: Wessels, Wolfgang/Maurer, Andreas/Mittag, Jürgen (eds.): *Fifteen into One? The European Union and its Member States* (Manchester: Manchester University Press 2001 forthcoming); Bulmer, Simon/Burch, Martin: 'Organizing for Europe: Whitehall, the British State and European Union', in: *Public Administration*, Vol. 76, No. 4/1998, pp. 601-628.

5 House of Commons, Modernisation Committee, 7th Report, 1998, Appendix 1, Memorandum by the Select Committee on European Legislation, *The House's Scrutiny of EU Business*, point 65.

quently ignored - what clinical psychologists would describe as the 'controlling parent voice'. "You won't hit your little sister if your mother's watching"¹:

"Ministers do not like being called into the House to give an account of why they have ignored the scrutiny reserve Civil servants don't like things being held up with a Minister saying 'why can't I agree to this in Council because my friends want me to' and being told it's because they didn't supply sufficient information to the House of Commons."²

From the House of Lords' perspective, the reserve is regarded as a principle, and a similar type of language is used: "it sets down a framework and the Government is expected to behave within that framework" with the "ultimate sanction" being that the minister may be called in to answer for his/her actions.³ Therein lies its strength. As I have argued elsewhere, it is a quality of the scrutiny reserve to impose a general discipline on the Government.⁴

On the other hand, both the ESC and the SCEU have sources of information at their disposal which can be tapped by the Government to enhance its own voice in Europe - the 'nurturing parent voice'. In this type of accountability, scrutiny performs a key function in maintaining the quality of the Government's policy preferences and bolstering its political position within the Council of Ministers. Thus, if we conceptualise accountability as a type of relationship, we can see that there are different voices within that relationship.

III. The UK Parliament and the Negotiation of the Treaty of Amsterdam

"The focus of our IGC work over the last two years has ... been twofold: how to ensure that National Parliaments can affect Community (and Union) decision-making; and, from a UK point of view, how to make the scrutiny system for which we are responsible play an influential part in this process."¹

This section sets out the ideas which informed the UK's negotiating position during the 1996/97 IGC on the appropriate role for national parliaments within the EU. Two successive governments of different political colours were involved in the negotiations. When the IGC opened, the Major Government (Conservative) was at the helm. The final negotiations at Amsterdam, however, were conducted under the Blair Government (Labour) which came to power in May 1997. Both Governments' negotiating positions were strongly influenced by the scrutiny Committees and, in particular, by the Committees as established under the Conservative Government. Indeed, many of the proposals for the Protocol on National Parliaments (PNP) emerged from within these Committees

1 Interview material.

2 Interview material.

3 Interview material.

4 See Carter, 2000, op.cit., p. 440.

and are published in their reports. This section provides an account of the significance of UK initiatives to the final text of the PNP, and, in so doing, illustrates the degree of influence exerted by the ESC and the SCEU during this period (a period which pre-dates the changes noted above).

1. Negotiation under the Conservative Major Government

One of the main objectives of the IGC was to improve the EU's institutional structure, both by strengthening democratic procedures and through greater transparency of decision-making. The call for 'more democracy' was in part linked to the wider notion of attempting to 're-connect' the EU system with the European public(s). With regard to national parliaments this raised a number of difficult questions. For historic reasons, national parliaments hold no formal role in the EU policy process.² This led many to ask what their role should be when acting either individually or collectively. A subsidiary issue which was also discussed during the course of the IGC was the appropriate role for national parliaments and the European Parliament (EP) respectively. This emerged as a somewhat muddled debate, with competing claims as to which type of parliament commanded greater 'democracy'. The EP had already taken a specific stance on this in early 1990.³ In the Duverger Resolution, the EP claimed its status as the democratic body representing the member states' electorate.⁴ The question of legitimacy is perhaps not so simple. Others would argue that national parliaments do provide the legitimisation of executive action within the Council of Ministers: "national parliaments have provided the legitimating frame within which the development of the EC has been able to take place."⁵

The debate on legitimacy and types of parliaments was thus bound to be controversial and highly political.

The UK Conservative Government took a specific approach to this, seeing nation states and their parliaments as the key institutional means for legitimising the overall policy process. This view is neatly encapsulated by David Davis, the UK representative to the IGC under Major (and a reputed 'Euro-sceptic'⁶):

"Despite the gradual granting of competences to the EU, Europe has not become more democratic. Democracy cannot simply result from the enforcement of the European Parlia-

1 House of Commons, ELC, 13th Report, 1997, point 6.

2 See Norton, *Democratic Deficit*, 1996, op.cit., p. 192.

3 See Westlake, Martin: 'The View from 'Brussels'', in: Norton, 1996, op.cit., pp. 168-169.

4 EP Resolution on the Preparation of the Meeting with the National Parliaments to discuss the Future of the Community (the Assises), adopted on 12.07.90, Official Journal EC, C 231, 17.09.90, p. 165.

5 Judge, 1995, op.cit., p. 81.

6 Lynch, Philip: 'British Policy Towards Europe: From Commonwealth and US Ties to Awkward Partnership within the European Union', in: Barbour (ed.), *The European Union Handbook*, London Fitzroy Dearborn Publishers, 1996, p. 67.

ment [...]. Democracy also needs nations. The main political force in Europe today is the liberal nation.”¹

Conservative thinking linked the role of national parliaments to a broader conception of a desired model of integration and a specific interpretation of the principle of subsidiarity. The Government’s approach was set out in a White Paper published in March 1996.² The White Paper identified a number of challenges facing the EU, one of which was the level of ‘public unease and alienation’ across the Union.³ The Government noted that the response to this crisis of legitimacy in other member states was a call for ‘more Europe’ - the strengthening of the supranational elements of the institutional framework and deeper political integration. Instead, a radically opposing view was offered, one which:

“rejects that conception of Europe’s future. We are determined to safeguard the power and responsibilities of the nation states that are signatories to the Treaty [...]. That is why it is crucial that national parliaments remain the central focus of democratic legitimacy.”⁴

The White Paper argued that the EP could not replace the ‘primary role’ of national parliaments, a view which grants the EP secondary status in terms of its electoral-representative function. Moreover, the EP was accused of being irresponsible and, as a consequence, lacking in public support. Lack of public support was evidenced by the low turnout in European elections.⁵ In order to ‘win public trust and confidence’⁶, the EP had to demonstrate that it made responsible use of its already existent powers. The White Paper thus accorded the EP a limited role (and no further increase in powers), with a clearly defined set of functions to hold the Commission to account, to monitor EC spending and to combat financial mismanagement.

By contrast, the White Paper proposed an extension of powers for national parliaments - institutions defined here as holding “the primary focus of democratic legitimacy in the European Union”, able to hold national ministers to account.⁷ Significantly, reference was made to the two UK parliamentary Committee proposals aimed at extending the powers of national parliaments within the EU policy system. These proposals were concerned with the input of national parliaments to the EU policy processes via two avenues. First, the increased influence of national parliaments over the institution of the Council of Ministers to encourage accountability and transparency of policy outcomes. Second, the accepted role national parliaments should play when acting in a collective

1 Davis in Agence Europe No.6406, 22 January 1995.

2 Government White Paper on the IGC, A Partnership of Nations: The British Approach to the Inter-Governmental Conference 1996, Cm 3181, March 12, 1996.

3 Ibid., point 4.

4 Ibid., point 5. Emphasis added.

5 For a discussion of this see Smith, Julie: ‘The 1994 European Elections: Twelve into One Won’t Go?’, in: Hayward, 1995, op.cit.

6 Government White Paper, 1996, op.cit., point 35.

7 Ibid., point 33.

capacity at the EU level. The Government thus appeared receptive to Committee thinking. Let us examine this more closely.

One of the main preoccupations of UK parliamentary discussions during the 1996 IGC was the operation of the Council of Ministers. The ESC was keen to change the culture of ministerial meetings and re-fashion executive/legislative relations at this level, irrespective of the specific nature of individual (national) parliamentary control mechanisms:

“While it is for each Parliament to consider how best to proceed, we believe that a high priority given to detailed demanding and timely scrutiny throughout the Parliaments of the Union would have a salutary effect on the Council of Ministers, and would create a climate of accountability which would offset the disproportionate and growing power of Executives.”¹

The first report written by the ESC, and published in July 1995 (after the Reflection Group began its deliberations), highlighted a number of areas of Council business which the ESC felt were in need of review. Overall, the report adopted a pragmatic approach stating that “action is now needed, backed where necessary by legal requirement”². The starting point for reform was a recognition by the ESC that Declaration 13 (which states that governments should notify national parliaments ‘in good time’) had not fulfilled its objective: “the Declaration [...] has been routinely ignored. It has proved to be a sham, reflecting no credit on those who negotiated it at Maastricht”³.

The report set out a number of outstanding problems experienced by the ESC in the conduct of scrutiny. From a procedural point of view, the central difficulties were first, the frequently short time frame between the publication of a legislative proposal by the Commission and the Council’s decision, and second, the practice of legislating in the Council without an official text, where ministerial negotiations involved the introduction of new elements not included in the original Commission proposal.

To address these emergent institutional behavioural patterns, the ESC made a number of critical proposals - critical not least because they were to form the basis of the PNP renegotiated at Amsterdam. Importantly, the ESC proposed a requirement of a “minimum period of notice [which] should be four weeks” for national parliaments to scrutinise EU documents prior to Council’s negotiation. The minimum period would exist between the availability of an official text, in the appropriate language, in all capitals of the EU, and any decision being taken in the Council. Moreover, such a minimum period of notice should be legally binding: “a clear Treaty requirement, not just a provision in the Council’s rules of procedure”⁴.

1 House of Commons, ELC, 24th Report, 1995, point 113.

2 Ibid., point 60.

3 Ibid., point 109.

4 Ibid., point 65.

The report went on to discuss rules concerning the waiving of the notice period in urgent situations and the scope of the requirement to include any document with legislative implications (including pre-legislative acts).¹

These proposals were to form the bedrock of the UK Conservative Government's initial negotiating position once the IGC got underway. The House of Lords Committee was quick to lend its support.² The Government's response was also favourable³, stating that the notice period should only begin once the text became available in all languages.⁴ In line with this, David Davis floated the idea of a minimum notice requirement in one of the pre-IGC Study Groups and it found its way into the Council Secretariat's papers in October 1995. By the time the EP task-force had reported in its briefing on the role of national parliaments in March 1996, just prior to the official opening of the IGC in Turin, this was still a UK-only initiative.⁵

It is to be noted that, at this stage, there were a number of other proposals which were made by UK Committees, but which were not supported by the Major Government. These were to increase the transparency of the operation of the Council of Ministers and were initiated by the House of Lords' SCEU.⁶ The SCEU was particularly concerned with transparency of the voting patterns within the Council of Ministers⁷ and the transparency of Council business in the outer two pillars of the TEU:

“The common foreign and security policy is presently formulated in secrecy and this does not accord with the Majesty's Government's frequently expressed wish to see scrutiny by national parliaments increased. This is a role for national parliaments, and we strongly recommend their involvement to a significantly greater extent.”⁸

The report recommended opening up both pillars to input from all national parliaments. The Major Government did not support this proposal, arguing its disagreement on grounds of the confidential nature of substance of the outer pillars.⁹

A final issue which had been a matter of some discussion since 1995, was a suggestion to grant national parliaments a formal role when acting collectively. The UK position was that a formal role was not appropriate. Both the Committees and the Government were in agreement on this. The view of the ESC in respect of COSAC was that its:

“great strength is its informality; that it should be a forum for making contacts and sharing experience and problems; and that it is most effective when discussing problems of Na-

1 Ibid., point 67.

2 House of Lords, 21st Report, 1995, point 307.

3 Government White Paper, 1996, op.cit., point 9.

4 Ibid., point 9.

5 IGC EP Task-Force on the IGC, Briefing on the Role of National Parliaments, No. 6 Luxembourg, 25-03-96, PE 165.966.

6 House of Lords, 21st Report, 1995.

7 Ibid., point 247.

8 Ibid., point 270.

9 House of Commons, ELC, 27th Report, 1996, points 73 & 76.

tional Parliamentary Scrutiny and control common to many Chambers, rather than holding broad debates on often vague political topics.”¹

The House of Lords Committee was also not in favour of granting any formality to co-operation between national parliaments.²

During the latter half of 1996, and in the lead up to the Dublin Summit, the ESC produced a second report, emphasising the importance of taking national parliaments seriously.³ At the COSAC Dublin meeting in October 1996, other national parliaments agreed on the mechanisms for so doing, offering unanimous support for UK parliamentary proposals. The UK Government’s response this time was still generally favourable tabling a Treaty amendment one week after the COSAC conference. The key element of this amendment was the minimum notice period. There was one noticeable departure from the ESC’s original text, however. The reference to “pre-legislative acts” was now dropped⁴ and this despite previous government statements in support of an all-inclusive clause⁵.

In December, the member states agreed the Dublin ‘Treaty’ Outline. Included therein was a draft form of a protocol on national parliaments, which included a minimum notice period of four weeks. The contents of this protocol fell short of UK Committee recommendations. In response, a number of specific criticisms were made by the ESC and published in a report communicated to government. According to the ESC, the text of the draft protocol was ambiguous on a number of points: first, it did not identify the precise moment when the four week notice period officially started;⁶ second, it did not specify the ‘exceptions on grounds of urgency’ when the minimum period of notice could be waived.⁷ The ESC raised the question whether conditions for waiving the notice period should appropriately be placed in the Protocol itself or in the Council rules of procedure (where they could be more easily and less publicly changed). The report argued that by placing the rules in the Protocol, the member states’ governments would be giving: “explicit assurance at the time of negotiation that the minimum notice requirement cannot be routinely set aside”⁸.

2. Negotiation under the Blair Labour Government

In May 1997, the Labour Party was elected to government. Consequently, it was the Blair Government which negotiated and signed the Treaty of Amsterdam 1997 and the

1 House of Commons, ELC, 13th Report, 1997, points 64 & 65.

2 House of Lords, 21st Report, 1995, point 306.

3 House of Commons, ELC, 28th Report, 1996.

4 House of Commons, ELC, 1st Special Report, 1996.

5 Cm. 3051.

6 House of Commons, ELC, 13th Report, 1997, points 39-48.

7 Cm. 3440, 18-21.

8 House of Commons, ELC, 13th Report, 1997, point 58.

Protocol on National Parliaments. The new Government took a rather different approach from that of its predecessor on the question of the overall strengthening of the parliamentary dimension of the EC's institutional framework. A degree of discontinuity in the UK line is thus apparent in that the Government did not see any contradiction in strengthening both the powers of the EP and those of national parliaments. With regard to EC supranational provisions, during the Amsterdam negotiations, the new UK Government supported an increase in the powers of the EP via reform of the co-decision procedure (as well as an increase in the numbers of policy areas to be subject to QMV and co-decision).¹ With regard to the specific provisions relating to national parliaments, the Blair Government negotiated both an extension of the minimum period of notice from four to six weeks and an extension of its coverage to include matters falling under the (now) Police and Judicial Co-operation in Criminal Matters Pillar (formerly Justice and Home Affairs).²

Based on evidence so far collected, it is difficult to assess the extent to which the change of government in the UK was crucial to the final wording of the PNP. Clearly, both UK governments had a significant role to play in its creation. A consistent UK position has been that national parliaments have an important role to play holding their governments to account. This notwithstanding, a number of issues which had been raised by the UK Committees were, however, left unresolved by both governments and by the PNP. First, there was no agreement reached on the rules for over-riding the six-week period. Second, there was no agreement reached on the minimum period allowed for scrutiny by national parliaments during the course of a parliamentary procedure when substantive new elements are introduced into a document during Council negotiations. Third, there was no agreement reached to ensure greater transparency of decision-making within the Council of Ministers. Fourth, the Protocol did not apply to all the activities of the EU: CFSP matters are excluded.³

IV. The UK Parliament After Amsterdam

Given that the UK national reform package of 1998 pre-empted the coming into force of the Treaty of Amsterdam, no substantive changes were made in 1999. In the House of Commons, minor word changes were made to Standing Order 143 to reflect the new title of the former Justice and Home Affairs Pillar - now re-named provisions of Police and Judicial Co-operation in Criminal Matters - and the new types of political and legal

1 See Armstrong/Bulmer, 2001 forthcoming, op.cit.

2 The Scrutiny of EU Business, Cm 4095, November 1998, p. 1.

3 Some of these failings at EU level have been addressed at national level in the UK - for example, as is clear from Section II of this chapter, the UK (Blair) Government has interpreted the wording of the Protocol in its widest sense and UK national scrutiny is greater in scope than the PNP proposes.

instruments now able to be adopted under the Treaty. In the House of Lords, no substantial changes were deemed necessary:

“There seems no reason to change domestic requirements such as those in the UK, though the Protocol may help to focus government departments on the scrutiny timetable.”¹

In both Houses, the six week period has had little noticeable practical impact. To begin with, in the initial stages of an EC parliamentary procedure, about six weeks or more had always generally lapsed between the publication of a first draft of a Commission proposal and the reaching of a common position in the Council of Ministers. In addition, the six week period had not helped “one iota” in problems experienced in the later stages of the EC parliamentary process, and in the co-decision procedure in particular². From the perspective of the House of Lords, time pressures still exist.³ In terms of the nature of the scrutiny conducted in this House, the six week period “gets you to the starting point”⁴. Six weeks is simply not enough time to sift, refer to Committee, take evidence and write a substantial report on a subject matter. These difficulties notwithstanding, officials in both Houses said that from a ‘symbolic’ or ‘psychological’ point of view, the six-week period was very significant. It is viewed as a “suitable thing [with which] to beat governments”⁵.

Other problems remain. First, and despite the wording of the PNP, there seems to be a residual difficulty of knowing when the six week period has actually begun. The UK have developed their own understanding on this point. As far as the ESC is concerned, the six-week period begins with publication by the Commission. The ESC does not believe that this is when it should begin. It believes - as did its predecessor - that the period should begin once documents are deposited by the Council in all of the Permanent Representations of the Member States (in the appropriate language(s)), to ensure a parity of scrutiny across the EU. Second, the fact that the Council meets in private is more of a problem to the ESC than the six-week rule - in particular in gaining access to likely problem areas of negotiation. Difficulties persist when officials choose to exercise ‘professional discretion’ and keep Council business confidential. Third, the ESC expressed discontent that EU documents are still not being transmitted electronically.

Major problems still remain with regard to the collective role of national parliaments and in particular the role of COSAC. From the parliamentary perspective, COSAC is viewed as a problematic body, unable to function effectively given that it brings together Committees from extremely varying Constitutional settlements, with different mandates, and little synergy between the systems. Officials in both Houses mentioned the ‘major row’ which erupted at the meeting of COSAC in Lisbon in June 2000 - and

1 Kerse, 2000, op.cit., p. 100.

2 Interview material.

3 See Kerse, 2000, op.cit., p. 100.

4 Interview material.

5 Interview material.

expressed concern over the unwieldy nature of this body. For, clearly, national interest fault-lines on policy matters exist as much between parliaments as they do between governments. Questions remain over the reason for this body - the exact nature of the role it can play Constitutionally in the EU system. Is it justified in terms of legitimacy - and what is the exact nature of its legitimacy which is not found elsewhere within the system?

On the question of the respective roles of national parliaments and the EP, conflicting views now abound. The current ESC has emphasised that in its view, national parliaments and the EP hold quite distinct and different roles to play in the overall EU system:

“We see the roles of the of the EP and National Parliaments as complementary, not competing [...]. There is also a profound difference between Parliaments which authorise taxes and sustain a Government in office, and the role of the EP as defined in the Treaties. We think this should be the background for any discussion of the EP/Westminster relationship.”¹

In the overall EU system, the EP is a legislative body, whereas national parliaments are not: they are exercising control and influence over national governments. This would not prevent co-operation between parliaments - indeed, the UK Committees do have an exchange of papers with the relevant EP Committees. A final question asked on interview was whether, from the UK's point of view, there was a limit to the involvement of national parliaments in the EU system, and whether in fact with the PNP, this limit had been reached. The answer given in both Houses related to the degree of dissimilarity between procedures in member states, which perhaps put a limit on collective national parliamentary involvement overall. A recent innovation from the Prime Minister may have influence in this area, however. In a recent speech to the Polish Stock Exchange², Tony Blair proposed the establishment of a second Chamber of the EP, to be composed of representatives of national parliaments. The role of this body would be to politically review the application of subsidiarity (i.e. to implement any EU statement of principles). It thus remains to be seen how much support this will receive in the two Houses.

V. Conclusion: A Modernising Parliament in Search for EU-Fitness

In conclusion, some observations can be made. First, in the UK experience, the PNP had minimal constitutional impact. This does not mean, however, that the process of the IGC had no impact of a constitutional nature. It is important in the case of the UK to distinguish the specific constitutional outcome of the process from the actual process of

1 House of Commons, Modernisation Committee, 7th Report, 1998: Annex, Proposed Amendments to the Standing Orders, point 87.

2 6th October, 2000.

constitutional negotiation. For, as has been shown, both the ESC and the SCEU used the framework of the IGC discussions on democratic accountability and the involvement of national parliaments to campaign for greater powers within the UK system. The ESC, in particular, saw an opportunity to put in the public eye a number of suggestions which had been raised in previous years and thus existed in the system, as it were, prior to the IGC itself. In this manner, the overall process opened space for parliamentary voice.

The key changes made to the scrutiny system in the UK were, however, an immediate result of internal reform. A question raised is to what extent recent change is incremental and inevitable, and to what extent it can be explained solely as a result of a change in Government. The Labour Government made a number of significant changes to the Standing Orders and it is unlikely that this would have happened under a Conservative Government - partly because, as is documented above, a number of these changes had been on the table for a large number of years. But, much of the recent change in culture is clearly inspired by the previous European Committees in operation under the Major Government. The impression given by the reports and on interview is that this is incremental change. And yet, as one official put it, "in retrospect it will be seen to be [a point of departure for scrutiny in the UK] but at the moment it is incremental"¹. Whether 1998 can be regarded as 'unleashing scrutiny' is thus hard to judge at the present time. Much will depend on how other processes now at work under the Government's ongoing agenda of Constitutional change (including devolution, modernisation of the House of Commons and reform of the House of Lords) evolve in the future.²

In making these observations, it may be the case that the established view on UK scrutiny no longer applies. One question still to be addressed is the extent to which there is an alteration in the nature of executive control. Judge, for example, has argued that the Government, as a general rule, only welcomed parliamentary participation where this strengthened the Government's own bargaining position - otherwise it was ignored. He listed specific factors which would suggest that there has been no real change in the control of ministers by parliament.³ But, much has changed since. Many of the reasons he gives for supporting his claims - such as the "unpredictable schedule of [the consideration of Commission proposals] by the Council of Ministers"⁴ - no longer apply. For, as the European Committees have responded to EC membership, and established their own momentum and indeed general drive, we should ask how powerful they are. Is it still true that "what stands out [...] is the replication and reinforcement of pre-existing power differentials between the UK Parliament and the executive in the processing of

1 Interview material.

2 For example, the procedures for clearing documents by the House under the Scrutiny Reserve Resolution may be re-considered in the light of the overall process of modernisation of the House of Commons. This in turn may strengthen the ESC. See HC, Modernisation Committee, 7th Report, 1998, point 30.

3 See Judge, 1995, *op.cit.*, p. 86.

4 *Ibid.*, p. 86.

EC legislation”¹? Certainly, the example given in this chapter on the ability of the House of Lords’ Committee to ‘claim’ areas for scrutiny merits further consideration in this regard.

Any analysis of the above must consider the way in which EU membership has affected executive-legislative relations at the national level, and precisely how these are evolving over time. For they are clearly not static. In the case of the UK, three key areas can be isolated. First, in the creation of the committees in 1974, a new type of parliamentary control of public policy - a form of ‘ex-ante’ control was introduced. Recent reports from the House suggest that pre-legislative scrutiny will now be introduced in other areas and become a feature of the UK Constitution. Second, the committees in both Houses have emerged as strong institutions. They have extensive scope of scrutiny, sophisticated procedures, and good relations with Whitehall departments. In general, the scrutiny procedure is a professional procedure and a key element of parliamentary work. This is perhaps more advanced in the House of Lords, but recent developments in the House of Commons would suggest cultural changes here, too. The committees have an authoritative and distinctive voice, which is quite unrelated to the ‘bad press’ sometimes given to EU matters within the UK. A question to be addressed here would be to consider to what extent this differs from other select committees. For, the general modernisation of the House of Commons has laid emphasis on strengthening the role of committees generally, and with particular reference to the European Committees as examples of good practice. Third, there is in evidence an emergent ‘Europeanisation’ of parliamentary culture generally. This is seen in the mainstreaming of European issues, with Departmental Select Committees becoming increasingly involved in the scrutiny process. Further adaptation along these lines potentially fosters a new quality to the character of executive/legislative relations.

1 Ibid., p. 86.

National Parliaments after Amsterdam: From Slow Adapters to National Players?

Andreas Maurer and Wolfgang Wessels

1. Locating National Parliamentarians in the European Union

1. Relevance for European Politics

The European Union moves forward to a complex, multi-level and multi-actor, political system, which uses state-like instruments within a non-state polity.¹ Within this process, national parliaments and the European Parliament face a growing number of challenges which call their institutional position as the directly legitimate and representative aggregates of the European Union's citizenry into question: They constantly have to adapt and adjust the possibilities and arrangements for parliamentary involvement in response to Community legislation and Union action.²

The transfer of national parliamentary powers to the European level has not automatically entailed an immediate transfer of these originally legislative powers to the European Parliament. Instead, the transfer of powers from the national to the European level has been larger and more rapid than either the strengthening of the powers of the European Parliament or the supervision of the development of European legislation by national parliaments.³ In addition, since the Treaty revisions of Maastricht and Amsterdam, decision-making on an intergovernmental basis in the fields of Common Foreign and Security Policy (CFSP) as well as in the framework of Co-operation in Justice and Home affairs (CJHA) generates specific forms of European governance, where neither the European Parliament (EP) nor the national parliaments are invited to participate in the formulation, codification and detailed scrutiny of legal acts. Instead, parliamentary involvement is mainly restricted to consultation and, most of the time, to ex-post information.

1 See the contribution by Andreas Maurer in this volume. See also: Maurer, Andreas/Wessels, Wolfgang: 'The EU matters: Structuring Self-made Offers and Demands', in: Wessels, Wolfgang/Maurer, Andreas/Mittag, Jürgen (eds): *Fifteen into One? The European Union and its Member States*, Manchester: MUP, forthcoming.

2 See Groud, Hervé: 'Les délégations parlementaires pour les Communautés européennes. Adaptation des assemblées au processus de construction européenne?', in: *Revue du Droit Public et de la Science Politique en France et à l'Étranger*, No. 5/1991, p. 1311.

3 See Nothomb, Charles-Ferdinand: 'The role of national parliaments and the European Parliament in building the European Union', in: *The Brussels Review*, No. 4/1994, p. 12.

2. *On the Process of European Integration: Fusion Dynamics*

During the process of ratification of the Maastricht Treaty on European Union (TEU), the loss of parliamentary legislative competencies at the level of the member states became one of the core issues in national legislatures. Despite a gradual increase in the European Parliament's legislative and control powers, representatives in national parliaments and in the European Parliament detected various incompatibilities between the institutional and procedural structure of the TEU and the principles of democracy that should apply in the European Union and its member states. They argued that minimum criteria for ensuring compliance with the principles of democracy, to which the preamble and Article 6.1 of the TEU refer, are not fully satisfied.¹ This judgement is not only shared by some parliamentary idealists in the European Parliament. Also governmental actors argue that the European Union faces a problem of democracy.²

What are the challenges for the parliaments of the member states? We considered a set of fundamental trends of the Brussels arenas and their evolution towards a fusion of actors, instruments and procedures, which need to be analysed in terms of their potential effects on the level of national parliamentary systems. According to our approach, the following indicators are of relevance³:

- the dynamic evolution of new and refined treaty provisions leading to an ever increasing set of communitarised frameworks for policy-making;
- the subsequent widening of the functional scope of the EU leading to a sectoral differentiation of an increasing variety of policy fields and thus involving more and more national actors;

1 According to this fundamental article, 'the Union shall respect the national identities of its member states, whose systems of government are founded on the principles of democracy'. Hence the TEU itself does not provide an operational definition of the principle of democracy. Article 6.1 consists only a simple indication of one but essential common ground for European integration, namely that all member states are founded on the same principles of 'liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law'.

2 See e.g. the speeches and declarations made under the framework of the ongoing debate on the Future of the European Union: Fischer, Joschka: 'Vom Staatenbund zur Föderation - Gedanken über die Finalität der europäischen Integration', in: *Integration*, No. 3/2000, pp. 149-156; Chirac, Jacques: 'Notre Europe', Speech before the German Bundestag, 27 June 2000, <http://www.elysee.fr>; Blair, Tony, Speech at the House of Commons, 11 December 2000, <http://www.fco.gov.uk/news/newstext.asp?4489>; Jospin, Lionel: Discours sur 'l'avenir de l'Europe élargie', Paris, centre d'accueil de la presse étrangère, Maison Radio France, 28 mai 2001. 'Les perspectives pour l'avenir de l'Union face aux défis de l'élargissement', Discours de Michel Barnier lors d'un séminaire de l'Institute of Public Affairs à Varsovie, 16 juillet; 'The Future of Europe', Speech by Carlo Azeglio Ciampi, President of Italy, at the Istituto di Studi di politica internazionale, Milano, 3 July 2001; 'Our common future';

3 See the contribution by Andreas Maurer in this volume.

- the creation of institutions by subsequent treaty amendments leading to institutional differentiation, which increases the number of interaction styles and modes of governance in the policy cycles;
- the set-up and cross-institutional combination of different kinds of procedures, which provide the actors with several opportunity structures for taking binding decisions. This procedural differentiation increases the complexity of the EU's multi-level system and the need of national actors to improve their procedural skills;
- the activation of policy networks, procedural and working mechanisms, which allow a growing set of interest groups outside the 'official' array of institutions to participate in EC/EU policy-making. This specific kind of actor differentiation leads to the need of allowing more and more actors to articulate their opinions. Consequently, actor differentiation then induces an increasing need to take political sensitivities in a broader set of coalition games into account;
- the increase in scope and density of legal obligations. The doubling of the *acquis communautaire* from the early 1980's to 1998 indicates both the rise of the para-constitutional set-up as well as the 'invasion' of the legal space of member states.

Given these indicators, we asked whether national parliaments caught up with a profound change of their politico-institutional environment: Do parliamentarians remain the losers or latecomers of integration? Or are we witnessing a process of institutional adaptation to the EU's multi-level and multi-actor system?

3. The Growing Significance: A Key Issue for the Political System of Europe

We describe the political system of the EU in term of a multi-level game.¹ In this regard, one should acknowledge that the debate on the role of the national parliaments in the decision-making process of the European Union relates to a critical aspect of the European political system. As a multi-tiered structure, the European Union faces the problem of interrelating governmental and political institutions of different layers.

1 See Putnam, Robert D.: *Diplomacy and Domestic Politics: The Logic of Two Level Games*, in: *International Organisation* 42, No. 3/1988, pp. 427-459; Scharpf, Fritz W.: 'Autonomieschonend und gemeinschaftsverträglich. Zur Logik einer europäischen Mehrebenen-Politik', in: Weidenfeld, Werner (eds.): *Reform der Europäischen Union. Materialien zur Revision des Maastrichter Vertrages 1996*, Gütersloh 1995, pp. 75-96; Scharpf, Fritz W.: *Community and Autonomy, Multilevel Policy-Making in the European Union*, EUI Working Paper 94/I, Florence 1994; Marks, Gary/ Scharpf, Fritz W./Schmitter, Philippe.C./Streeck, Wolfgang: *Governance in the European Union*, London: Sage 1996; Evans, Mark/Davies, Jonathan: 'Understanding Policy Transfer: A Multi-Level, Multi-Disciplinary Perspective', in: *Public Administration*, No. 2/1999, pp. 361-385. With regard to the issue of national parliaments in two-level games see especially: Pahre, Robert: 'Endogenous Domestic Institutions in Two-Level Games and Parliamentary Oversight of the European Union', in: *Journal of Conflict Resolution*, No. 1/1997, pp. 147-174.

As subsequent results of negotiations and compromises among the member states, each EC/EU treaty and the ensuing treaty amendments brought new competencies, empowerments and instruments. The scope and salience of policy areas of the Community has been amended, substantially widened and, as a consequence, challenged the policy frameworks of the member states. Today, the European Union amalgamates several national interests and a multitude of historical developments and readings of common historical beliefs. The success of this construction has perpetuated the effect of the EC/EU process, leading to a magnetic attraction for outside countries.¹

The reasons to join the EC/EU integration process vary from country to country. We identified several approaches in the member states from the very beginning of their respective memberships in the EC/EU. While the three 'smaller' founding members (B, LUX, NL)² have drawn their conclusions from the failure of their neutrality policy, the engagement of Germany was accompanied by the struggle for more acceptance and regaining sovereignty after the disastrous effects of World War II.¹ A similar tendency towards multilateralism combined with the desire to overcome social fragmentation has been the main reason for the engagement of Italy in the integration process. The driving force of France's participation in the European integration process was based to a certain degree on the strategy that national interests with regard to Germany, the US and the USSR could be realised most efficiently within a European set-up. Denmark joined the EC for economic reasons and the fear of isolation vis-à-vis the UK and Germany. The key motives behind Irish membership can be summarised as the intention to achieve more independence from the UK. On the other hand, the countries of the EC first southern enlargement (GR, E, P) linked their accession to the European project with the expectation of promoting the process of democratic consolidation after the demise of the authoritarian systems. The three latest newcomers (A, S, SF) were motivated by economic and geopolitical reasons.

Joining the EU is an instrument for domestic modernisation. Accordingly, the 'reality' of European integration and the subsequent domestic modernisation of public policy instruments, institutions and procedures affect national parliaments. Evidently, the evolution of the EU system risks an erosion of traditional patterns of national parliamentary

1 For an overview on governmental motives to join and to participate in EU integration see: Maurer, Andreas/Grunert, Thomas: 'Der Wandel in der Europapolitik der Mitgliedstaaten', in: Jopp, Matthias/Maurer, Andreas/Schneider, Heinrich (eds.): *Europapolitische Grundverständnisse im Wandel*, Bonn 1998, pp. 213-300; and Mittag, Jürgen/Wessels, Wolfgang: 'The 'One' and the 'Fifteen'? The member states between procedural adaptation and structural revolution', in: Wessels, Wolfgang/Maurer, Andreas/Mittag, Jürgen (eds.): *Fifteen into One? The European Union and its Member States* (Manchester: MUP forthcoming).

2 We use the following abbreviations for the respective member states: A = Austria; B = Belgium; D = Germany; DK = Denmark, E = Spain; F = France; SF = Finland; GR = Greece; I = Italy; IR = Ireland; LUX = Luxembourg, NL = Netherlands; P = Portugal; S = Sweden, UK = United Kingdom.

systems. Hence, in several cases the challenges of the European level are highly welcome by the single member states' elites. Some of them consider the integration process as a gateway for their national projects of administrative reform (A, GR, IR, NL), of economic liberalisation (SF, S), of structural reform (IR, P, E), or as a source and necessary guidance for overcoming particular regional problems such as the bi-national system of Belgium or the strong north-south cleavages in Italy.

II. Patterns and Phases: The Challenges

1. Staying Outside the Games: The Traditional Patterns of the Slow Adapter

The EC/EU treaty provisions did not and do not fix a specific role for national parliaments.² The EU's legal doctrine is unambiguous: National parliaments are not provided any role in the 'top 10' articles of the EU's para-constitutional framework. The modalities by which national parliaments are involved into the ratification of treaty amendments and revisions, in transforming EC directives or in dealing with other constraints like fiscal discipline are a matter of national constitutions and specific arrangements of member states. This 'blindness' of the treaties in view of national parliaments is the same for other constitutional bodies like regional states or second chambers and constitutional courts. It reflects the original approach of the EC founding fathers that the EC/EU treaties are agreements between states. Consequently, they leave the internal arrangements for coping with EC/EU politics to the sovereign decisions of member states. In other words, the treaties manifest some kind of a 'constitutional subsidiarity principle'.

This principle had - at least for some decades - its domestic equivalent: EC policy was considered to be part of 'external' affairs and as such an indisputable prerogative of the 'executive' - outside the legitimate claim for parliamentary participation. In some cases European affairs were dealt with in committees for foreign affairs and thus within a confidential club of a few selected parliamentary insiders.³

However right from the beginning there was one exemption to this strict demarcation between these two games: a small group of national parliamentarians were delegated

1 See Webber, Douglas: 'Introduction: German European and Foreign Policy Before and After Unification', in: Webber, Douglas (ed.): *New Europe, New Germany, Old Foreign Policy?*, London 2001, pp. 1-18.

2 See the documentation by Astrid Krekelberg in this volume.

3 See Cassese, Antonio (ed.): *Parliamentary Foreign Affairs Committees, The National Setting*, Padova 1982.

with a dual mandate to the European Parliament. Its powers were however minimal and its impact on national politics and policies marginal.¹

2. Being Replaced by a European Player: The European Parliament as the Parliamentary Body of the EU

With the increase of the budgetary and legislative empowerments of the EC from the early 1970's onwards national governments were confronted with another traditional doctrine of modern western societies: The claim for 'parliamentary government' was also extended to the European level. Keeping EC affairs just as a matter of diplomats and few other ministries could not be kept as the rule. With direct elections from 1979 onwards and with the increase of legal rights from the Single European Act 1986 onwards the EP developed towards a co-legislator² and co-elect. It evolved into some kind of a second chamber to the Council and as such towards a strong European Player.³ Since 1979 the EP expanded its role as a watchdog by making intensive use of its right to ask questions, by keeping a closer eye on EU expenditure (through the Committee on Budgetary Control) and by setting up temporary committees of inquiry. Since 1986/87, EC Treaty amendments have introduced important changes concerning the role and position of the European Parliament. On the basis of the positive experiences gained with the co-operation procedure since the entry into force of the SEA (1987), the Maastricht Treaty widened the procedure's scope and in also created the so-called co-decision procedure. Herewith, the Parliament obtained the right to block a proposed legislative act without the Council having the right to outvote Parliament at the end of the procedure. The conciliation committee was to be the nucleus of the co-decision procedure. Apart from co-decision, Maastricht extended the assent procedure to a wide range of international agreements and other sectors of a legislative and 'para-constitutional' nature. As regards the implementation phase of the EC/EU policy cycle, Parliament was given the formal right to set up temporary Committees of Inquiry in order to investigate maladministration in the implementation of EC law. Finally, and with a view to the early stages of European decision-making, Parliament gained the right to request the European Commission to submit legislative proposals.

1 See Fitzmaurice, John: *The European Parliament*, Farnborough 1978; Herman, Valentine/Lodge, Juliet: 'Democratic Legitimacy and Direct Elections to the European Parliament', in: *West European Politics*, No. 2/1978, pp. 226-251; Herman, Valentine/Lodge, Juliet: *The European Parliament and the European Community*, London 1978; Herman, Valentine/Schendelen, Rinus van (eds.): *The European Parliament and the National Parliaments*, Westmead 1979. Wallace, Helen: 'The European Parliament: The Challenge of Political Responsibility', in: *Government and Opposition* (special edition 1979), pp. 433-443.

2 Maurer, Andreas: *What next for the European Parliament?*, London 1999.

3 See Maurer/Wessels, 2001, op.cit.

Commentators on the Maastricht Treaty have argued that the European Parliament “was perhaps the largest net beneficiary of the institutional changes in the TEU”¹ and that the treaty “marks the point in the Community’s development at which the Parliament became the first chamber of a real legislature; and the Council is obliged to act from time to time like a second legislative chamber rather than a ministerial directorate”.² As for the roles provided by the treaties for the European Parliament, the relative proportion of its ‘exclusion’ from the EC/EU policy-making process has considerably diminished.

For national parliaments this considerable gain in access and influence by the EP was seen quite often as the optimal form and level of parliamentary representation: Each level just has its proper form of parliamentary participation. However such a view would presuppose a neatly divided allocation and/or repartition of competencies (*Kompetenzabgrenzung*) and, as a consequence, a clear-cut transfer of powers (empowerments) from the national to the EU level. However as member states continued to take significant steps which furthered the fusion process³ this basic pace towards a ‘dual federal system’ was not taken. With some few exceptions public policy-making remained a matter of mixed, i.e. multi-level and multi-actor processes. Given their rather weak positions with regard to the performance in the daily business of EC/EU policy-making, national parliaments were certainly not the champions for downgrading the EP’s role to a limited set of secondary level powers.

III. National parliaments on Their Ways Towards National Players

1. Public Opinion: From Permissive Consensus to Reluctant Acceptance

All member states - with the exception of the United Kingdom and to a certain degree Denmark and Sweden - feature a long-standing affective and - to a lesser extent - utilitarian support for the European enterprise.⁴ The integration process has been traditionally regarded as a positive sum game for many member states. However, since the end of the 1980’s and especially towards the negotiations of the Amsterdam Treaty this

1 Helen Wallace 1996, op.cit., p. 63.

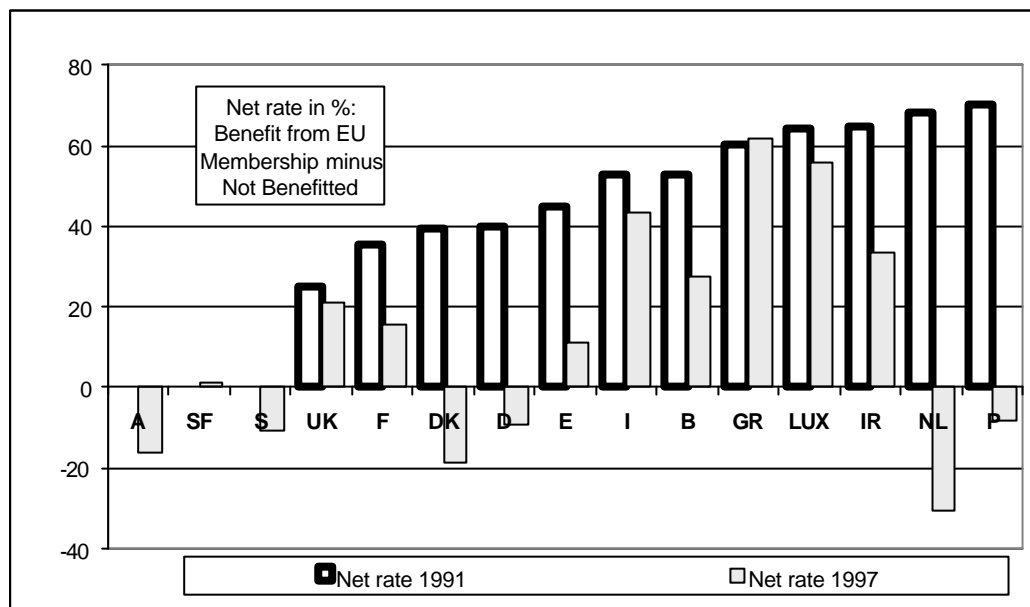
2 Andrew Duff: ‘Building a Parliamentary Europe’, in: Mario T  lo, (ed.), *D  mocratie et Construction Europ  enne*, (Bruxelles: Bruylant, 1995), pp. 253-254.

3 See Wessels, 1997, op.cit.

4 On the different aspects of popular support see Niedermayer, Oskar/Westle, Bettina: ‘A Typology of Orientations’, in: Niedermayer, Oskar/Sinnott, Richard (eds.): *Public Opinion and Internationalized Governance*, Vol. II, Oxford 1995, pp. 33-50; Inglehart, Ronald: ‘Long Term Trends in Mass Support for European Unification’, in: *Government and Opposition*, No. 12/1977, pp. 150-177, Lindberg, Leon N./Scheingold, Stuart A.: *Europe’s Would-Be polity. Patterns of Change in the European Community*, Engelwood Cliffs 1970, Handley, 1981, op.cit.; Hewstone, Miles: *Understanding Attitudes to the European Community*, Cambridge 1986; Inglehart, Ronald/Rabier, Jacques Ren  /Reif, Karlheinz: ‘The Evolution of Public Attitudes towards European Integration’, in: *Journal of European Integration/Revue d’Int  gration Europ  enne*, No. 10/1987, pp. 135-155; Niedermayer, Oskar: ‘Bev  lkerungsorientierungen gegen  ber dem politischen System der Europ  ischen Gemeinschaft’, in: Wildenmann, Rudolf (ed.): *Staatswerdung Europas?*, Baden-Baden 1991, pp. 321-353.

overall trend has changed.¹ Attitudes within member states to the European integration process get more multifaceted.² In several countries more and more signs of 'Euro-scepticism' have surfaced, causing heated debates about the benefits and costs of membership (A, D, DK, S, UK). The new and more sensitive policy areas of the Maastricht Treaty (EMU, CFSP, CJHP) evoked sceptical views and serious concerns in the general public about the democratic deficits of the European Union.³

Graph 6: Evolution of Utilitarian Support for EU membership 1991-1997



Authors' own calculation on the basis of European Commission, Eurobarometer 36. Luxembourg 1991, and European Commission, Eurobarometer 47.1., Luxembourg 1997.

Given the greater salience of EC/EU policies in the daily life of citizens, the public frame of mind has changed from 'permissive consensus' or 'positive indifference'⁴ to

- 1 See Anderson, Christopher/Kaltenthaler, Karl: 'The Dynamics of Public Opinion toward European Integration, 1973-93', in: *European Journal of International Relations*, No. 2/1996, pp. 175-200; Duwendag, Dieter: 'Akzeptanzprobleme der Europäischen Währungsunion', in: *Jahrbuch fuer Wirtschaftswissenschaften*, Göttingen, Vol. 47, No. 3/1996, pp. 241-264; Inglehart, Ronald/Rabier, Jacques-Rene/Reif, Karlheinz: 'The Evolution of Public Attitudes toward European Integration: 1970-1986', in: *Journal of European Integration*, No. 2-3/1987, pp. 135-155.
- 2 See generally Westle, Bettina/Niedermayer, Oskar: 'Die Europäische Gemeinschaft im Urteil der Bürger - ein sozialwissenschaftlicher Untersuchungsansatz', in: *integration*, No. 4/1994, pp. 177-186. See as well the annual contributions of Noelle-Neumann, Elisabeth: 'Die öffentliche Meinung', in: Weidenfeld, Werner Weidenfeld/Wessels, Wolfgang (eds.): *Jahrbuch der Europäischen Integration 1998/99 ff*, Bonn 1999ff., pp. 311-316.
- 3 See especially van der Eijk, Cees et al. (eds.): *Choosing Europe?, The European Electorate and National Politics in the Face of the Union*, Ann Arbor 1996; Reif, Karl Heinz: 'Ein Ende des 'Permissive Consensus'? Zum Wandel europapolitischer Einstellungen in der öffentlichen Meinung in den EG-Mitgliedstaaten', in: Hrbek, Rudolf (ed.): *Der Vertrag von Maastricht in der wissenschaftlichen Kontroverse*, Baden-Baden 1993, pp. 23-33.
- 4 See the contribution by Ben Hoetjes in this volume.

‘issue related voice’ - with considerable variations within a broad corridor. If we look at the evolution of the explicit utilitarian support (‘Country X benefited from EU membership’) from 1991 to 1997, we can detect relatively high and stable rates in Greece, Luxembourg, Italy, Ireland, and Belgium. On the other hand, the lowest rates of support for European Union membership are expressed in the Eurobarometer public opinion polls in some northern states (D, DK, NL, UK, S) and in Austria.¹ While the political and economic elites in these countries are still in favour of membership - as they see the benefits from the Community - the general public is less positive. These member states feature ‘two discursive worlds’: the general public discourse evolves according to its own - mainly national - logic whereas the dynamics of the multi-level EU system generates a rather pro-European attitude on the side of socio-economic elites. However, the increasing controversies about specific EU policies have not put the EU system as such into question. Given the dramatic changes in the international and European system of 1989 it is even more revealing that the fluctuations in public opinion did not reverse pre-existing trends with regard to the general attitude vis-à-vis EU membership. A certain ‘normalcy’ of getting and remaining involved is a key feature of all member countries. The participation of a considerable part of the political machinery in the daily business of EC/EU affairs has led to a broad acceptance of the EU polity. In this regard, the observed tendency towards more negative net rates in the utilitarian support reflects that the EU system is becoming an essential part of each national political system. And like any ‘national system’, the intertwined EU-member states systems are subject to a more rationalist - utilitarian - and critical attitudes. The resulting tendency of public opinion to the ‘accommodation with the inevitable’ is becoming an essential background for policy-making. The low voter turnout at the European Parliament elections in June 1999 confirm this trend. On the other hand, ‘questioning’ the usefulness of EU integration with regard to a growing spectrum of policy areas also reinforces the pressure for national parliaments to articulate their roles and features in the EU’s political system.

With the upswing of Euro-sceptic attitudes - similar to waves before in the 50 years of the EC/EU² - governments and parliaments in the 1990’s reinforced arguments in favour of defending and pursuing some of their ‘vital’ national interests. The post-Maastricht process has increased this trend in a considerable number of states, especially in Germany, France and the Netherlands. The emergence of more robust national attitudes can be noted as an indirect consequence of the implementation of the Maastricht Treaty, also in member states which are usually considered as traditional supporters of the integration process.

1 See for detailed empirical data the Eurobarometer 53 (Spring 2000).

2 Handley, David: ‘Public Opinion and European Integration: The Crisis of the 1970s’, in: *European Journal of Political Research*, No. 9/1981, pp. 335-364.

We thus depict very heterogeneous policy interests, which are closely linked to the peculiar structure and the geographical or organisational context of member states. Domestic issues still prevail the generation of and the deliberation on EC/EU policy issues. Thus, if we look at the 'real' actions of national governments and parliaments, the 're-nationalisation' appears quite often to be more a 'public relations affair' than a real change in the pursuit of European policies. We understand this kind of 're-nationalisation' as a mechanism of digesting EC/EU policies in domestic arenas. In this context, the demands to reinforce the roles of national parliaments in European policy-making also appear as a means for reorienting the 'slow adapters' towards 'national players' according to both the EU's reality *and* the national mechanisms of 'selling' EU affairs to the larger public.

2. Shaping the National Level of the EU's Policy-Cycle

With the growth and differentiation of the EU system¹ national parliaments realised a loss in influence which was not just due to the Brussels bureaucracy and could not only be adequately substituted by the EP. By the end of 1980's it became obvious that their 'own' governments and administrations were using their channels to the EU institutions with the intended or unintended consequence to virtually reduce parliamentary powers and control. With some few exemptions like the Danish Folketing national parliamentarians felt increasingly marginalized as slow adapters.

The Maastricht treaty's declaration No. 13 on the role of the national parliaments in the European Union generated some added powers for national parliaments within the framework of their national constitutions.² Although the declaration was only of political importance, it contained some key indicators for measuring and comparing the participation of national parliaments in the EU. Accordingly, our research design focused on the following indicators:³

- The institutionalisation of parliamentary structures, instruments and procedures for dealing with EU policy-making at the national level,
- The substantial scope of parliamentary control resulting from the extent of documents forwarded to parliaments by their governments,
- The basic orientation and methods of national parliaments with regard to the organisation of filtering documents within the parliamentary bodies,
- The timing and management of parliamentary scrutiny, and
- The potential and real impact of parliamentary scrutiny on the Government's room of manoeuvre within the EU Council of Ministers.

1 See Maurer/Wessels, 2001, op.cit; Wessels, 2001 op.cit.

2 See the documentation by Astrid Krekelberg in this volume, document No. 1.1.

3 See the contribution by Andreas Maurer in this volume.

Following this research design¹, the country reports explored the post-Maastricht changes with regard to parliamentary participation in the legal constitution of member states and with regard to their impact on the real patterns of involvement in the living constitution. The results point at a considerable legal constitutionalisation² and institutional adaptation, and at a modest impact with regard to the real patterns of participation.

2.1. Institutionalisation and Institutional Adaptation: The Creation of Committees

If we look at the EU's present (2001) institutional structure, the role of the national parliaments in the decision-making process lies in 'one-level'-scrutiny and advice within the model framework of government-legislature relationships.³ National parliaments exercise these roles according to the constitutional and political context of the country.

Since the mid-1980s national parliaments have made important changes to their procedures concerning the examination of EC/EU issues. The next chapters will deal with these attempts. We concentrate on institutional developments. Institutions are understood as formal rules, compliance procedures, and standard operating practices that structure the relationship between individuals in various units of the polity and economy⁴. Adopting this broader perspective, we can identify three major evolutions with regard to institutional adaptation of national parliaments in view of the EU system:

- A greater specialisation of parliamentarians with regard to policy areas and functions of parliaments,
- A greater activity of committees within the management of parliamentary business, and - as a result of the two aforementioned changes, and
- A higher rate of segmentation and fragmentation of parliamentary bodies and groups.

In some cases (DK, S, SF, D, A), EU Committees perform as key interlocutors for government representatives in order to voice a more or less binding opinion on a given document. Moreover, several of these committees function as transmission belts between their parliaments and public opinion (DK, S, SF, F) by organising hearings and

1 See also Figure 2 in the contribution by Andreas Maurer in this volume.

2 See Olsen, Johan P.: *Organising European Institutions of Governance. A Prelude to an Institutional Account of Political Integration*, Arena Working Papers WP 00/2, Oslo 2000.

3 Norton, Philip (ed.): *National Parliaments and the European Union*, Special Issue of *The Journal of Legislative Studies*, No. 1/1995.

4 Hall, Peter: *Governing the Economy: The Politics of State Intervention in Britain and France*, Cambridge: 1986, p. 19. David R. North offers a similar definition. Institutions are 'the rules of the game in a society or, more formally [...] the humanly devised constraints that shape human interaction'. See North, David R.: *Institutions, Institutional Change and Economic Performance*, Cambridge 1990, p. 3. See also March, James G./Olsen, Johan P.: *Rediscovering Institutions: The Organisational Basis of Politics*, New York 1989, p. 167.

through the management of EU-related internet pages. Finally, all EU committees share the task to participate in COSAC as the main interparliamentary co-operation network. As a starting point, we observe some convergence in organisational adaptation, i.e. the set up of specific bodies within parliaments that deal with the incoming documentation of the EC/EU's policy processes.

Table 27: Institutionalisation of EC/EU Committees 1957 to 1997

Parliament		Committee Name and Date
The early days and founding experiments		
D	Bundesrat	Ausschuss für Fragen der Europäischen Gemeinschaft (1957)
B	Chambre des Représentants	Commission des Affaires européennes (May 1962)
D	Bundestag	Integrations-Ältestenrat (1963-1967); 6 meetings in 5 years
I	Senato	Giunta consultativa per gli Affari Delle Comunità Europee (1968)
NL	Eerste Kamer	Vaste Commissie voor Europese Samenwerkingsorganisaties (June 1970)
DK	Folketing	Markedsudvalget (October 1972)
I	Camera dei Deputati	Comitato permanente per gli affari comunitari (1973)
IRE	Oireachtas	Joint Committee on the Secondary Legislation of the European Communities (August 1973)
UK	House of Lords	Select Committee of the European Communities (April 1974)
UK	House of Commons	Select Committee on European Legislation (May 1974)
F	Assemblée nationale and Sénat	Délégation (de l'Assemblée nationale / du Sénat) pour les Communautés européennes (July 1979)
European Parliament Direct Elections 1979		
UK	House of Commons	Standing Committee on European Community Documents (1980)
D	Bundestag	Europakommission (1983)
B	Chambre des Représentants	Comité d'Avis chargé de questions européennes (April 1985)
E	Cortes Generales	Comisión Mixta para las Comunidades Europeas (1985)
Single European Act 1986		
NL	Tweede Kamer	Vaste Commissie voor EG-Zaken (October 1986)
D	Bundestag	Unterausschuss des Auswärtigen Ausschusses für Fragen der EG (June 1987)
I	Camera dei Deputati	Commissione Affari Esteri et Comunitari (July 1987)
P	Assembleia da Republica	Comissao de Assuntos Europeus (October 1987)
D	Bundesrat	Kammer für Vorlagen der EG (June 1988)
LUX	Chambre des Députés	Commission des Affaires étrangères et communautaires (1989)
B	Sénat	Comité d'Avis chargé de questions européennes (March 1990)
GR	Vouli Ton Ellinon	Epitropi Evropaikon Ypothesseon (June 1990)
I	Camera dei Deputati	Commissione speciale per le politiche comunitarie (1990)
UK	House of Commons	Standing Committees A and B (1990)
D	Bundestag	EG-Ausschuss (June 1991)
Maastricht Treaty on European Union 1992		
IRE	Oireachtas	Joint Committee on Foreign Affairs mit dem Sub-Committee on E.C. Legislation (1992)
DK	Folketing	Europaudvalget (November 1993)
E	Cortes Generales	Comisión Mixta para la Unión Europea (May 1994)
D	Bundestag	Ausschuss für Angelegenheiten der Europäischen Union (1994)
NL	Tweede Kamer	Allgemene Commissie voor EU-Zaken (May 1994)
A	Nationalrat	Hauptausschuss (December 1994)
S	Riksdagen	EU-Nämnden (December 1994)
SF	Eduskunta	Suuri valiokunta / Stora utskottet (January 1995)
IRE	Oireachtas	Joint Committee on European Affairs (March 1995)
B	Chambre and Sénat	Comité d'avis fédéral chargé des questions européennes (1995)
I	Camera dei Deputati	Commissione politica dell'Unione europea (August 1996)

Source: Maurer 2001, based on: European Parliament 1995 and own research.

The growing salience of EC/EU affairs would suggest that parliaments would adjust their existing resources accordingly. In institutional terms, one could expect that parlia-

ments would revise the composition and the relative strength of EU Committees. However, table 28 indicates a rather stable share composition of EU Committees.

Table 28: Ratio of EU Committee Members in Relation to the Strength of Parliament

In per cent		1987/88	1992/93	1995/96	1999
Belgium	Chambre Senate	9.43	9.43 20.75	15.79	13.57
Denmark	Folketing	9.71	9.71	9.71	9.50
Germany	Bundestag Bundesrat	2.5 37.77	6.45 31.88	7.44 33.33	5.9 33.33
Finland	Eduskunta	-	-	12.5	12.5
France	Assemblée Senate	3.13 5.60	6.23 11.24	6.23 11.24	6.23 11.24
Greece	Voulí	-	10.33	10.33	10.33
UK	Commons Lords	2.46 1.87	2.46 1.87	2.46 1.87	2.43 3.00
Italy	Camera Senate	n.a. 7.92	8.1 7.92	7.94 7.36	7.62 7.36
Ireland	Dail /Senate	11.06	11.06	7.52	8.41
Luxembourg	Chambre.	n.a.	18,33	18,33	18,33
Netherlands	Tweede Kamer Eerste Kamer	17.33 n.a.	17.33 n.a.	17.33 17.33	16.66 14.66
Austria	Nationalrat Bundesrat	-	-	14.75 11.48	15.85 25.0
Portugal	Assembleia	10,0	10,0	11,74	11,74
Sweden	Riksdag	-	-	4.87	4.87
Spain	Camera /Senate	n.a.	6.63	6.63	6.44

Source: Maurer 2001; Raunio/Wiberg 1999; WWW-Pages of the IPU and of the national parliaments.

The information recorded in table 28 does not allow to deduce an overall immunity of parliaments vis-à-vis EU integration. EU Committees can be seen as but one specific translation of institutional adjustment, but we should not restrict our view to the development of bodies and their membership. The creation of EU Committees is thus one specific focus of parliaments for getting involved through special institutional provisions. Some of the parliaments turned to be more active on EU affairs, especially after the Single European Act and the Maastricht Treaty. As the country studies show, not only the Committee of the Danish Folketing, but also those of the French Parliament, the German Parliament, the Dutch Second Chamber, the Austrian Nationalrat and the Finnish Eduskunta have developed their formal position and potential leverage on EC and EU affairs. They are not only dependant on filtered EU information of their governments, but generate their own - additional - information about the EU's daily business. They are not only allowed to deliberate on incoming EU draft legislation, but produce and pass resolutions, voice their opinion on a given issue, and ask their governments to act in the Council of Ministers according to their opinion.

2.2. *The Scope of Information and the Sift of Documentation*

Information is the ultimate basis for participating in public policy-making. The self-made loss of original legislative powers in the upstream process of EC/EU policy-making may be compensated by an increase in the national parliament's control function vis-à-vis their governments.¹ Since the German Bundesrat's decision of 1957 to create a special EC affairs committee, national parliaments established institutions, general norms and procedures in order to scrutinise their governments in the EC decision-making process. The degree of effective parliamentary scrutiny varies a lot, ranging from simple ex-post information rules to mandatory procedures.² The Maastricht Treaty lead to a limited range of new provisions affecting the role of national parliaments in monitoring their governments' activity in EC/EU affairs. According to Declaration No. 13 of the Maastricht TEU version, member states government agreed that "it is important to encourage greater involvement of national parliaments in the activities of the European Union". In this context, they committed themselves to "ensure, inter alia, that national parliaments receive Commission proposals for legislation in good time for information or possible examination".³

The scope of parliamentary participation in EC/EU affairs results from the extent of documents forwarded to parliaments by their governments. The country reports explored the extent to which national parliaments receive draft proposals of EC legislative acts and other EU acts, i.e. white and green papers, recommendations, declarations, documents produced by COREPER, the Council working groups, the European Parliament and its committees etc. Table 29 shows how national systems responded to the growing space of information, which can be forwarded to parliaments.

As the study on France shows, the extend of information forwarded to national parliaments may be restricted according to national hierarchies of norms.⁴ The concept of proposals containing provisions of a legislative nature implies that Parliament only receives those draft acts, which, if they were to be adopted in France would form part of the law within the meaning of Article 34 of the Constitution. Thus, Article 88-4 leaves to the 'Conseil d'État' and the Government the decision whether draft proposals constitute legislative acts. The supply with information is much more comprehensive in Denmark, Finland, Germany, the Netherlands, Austria, Sweden and the United Kingdom. These parliaments do not only have access to the overall amount of incoming documents of the European Commission, the Council, the EP and the other EU institutions,

1 See Schüttemeyer, Suzanne: 'Funktionsverluste des Bundestages durch die europäische Integration?', in: Zeitschrift für Parlamentsfragen, No. 2/1979, p. 261.

2 Laprat, Gerard: 'Parliamentary Scrutiny of Community Legislation: An Evolving Idea', in: Laursen, Finn/Pappas, Spyros A. (eds.): The Changing Role of Parliaments in the European Union, Maastricht, European Institute of Public Administration 4-10, 1995; Norton, 1995, op.cit.

3 See the documentation by Astrid Krekelberg in this volume, document No. 1.1.

4 See the contribution by Andrea Szukala and Olivier Rozenberg in this volume.

but succeeded to bound their governments to provide comprehensive explanatory informations in order to facilitate the sift of documents between MP's and committees. These government 'translations' of EU information are of high political relevance, since they allow MP not only to discuss the documents as such, but also their government's perspective on a given issue. Explanatory informations orient national debates with regards to the issue of competencies (B, D, A) and the respect of the subsidiarity principle (DK, D, F), the financial implications of a proposed act (D, DK, NL, S, SF, UK), the state of the art on a given policy issue as well as the - perceived - progress of negotiations (DK, D, F, S, UK).

Table 29: Evolution of the Scope of Information for National Parliaments 1987 to 1998

	1987-1992 (SEA -Period)	1992-1997 (Maastricht-Period)	Since 1997 (Amsterdam-Period)
B	Draft EC acts, explanatory information of the Government. No systematic transfer.	Unchanged	Unchanged
DK	Systematic transfer of all EC-Documents and explanatory information by the Government on each forwarded document.	All Commission documents (COM and SEC), important documents of the Council, factual notes of the Government. Extension to pillars II and III and other -non-legislative - documents.	More systematic transfer of pre-legislative documents.
D	Systematic transfer of draft EC acts.	All EC/EU proposals, progress reports prepared by Council Working groups, views of the Government.	Unchanged
E	All EC proposals of the Commission, reports of the Government.	Since 1994 information on all EC draft acts.	Unchanged
F	No systematic transfer of legislative COM documents.	All EC draft acts including provisions of a legislative nature according to Art. 88-4 and 34 of the Constitution, Agendas of the Council, at irregular intervals notes of the Government on the French position. Since 1994 also documents of the EU.	All EC and EU documents of legislative nature
GR	Reports on developments of EC affairs and the end of each parliamentary session.	Unchanged	Unchanged
I	No systematic transfer of legislative COM documents.	All Commission draft proposals, fact sheets of the Government.	Unchanged.
IRE	EC draft acts at the Government's discretion.	Drafts acts falling under Art. 249 ECT, Council documents, programmes, guidelines of the Commission, explanatory memoranda of the Government.	Unchanged
LUX	No systematic transfer of EC documents.	Draft regulations and directives, documents arising out of the 'Comitology', decisions of the Commission. Additional information of the Government.	Unchanged
NL	Tweede Kamer receives a monthly table of new COM-proposals. Eerste Kamer only deals with implementation of EC law.	Tweede Kamer: Binding responsibility of governmental transfer of documents only for III pillar proposals.	Unchanged
A	Not yet member of the EC	All EU proposals. Explanatory memoranda by the Government.	Unchanged
P	No systematic transfer of EC draft acts.	Since 15 June 1994 systematic transfer of EC draft proposals.	Unchanged
SF	Not yet member of the EC	All EC and EU-documents.	Unchanged
S	Not yet member of the EC	Transfer of all EC and EU draft acts, explanatory memoranda by the Government.	Unchanged
UK	EC draft acts and explanatory memoranda.	All legislative documents except II. and III. pillar documents.	All EC and EU documents.

Source: Maurer 2001, p. 254; and country reports in this volume.

Still after Maastricht, the scrutiny power of many parliaments was strictly limited to simple ex-post information. Consequently, closer examination had any effect on the Government's European policy management. Given their 'late' awakening with regard to the effects of the EU's reality, parliamentarians realised in the middle of the 1990's that they need to convince their governments to shift from one-sequential information towards more continuous cycles of self-generated information and 'national' forecasts about the consequences of EU law. A growing part of national legislatures and their EU committees revised their rules of procedure and opened up new ways for obtaining information on EC/EU draft legislation. As regards the initial phases of the EU's policy cycle, parliaments and governments in Denmark, Germany, the UK and the Netherlands fine-tuned the mechanisms for drafting short commentary sheets on incoming draft acts of the European Commission.

Table 30: Evolution of Supplementary Information Practices 1992-1998

	1992/1993		1995		1997/1998	
	Initial	Continuous	Initial	Continuous	Initial	Continuous
B	-	-	Unchanged	On demand	☑	Unchanged
DK	☑	●	●	Unchanged	Unchanged	Unchanged
D	☑	●	●	Unchanged	Unchanged	Unchanged
E	-	Ⓒ	☑	On demand	☑	Unchanged
F	Ⓒ	-	☑	☑	●	●
GR	-	-	Unchanged	Unchanged	Unchanged	Unchanged
I	Ⓒ	Ⓒ	Unchanged	On demand	Unchanged	Unchanged
IRL	Ⓒ	-	Ⓒ	On demand	☑	Unchanged
LUX	-	On demand	Unchanged	Unchanged	☑	Unchanged
NL	●	☑	Unchanged	Unchanged	Unchanged	Unchanged
A	n.a.	n.a.	●	●	Unchanged	Unchanged
P	-	-	☑	Ⓒ	Unchanged	Unchanged
S	n.a.	n.a.	●	●	Unchanged	Unchanged
SF	n.a.	n.a.	●	●	Unchanged	Unchanged
UK	●	☑	Unchanged	Unchanged	Unchanged	●

Legend for initial phases of the EU's policy cycles ('Initial'): - : No supplementing information, Ⓒ: Some supplementing informations like summaries of the draft; ☑: document summaries, agendas and minutes of Council of Ministers, ●: substantial supplementing information like financial forecasts, analyses on constitutional implications, subsidiarity/environmental impact assessment/social affairs forecast sheets etc. Legend for the decision-making phase of the EU's policy cycles: ('Continuous'): -: No information at all; Ⓒ: Short hand information about the envisaged dates of the decision-making process; ☑ Commented information about the stance of other EU actors in the decision-making process; ●: Complete and timely information about each stage in the decision-making process; On demand: New information on the decision-making process only on specific demand by MP or committees.

A continuing source of dissatisfaction of both the EP and the national parliaments is the fact that new - post-SEA - policy fields and new modes of governance¹ evade any par-

1 See Wallace, Helen: 'Analysing and Explaining Policies', in: Wallace, Helen/Wallace, William (eds.): Policy-Making in the European Union, Fourth edition, Oxford, 2000, pp. 65-81; Kohler-Koch, Beate: 'The Evolution and Transformation of European Governance', in: Kohler-Koch,

liamentary guidance or control.¹ Some of these fields have evolved recently, i.e. foreign policy and common security, justice and home affairs, economic and monetary policy in the context of the EMU, the Euro 12-nucleus' policies within the framework of the growth and stability pact and the so-called 'open method of co-ordination' policies. In these areas both the Amsterdam and the Nice Treaty reforms have not made any progress towards an inclusion of at least one level of parliamentary participation, whilst they have sanctioned particularly innovative decisions, at strictly intergovernmental level, such as those concerning the introduction of a political and military structure for common crisis reaction forces or the setting up of new intergovernmental committees in the fields of EMU and employment. New modes of governance have thus created new democratic deficits on both levels. The recent tendency to replace the 'Community method' has become obvious with the recent heads of state and governments' decisions on ESDP, where the intergovernmental dimension in steering the Union has been strengthened, as expressed most clearly in the emphasis given to the role of the European Council. The serious limits, as regards both transparency, 'traceability' and 'monitorability', of the Council's activities, were merely touched upon in a few provisions of the Amsterdam Treaty.²

Beate/Eising, Rainer (eds.): *The Transformation of Governance in the European Union*, London/New York 1999, pp. 14-35; Wessels, Wolfgang/Linsenmann, Ingo: 'EMU's impact on national institutions: Fusion towards a Gouvernance économique or fragmentation?', in: Dyson, Kenneth (eds.): *European States and the Euro: Playing the semi-serenity game*, Oxford 2001 (forthcoming).

1 See also the European Commission's White Paper on European Governance, COM(2001) 428, 27. July 2001, pp. 21-22.

2 See Maurer, 2001, op.cit., pp. 345-361.

Table 31: Scope of Information in two specific policy areas (as in 1997)

Member State	CFSP (Second pillar)	CJHA/Police and Judicial Co-operation in Criminal matters (Third pillar)
B	Traditional instruments: Hearings, written and oral questions	Traditional instruments: Hearings, written and oral questions
DK	Analogous to the EC pillar, internal co-operation between EU affairs and Foreign affairs committees	Analogous to the EC pillar, internal co-operation between EU affairs and Internal affairs committees
D Bundestag	Through the Committee for Foreign affairs	Analogous to the EC pillar
D Bundesrat	No	Analogous to the EC pillar, special consultation procedure for 'framework decisions'.
GR	At the Government's discretion	No.
E	At the Government's discretion	At the Government's discretion
F (both houses)	Comprehensive information since October 1995	Comprehensive information since June 1994
IRE	All documents which are legally binding for Ireland	All documents which are legally binding for Ireland
I Camera	At the Government's discretion	At the Government's discretion, but specific procedure for the Schengen Committee
I Senate	At the Government's discretion	At the Government's discretion
LUX	No	At the Government's discretion
NL Tweede Kamer	Yes, through the Committee for Foreign Affairs	Yes, because of the parliament's assent required
NL Eerste Kamer	No	No
A Nationalrat	Similar to the EC pillar	Similar to the EC pillar
A Bundesrat	Only if the competencies of the Bundesländer are affected	Only if the competencies of the Bundesländer are affected
P	At the Government's discretion	At the Government's discretion
SF	Similar to the EC pillar but executed through the Committee for Foreign Affairs	Similar to the EC pillar
S	Similar to the EC pillar	Similar to the EC pillar
UK	All texts of CFSP statements, declarations, common positions and joint actions once they are agreed, CFSP documents submitted by one Community institution to another, other documents at the Government's discretion.	Restricted: The first full text of any convention requiring, if agreed, later primary legislation in the UK, other documents at the Government's discretion.

Source: Maurer 2001, p. 254; and country reports in this volume.

The scope of information in these areas was and remains particularly low in the Southern European parliaments (GR, E, P) and in Ireland. The parliaments of France and the UK had to fight for the application of existing information routines in the EC area to the intergovernmental policy areas. Comparing their relative positioning in 1991/1992 and 1997/1998, both parliaments developed from a 'weak adapter's' to a 'national player's' role.

While conquering ground in the classic areas of EC policy-making, national parliaments lost influence in other 'vital' policy areas: Also after the Treaty of Amsterdam, parliamentary involvement in CFSP and Police and Judicial Co-operation in Criminal Matters depends on the willingness of governments to keep their legislatures informed on intergovernmental events. It is not unusual for parliaments to be made aware of international agreements only at the time of their presentation to the legislature for ratification. As both areas feature co-operation that remain officially outside the EC arena, the tradi-

tional domestic scrutiny procedures for Community legislation do not automatically apply. Information remains a vital tool for processes of scrutiny and accountability and parliaments depend heavily on executives and/or interest groups for this key resource.

2.3. An Indicative example: The Third Pillar on Justice, Home Affairs, Police and Judicial Co-operation

The third pillar on co-operation in Justice, Home Affairs, Police and Judicial Co-operation provides a clear example of intergovernmental activity excluding parliamentary actors and thus bypassing traditional scrutiny and accountability controls. Most of the national parliaments proved incapable of bypassing and/or controlling national gatekeepers through a lack of resources, knowledge and occasionally interest. As well as creating an ambiguous situation for the EU's supranational institutions, the formalisation of the Justice and Home affairs sector under the Maastricht Treaty caused significant difficulties for domestic parliamentary actors seeking to exercise power in the scrutiny/accountability process. In particular the failure to mainstream Justice and Home affairs co-operation in the EC legislative process undermined the role of national parliaments as well as that of the European Parliament. As the Third Pillar was not considered 'normal' EC decision-making, governments had much greater leeway in deciding what information should be released to national parliaments and when. The issue of information provision was key, as national parliaments were unable to debate national strategies early enough in the process to influence the final positions adopted in the Council. The absence of a transparent decision-making process also hampered efforts of parliaments to follow the Third Pillar's activities, as issues were passed up and down the five decision-making tiers (decision-preparation, deliberation, decision-taking, implementation, and control), with little rhyme or reason. Many national parliaments found themselves informed as late as necessary rather than as early as possible.¹

However, the case of France shows that at least the scope of information forwarded to national parliaments can be extended if the latter claim a specific interest.² In order to enlarge the scope of information, both houses of the French Parliament modified Article '6bis de l'ordonnance du 17 novembre 1958' by the law of 10 juin 1994 which changed the name of the 'délégations de l'Assemblée nationale et du Sénat pour les Communautés européennes' into 'délégations pour l'Union européenne'. Concomitantly they asked the Government to obtain all legislative acts of the European Union established on the basis of Title V (CFSP) and VI (CJHA) of the Maastricht Treaty. In reaction the then

1 Including France, Italy, Spain and the UK. In Denmark, the general mandating procedure applies to the Third Pillar. The Dutch Parliament had to agree to provisions before the Government agreed in the Council. Similarly, the German Bundestag and Bundesrat had to formulate an opinion before the Government could agree to anything in the Council.

2 See the contribution by Andrea Szukala and Olivier Rozenberg in this volume.

Prime Minister Juppé agreed to transmit to Parliament all draft acts relevant to Title VI provided they contain measures of 'legislative nature'.¹

Other governments reserved the right to withhold confidential and sensitive documents, although there was no formal common agreement of what this constituted. National parliaments should not however escape criticism entirely. Many parliaments initially suffered from the effects of internal rivalries between foreign affairs, EU and internal affairs committees. The struggle to assert primacy over the Justice and Home affairs sector in the domestic arena has detracted attention away from the issues at hand. In addition many continued to lack the necessary time, resources and expertise to deal with the issues they are faced with. Ironically in the case of the UK it is the entirely undemocratically 'elected' House of Lords that has made the most impact in this area, producing a series of well-documented reports on the development of the Third Pillar.²

An additional problem for the exercise of democracy in the Justice and Home affairs cooperation was caused by the ambiguity surrounding the legal bases of the Third Pillar's instruments. As with many of the other problematic elements of the Third Pillar, which eluded agreement during the Maastricht IGC, the period of implementation that followed showed little evidence of agreement being reached among Member States. The knowledge that a further - Amsterdam - IGC was rapidly approaching ensured that any potentially precedent setting activities were rigorously avoided and Member States followed the most uncontroversial path possible. Finally, it should be noted that the business of the Third Pillar was conducted almost entirely behind closed doors with negotiations and voting records kept secret. Documentation was rarely made available to the public and/or interest groups (unless leaked) and requesting documents from the Council Secretariat proved a cumbersome process.

The supply with information about intergovernmental policy-making in the second and third pillars of the EU is much more comprehensive in Denmark,³ Germany,⁴ Finland,⁵ the Netherlands⁶ and Austria⁷. In Denmark, parliamentary scrutiny over the second and the third pillars is similar to the examination of European Community draft law. In Germany, both chambers are kept informed on the Commission's and the Member States' proposals for Council decisions. As regards the cases of Austria, Finland and the Netherlands, the lower houses are kept informed comprehensively on draft acts, minutes and the Government's stance in both the EC and the two intergovernmental pillars.

1 See Maurer, 2001, op.cit., pp. 252-269.

2 See the contribution by Caitriona Carter in this volume.

3 See the contribution by Finn Laursen in this volume.

4 See the contribution by Sven Hölscheidt in this volume.

5 See the contribution by Tapio Raunio in this volume.

6 See the contribution by Ben Hoetjes in this volume.

7 See the contribution by Christine Neuhold and Barbara Bluemel in this volume.

2.4. *Timing and Management: Key Instruments of National Players*

Parliamentary involvement in EU affairs is also a product of efficient procedures. Parliaments are confronted with the growing diversity of inter-institutional deliberation and decision-making processes at the Brussels/Strasbourg level of the Council and the EP. A closer look at the EC/EU treaties reveals a clear trend towards procedural ambiguity over time.¹ Whereas the original treaties foresaw a restricted set of rules for each policy field, subsequent treaty amendments have led to a procedural differentiation with a variety of rule opportunities. As a result, the treaty provisions do not dictate a clear nomenclature of rules to be applied to specific sectors. Instead, since the SEA, member states and supranational institutions can, in an increasing number of policy fields, select whether a given piece of secondary legislation - a regulation, a directive or another type of legal act - should be decided by unanimity or qualified majority in the Council; according to the consultation, co-operation or (after Maastricht) the co-decision procedure; without any participation of the European Parliament or with or without consultation of the Economic and Social Committee, the Committee of the Regions or similar institutions. In other words, different procedural blueprints and inter-institutional codes compete for application and raise the potential for conflict between the actors involved.²

From a national government's perspective, this growing variation of institutions and procedures means a mixed set of opportunity structures and "engrenage-like"³ networking systems for access and participation in the EC/EU policy cycle.⁴ Assuming that the resulting bureaucracy⁵ is not just an accidental product of personal mismanagement, national parliaments are confronted with an ever-growing realm of policy-making infrastructures, which are less open to parliamentary oversight than bodies bringing together politicians. Unlike the component units of the Council (governmental administrations and services, and the Council Secretariat), national parliaments need to employ a more limited set of resources according to the variety of institutional-procedural codes.

1 See Maurer/Wessels, 2001, op.cit.

2 See for a detailed analysis: Maurer/Wessels, 2001, op.cit.

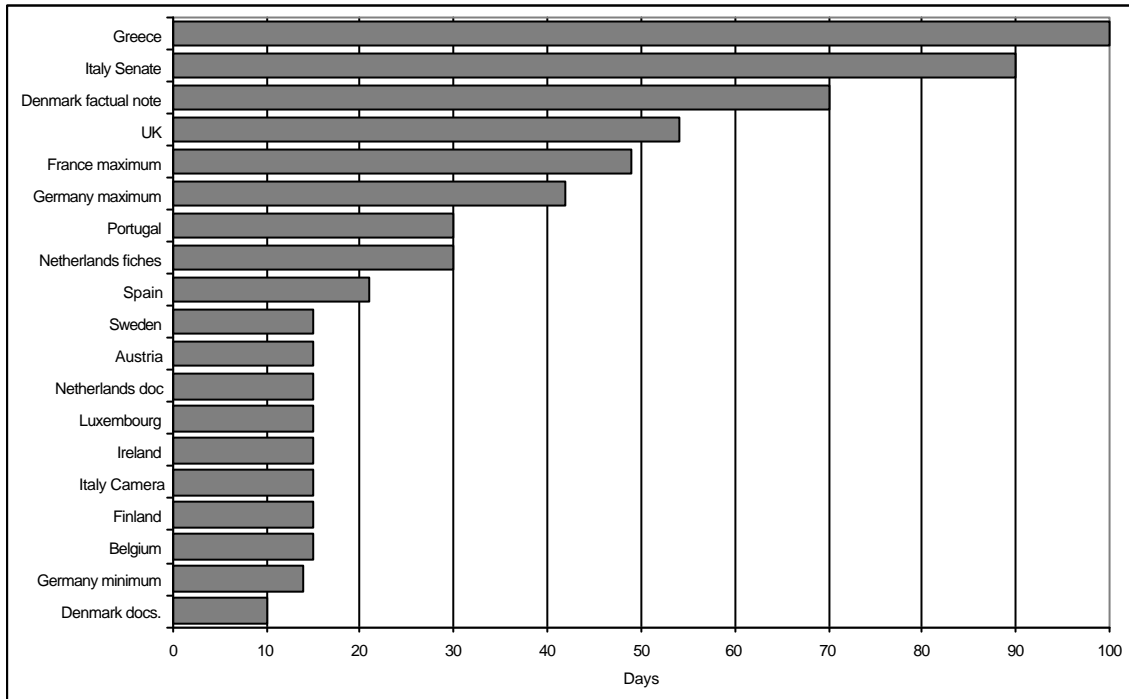
3 See Sasse, Christoph/Poullet, Edouard/Coombes, David/Deprez, Gérard: *Decision-Making in the European Community*, New York/London, 1977; see also the contribution by Andreas Maurer in this volume.

4 See van der Knaap, Peter: 'Government by Committee: Legal Typology, Quantitative Assessment and Institutional Repercussions of Committees in the European Union', in: Pedler, Robert/Schäfer, Günther (eds.): *Shaping European Law and Policy: The Role of Committees and Comitology in the Political Process*, Maastricht 1996, pp. 83-116. The Council itself notes that some two thirds of its rolling agenda is closed by COREPER, out of which 70 % are agreed at the working groups level. See *Rat der EG, Der Rat der EG, Luxembourg: Amt für amtliche Veröffentlichungen*, 1990, p. 22; See also Wessels 2000, op.cit., pp. 228-229.

5 See Peters, Guy: 'Bureaucratic Politics and the Institutions of the European Community', in: Sbragia, Alberta (ed.): *Euro-Politics: Institutions and Policymaking in the 'New' European Community* Washington: 1992, pp. 75-122; Wessels, Wolfgang: *The Growth and Differentiation of Multi-Level Networks: A Corporatist Mega-Bureaucracy or an Open City?*, in: Wallace, Helen/Young, Alasdair R. (eds.), *Participation and Policy-Making in the European Union*, Oxford 1997, pp. 17-41.

Some member states facilitate the management of parliamentary EU business, because the efficient sift of EC/EU draft legislation is in their own interest: Given that ministers are bound by decisions of their parliament in Denmark, the Netherlands, Austria, Germany and Finland, the respective governments must forward the relevant documents within a certain period of time, which allows parliamentarians the examination before the meeting of the Council of Ministers. As graph 7 clearly indicates, the parliaments in these countries receive relevant EC/EU information in sufficient time.

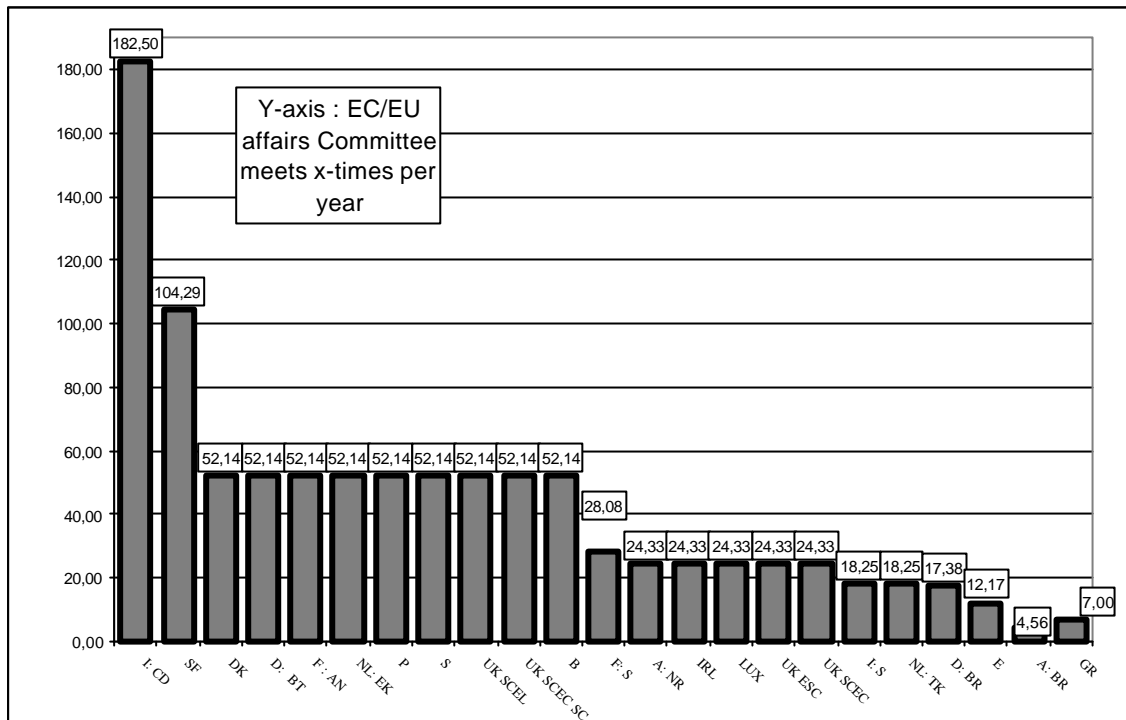
Graph 7: Average Duration for the Transfer of EC/EU Documents



Source: Maurer 2001, p. 295. Note: Duration is the difference between the arrival of a document at the parliaments' chancellery (or another comparable recipient) and the publication of this document by the relevant source (for COM documents the Commission, for Council documents the Council's General Secretariat).

Today, about half of the parliaments are able to run with their governments in EC/EU affairs. Theoretically, parliaments could manage the problem of timely information by referring to the documentary bases, which are already open to each citizen in the Union. Today, Commission initiatives and EP draft reports are available the day after their adoption. However, parliaments claim to get relevant information officially, i.e. translated in their official language, stamped by their governmental service etc. In this regard, parliaments hamper themselves for, however, understandable reasons. Since they are constitutionally entitled to act on behalf of their electorates, in co-operation or vis-à-vis a constitutionally delimited set of institutions, they hardly start to deliberate on information that is not 'officialised' within their realm of competencies.

Graph 8: Frequency of EU Committee Meetings Per Year



Source: Maurer 2001, p. 296.

The information in graph 8 recounts a dilemma of national parliaments in relation to EC/EU affairs: On the one hand, parliamentarians wish to get involved in the EU policy cycle. To facilitate the digestion of incoming draft acts, they have created specific bodies, which are entitled to sift documents, to elaborate reports and to prepare resolutions for the plenary. The activity of EU Committees varies not only according to the amount of documents to be dealt with, but also depending on the general orientation of their work and the intra-parliamentary focus on committee and plenary meetings (Table 32).

Hence, whereas EU Committees in Denmark, Finland, Austria, Ireland and the UK House of Commons deal with incoming EC/EU documentation as *the* Committee-in-charge of the whole scrutiny process, other EU Committees (D, NL, S, I) are simply regarded as the first - sifting - institution within parliament in order to facilitate the further consideration of the relevant documents within specialised Standing Committees. EU Committees in these countries specialise themselves on some European issues like IGC's, Enlargement and other - horizontal - themes of the EU's long-term agenda, whereas the first group of EU Committees-in-charge need to digest each incoming EU dossier on behalf of their parliament. These EU Committees need much more time to deliberate EU issues. Necessarily, they meet more frequently than EU Committees of the second group (Table 32, Column/Variable (1)).

The basic orientation of parliaments in EU affairs also differs with regard to the - ideally constructed - nature of the scrutiny process (Table 32, Variable (2)). Hence, the

parliaments of Denmark, Austria, Sweden, and France focus their EU-related activity on the formulation and issuing of voting instructions for their respective government members in the Council of Ministers. These parliaments build on an ideal bipolar legislature-government scenario. The other parliaments follow a more open and consensual (NL, D, SF), or supportive (IR, I, B, LUX, P, E, GR) approach vis-à-vis their governments. Their main rationale is to ensure that interested parliamentarians can track the EU policy cycles according to the constitutional rules.

Finally, the consideration of the different steps in the EU policy cycle also generates different time constraints for parliamentarians and their EU Committees (Table 32, Variable (3)). If parliaments anticipate EC/EU legislation, their scrutiny process starts earlier and the involved committees meet more frequently. If parliaments adopt a more reactive stand by focusing on already adopted EU legislation, their timing and management of EU scrutiny processes is less intensive and frequent.

Table 32: Basic Orientation of Parliamentary Scrutiny EC/EU affairs

(1) Parliament's Working style	(2) Nature of Scrutiny processes			(3) Consideration of phases in EU policy cycles		
	Orientation to- wards supportive Scrutiny	Orientation towards for- mulating and/or voting instructions		Anticipative, ex- ante examination of EC/EU draft legislation	Reactive, ex-post consideration of EC/EU legislation	
Main Focus on EU Committee	SF, IR	F, UK	DK, A	DK, SF, A, UK	IR	
Strong involve- ment of Special- ised Standing Committees	D, NL, SF, I		S	D, F, NL, S		I
Focus on Plenary sessions	B, GR, LUX, P, E			B, LUX	P, E	GR

Authors' own classification. Sources: Country studies in this volume; Maurer 2001, p. 353; Raunio/Wiberg 1999.

If we only consider the time-frame from 1994 to 1998, the Belgian Parliament dealt with 136 selected 'summaries of the Secretariat for EU affairs',¹ the Finnish Eduskunta with 678 so-called 'U'- and 'E'-matters,² the German Bundestag with 2387 'EU documents',³ the UK House of Commons with 2635 'scrutiny events',¹ the Swedish Parlia-

1 Answer to the questionnaire of Andreas Maurer and Astrid Krekelberg by Hugo D'Hollander, Secretary of the Advisory Committee on European Affairs in the Belgian House of Representatives, Brussels 29 June 2000.

2 See the contribution by Tapio Raunio in this volume.

3 See the contribution by Sven Hölscheidt in this volume.

ment with 3563,² the French Parliament with 10.415,³ and the Austrian Nationalrat with 93.926 EC/EU documents.⁴ The difference of submitted EC/EU documents is due to the variety of selection criteria.

The productivity of EU Committees also varies according to the different orientations of their scrutiny mechanisms. To illustrate: The Belgian EU Committee issued only 22 reports from 1993-1997.⁵ The Spanish Parliament's Plenary adopted 44 resolutions, the Parliament's EU Committee 32 resolutions and 2 reports (1993-2000).⁶ The French National Assembly issued 83 and the French Senate 47 resolutions (1994-1998).⁷ The German Bundestag selected 981 out of 2387 incoming documents as 'printed EU items' (1994-1998). Of these, only 111 were subject to a recommendation for a plenary decision.⁸ In contrast, the Finish Parliament's Standing Committees issued 620 opinions (1995-1998).⁹ As regards the Main Committee of the Austrian Nationalrat, 18 binding instructions were passed during the XIX. legislative period (1995-1/1996), and 13 during the XX. (1/1996-10/1999). In addition, the Standing Sub-Committee on European Affairs passed two opinions until June 2001.¹⁰

Given the self-made multitude of portfolios, EU Committees face the problem of remaining locked in the national organisation of parliamentary business. The 'one-level-only'-problem becomes visible in the fact that the handling of EU affairs does certainly not influence the rolling agenda of national parliaments. Compared to the governments' ministerial administrations, parliamentarians need to allot their capacities for several agendas. Members of EU committees get not re-elected by focusing their campaign towards the handling of EU affairs. In addition - and partly of the same reason -, the parliaments' agendas remain oriented towards national debates. With few exceptions¹¹, the EU committees stay 'outsiders' in their parliaments, perceived as 'EU-ised Trojan horses', which challenge the competencies and - more important - the reputation of other committees.

1 See: House of Commons: 27th Report on the Scrutiny of European Business, 18 July 1996, pp. 18, 21, and 24; and: Cygan, Adam: The United Kingdom Parliament and EU Legislation, The Hague/London 1998, pp. 79-81.

2 See the contribution by Hans Hegeland in this volume.

3 See the contribution by Andrea Szukala and Olivier Rozenberg in this volume.

4 See the contribution by Christine Neuhold and Barbara Bluemel in this volume.

5 See the contribution by Claire Vandevivere in this volume.

6 See the contribution by Felibe Basabe and Maria Teresa González Escudero in this volume.

7 See the contribution by Andreas Szukala and Olivier Rozenberg in this volume.

8 See the contribution by Sven Hölscheidt in this volume.

9 See the contribution by Tapio Raunio in this volume.

10 See the contribution by Christine Neuhold and Barbara Bluemel in this volume.

11 See the contributions by Finn Laursen on the Danish Parliament and by Tapio Raunio on the Finnish Parliament.

2.5. *Influence and Impact: Parliaments as 'Supportive Scrutinizers'*

The impact of parliamentary scrutiny differs between those parliaments which are legally able to mandate their government's representative before a Council decision takes place (DK, D: Bundesrat, NL: Tweede Kamer for CJHA, A: Nationalrat, and SF) and parliaments which simply do not have any means for effectively influencing their government's standpoint in the Council of Ministers (GR, I, IRL, P). Note in this context that the legal provisions might differ from the real patterns: Whereas the Danish, Finnish and Dutch parliamentarians use the practice of formulating mandates for, or of assenting draft mandates of their governments, their counterparts in Germany and Austria use this possibility less frequently.

The other 'northern European' parliaments are able to express their views on a certain proposal (F, LUX, B, E, UK), but their governments decide whether to integrate them or not.

Since Maastricht, we can observe a tendency of some parliaments to contribute to their governments' position in the Council by imposing the so-called parliamentary scrutiny reserve. However, whereas these scrutiny reserve mechanisms apply to all three pillars in Denmark, Austria, France and the United Kingdom, it only applies to the third pillar in the Netherlands.

Parliamentary scrutiny reserves are an ambiguous instrument for influencing governments. Provided a government is politically dependent on the day-to-day acceptance of parliament, scrutiny reserve mechanisms might help to render the Government 'online' with its parliamentarians. However, Montesquieu's repartition of powers remains a model and apart from Denmark, governments are not juxtaposed to their parliament. In this regard, it is worthy to note that scrutiny reserves may be instrumentalised by governments in order to scapegoat their veto in the Council of Ministers. As a civil servant of the House of Commons holds: "From a tactical viewpoint, it can be useful to Ministers to be able to go into Council in the knowledge that Parliament has approved the stance they wish to take - or even to be able to say, 'Parliament would not tolerate my agreeing to this'."¹ Moreover, parliamentary scrutiny reserves are formulated as a demand and not as a legally binding 'ruling'. Such a demand "is not a mandate. If the Government agrees, the resolution may be a trump for it in European negotiations. If it disagrees, the Government is not bound by the resolution."² Thus, the scrutiny reserve facilitates parliaments to strengthen their potential for worst-case-situations. But the

1 Flood, Elizabeth: 'Interaction between the Government and Parliament in the Scrutiny of EU Decision-Making', in: Finnish Parliament/COSAC Presidency (ed.): National Parliaments and the EU: Stock-taking for the post-Amsterdam era, Eduskunnan Kanslian Julkaisu, No. 1/2000, p. 63.

2 Dubois, Louis: 'The European Union: An Opportunity for the French Parliament to Recover Powers?', in: Smith, Eivind (ed.): National Parliaments as Cornerstones of European Integration, Den Haag/London 1996, p. 60.

logic behind the reserve mechanism is a parliament, which acts as a 'supportive scrutinizer'¹ of and not - systematically - against its government.

In the Netherlands, where consociational policy-making delimits open confrontation between parliament and government², a special procedure for parliament's participation in CJHA was established: Any draft decision falling within the scope of Title VI TEU that is intended to bind the Netherlands is subject to the consent of the States-General. In practice, ministers for home and justice affairs send Parliament the annotated agendas together with the background documents. This agenda states which decisions are in the Government's view binding the Netherlands and thus require the assent of Parliament. In conclusion then, Parliament's approval right is dependent to Government's power in the framework of agenda-setting on the third pillar. The Standing Committees on Justice and Home Affairs of the Dutch States-General may hold consultations on these subjects with the ministers before the Council meeting takes place, after which the Chambers may give a formal ruling in plenary sitting on draft decisions for which the assent of parliament is required. However, tacit consent is deemed to have been given in case the desire to give explicit approval has not been expressed by or in the name of one of the Chambers within 15 days of the draft being submitted to the States-General.³

A similar consent procedure applies in Austria, where the Government is bound by a decision of the Nationalrat, if the draft act to which the decision relates must be transposed by means of a Federal law or it is designed to provide for the adoption of a directly applicable act concerning a matter which would otherwise have been regulated by a Federal law.⁴

In Germany, the Government is required to 'base its position in the Council of Ministers' on a proposal of the Bundestag provided that the latter expressed its views. On the other hand, the Government's position in the Council is not subject to the assent of the Bundestag. Yet assent is required in the Bundesrat, where Government under certain conditions is legally bound by the decision of the chamber in cases where a proposal requires approval pursuant to domestic law or in instances where the Länder have jurisdiction.⁵ Moreover, where exclusive competencies of the Länder are involved, Germany might be represented in the Council of Ministers by a minister of the Länder nominated by the Bundesrat.

1 See the contribution by Sven Hölscheidt in this volume.

2 See the contribution by Ben Hoetjes in this volume; and Lijphart, 1999, op.cit., pp. 248 and 255-256.

3 See the contribution by Ben Hoetjes in this volume.

4 See the contribution by Christine Neuhold and Barbara Bluemel in this volume.

5 See Hrbek, Rudolf: 'The Effects of EU Integration on German Federalism', in: Jeffery, Charlie (ed.): Recasting German Federalism. The Legacies of Unification, (London: Pinter, 1999), p. 218; Knodt, Michèle: 'Auswärtiges Handeln der deutschen Länder', in: Eberwein, Wolf-Dieter./Kaiser, Karl. (eds.): Deutschlands neue Außenpolitik, Band 4 - Institutionen und Ressourcen, München 1998, pp. 153-166; Maurer 2001, pp. 314-325.

The protagonists of the role of the national parliaments invoke the diffusion of the so-called 'Danish model' of parliament oversight. The Danish model consists in the decisive - though not formal - power of the European Affairs Committee of the Folketing. The Committee gives the Government a mandate before important decisions are taken by the Council of Ministers. The Danish model can be explained "by the presence of minority governments which has made it imperative to current governments to inform and to take the opinion of the committee into careful consideration"¹. Beside this factor, the small size and the mono-cameral nature of the Danish Parliament must be taken into consideration to understand why this model works rather well despite the complex and cumbersome EU decision-making process which discourages any regular exercise of mandate control of the parliament on the national government. Finally, both the Danish party system and public opinion provide a sufficient 'critical mass' for the Government to respect the Folketing's views. The Danish system of parliamentary control has made Denmark good at implementing EU legislation. And the mandate-giving part of the process assures that post-decision political problems can usually be avoided even under minority governments. But is it possible to export this 'success story' of parliamentary oversight into other national systems? Hence, the essential framing factor - minority governments, EU-sceptical parties and, as a result the Folketing as a Parliament which can perform as 'one' actor with or against 'the' government - would be difficult to find in any other Member state.

IV. Building Links to the EU Level: Catching Up with Multi-level Governance

Since the beginning of the European construction national parliamentarians were offered opportunity structures to get access to the EC/EU institutions. The end of the 'delegated parliament' in 1979 - the abolishment of a permanent structure of national MP's placed between two legislatures - did not result in a direct adaptation of interparliamentary contacts. Still after the Amsterdam Treaty, the overall record of their participation patterns within the Brussels/Strasbourg arena is bleak. Though several and different procedures were tested over the last 40 years, none of them has led to a sufficiently intensive and efficient working relationship. The 1990's Conference of parliaments (Assizes) in Rome remained a one event institution. Instead, the 1999 convention to draft the charter for fundamental rights was generally assessed as a more successful link between parliamentarians of several levels.² Other activities of national parliaments

1 Sidenius, Nils C./Einersen, Bjorn/Sorensen, Jens A.: 'The European Affairs committee and Danish European Union Politics', in: Wiberg, Matti, (ed.): *Trying to make democracy work. The Nordic parliaments and the European Union*, Stockholm 1997, pp. 9-28, here p. 27.

2 See Stechele, Cornelia: *Der Konvent zur Erarbeitung der EU-Charta der Grundrechte: Modell eines deliberativen Supranationalismus?*, Diploma Thesis, Cologne 2001; Pernice, Ingolf: *'Europäische Grundrechte-Charta und Konventsverfahren: Zehn Thesen zum Prozess der europäischen Verfassung*

and the European Parliament - like COSAC, the regular meetings of their Speakers and joint sessions of specialised committees - seem to attract greater interest.¹

1. The Consequences of 1979 and the Abolition of Dual Mandates

With the original ECSC and EEC treaties the Members of the EP occupied a seat in their national parliaments and - at least to the extent that re-election was a matter of national performance - a national orientation. The voices of engaged MEP were however not heard in the national politics. The implied assumptions of linking both arenas by a dual mandate however proved to be difficult: With the increased work of the EP the political attention had to be focused on one level only. Already the difficulties of presence in parliamentary sessions urge parliamentarians to make a choice for a national or a European career. Direct elections of the MEP from 1979 onwards manifested this level dilemma: Few MEP kept their national seat. Those members who had ambitions within their national parliaments and parties were rather absent from Brussels and Strasbourg. Most national careers were not made in the EP.²

2. The Presence at the National Level

The 'one-level-only' activity of MEP's is documented in the weak presence in those committees of national parliaments which are specialised on EU affairs.³ Since 1979, parliaments began to open up their committees by integrating MEP's into EC/EU-related activities (see box 2). This process was strengthened by the more recent - post-Maastricht - set up of 'liaison officers' within the European Parliament (Italian Chamber, French Senate, Danish Folketing, Finnish Eduskunta, Swedish Riksdagen, UK House of Commons).

Thus, most of the parliaments developed some institutional devices in order to perform as multi-level players between their countries and the EU institutions, although the Italian perception is still valid for most legislatures: "Really effective contacts between parliamentary groups at the two levels have not yet been established. In the administra-

nach Nizza', in: *Integration*, No. 2/2001, pp.194-198. Däubler-Gmelin, Herta: 'Eine europäische Charta der Grundrechte-Beitrag zur gemeinsamen Identität', in: *Europäische Zeitung für Wirtschaftsrecht*, No. 1/2000.

1 See European Parliament/Andreas Maurer: *Perspectives for co-operation between the European Parliament and the national parliaments*, Working document: Political Series W-19, Brussels/Luxembourg 1996, pp. 37-67.

2 See the recent findings by Stolz, Klaus: *Parliamentary Careers in Europe. Between the Regional, National and Supranational Level*, Paper presented at the ECPR Joint Sessions of Workshops, 6-11 April 2001, Grenoble, Workshop No. 17: *Political Careers in a Multi-Level Europe*, pp. 22-25; See also Scarrow, Susan: 'Political Career Paths and the European Parliament', in: *Legislative Studies Quarterly*, No. 2/1997, pp. 253-263.

3 See e.g. the contribution by Sven Hölscheidt in this volume.

tive bodies of the national parties there is usually someone responsible for relationship with the federations and European political unions, so that the political circuit is closed: European groups-national parties-national parliamentary groups”.¹

Box 2: Participation of MEP’s in National Parliaments’ Meetings

Specific cases of de-facto ‘Joint MP/MEP Committees’	
1.	The EU Committee of the Belgian Parliament is composed by 10 members of the Chamber of Representatives, 10 Senators and 10 Belgian MEP’s. The latter’s’ rights and obligations do not differ from the MP’s ones.
2.	The EU Committee of the Greek Parliament is composed by 16 MP’s and 15 Greek MEP’s. The latter’s’ rights and obligations do not differ from the MP’s ones.
3.	The EU Committee of the German Bundestag is composed by 36 MP’s and 14 German MEP’s. The latter’s’ have a right to speak, but not to vote.
Participation of MEP’s	
4.	possibility to attend EU Committee meetings for all MEP’s from the respective member state:
-	With a right to speak and consultative voting rights:
	Assemblée nationale (F)
	Sénat (F)
-	With a right to speak:
	Chambre des Députés (LUX)
	Bundesrat (D)
	Senado (E)
	Camera del Deputati (I)
	Senato della Repubblica (I)
	Eerste Kamer (NL)
	Tweede Kamer (NL)
	Nationalrat (A)
	Bundesrat (A)
5.	Possibility for all MEP’s having a double mandate in the EP and their respective member state
	Folketing (DK)
	Dail Eireann (IR)
	Seannad Eireann (IR)
	House of Commons (UK)
	House of Lords (UK)
6.	No regular participation of MEP’s
	Eduskunta (SF)
	Riksdagen (S)
	Assembleia da Republica (P)

Source: Maurer 2001, p. 281.

As the country reports on Denmark², Belgium³ and France⁴ note, the offer to participate in the work of national parliaments is used to a growing extent. Also within the bodies of European parties, parliamentarians of both levels have not evolved at any set of regu-

1 See the contribution by Federiga Bindi and Stefano Grassi in this volume; and Guizzi, Vincenzo: ‘Italy’, in: Morgan, Roger, Tame, Clare, (eds.): Parliament and Parties. The European Parliament in the Political Life of Europe, New York 1996, p. 135 and p.141.

2 See the contribution by Finn Laursen in this volume.

3 See the contribution by Clair Vandevivere in this volume.

4 See the contribution by Andrea Szukala and Olivier Rozenberg in this volume.

lar interactions. Yet the Finnish¹, Dutch² and Swedish³ case studies observe a growing recognition of intra-party links in order to facilitate informal contacts between members of both sides of parliament.

4. First Attempts at the Interparliamentary Level: The Conference of Speakers of Parliaments

The Conference of Speakers of Parliaments of the European Union is due to an initiative by Gaetano Martino, a former President of the European Parliament. The first conference took place in January 1963. It was to be 1975, however, before arrangements could be made for these meetings to be held at regular (two-year) intervals.⁴ Formally, the conference may adopt resolutions. This has hitherto been done by consensus through the publication of a final communiqué at the end of the conference.⁵ The regularisation of these contacts resulted from the anticipated consequences of the first direct elections to the European Parliament and the separation of parliamentary mandates that became necessary in some member states. The discussion of initiatives to maintain the indirect and visible involvement of national parliamentarians in EC policy cycles began at a rather early stage. The Spénale report⁶ submitted to the conference held in Rome in 1975 proposed the establishment of an interparliamentary secretariat located in Luxembourg. It also called for the formation of interparliamentary bodies at the level of the parliamentary committees and parliamentary groups. To arrange these contacts and ensure their continuity, it was proposed that a joint committee for relations with the national parliaments should be set up in the European Parliament.⁷

The Conference of Speakers faces a problem of representativity. The presidents and speakers of the parliaments of Spain, Ireland, the United Kingdom, Denmark, Finland and Sweden and the Lower House in the Netherlands are not entitled to speak or to take decisions on behalf of their parliaments at interparliamentary meetings. However, the other parliamentary presidents (B, F, GR, I, LUX, P, A, D) are only allowed to take part in votes that have no direct organizational or political implications for the parliament they represent. The Conference of Speakers undoubtedly suffers through having very

1 See the contribution by Tapio Raunio in this volume.

2 See the contribution by Ben Hoetjes in this volume.

3 See the contribution by Hans Hegeland in this volume.

4 Agence Europe, No 1830, 2 October 1975; Thöne-Wille, Eva-Maria: *Die Parlamente der EG - Das Europäische Parlament und die nationalen Parlamente*, Kehl am Rhein 1984, p. 184; Bieber, Roland: *Organe der erweiterten Europäischen Gemeinschaften: Das Parlament*, Baden-Baden 1974, p. 209.

5 See Pöhle, Klaus: 'Parlamente in der EG - Formen der praktischen Beteiligung', in: *Integration*, No. 2/1992, pp. 73-76.

6 See *Europäisches Parlament: Bericht Spénale zur Konferenz der Präsidenten der europäischen Parlamentarischen Versammlungen vom 26.-27. September 1975 in Rom über die Beziehungen zwischen dem Europäischen Parlament und den nationalen Parlamenten*, DOC PE 42.070 Bur.

7 *Ibid.*, p. 13.

limited powers in substantive and political questions. Those presidents and speakers who attach considerable importance to interparliamentary work are hampered in the pursuit of this interest by their other responsibilities. The Conference is hardly a suitable vehicle for the efficient assertion of the joint interests of national parliaments and the European Parliament.

5. The Conference of European Affairs Committees (COSAC)

Also COSAC as the only interparliamentary body mentioned in the Amsterdam treaty's Protocol on the role of national parliaments in the EU (PNP) has not developed into a real institution for 'multi-level-scrutiny'.¹ Since the first COSAC was held in 1989, the meetings have been timed to coincide with those of the European Council. The emphasis of COSAC concentrated on general political topics and some kind of an introspection with regard to the roles of national parliaments in the EC/EU system. COSAC continues to face major problems with the exchange of practical information on specific policy areas in addition to discussing general issues for three reasons: First the MP are members of the 'horizontal' EC/EU affairs committees, i.e. committees that consider general policy matters. Secondly, the EC/EU affairs committees differ significantly as regards their importance and function in the overall work process in the various parliaments, as do their powers compared with those of the specialized committees. Finally, the composition of COSAC is not representative; COSAC delegates do not systematically speak in the name of their parliaments.² As the European Parliament sees it, a cautious attitude still needs to be taken towards the substantive form of COSAC. It should be emphasized in this context that since 1991 the European Parliament's participation in the preparation and holding of COSAC meetings has extended beyond the involvement of its Committee on Institutional Affairs (since 1999 the Committee for Constitutional Affairs). Since the 1994 elections its delegation has usually consisted of the two Vice-Presidents responsible for relations with the national parliaments, interested members of the specialized committees and further members of the Committee on Institutional Affairs. The composition of the EP delegation also makes it clear that it is in the EP's interests to discuss matters which relate more to specific policy issues and therefore fall within the terms of reference of specialized committees rather than general issues.

1 On the evolution of COSAC, see the contribution by Andreas Maurer in this volume. See also European Parliament/Andreas Maurer: Perspectives for co-operation between the European Parliament and the national parliaments, Working document: Political Series W-19, Brussels/Luxembourg 1996, and Maurer 2001, op.cit., pp. 276-290.

2 See Laprat, Gérard: 'Parliamentary Scrutiny of Community Legislation: An Evolving Idea', in: Laursen, Finn/Pappas, Spyros A., (eds.): The Changing Role of Parliaments in the European Union, Maastricht 1995, pp. 1-19; Maurer, Andreas: Les implications du Traité de Maastricht sur la coopération interparlementaire - le cas du Parlement européen et du Parlement français, Brussels 1996;

Yet, COSAC performs as a 'central' tool for communicating institutional issues in relation to the EU. But if we turn to the daily EC/EU business of national parliaments and the EP, i.e. the control of or the participation in policy-making, the two COSAC sessions per year do not really affect the day-to-day work of national parliaments nor that of the EP.¹ Instead, "COSAC is seen as a channel for keeping [...] parliamentarians informed about Europe."² The COSAC meetings provide an arena for Members of EU Affairs Committees in national Parliaments and MEP's to discuss general developments of the Union. Due to the regularity of the COSAC meetings, the involved MP's develop a personal network, which also involves the applicant countries. The size of the delegations at COSAC (Six MP's per national parliament and Six MEP's) ensures that different political views from each country are represented. However, the effects of COSAC meetings do not go beyond the core network of its constituent members. Yet, most of the national parliaments see the Amsterdam Treaty's provisions on COSAC as a pragmatic approach to an exchange of opinions and experience. COSAC facilitates informal exchange, but the overall majority of parliaments oppose any further institutionalisation.³

6. Joint and Bilateral Committee Meetings: Informal Tools for Playing the Multi-level Game

The involvement of the national parliaments' standing specialised committees represented another option for a more policy-oriented interparliamentary co-operation. Moreover, this kind of multi-level co-operation seemed to be conducive both to making EC/EU legislative processes more effective and to democratising the European Union while preserving and strengthening the European Parliament's legislative powers. Hence, so-called joint committee meetings have attracted much more interest in both the national parliaments and the EP. To increase the effectiveness of all legislative activities and make them a parliamentary responsibility, the EP took numerous initiatives in the context of the establishment and implementation of the EU's annual legislative programme. In 1991, a special division for relations with the parliaments of the member states was established within the EP's Directorate General for committees and delegations. Besides assisting the MEP in COSAC meetings, this division started to coordinate joint committee meetings, bilateral meetings between corresponding committees of the EP and national parliaments, and meetings of Rapporteurs and higher civil servants.

Delmas-Derroze, Sabine: 'Le traité d'Amsterdam et le déficit démocratique de l'Union européenne', in: *Revue du Marché Unique européen*, No. 4/1999, pp. 143-182.

1 See Maurer, 2001, op.cit, pp. 276-291.

2 See the contribution by Brigid Laffan in this volume.

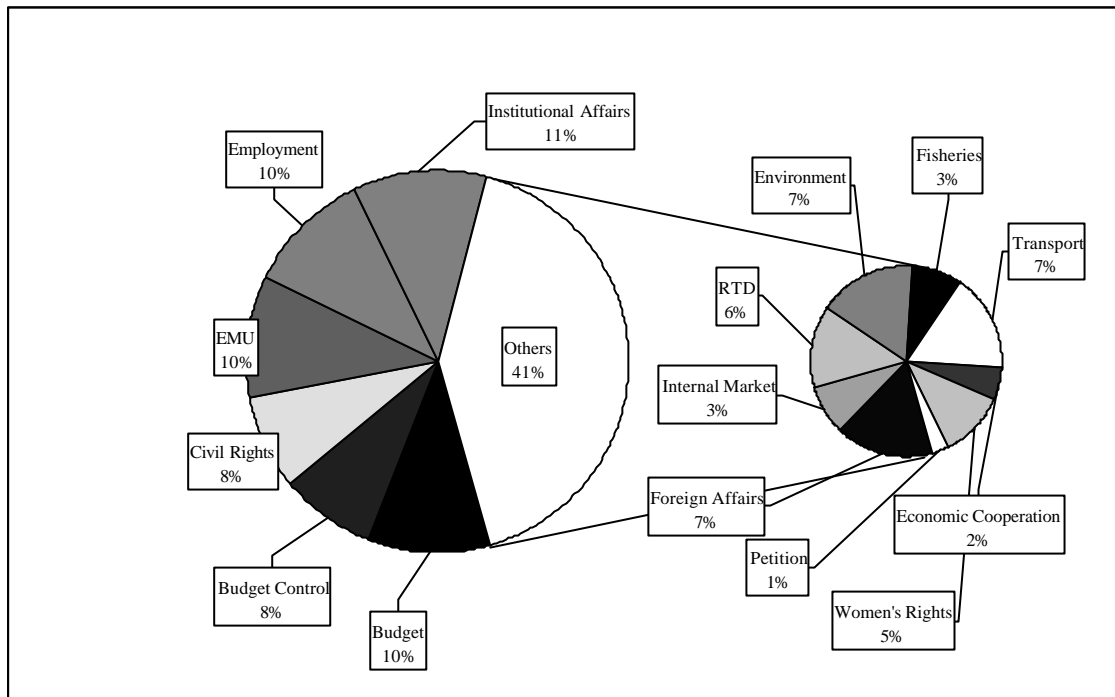
3 See the contribution by Sven Hölscheidt in this volume.

The quality of joint committee and bilateral meetings differs in several respects: At joint committee meetings national parliamentarians receive information not only on the position of the European Parliament's committee on the items concerned (as a rule, an aspect of current or foreseeable legislation is discussed) but also on the position of other national parliamentary committees and, where appropriate, the views of the Member States' governments. Since 1991, European Parliament rapporteurs have been appointed to prepare these meetings. They send to the national parliamentary committees questionnaires on specific areas of policy to help them with the drafting of their reports and gear the agenda of joint committee meetings to the lists of questions. Since 1992, joint committee meetings have often been seen as an opportunity for determining the European Parliament's position during the Community's legislative procedures in the light of national parliamentarians' reactions on relevant draft proposals. They thus implicitly help to fulfil the European Parliament's efficiency criterion in that rapporteurs are informed of possible and foreseeable problems with the implementation of planned Community legal acts and are able to take them into account when drafting their proposed amendments. Conversely, national parliamentarians receive background information on the possible negotiating strategies and positions of the Member States' governments and parliaments in specific areas of Community legislation. Also since 1992 members of the European Commission started to attend joint committee meetings.¹

Both joint committee and bilateral meetings promote the programming and systematisation of interparliamentary contacts. Ideally, joint committee meetings are held to discuss specific issues emerging from the EU's legislative programme. They precede bilateral meetings with the committees of national parliaments which intend to express national concerns about specific draft legislation. In certain cases (F, UK) such systematisation is optimised by the organization of meetings between corresponding rapporteurs or committee chairs (DK, SF). A systematized co-operation between rapporteurs is impossible, however, since the institution of Rapporteurs is unknown in the vast majority of the national parliaments.

1 A high point in this respect was the joint meeting of the committees for economic and monetary affairs and industrial policy that was held on 25 and 26 January 1995, when the then Commissioners Kinnock, Bangemann, Papoutsis and Monti made introductory statements on the various items on the agenda and joined in the ensuing discussion. See European Parliament: Meeting between the Economic and Monetary Affairs Committees of the national parliaments and the European Parliament, 25 and 26 January 1995, Programme, PE 211.143/fin.; European Parliament: Info-Memo, No 13, 26 January 1995 and Info-Memo, No 15, 27 January 1995.

Graph 9: Repartition of Joint Committee Meetings 1987-1998



Source: Maurer, 2001, p. 289.

Compared with COSAC and the Conference of Speakers, these types of informal co-operation are geared to specific areas of public policies rather than institutional questions. As graph 9 indicates, 59% of the joint committee meetings are organised by six EP Committees. Apart from the Committee on Civil Rights, this kind of interparliamentary co-operation is mainly covered by committees dealing with socio-economic and monetary issues.

Joint committee meetings certainly represent a more practical implementation strategy for reducing the democratic deficit and making Community legislation more effective, a task which cannot be performed by COSAC or the Conference of Speakers because of their participant structures. Compared with COSAC and the Conference of Speakers, informal Co-operation is more closely geared to the preparation and implementation of the legislative programme. Joint committee meetings are geared to issues of Community rather than national interest because of their participant structure and the matters they consider.

Table 33: Bilateral meetings between corresponding committees of the EP and national parliaments 1987-1998

Years	B	DK	D	GR	E	F	IR	I	LUX	NL	A	P	SF	S	UK
1987	0	0	1	0	2	0	0	1	0	0	0	0	0	0	0
1988	0	0	3	1	2	2	0	1	0	0	0	3	0	0	1
1989	0	1	0	0	3	2	0	0	0	0	0	0	0	0	0
1990	0	1	2	0	0	1	3	1	0	0	0	1	0	0	1
1991	0	1	1	0	0	3	0	0	0	0	0	0	0	0	0
1992	0	0	3	0	0	2	0	0	0	0	0	0	0	0	0
1993	0	1	2	0	0	8	1	0	0	0	0	0	0	0	3
1994	0	0	0	0	0	5	0	0	0	1	1	0	0	0	2
1995	1	3	4	1	2	6	1	1	0	2	0	1	8	3	6
1996	1	0	0	0	0	6	1	4	0	1	0	0	4	8	7
1997	0	2	3	1	1	6	0	0	0	0	2	0	1	1	2
1998	1	2	3	0	0	9	1	2	0	0	1	2	4	3	3
Sum	3	11	22	3	10	50	7	10	0	4	4	7	17	15	25

Source: Maurer, 2001, p. 290, based on the internal data basis of the EP's Division for relations with national parliaments.

Bilateral contacts between the European Parliament and the national parliaments and their committees tend to favour some national parliaments. As table 33 shows, meetings between the European Parliament's committees and the national parliamentary committees of France (50), the United Kingdom (25), and Germany (22) accounted for the bulk - nearly 52% - of all bilateral meetings. This is not, however, due to the European Parliament's preference for the committees of these parliaments since most bilateral meetings are held on the initiative of the national parliaments.

V. Conclusions: Beyond Slow Adaptation?

1. On the Record: One-level Players?

Over the evolution of the EU system in the last fifty years national parliaments have been slow and retarding adapters. Only during the 1990's they increased their role on the national level and, to a limited extent, on the European - European Parliament - level, too. The country reports tested how far the opportunity structures offered to parliaments by national constitutions were really used. The overall majority of studies indicate that the real patterns of access and influence were below the potential participation offered by the EU's and the national 'legal constitutions'¹. Only the Maastricht Treaty generated a revision of participation rights in the majority of parliaments. The Amster-

¹ See Olsen, 2000, op.cit and the contribution by Andreas Maurer in this volume.

dam Treaty and its Protocol on the role of national parliaments in the European Union did not engender a similar effect.

In sum, the Danish case remains a unique archetype of a parliament, which is apt to formulate its own political assumptions about the daily EU business effectively. The parliaments of Finland, Austria and Sweden followed this line, although their scrutiny systems are less binding for their governments. As to the scheme for measuring parliamentary participation in EC/EU affairs (see Table 34), these parliaments certainly fulfil the criteria of strong policy-making, and thus ‘national players’. Their performance is based on a certain veto power, the possibility of making modifications and of steering compromises in the course of the national policy process.

Table 34: The Scheme for Measuring Parliamentary Participation in EC/EU Affairs

Raw Categories of Parliaments	Scrutiny Variables		
	Scope	Timing and Management	Impact
Weak parliaments	Rather low	Reactive and Accidental	None
Modest policy influencing parliaments able to modify or to reject government proposals	Low – High	Reactive but Formalised	Low
Strong policy-making parliaments able to substitute government proposals	High	Anticipative, Proactive and Institutionalised	High

The EC/EU-related policy-making strength of the parliaments of Germany and the Netherlands is similar to the first group. However, the consensual policy-making style and the - still existing - pro-European consensus among the political parties in these countries prevents parliamentarians from a systematic confrontation with their governments. They thus perform as potential or latent ‘national players’. The French and the UK Parliament are both cases of modest policy-making legislatures, who wish to act the games of the ‘national players’. Both parliaments are able to comment on incoming EC/EU information and to voice their opinions by reports, resolutions and the so-called parliamentary scrutiny reserves. But they are not able to effectively change a governmental draft reaction to EC/EU input. The remaining parliaments (IR, B, LUX, I, E, P, GR) should be categorised as ‘slow adapting’ parliaments, which are not willing or able to affect their government’s stance in EU negotiations. If we turn our view to the real performance of parliaments in interparliamentary co-operation, we can identify an emerging group of multi-level players in the Nordic countries as well as in Germany, the UK and France. Parliamentarians of these countries use the informal networking

arenas for joint consultation through committees, committee chairs, parliamentary staff and, to a limited extent, through rapporteurs.

Figure 11: 'Real' Types for Actors in the EU's Two-Level Game

		Participation in the National Arena	
		Strong ⇒ ⇒ ⇒ ⇒ ⇒ ⇒ ⇒	Weak
Participation in the Brussels / Strasbourg Arena	Strong	Multi-level players DK, SF	European players EP
	↑↑	S, D, B, UK, F	
	↑↑	National players A, NL	Slow adapters IR, LUX, I, E, P, GR
	Weak		

In some limited cases, the role of the 'national players' was strengthened to a certain degree. At the same time the EP developed into a more efficient European player - with a strong trend to become a 'real' second chamber in the EU's institutional set-up.

This record also highlights that the majority of MP's have not become strong multi-level players. In comparison with national governments and administrations, with intermediary bodies as lobbies and NGO's parliamentarians are less competitive especially in cases where the participation in the EC/EU policy cycle on both levels is of a major importance. In this sense the national parliaments of the last two categories are still 'losers' in the evolution of the EU system. Their late efforts of the 1990's did not lead to a fundamental upgrade of their relative role vis-à-vis their governments.

2. Explanations on the Negative Balance Sheet: A Misguided Role Attribution?

If we take our original paradox regarding on the one hand the self-made losses of parliaments and the demands for parliamentary involvement on the other, the record of the slow adapters and reluctant multi-level players needs further explanation. We suggest to start from the role attribution normally given to national parliaments as major *actors*.¹ The demand for participation of *the* parliament as such does presuppose that parlia-

¹ See the contribution by Andreas Maurer in this volume.

ments are more than an arena but an autonomous institution in its own right. If we however accept that within the EU parliamentary democracies most national legislatures are clearly divided into factions of majority and opposition, the dominating cleavage between a pro-government group and anti-government one is also determining the behaviour towards EU issues.¹ Thus the parliamentary majority feels represented by the Government of the day - and not by some few of its members in COSAC or even by some of their party members in the EP. Parliamentary scrutiny is then a matter of participation and getting or remaining involved without developing a systematic anti-governmental stance. Even more in consensual democracies opposition parties and their parliamentary groups might follow the Government's politics as 'supportive scrutinisers'.² This role applies both to the typical parliamentary systems in most of the EU countries as well as to the semi-presidential system of France. The 'classic' parliament-versus-government style of scrutiny applies only in the UK majoritarian system and the Danish parliamentary system, which is stamped by minority governments.

If we take the 'real' parliamentary evolution over the last two centuries serious, then the slow and weak adaptation of national parliaments in EC/EU affairs is not just the product of benign neglect of governments or mismanagement of the involved MP's, but the unavoidable consequence of the fundamental trends in our parliamentary systems. This set of arguments differs from the original doctrine on the non-intervention of parliaments in external affairs. It is not part of a state-centric view but follows the logic of party government.

To turn the argument around - also in view of the concepts and post-Nice debates on the future of the Union: Given the increased importance of EC/EU affairs any stronger and direct participation of national parliaments on the EU level would affect the basic way national governments and parliaments function in general. A stronger - more direct and less delegated - involvement of parliaments would thus erode traditional patterns of policy-making in our polities - for better or for worse.

Such a causal link between the virtues of the political system in general and EU activities in specific could be derived from the empirical studies in our work: The more a national system belongs to the category of a close unity between majority party and government the less its parliament is directly and independently engaged both on the EU as on the national level. Our assessment that many parliaments are slow adapters or weak performers is thus a depending variable on the roles which national systems implicitly attribute to their parliaments.

On the other hand, the evolution of the parliamentary multi-level players seems to be a more dependent variable of government-parliament relationships. Hence, both the slow

1 See Lijphart, 1999, op.cit., pp. 62-89.

2 See in this regard the analysis by Ben Hoetjes on the Dutch system and Sven Hölscheidt on the German system in this volume.

adapters and the national players invest time and personal into the different interparliamentary co-operation regimes, which are offered and managed by the European Parliament. The difference here is the formality of these regimes. The French Parliament could be classified as *the* protagonist for more institutionalised co-operation mechanisms. The reason is to be found in the French political system and the rather weak role of parliament in both national and European policy-making. Playing the multi-level game from a French parliamentary perspective is a compensation for missing links in the national system. A second fundamental reason is based on the EU's own fusion dynamics: Institutional and procedural differentiation, the continuous trend of merging public policy instruments and actors at the European, national and sub-national levels of governance urges each actor to generate effective and efficient means for participation and influence. Unless national parliaments turn into efficient multi-level players they remain structurally handicapped to become competitive. Both factors - the parliament-government logics and the EU's fusion dynamics¹ - create an antagonist environment for national parliaments and reinforce a significant tension between the aim to participate in EU policy-making and the realities of the EU's multi-level and multi-actor nature.

3. Traps, Trends and Options for the Future

The role of national parliaments in European integration has - again - become an issue for two reasons at least. The 2000 Nice European Council, in the Declaration No. 23 on the future of the Union annexed to the Treaty², stated that it was one of the four topics to be placed at the center of a rather vast and ambiguous debate, destined to result in a new Intergovernmental Conference being held in 2004. The European Council's declaration can be read in different ways: Hence it mirrors a set of views which were not clearly defined by the Heads of State and Government among themselves and which diverge as regards the institutional architecture and overall development of the larger Union which is about to come into being.

The declaration raises the general question how democratic the integration process is, and whether the European Union could be democratised by modified institutional and/or para-constitutional rules. It would be a mistake to imagine that the EU's citizenry is not aware of the problem. The Irish 'No' to the Nice Treaty might have several reasons, which are not directly linked to 'knowledge' about and an objective 'evaluation' of the Treaty's text. However, the reaction of the Irish citizens indicates the EU's major problem of building legitimate links between the multi-level playing actors and the citizens. As the chairman of the EP's Committee for Constitutional Affairs put it:

1 See chapter I of our contribution.

2 See the documentation by Astrid Krekelberg in this volume, document No. 3.

“The loss of consensus in public opinion and the growing disaffection, disappointment and distrust regarding the EU’s development can not be explained solely by the shortcomings or unconvincing actions of the Union in its tangible policies and its responses to major demands and expectations as regards the life and future of citizens. The spread of such feelings is also due to a sense of alienation, the serious difficulties encountered in understanding and participating, a fear of helplessness in the face of imposed decisions which cannot be influenced or controlled.”¹

Both the European and the national actors are therefore called to elaborate new or renewed options for organising the enlarged Union in a democratic, efficient and effective way.

3.1. *The Scope of Options*

The actual - 2001 - post-Nice reflection on the role of national parliaments concentrates on two options: The creation of another parliamentary chamber at the EU level, and the organisation of interparliamentary exchanges at a larger scale than the already existing regimes of COSAC and committee meetings.

A ‘new’ *European Parliament* (Figure 12): The most spectacular proposal aims at the ‘re-creation’ of a ‘European Parliament’ as a bicameral body - one of which would be composed by elected national parliamentarians. The second chamber would then be composed either by directly-elected senators from the member states (US Senate model), or by delegated ‘senators-MEP’s’ from each member state with weighted voting rights (German Bundesrat model).²

1 See: European Parliament/Committee on Constitutional Affairs: Working Document on Relations between the European Parliament and the National Parliaments in European Integration. Rapporteur: Giorgio Napolitano, Doc. No. DT/436579EN.doc, Brussels, 7 June 2001.

2 See Joschka Fischer: ‘From Confederacy to Federation-Thoughts on the finality of European integration’, Speech held at the Humboldt University in Berlin, 12 May 2000, German Foreign Ministry’s translation, p. 8. Similar ideas have been proposed by Tony Blair, Prime Minister of the UK, at his Polish Stock Exchange speech on 6 October 2000, pp. 9-10. Note that the ideas of Fischer were indirectly opposed not only by the German SPD draft programme for the party’s National Conference in Nuremberg, 19-23 November 2001, See: Keynote proposal: Responsibility for Europe, Draft (Status 30 April 2001). Hence, also the Foreign Minister’s own party, Greens/Bündnis 90, do not reflect his ideas. Instead the party’s draft programme puts forward the idea to simply replace the Council of Ministers by a second chamber of national parliamentarians. See: Bündnis 90/Die Grünen-Grundsatzprogrammkommission: Grün 2020 - Entwurf für das Grundsatzprogramm von Bündnis 90/Die Grünen, 16 July 2001, Chapter ‘Aufbruch nach Europa und in die Eine Welt’, pp. 66-67.

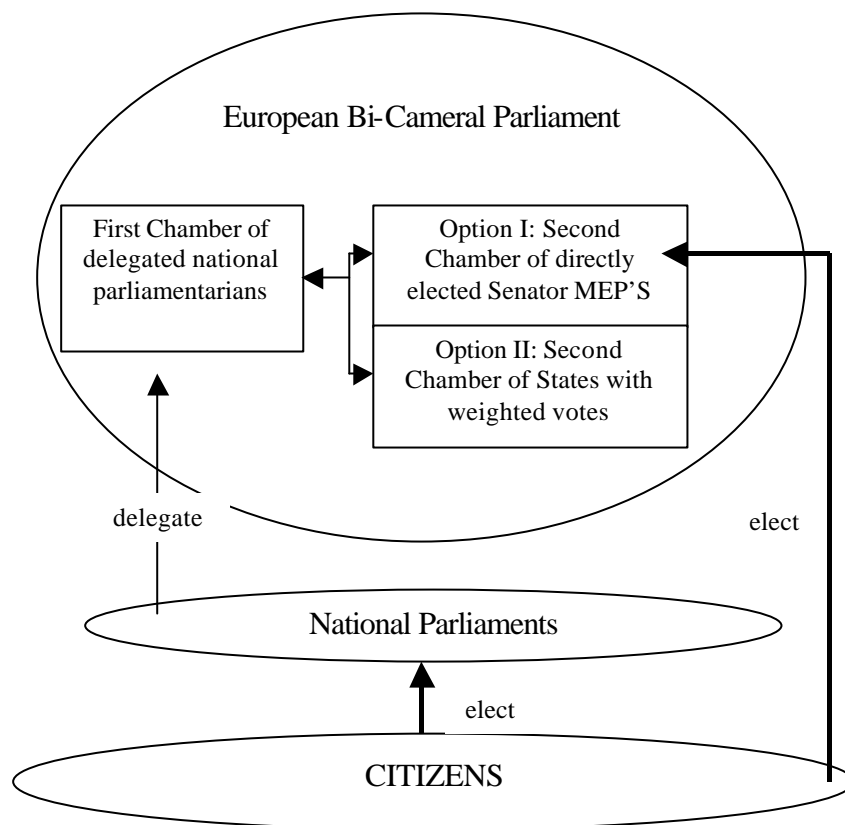


Figure 12: Model for a 'New European Parliament'

The proposal of such a bi-cameral parliament is based on the conviction that this could strengthen the democratic legitimacy of the Union and respond to the concern among national parliaments that their influence over the decision-making process at European level and developments in European integration is being further reduced. However, it should be noted that this concept would result in a new Brussels-based institution not directly and uniformly elected by the citizens (like the actual EP), and not indirectly elected (like the Council). The actual legitimacy of the directly elected European Parliament would be replaced by a body, whose legitimacy would be rooted in a purely national oriented selection procedure, where the electorate should choose candidates on an entirely national dimension. Moreover, it is not clear whether the first and the second chambers' powers would cover only (a.) legislative or constitutive consultation, or (b.) legislative deliberation and co-decision, or (c.) only scrutiny. Should both chambers share the same rights, or should one chamber get a more 'important' design than its

matching body?¹ If the powers of the two chambers were restricted to scrutiny, they would eventually withdraw those existing rights and powers of the national parliaments vis-à-vis the respective governments. If they would receive powers of legislative co-decision, they would either overlap in a confusing way with those assigned to the existing European Parliament or - if the EP would wither away and be replaced by a new 'first chamber' of national double mandate holders - with those of the second chamber/Senate. Even if the competences of this Senate were confined to the second and third pillars, the institutional architecture of Europe would be further complicated.² Ultimately this would not be the answer to the frustrations and tensions currently felt by the national parliaments.

A Permanent Conference of Parliaments (Figure 13): The suggestion to create a 'permanent conference of parliaments or a congress', which would meet periodically to monitor the respect of the principle of subsidiarity and to debate the 'State of the Union' each year, as well as exercising powers to ratify certain amendments to the Treaty,³ also raises a number of questions which should be dealt with in greater depth.

Hence, the proposal seems to be inspired by the 1990 'Assizes' in Rome, where delegates of both the EP and the national parliaments issued a resolution to the IGC that culminated in the Maastricht Treaty.⁴ The final declaration adopted by 150 votes to 13 (with 26 abstentions, including 18 French parliamentarians) recommended the holding of further conferences of the Rome-Assizes type whenever a debate to determine the line to be taken in essential parliamentary questions seemed necessary. The Rome Assizes revealed that a minority of - at that time French and Belgian - national parliamentarians differed from MEP's and the majority of MP's in that they wanted greater institutionalisation of parliamentary conferences. The French Senate in particular pressed for conferences in the form of Assizes to be held at regular, predetermined intervals.

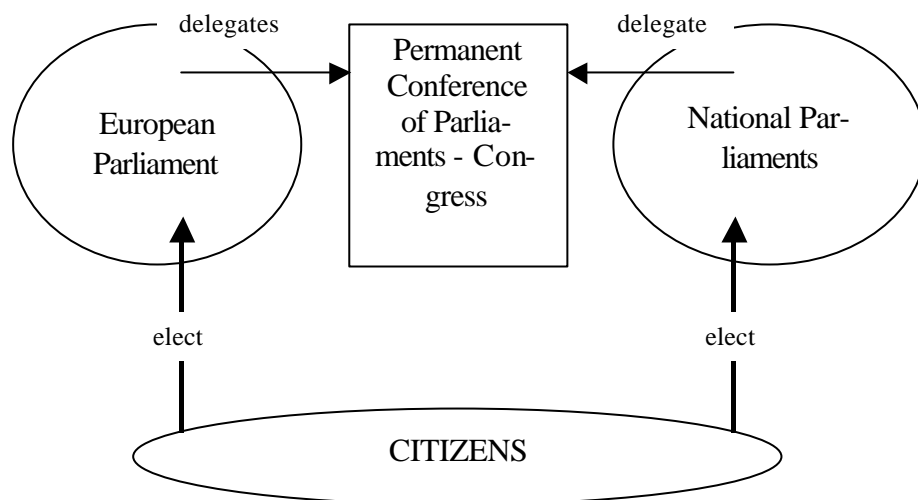
1 See also the speech of Michel Barnier, Commissioner for Regional policy and Institutional reform, at the meeting of the European Parliament with members of the national parliaments, Brussels, 20 March 2001: *The Future of the Union and the National Parliaments of the Member States*.

2 See the speech of Paavo Lipponen, Prime Minister of Finland, at the European University Institute, Florence, 9 April 2001: *The Future of the European Union after Nice*, Speech Text, p. 4.

3 See the speech of Lionel Jospin, Prime Minister of the French Republic: *On the Future of an Enlarged Europe*, Paris, 28 May 2001, Speech Text, p. 6.

4 *Parlement européen (27-30 novembre 1990)*

Figure 13: Model for a Permanent Conference of Parliaments - Congress



The European Parliament and the vast majority of national parliaments rejected such institutionalised regularity on the following grounds: First, the EP's experience before its members were directly elected had revealed the practical procedural and interinstitutional limits to a parliamentary body composed of delegates who were involved in the work of at least two parliaments. Secondly, the EU already knows institutions which represent the interests of the member states (Council, European Council) and the regions (Committee of the Regions, and again the Council in the case of Belgium, Germany and Austria) and whose members are accountable to the national and regional parliaments. Thirdly, the EU's decision-making procedures would be complicated and made less transparent by the addition of other bodies whose members represented similar interests in more than one Community body. The rejection was also endorsed because any institutionalised form of interparliamentary Assizes would delay institutional relations and procedures, increase their complexity and, possibly develop a momentum of their own, leading to conflicts between national and European parliamentarians to the benefit of the institutional position of the Commission and Council.¹ Looking ahead to the 1996/1997 Amsterdam IGC, some parliaments supported the revival of the Assizes in the form of the conference held in 1990. On several occasions the then President of the EP, Klaus Hänsch, called on the national parliaments to prepare and hold further congresses according to the Rome exercise.² And like the actual 2001 proposal, the

1 Assemblée nationale, 4 octobre 1990, p. 27.

2 See the inaugural address by the President of the European Parliament, Dr Klaus Hänsch, on 20 July 1994. See also his statement at the meeting of the Committee on Institutional Affairs of 5/6 September 1994 and the speech of the former President of the European Parliament, Dr Egon Klepsch, to the European Council in Birmingham on 16 October 1992.

European Parliament suggested to convene congresses only when the subject matter to be discussed was clearly defined: Congresses focusing on specific subjects should take account of the role of joint committee meetings and not result in any duplication of deliberations; the specialised committees and the parliamentary bodies proposing meetings of another congress should therefore coordinate their activities and join in defining the subjects to be considered at these meetings. Practically, interparliamentary congresses could be organised when EC/EU legal acts require ratification and the approval by national parliaments. Such kind of conferences could be held for the purposes of a larger parliamentary deliberation before the ratification procedures begin in the national parliaments and - if required by the Treaty - the European Parliament takes its decisions.

3.2. *Three Alternatives*

Most supporters of the idea of a 'second chamber' have backtracked, and now suggest that a new body should only have a limited role. Three options appear to be taking shape.

A Chamber of Subsidiarity: The first is that a new joint body of MEP's and MP's should be a "chamber of subsidiarity"¹ policing the borders of EU competence.² However, this option faces some serious difficulties.³ If the parliamentarians were to examine Commission proposals to check that they were within the EU's field of competence, leaving them then to the Council and Parliament to deal with according to normal procedures, this would be too soon in the procedure, as questions about 'invasive legislation' are usually about the final outcome of the legislation, rather than the initial proposal. Commission proposals get substantially amended by the Council and the European Parliament, so pronouncing on the 'first draft' is premature.⁴ If the chamber is to intervene at the end of the procedure, it would be invited for a second guess to the position adopted by the ministers in the Council, each of whom enjoys the confidence of a majority in his/her national Parliament. Either they will endorse their ministers' actions, or there will be a European level repetition of national political conflicts.

1 See the speech of Tony Blair, 2000, op.cit., p. 10.

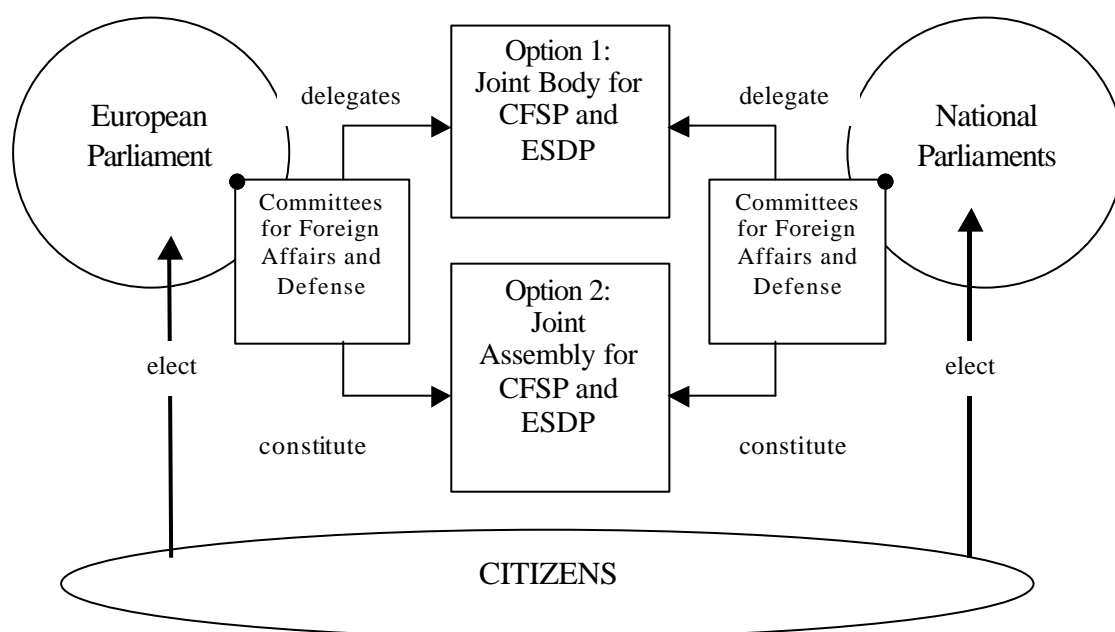
2 The proposal to create a specific body for checking EC/EU legislation against the principle of subsidiarity dates back to a report by French Senator Michel Poniatowski on the principle of subsidiarity in 1992. See Rapport d'information no. 45 du 12 novembre 1992 sur le principe de la subsidiarité, par M. Michel Poniatowski, pp. 37-46. As to the recent, i.e. post-Amsterdam British proposals to create such a body, see 'Cook on making Europe accountable to the people', Interview by Foreign Secretary Robin Cook, BBC Radio 4, London, Thursday, 13 August 1998.

3 See Corbett, Richard: 'An EU Senate is superfluous', in: Centre for European Reform - Online, CER Bulletin, No. 17, April/May 2001; at: www.cer.org.uk.

4 See in this regard the European Commission's White paper on Governance, op.cit., pp. 15-18.

A joint body to control CFSP and ESDP policies (Figure 14): The second concept is that the chamber could be charged with scrutiny of second pillar matters, taking over from the WEU assembly regarding security matters.¹ Hence, the year old rivalry between the WEU assembly and the EP on parliamentary oversight in security and defence matters needs to be resolved by both sides of parliaments. The EP invited the national parliamentarians to establish a “European interparliamentary body on security and defence [...] comprising European and national MP’s responsible for security and defence issues [...] designed] on the basis of the COSAC’s experience”.² At the invitation of the Belgium Parliament MP’s of the EU member states, the European Parliament and the WEU-Assembly met on 2 and 3 July 2001 to discuss their jostling.

Figure 14: Model for a Joint Body for Scrutinising CFSP and ESDP



The conference agreed on a declaration, in which it calls for the creation of an “ad hoc security and defence assembly” with members from both the EP’s and the national parliaments’ standing committees for defence and foreign affairs. This body should organ-

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- 1 See the speech of Tony Blair, 2000, op.cit., p. 10. On the issue of parliamentary scrutiny in ESDP see especially: Gourlay, Catriona: ‘The European Parliament’s Role in Scrutinising Defence and Security: An Uncertain Future’, in: ISIS Briefing Paper, No. 21, Brussels 1999; and Jensen, Frederick: ‘Filling the accountability gap in ESDP’, in: European Security Review, No. 2/2000, pp. 4-5.
 - 2 European Parliament, Resolution on the establishment of a common European Security and Defence Policy with a view to the European Council in Feira, Doc. No. PE 291.8882, of 15 June 2000.

ise “two sessions at least per year”.¹ During the conference’s debate most of the committee chairpersons of the national parliaments recognised that the European Parliament disposes of parliamentary power in defining and monitoring the civil instruments for crisis management as well as of conflict prevention. On the other hand, they stressed that parliamentary control of military missions remains the responsibility of their assemblies. Yet, parliaments do not take most decisions regarding foreign policy and security: They question, debate and scrutinise the decisions of executives. Thus, a new interparliamentary body restricted to these issues would be open to the charge of being an expensive talking shop, since CFSP and ESDP matters will in any case continue to be debated in the national parliaments and in the European Parliament. Note in this regard that the latter already questions the High Representative and the Council Presidency, adopts resolutions, conducts inter-parliamentary relations with third countries and adopts the non-military part of the budget for the two areas under consideration.

A Convention on the future of the European Union (Figure 15): The third option considers the role of national parliaments with regard to the further development of the EU’s para-constitutional nature and the very process towards the IGC in 2004. The participation of national parliaments in the body responsible for drawing up the Charter of Fundamental Rights of the Union was an original experience, which might open the way for another innovation as regards the role of parliaments in the development of the EU. The Convention was marked by the recognition, on an equal footing, of the contribution of four institutions - alongside the parliaments, national governments and the Commission were also involved - in drawing up the Charter of Fundamental Rights. This exercise symbolised the recognition of shared responsibility in the exercise of ‘para-constituent power’, which had hitherto been reserved for governments alone.

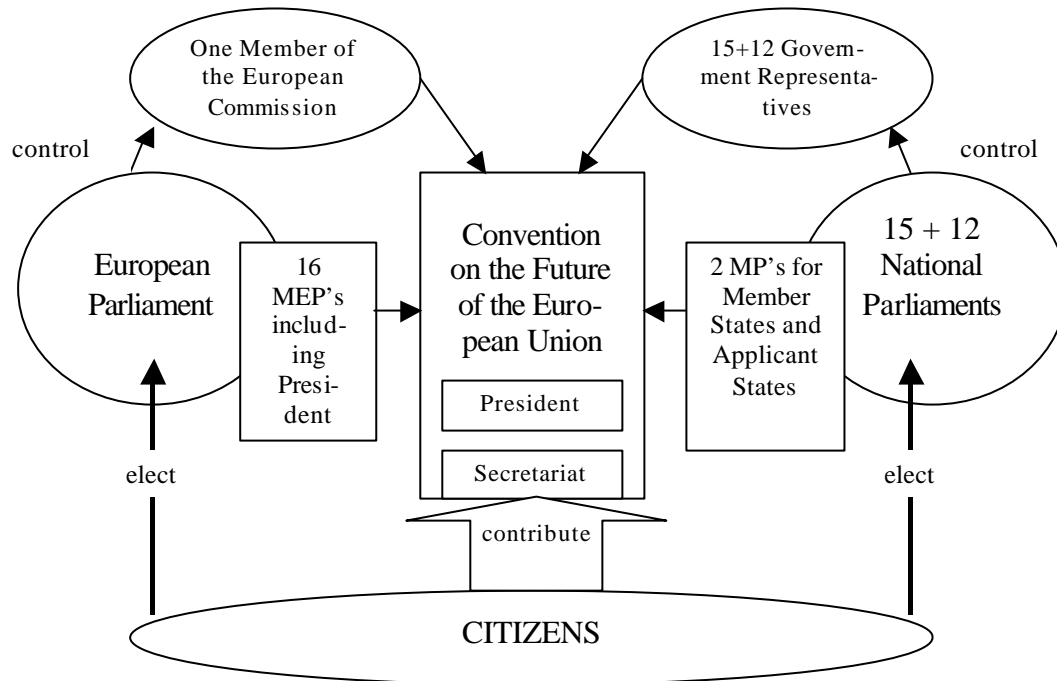
In the Declaration on the future of the Union, the Heads of State and Government outlined the process which should lead to the next IGC being held by 2004, without a repetition of the method for preparing the 2000 IGC, which seems to have outlived its usefulness. The European Parliament and the COSAC Stockholm meeting in May 2001² already proposed a process of this kind that should be focused on a body such as the tried and tested Convention. Of course, the actors involved should take into account the fact that the task is different from that of drawing up the Charter of Fundamental Rights. Moreover Article 48 TEU necessitates for a definitive version of texts entailing any revision of the existing EC/EU Treaties a ‘traditional’ conference of representatives of the governments of the member states. In this context, the Convention could be seen as a move towards assigning to the national parliaments and the European Parliament a specific kind of joint ‘para-constituent power’, i.e. a power to be shared with the na-

1 See Federal Parliament of Belgium: Parliamentary Conference on the European Security and Defence Policy and Related Parliamentary Scrutiny, Declaration, Brussels, 2-3 July 2001, p. 3.

2 See the documentation by Astrid Krekelberg in this volume, document No. 4.3.6.

tional governments. This development would mark a new chapter in the role of parliaments in European integration following the fusion dynamics.

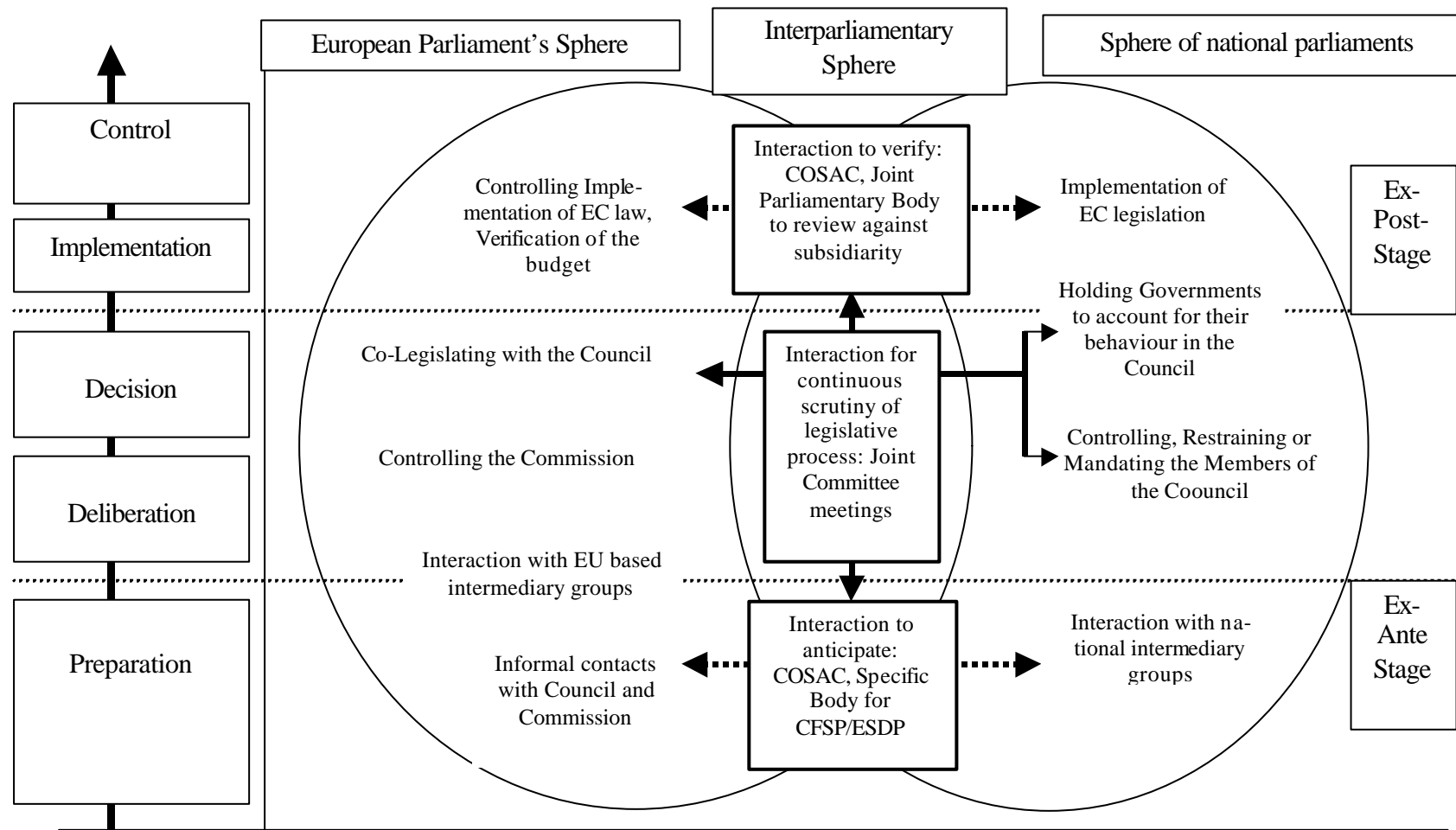
Figure 15: Model for the Convention on the Future of the European Union



Of course, to build on this outline and to give national parliaments access to the policy process of the European Union level makes such a process fully dependent on the veto of the single unit. However, the Nice declaration on the future of the Union reflects the need to strengthen the role of all collective actors of popular representation *and* to make the institutions of the different levels of the Union co-operate with each other. In such a perspective, it might not be wrong to call upon national parliaments to strengthen their role as multi-level players in the European Union, to strengthen COSAC according its own proposals¹ and to invite national parliaments to open ‘their’ offices in the EP buildings.

1 See the conclusions of the Versailles COSAC meeting in 2000 in the documentation by Astrid Krelberg in this volume, document No. 4.3.5.

Figure 16: Role Attributions for the European Parliament and the National Parliaments in the EU Policy Cycle



However, the right attribution of roles and functions must be made: The fusion trend points at a typical merging of powers and responsibilities, which is also valid for shaping the ‘interparliamentary sphere’ or European governance (see Figure 16).

In this context, ‘joint parliamentary bodies’ for sectoral issues might take up the heritage of already existing network of joint parliamentary committee meetings. This renewed network could parallel the Council of Ministers in its various formats; the former WEU assembly and the EP’s Committee for Foreign Affairs might mutate into a specific case. Finally, a para-constitutional assembly might generate the parliamentary backbone of the Union’s further evolution with regard to Treaty developments. COSAC would remain the main locus for interparliamentary Co-operation with regard to institutional issues.

The realisation of such a multi-dimensional net of interparliamentary contacts might help to reduce the democratic deficit in institutional - parliamentary - terms. On the other hand, one should bear in mind that institutional mechanics are not self-evident for the end-users of public policy outcomes: Do these improvements also provide new ground for enhancing the legitimacy and proximity of European governance towards the citizens of the Union? It remains in the hands of the actors involved to offer appropriate means for the involvement of the Union’s Demoi in shaping the conditions for their way of living. More precisely, the national parliaments will face the difficult task to prove that they are able and willing to provide channels for communication across the boundaries of the EU’s member states.

The greater involvement of national parliaments in the EU’s policy cycles may help to render governments more accountable for what they decide in the Council of Ministers and its subordinated working mechanisms. However, the simple formalisation of COSAC or any other joint body incorporating MEP’s and MP’s within the realm of a new Treaty or constitution also renders the EU more complex and less understandable. The ‘ordinary’ - hopefully interested - citizen may ask: If the (directly elected) European Parliament represents the peoples of the Union, the Council of Ministers the member states through (elected) governments, the European Economic and Social Committee the “economic and social components of civil society”¹, and the Committee of the Regions the (elected) representatives of some of the Union’s regional and local communities, what is the surplus of a group of bodies bringing together some members of the European Parliament with some members of the national parliaments? The next Treaty reform should discuss appropriate ways for a more coherent and clear-cut organisation of interest representation and mediation in an enlarged European Union. There are no easy solutions and one should be aware of naïve myths and simplistic parliament versus-government designs.

1 See for this definition Article 257 ECT as amended by the Treaty of Nice.

The Reticent Acknowledgement of National Parliaments in the European Treaties: A Documentation

Astrid Krekelberg

When the Treaty of Rome was signed in 1957 neither the European architects nor the ratifying members of national parliaments themselves paid much attention to the role of national legislatures in the European context. This attitude changed with the increasing transfer of national competencies towards the EC/EU. The growing scope of EC/EU activities more and more affected and undermined the traditional legislative function of national parliaments in public policy-making. With the development of the European Communities towards a European Union, some governments and parliaments raised the question by which means the national parliaments' role could be enforced in the treatment of European issues and in how far the loss of their original legislative functions could be compensated for example by control functions in the European decision-making process. The first national answer to the lack of national parliaments' involvement in the EU policy-cycle was the creation of 'European Affairs Committees' and the establishment of specific parliamentary procedures which should help scrutinizing the governments' actions on the European level. But besides these national arrangements, until the Treaty of Maastricht there was no common and legally fixed European basis for the national parliaments' functions in the European policy-cycle.

The TEU's *Declaration No. 13* is the first European document that in particular treats the role of the national parliaments in the EU by encouraging "greater involvement of national parliaments in the activities of the European Union". According to the Declaration, which was set up following proposals by the United Kingdom and France, the governments should ensure "that national parliaments receive Commission proposals for legislation in good time for information or possible examination". Though not being legally binding the Declaration had political consequences. Above all it intensified the debate between national parliaments and the European Parliament on the effectiveness of parliamentary accountability in EU affairs.

The TEU's *Declaration No. 14* is the attempt to strengthen the collective role of the national parliaments on the European level. It invited both the European and national parliaments to "meet as necessary as a Conference of the Parliaments", which had taken place in Rome in June 1990 and had brought together 173 MP's and 85 MEP's in order to adopt a resolution on the intergovernmental conference on the EMU and on the Political Union. Declaration No. 14 grants the Conference with a consultative role in the discussion of the "main features of the European Union". But since the overall majority of national parliaments did not want to repeat the 'Rome exercise', Declaration No. 14 has never been activated.

Altogether the TEU Declarations No. 13 and 14 were the catalysts for a wider European debate in the 1996/97 IGC on the appropriate positioning of the national parliaments in the European policy-cycle. The discussion mainly focussed on two issues: firstly the potential common European basis for the unilateral control mechanisms of each parliament - the scope, timing and management of parliamentary scrutiny - and secondly the form of interparliamentary co-operation within the Conference of European Affairs Committees - COSAC. The COSAC, a body, which comprises six MP's per member state and six MEP's, was established in Paris in November 1989. It meets twice a year in the country holding the Presidency of the Council and offers a forum of regular exchange among the member delegations. On the one hand general institutional questions are on COSAC's agenda. On the other hand the Conference is used as channel for information about special national features in the parliamentary process, for example about the role of the EC/EU affairs committees concerning specific policy areas.

The results of the 1996/97 IGC's debate on the role of national parliaments are fixed in the Protocol on the role of the national parliaments in the European Union (PNP), which is part of the Treaty of Amsterdam. Regarding the strengthening of unilateral control mechanisms the PNP holds that national parliaments shall receive all Commission consultation documents such as green and white papers or communications. Addressing the Commission and the Council of the EU the PNP demands that the Commission's legislative proposals should be "made available in good time" and that a six-week period has to elapse between issuing a "legislative proposal or a measure to be adopted under Title VI" of TEU and its discussion or adoption by the Council. Concerning the form of interparliamentary co-operation the PNP formally recognizes COSAC as a body that may make "any contribution it deems appropriate for the attention of the EU institutions".

Given COSAC's activity and the shortcomings of the PNP, the COSAC meeting in Versailles on 16/17 October 2000 proposed to amend the PNP without 'upgrading' the official status of COSAC. However, during the final IGC meeting at the European Council of Nice on 7/11 December 2000 national delegations were not interested in opening up another topic of the EU's institutional reform agenda. In exchange, France and Belgium succeeded in mandating the 'post-Nice-reflection process' on the future of the European Union with the question about the role of national parliaments in the European architecture.

Altogether the latest COSAC conclusions - beginning with the COSAC in Dublin in 1996 - show an increasing will of a - still - small number of national parliamentarians to express their views jointly vis-à-vis the institutions of the European Union.

Today MP's in all the EU member states share the view that stronger involvement of national parliaments in EU issues is a key feature of the further 'parliamentarisation' of the EU decision-making system. Above all they aim at increasing the parliamentary scrutiny towards the governments' actions within the Council. Parliamentarisation in general shall help reducing the "democratic deficit" by strengthening the input-legitimacy and on this way making the public feel that it is properly represented at the

European level. The question how a stronger involvement of national parliaments can be brought about is still an open one. Possible answers range from strengthening once again the unilateral mechanisms of each national parliament to the idea of establishing a second chamber, composed of representatives of the national parliaments.

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1. Treaty on European Union 1993

1.1 Declaration No. 13 on the role of the national parliaments in the European Union

The Conference considers that it is important to encourage greater involvement of national parliaments in the activities of the European Union.

To this end, the exchange of information between national parliaments and the European Parliament should be stepped up. In this context, the governments of the member states will ensure, inter alia that national parliaments receive Commission proposals for legislation in good time for information or possible examination.

Similarly, the Conference considers that it is important for contacts between the national parliaments and the European Parliament to be stepped up, in particular through the granting of appropriate reciprocal facilities and regular meetings between members of Parliament interested in the same issues.

1.2 Declaration No. 14 on the Conference of the Parliaments (Assizes)

The Conference invites the European Parliament and the national parliaments to meet as necessary as a Conference of the Parliaments (or 'assizes').

The Conference of the Parliaments will be consulted on the main features of the European Union, without prejudice to the powers of the European Parliament and the rights of the national parliaments. The President of the European Council and the President of the Commission will report to each session of the Conference of the Parliaments on the state of the Union.

2. Treaty of Amsterdam 1999: Protocol on the role of the national parliaments in the European Union

The high contracting parties recalling that scrutiny by individual national parliaments of their own government in relation to the activities of the Union is a matter for the particular constitutional organisation and practice of each Member State,

Desiring, however, to encourage greater involvement of national parliaments in the activities of the European Union and to enhance their ability to express their views on matters which may be of particular interest to them,

Have agreed upon the following provisions, which shall be annexed to the Treaty on European Union:

I. Information for national parliaments of member states

1. All Commission consultation documents (green and white papers and communications) shall be promptly forwarded to national parliaments of the Member States.
2. Commission proposals for legislation as defined by the Council in accordance with Article 151.3 of the Treaty establishing the European Community, shall be made available in good time so that the Government of each Member State may ensure that its own national parliament receives them as appropriate.
3. A six-week period shall elapse between a legislative proposal or a proposal for a measure to be adopted under Title VI of the Treaty on European Union being made available in all languages to the European Parliament and the Council by the Commission and the date when it is placed on a Council agenda for decision either for the adoption of an act or for adoption of a common position pursuant to article 189b or 189c, subject to exceptions on grounds of urgency, the reasons for which shall be stated in the act or common position.

II. The Conference of European Affairs Committees

4. The Conference of European Affairs Committees, hereinafter referred to as COSAC, established in Paris on 16-17 November 1989, may make any contribution it deems appropriate for the attention of the EU institutions, in particular on the basis of draft legal texts which Representatives of Governments of the Member States may decide by common accord to forward to it, in view of the nature of its subject matter.
5. COSAC may examine any legislative proposal or initiative in relation to the establishment of an area of freedom, security and justice which might have a direct bearing on the rights and freedoms of individuals. The European Parliament, the Council and the Commission shall be informed of any contribution made by COSAC under this paragraph.
6. COSAC may address to the European Parliament, the Council and the Commission any contribution which it deems appropriate on the legislative activities of the Union, notably in relation to the application of the principle of subsidiarity, the area of freedom, security and justice as well as questions regarding fundamental rights.
7. Contributions made by COSAC shall in no way bind national parliaments or prejudice their position.

3. Treaty of Nice 2001: Declaration No. 23 on the Future of the European Union

1. Important reforms have been decided in Nice. The Conference welcomes the successful conclusion of the Conference of Representatives of the governments of the Member States and commits the Member States to pursue the early and successful ratification of the Treaty of Nice.
2. It agrees that the conclusion of the Conference of Representatives of the governments of the Member States opens the way for enlargement of the European Union and underlines that, with ratification of the Nice Treaty, the European Union will have completed the institutional changes necessary for the accession of new Member States.
3. Having opened the way to enlargement, the Conference calls for a deeper and wider debate about the future development of the European Union. In 2001, the Swedish and Belgian Presidencies, in cooperation with the Commission and involving the European Parliament, will encourage wide-ranging discussions with all interested parties; representatives of national Parlia-

ments and all those reflecting public opinion; political, economic and university circles, representatives of civil society, etc. The candidate States will be associated with this process in ways to be defined.

4. Following a report to Göteborg in June 2001, the European Council, at its meeting at Laeken/Brussels in December 2001, will agree on a declaration containing appropriate initiatives for the continuation of this process.

5. The process should address, inter alia, the following questions:

- how to establish and monitor a more precise delimitation of competencies between the European Union and the Member States, reflecting the principle of subsidiarity;
- the status of the Charter of Fundamental Rights of the European Union proclaimed in Nice, in accordance with the conclusions of the European Council in Cologne;
- a simplification of the Treaties with a view to making them clearer and better understood without changing their meaning;
- the role of national Parliaments in the European architecture.

Addressing the above-mentioned issues, the Conference recognises the need to improve and to monitor the democratic legitimacy and transparency of the Union and its institutions, to bring them closer to the citizens of the Member States.

6. After these preparatory steps, the Conference agrees that a new Conference of the Representatives of the governments of the Member States will be convened in 2004, to treat the above-mentioned items in view of the related Treaty changes.

7. The Conference of Member States shall not constitute any form of obstacle or pre-condition to the enlargement process. Moreover, those candidate States which have concluded accession negotiations with the Union shall be invited to participate in the Conference. Those candidate States which have not concluded their accession negotiations shall be invited as observers.

4. Documents of the Conference of European Affairs Committees (COSAC)

4.1 COSAC rules of procedure

Rules of procedure of the Conference of Community and European Affairs Committees of Parliaments of the European Union

The present rules of procedure are designed to facilitate and improve the work of the Conference of Community and European Affairs Committees of Parliaments of the European Union, hereinafter referred to as COSAC, established in Paris 16-17 November 1989.

COSAC enables a regular exchange of views, without prejudicing the competences of the parliamentary bodies of the European Union. The Protocol on the Role of National Parliaments in the European Union to the Amsterdam Treaty amending the Treaty on the European Union, the Treaties establishing the European Communities and certain related acts, empowers COSAC to make any contribution it deems appropriate

for the attention of the institutions of the European Union and to examine Union legislative activities, proposals and initiatives. Contributions made by COSAC shall in no way bind national parliaments or prejudice their position.

These rules of procedure are adopted in the XXI COSAC of Helsinki on 11 and 12 October 1999. They replace the rules elaborated on 6 and 7 May 1991 in the IV COSAC of Luxembourg, adopted on 4 and 5 November 1991 in the V COSAC of The Hague and modified on 9 and 10 May 1994 in the X COSAC of Athens and 24 and 25 June 1996 in the XIV COSAC of Rome.

1. Frequency and dates of meetings

1.1 Ordinary meetings

One ordinary meeting of COSAC shall be held during each Presidency of the Council of the European Union taking account of different parliamentary practices of Member States, of election periods and of the dates of public holidays in Member States. The date of the next meeting shall be fixed and announced by the date of the preceding meeting at the latest.

1.2 Extraordinary meetings

Extraordinary meetings of COSAC shall be held, if deemed necessary, by an absolute majority of the Chairpersons of the European Affairs Committees of the national Parliaments and of the appropriate body of the European Parliament.

1.3 Preparatory meetings of the Chairpersons

A preparatory meeting of the Chairpersons of the European Affairs Committees and of the representative of the European Parliament shall be held prior to meetings of COSAC, if proposed by the Parliament of the Member State holding the Presidency, after consulting the Presidential Troika. The Presidential Troika of COSAC consists of the Presidency, the preceding Presidency, the next Presidency, and the European Parliament.

1.4 Extraordinary meetings of the Chairpersons

Extraordinary meetings of the Chairpersons of the European Affairs Committees and the appropriate body of the European Parliament shall be held, if proposed, by the Presidency, after consulting the Presidential Troika, or, if deemed necessary, by an absolute majority of the Chairpersons of the European Affairs Committees of the national Parliaments and of the appropriate body of the European Parliament.

1.5 Working groups

COSAC may decide to set up a working group to study a particular issue linked with the activities of the European Union. Such a

working group shall also be set up, if deemed necessary, by an absolute majority of the Chairpersons of the European Affairs Committees of the national Parliaments and of the appropriate body of the European Parliament. The Chairperson of the European Affairs Committee of the Parliament of the Member State holding the Presidency shall act as the Chairperson of the working group. The Secretariat of the Parliament of the Member State holding the Presidency shall provide secretariat for the working group.

2. Place of meetings

Meetings shall take place in the Member State holding the Presidency, although extraordinary meetings, meetings of the Chairpersons and of Working Groups may be held elsewhere.

3. Duration of meetings

The duration of ordinary and extraordinary meetings of COSAC shall be one and a half days.

4. Composition

4.1 Ordinary and extraordinary meetings

Each National Parliament shall be represented by a maximum of six members -of its European Affairs Committee(s). The European Parliament shall be represented by six Members. Each Parliament shall determine the composition of its own delegation.

4.2 Observers from the Parliaments of applicant countries

Three observers from the Parliaments of each applicant country shall be invited to ordinary meetings, and may be invited to extraordinary meetings, provided that the European Union has officially opened discussions and/or negotiations aimed at accession with the country concerned and that the Parliament concerned has made an official request to participate in COSAC. These observers shall have the right to participate in debates on specific items on the agenda determined by the meeting.

4.3. Other observers, specialists and special guests

The Presidency shall invite observers from the General Secretariat of the Council of the European Union and the European Commission, and it may invite observers from the embassies of the Member States of the European Union, and, after consulting the Presidential Troika, specialists and special guests.

4.4. Public access to meetings

Meetings of COSAC shall be public, unless otherwise determined.

5. Convocation

Ordinary meetings and meetings of the Chairpersons and of Working Groups shall be convened by the Secretariat of the Parliament of the Member State holding the Presidency. Extraordinary meetings shall be convened by the Secretariat of the Parliament of the Member State where the meeting takes place.

6. Designation of meetings

The designation of ordinary and extraordinary meetings shall be "Conference of the European Affairs Committees (of the European Union's National Parliaments and the European Parliament) - COSAC" - with the name preceded by the number of the meeting in sequence, followed by the date and place of the meeting.

7. Agenda

7.1 Before the last ordinary meeting of each year the delegations will indicate the subjects they propose to be dealt with the following year. This matter shall be discussed at the end of the meeting. The Presidential Troika, paying due account to the provisions of Part II of the Protocol to the Amsterdam Treaty on the Role of National Parliaments in the European Union, proposes, at the beginning of each Presidency, one or several subjects drawn from the working programme of the Council of the European Union, the European Parliament, and the European Commission, or from proposals made during the meeting referred to above.

7.2 A draft agenda shall be drawn up by the Chairperson of the European Affairs Committee of the host Parliament, after consult-

ing Chairpersons of the European Affairs Committees and the representative of the European Parliament. National delegations may propose to the Presidency that a specific item is put on the agenda.

7.3 The meeting itself shall decide on its final agenda.

8. Preparation of meetings

8.1 The national delegations may send documents relating to items on the agenda to the Secretariat of the host Parliament.

8.2 The national delegation of the Member State holding the Presidency may draw up discussion documents for the Conference.

9. Languages

9.1 Each delegation is responsible for translating any document which it submits into English or French.

9.2 Participating Parliaments will receive conference documents in French or English. Each Parliament is responsible for translation into its national language.

9.3 Simultaneous translation is provided into the official languages of the EU in the meetings.

9.4 The contributions of COSAC are drawn up in a single original in French and English, each of these texts being equally authentic.

10. Cosac Contributions

10.1 COSAC may address contributions to the institutions of the European Union pursuant to the Amsterdam Treaty Protocol on the Role of National Parliaments in the European Union.

10.2 Each national delegation may propose that a contribution is adopted by COSAC. A draft contribution shall be drawn up if proposed by the Presidency, after consulting the Presidential Troika, or if deemed necessary by an absolute majority of the Chairpersons of the European Affairs Committees of the national Parliaments and of the appropriate body of the European Parliament, or if decided in a meeting of COSAC.

10.3 The draft of a contribution shall be communicated to the delegations in good time before the relevant meeting of COSAC to avail them with a reasonable period for scrutiny and remarks.

10.4 The final draft of a contribution shall be prepared at the preparatory meeting of the Chairpersons preceding the relevant meeting of COSAC. It shall embrace the observations and remarks by all delegations, including possible declarations concerning the vote.

10.5 Adoption of the contribution requires unanimity between the delegations present at the meeting. Abstentions by delegations shall not prevent the adoption of the contribution.

11. Role of the Presidency

11.1 The European Affairs Committee of the Member State holding the Presidency of the Council of the European Union shall hold the Presidency of COSAC during that Presidency.

11.2 The Secretariat of the host Parliament shall prepare the documents for the meeting.

11.3 The Chairperson of the European Affairs Committee of the host Parliament shall open the debate.

11.4 The Chairperson of the European Affairs Committee of the host Parliament shall propose a timetable for the meeting and the length of speeches which shall be four minutes, unless the meeting determines otherwise.

11.5 The Secretariat of the host Parliament shall draw up brief minutes of the meeting.

11.6 The Chairperson of the European Affairs Committee of the host Parliament shall present the debate's conclusions, as drawn up by the Presidential Troika.

11.7 The Secretariat of the Parliament holding the Presidency shall provide secretariat for the activities of COSAC during its term. The Secretariats of national Parliaments and of the European Parliament shall provide assistance.

12. Debate Conclusion

If the meeting decides to issue a communiqué, a draft, annexed with possible contributions adopted, is drawn up by the Presidential Troika.

13. Recipients of Communiqués

Communiqués are sent to the Parliaments of the Member States and the European Parliament, to the Council of the European Union, and to the European Commission by the Secretariat of the host Parliament.

14. Revision of the rules of procedure

14.1 Proposals for a revision of the Rules of Procedure must be sent, in writing, from one or several delegations of one or several Parliaments to all national Parliaments of the Member States and to the European Parliament, at least one month before the meeting of COSAC.

14.2 Any proposals for a revision of the rules should be put on the agenda of the first meeting of COSAC following the presentation of the proposal.

14.3 Adoption of the proposal requires unanimity between the delegations present at the meeting. Abstentions by delegations shall not prevent the adoption of the proposal.

15. Entry into force

These Rules of Procedure shall enter into force on 1 January 2000. They are drawn up in a single original in English and French, each of these texts being equally authentic. The text of these Rules of Procedure shall, for the authentication thereof, be drawn up in Danish, Dutch, German, Greek, Italian, Portuguese, Spanish, Finnish and Swedish. The translations shall be agreed between the national Parliaments using those languages and the European Parliament. In any question relating to the interpretation of these Rules only the English and French versions shall have official status.

Annex

Declaration by the European Parliament on Rule 10.5 of the Rules of Procedure: The European Parliament shall abstain in the vote of a contribution which is also addressed to it.

4.2 Dublin COSAC Conclusions adopted by the XV COSAC in October 1996

1. Within the European Union, National Parliaments have their own role to play to strengthen democracy and improve the efficiency of the Union. COSAC, through its work, will give a high priority to the pursuit of these aims. COSAC can assist individual National Parliaments by making available to them the experience and information of other Parliaments.
2. It is the view of COSAC that, to further the useful work of parliamentary Co-operation, the organisation should be strengthened and its meetings should be organised to maximise its potential. A number of National Parliaments are in the course of considering sending official representatives to Brussels who could in time come together to offer a support service for COSAC.
3. It is appropriate that the flow of information from Union Institutions to the National Parliaments be improved and that National Parliaments should have control over the decisions of their respective Governments as set out in the constitutional arrangements of the Member States. To this end, COSAC believes that Declaration 13 should be reinforced by the Inter-Governmental Conference, by including it in the Treaty, to insure that Governments follow through on their commitments under the Declaration and that the National Parliaments have a period of at least four weeks for examining all proposals of relevance to the legislative process.
4. There is a desire to improve the working of COSAC. The following are among the ways in which this can be brought about: the dates of COSAC should be set at the conclusion of the previous COSAC, each delegation should have, within reason, the opportunity to include items on the agenda for COSAC, each delegation should be allowed to distribute, before the COSAC, documentation and proposals relevant to the agenda, a meeting of officials should be called to preview COSAC, to allow each delegation and each delegate an opportunity to speak on an agenda item; time limits of, say, five minutes should be imposed on speakers from the floor and to arrange during COSAC meetings for time for informal association and dialogue between delegates.
5. COSAC may pursue certain specific issues, e.g. subsidiarity, 2nd and 3rd Pillar items and questions relating to the fundamental rights of European Union citizens, with a view to arriving at some ideas as to the way forward for these items. However, its conclusions will be offered as suggestions and would not seek to bind any delegate or delegations. The communiqués on the above will be forwarded by the President of COSAC to the Institutions of the European Union and to the governments of Member States.

4.3 COSAC documents from 1997 to 2001

4.3.1 XVI COSAC, The Hague, June 1997: Declaration on transparency

Considering that it is necessary to bring Europe closer to the citizens; that the democratic legitimacy must be reinforced; that the transparency of the decision-making process in the European Union must be improved; Is of the opinion: that proposed legislation and the legislative acts of the Union should be accessible; that when the Council acts in its legislative capacity the results of votes and explanation of votes as well as statements in the minutes shall be made public; that a reinforced Declaration 13, as described in the conclusions of the COSAC in October 1996 in Dublin, and which the Dutch Presidency has included in its final proposals to the IGC should be given treaty force; that the six weeks delay mentioned in these proposals should be applicable to all Commission acts of a legislative nature.

4.3.2 XIX COSAC, Vienna, November 1998: Solidarity with Italy

The XIX COSAC meeting, assembled in Vienna on 23-24 November 1998, expresses its solidarity with Italy, which has faced the Ocalan affair in full compliance with the principles of Italian and European legislation.

4.3.3 XX COSAC, Berlin, Mai-June 1999: Appeal to voters in the European elections

The participants in the XX Conference of European Affairs Committees of the National Parliaments of EU Member States and the European Parliament, gathered in Berlin on 31 May and 1 June 1999, appeal to all voters in the European Union to participate in the fifth direct elections to the European Parliament which will take place between 10 and 13 June 1999.

Twenty years have passed since the first direct elections to the European Parliament. As a directly elected body, the European Parliament can contribute to the necessary strengthening of democratic decision-making within the institutions of the European Union.

All those who call for more democracy, more transparency and greater closeness to the citizen within the European Union, are urged to cast their vote in the elections to the European Parliament.

4.3.4 XXII COSAC, Lisbon, Mai 2000: Contribution

1. In view of the extraordinary meeting of the European Council on employment, economic reforms and social cohesion, COSAC expresses its support for the Union's new strategic aim of basing its economy and society of knowledge.
2. COSAC recognises the importance of commitment to a European research area, in which information technologies can develop as a form of modernisation, of combating social exclusion and of promoting economic and social cohesion.
3. COSAC calls on the Commission, the Council and the European Parliament to adopt a European agenda which promotes economic modernisation and growth, employment, improvements in education and vocational training and which combats all form of exclusion and discrimination.
4. COSAC believes that all Member States of the Union should adhere in the latter and spirit of the Treaties, with particular reference to the single European market.
5. COSAC considers that the European Union Charter of Fundamental Rights presents an important opportunity to give citizens greater protection in relation to the European Union legal order, and to make fundamental rights more visible to the citizens of the Union and to the European institutions. The creation of the Charter might have broader implications in the future of the Union, and its connection with the European Convention on Human Rights should be safeguarded, through respect for the case law of the Courts of both Luxembourg and Strasbourg.
6. COSAC invites the European institutions and the IGC to take into account the efforts of the Convention responsible for drawing up the Charter of Fundamental Rights.
7. COSAC asks the Convention responsible for drawing up the Charter of Fundamental Rights to take the opinion of applicant countries and their parliaments on this question into account.

8. COSAC expresses its strong support for the enlargement process of the EU and urges the governments participating in the IGC to proceed with their work in order to make it possible to start the ratification procedures of the Treaty amendments early next year.

4.3.5 XXIII COSAC, Versailles, October 2000

4.3.5.1 Contribution addressed to the institutions of the European Union

1. COSAC calls on the member states to reach an agreement, at the Nice European Council, on institutional reform, in the light of enlargement, that would ensure, from now on, efficient, transparent and legitimate institutions and allow the accession of new member states from January, 1st 2003. It expresses its strong support for the enlargement process and recommends the intergovernmental conference in its global agreement on the revision of the Treaties to safeguard the principles of solidarity, cohesion, subsidiarity and proportionality, which are necessary for a true Union of people and states.

2. COSAC takes note of the political agreement reached by the heads of state and government on the draft Charter of Fundamental rights of the European Union as drafted by the Convention. It calls on the Council, the Commission and the European Parliament to proclaim this Charter. It considers that the chosen procedure, involving representatives chosen by the heads of states and government, the Commission, the European Parliament and the national Parliaments, could be useful in the future.

3. COSAC stresses the Union's need to foster, in the spirit of the Lisbon European Council, the development of an economy of innovation and knowledge, ensuring policies actively promoting employment and combating unemployment and social exclusion. It calls on the European institutions to approve, during the French presidency, the "Social European Agenda" which will be a multi-annual framework for social measures with due respect for the principle of subsidiarity. This new strategic objective should enable the reconciliation of the changes due to the new economy with the European social values and with the perspective of enlargement.

4. COSAC, in the light of the Tampere conclusions, calls upon the Union and the member states to create in Co-operation with the candidate countries, an area of freedom, security and justice reinforcing fighting against terrorism and serious forms of transnational organised crime which, respecting the right to individual privacy, is based on practical measures in the fight against illegal immigration and common standards regarding external border checks as well as reinforced co-operation between the relevant enforcing authorities.

5. Considering that national Parliaments, together with the European Parliament, are a constituent element of the democratic legitimacy of the European institutions, COSAC urges the Intergovernmental Conference to modify part I of the Protocol on the role of national Parliaments as follows:

- All consultation documents and proposals for legislation from the European Commission, as well as proposals for measures under titles V and VI, should be transmitted by electronic means to each national Parliament as soon as they are adopted by the college of Commissioners;
- The six-week time period provided by paragraph 3 should also apply, except in urgent cases, to proposals for measures to be adopted under titles V of the Treaty on European Union as well as to proposals regarding inter-institutional agreements to which the Council is a party;
- A minimum 15-day time period, or one week in urgent cases, should be observed between the final reading of a text by COREPER and the Council decision.

- COSAC recalls that no provision of this protocol can jeopardise the competences and prerogatives of each national Parliament as provided by its national constitutional arrangements.

4.3.5.2 Declaration on Serbia

COSAC salutes the courage shown by the Serbian people who have won an exemplary victory for democracy. It expresses the wish that the European Union should establish a new Co-operation with the Federal Republic of Yugoslavia to enable it to find its rightful place in Europe and that the European Union should help it to strengthen democracy and raise its standards of living.

4.3.5.3 Declaration on terrorism

COSAC most firmly condemns any terrorist action, in particular the one that plunged Spain into mourning.

4.3.6 XXIV COSAC, Stockholm, May 2001: Contribution to the European Council

The future development of the European Union

1. COSAC expresses its strong support for the enlargement process of the EU and calls on the governments of the Member States to take appropriate measures so that the ratification process of the Treaty of Nice is completed by the beginning of 2002. COSAC urges the European Union and its Member States to admit a first group of new Member States in time for the European election in 2004.
2. COSAC underlines the role of Parliaments in the debate about the future development of the European Union. Parliaments in the Member States are close to their voters, and can thus function as a link between the citizens and the debate at the European level. Along with the European Parliament, national Parliaments should therefore actively and continuously foster a public dialogue about the future of the EU. COSAC stresses the necessity to include the Parliaments in the candidate countries in the debate. One important aim of this debate is to ensure a well functioning Union.
3. COSAC in itself is a suitable forum for the debate. COSAC is recognised in the Treaty and is entitled to forward contributions to the EU institutions. COSAC will continue to meet during every presidency and there is already a practical framework in place for COSAC and a Troika that ensures continuity. At the same time the rotating Presidency of COSAC facilitates that attention is paid to different subjects. COSAC has the virtue of including national Parliaments of the Member States and the candidate countries, as well as the European Parliament. The size of the delegations at COSAC ensures that different political views from each country are represented. Thanks to the regularity of the COSAC meetings, personal networks develop between participant members. Everyone involved may bring ideas from COSAC discussions to their national debate.
4. COSAC hereby declares its intention to actively follow and participate in the debate. COSAC intends to put the future development of the Union on its agenda at its meetings until the next IGC. A COSAC Working Group, which was set up during the Swedish Presidency, has dis-

cussed the role of national Parliaments and the European Union. COSAC has decided that the Working Group will continue its work and study the issues mentioned in the Nice Declaration.

5. A Convention was used as a forum for drafting the Charter of Fundamental Rights. Experiences from this work should be taken into account, when the European Union enters the more structural phase of the debate on its future. As part of the preparations for the IGC 2004, a conference based on this model should be convened in order to develop proposals for EU reform. As to the composition and working methods of such a body, COSAC stresses the necessity that national Parliaments are given a strong and early role. The Member States are after all the contracting parties to the Treaties and their national Parliaments are responsible for the eventual ratification of amendments to the Treaties. The parliaments of the candidate countries should be included in the preparations for the IGC 2004.

Protocol on the role of the national Parliaments in the European Union

6. COSAC recalls what is stated in the Protocol on the role of the national Parliaments in the European Union, that scrutiny by individual national parliaments of their own government in relation to the activities of the Union is a matter for the particular constitutional organization and practice of each Member State. This means that the EU should function in a way that allows every national Parliament to work with EU matters in the way it decides for itself. The handling of matters at the EU level should thus give time and room for scrutiny by Parliaments at the national level.

7. COSAC draws the conclusion that the Protocol on the role of national Parliaments has not been fully implemented since some Parliaments claim that they do not receive the documents within the stated time limits. COSAC urges the institutions to ensure that the Protocol, which is an integral part of the Treaties, is followed. COSAC notes that the Protocol does not explicitly say by whom Commission consultation documents (green and white papers and communications) “shall be promptly forwarded to national Parliaments of the Member States”. COSAC asks the Council of Ministers and the Commission to clarify the division of responsibility between them in this respect. COSAC also reaffirms its statement from the COSAC meeting in Versailles regarding modification of the Protocol in order to ensure that national parliaments have enough time to scrutinise EU matters.

The new strategic objective of the European Union

8. COSAC, in the spirit of the Lisbon European Council, welcomes the acceptance by the Stockholm European Council of the recommendations drawn up by the COSAC meetings in Lisbon and Versailles regarding the Union’s new strategic objective to become the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion. COSAC recognises the impetus given to this process by the Swedish EU Presidency.

Following-up of this Contribution

9. COSAC urges the institutions to take this Contribution into account. COSAC looks forward to the report on the future of the European Union that, according to the Nice Declaration on the Future of the Union, shall be presented to the European Council in Göteborg in June 2001 and expects the report to consider this Contribution. COSAC also notes that the main theme for the meeting in Stockholm in September 2001 of the Conference of Speakers of the EU Parliaments will be the role of national Parliaments in the European structure.

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Abbreviations

A	Austria
ADR	Aktiounskomite fir Demokratie an Rentegerechtegkeet (LUX)
ARP	Anti-Revolutionaire Partij (NL)
B	Belgium
BE	Berdak-Les Verds (E)
BMPP	Bundestag Minutes Primary Protocol (Bundestags- Plenarprotokoll) (D)
BOCG	Boletín Oficial de las Cortes Generales (E)
BPP	Bundestag Printed Paper (Bundestags-Drucksache) (D)
B-VG	Bundes-Verfassungsgesetz (A)
CAP	Common Agricultural Policy
CC	Coalición Canaria (E)
CDA	Christen-Democratisch Appel (NL)
CDS	Centro democratico social (P)
CDU	Christlich-Demokratische Union (D)
CEECs	Central and Eastern European Countries
CFSP	Common Foreign and Security Policy
CHU	Christelijke Historische Unie (NL)
CiU	Convergencia i Unió (E)
CJHA	Co-operation in Justice and Home Affairs
CMO	Common Market Organisation
COM	Communication Document of the European Commission
COREPER	Comité des représentants permanents auprès l'Union Européene / Committee of Permanent Representatives
COSAC/CEAC	Conférence des organes spécialisés dans les affaires Communautaires / Conference of Community and European Affairs Committees of Parliaments of the European Union
CPG/KKE	Communist Party of Greece/Kommonounistikó Kómma Elládas (GR)
CSU	Christlich-Soziale Union (D)
CSV	Chrëschtlech Sozial Vollekspartei (LUX)
D	Germany
D '66	Demokraten 66 (NL)
DAS	Athens Bar of Lawyers
DC	Democrazia Cristiana (I)
DD.LL.	Decreti legislativi
DfEE	Department for Education and Employment (UK)
DG	Directorate General
DGEI	Directorate General "European Integration" (I)
DK	Denmark
DIRT	Deposit Interest Retention Tax
DL	Démocratie libérale (F)
DPCM	Decreto del Presidente del Consiglio dei Ministri
DTI	Department of Trade and Industry (UK)
E	Spain
EA	Eusko Alkartasuna (E)
EC	European Community
ECB	European Central Bank
ECJ	European Court of Justice

ECOFIN	Council of Ministers of Economic Affairs and Finance
ECSC	European Coal and Steel Community
ECT	Treaty establishing the European Community
EEA	European Economic Area
EEC	European Economic Community
EFTA	European Free Trade Association
EKEM	Greek Center for European Studies
EKEME	Greek Center for European Studies and Research
ELA	Epanastatikós Laikós Agónas (GR)
ELIAMEP	Hellenic Foundation for European and Foreign Policy
EM	Explanatory Memorandum (S/UK)
EMU	Economic and Monetary Union
ENA	École nationale d'administration
EP	European Parliament
ESC	Economic and Social Committee
ESC	European Scrutiny Committee (UK)
ESDP	European Security and Defence Policy
EU	European Union
EURATOM	European Atomic Energy Community
EUROPOL	European Police Office
EUZBBG	Gesetz über die Zusammenarbeit von Bunderegierung und Bundestag in Angelegenheiten der Europäischen Union (D)
F	France
FDP	Freie Demokratische Partei (D)
FLG	Federal Law Gazette (A)
FPÖ	Freiheitliche Partei Österreichs (A)
FYROM	Former Yougoslaw Republic of Macedonia
GL	Groen Links (NL)
GPV	Gereformeerd Politiek Verbond (NL)
GR	Greece
GSEE	General Confederation of Greek Workers
HMT	Her Majesty's Treasury (UK)
I	Italy
IGC	Intergovernmental Conference
IRL	Ireland
IU	Izquierda Unida (E)
JHA	Justice and Home Affairs
KESK	Suomen Keskusta (SF)
KKE	Kommonounistikó Kómma Elládas (GR)
KOK	Kansallinen Kokoomus (SF)
KVP	Katholieke Volkspartij
Lib.Dem.	Liberal Democrats (UK)
LIF	Liberales Forum (A)
LUX	Luxembourg
MAE	Ministerio die Affari Internazionali (I)
MEP	Member of the European Parliament
MP	Member of Parliament
NATO	North Atlantic Treaty Organization
ND	Néa Dimokratía (GR)
NGO	Nongovernmental organisation
NL	Netherlands
OECD	Organisation for economic Co-operation and development
ÖVP	Österreichische Volkspartei (A)

P	Portugal
PASOK	Panellinio Socialistiko Minima (GR)
PCI	Partito dei Comunisti Italiani (I)
PCP	Partido Comunista Portugues (P)
PD	Demokratesch Partei (LUX)
PD	Progressive Democrats (IRL)
PDS	Partei des demokratischen Sozialismus (D)
PECO	Pays de l'Europe centrale et orientale
PeVL	Perustuslakivaliokunnan lausunto (SF)
PNP	Protocol on the Role of National Parliaments in the European Union
PNV	Partido Nacionalista Vasco (E)
POSL	Parti Ouvrier Socialiste Luxembourgeois/ Lëtzebuerger Sozialistesesch Arbëschterpartei (LUX)
PP	Partido Popular (E)
PR	Proportional Representation
PS	Parti Socialiste (B/F)
PSD	Social Democratic Party (P)
PSI	Partito Socialista Italiana (I)
PSOE	Partido Socialista Obrero Español (E)
PvdA	Partij van de Arbeid (NL)
QMV	Qualified Majority Voting
RKP	Ruotsalainen Kansanpuolue/Svenska Volkpartiet I Finland (SF)
RPF	Rassemblement pour la France (F)
RPR	Rassemblement Pour la République (F)
RSE	Research Section Europe
S	Sweden
SCEU	Select Committee on the European Union (UK)
SC	Statutory Committee (IRL/SF)
SDP	Suomen Sosialidemokraattinen Puolue (SF)
SEA	Single European Act
SEC	Documents of the European Commission Secretary General
SEV	Greek Industries Association
SF	Finland
SGCI	S�cretariat general du Comit� interminist�riel pour les questions de coop�rations �conomiques europ�ennes
SGG	S�cretariat g�n�ral du Gouvernement/General secretary of Government
SGP	Staatkundig Gereformeerde Partij (NL)
SI	Statutory Instrument (IRL)
SMP	Single Market Programme
SNP	Scottish Nationalist Party (UK)
SPD	Sozialdemokratische Partei Deutschlands (D)
SP�	Sozialdemokratische Partei �sterreichs (A)
STV	Single Transferable Vote
SuVL	Suuren valiokunnan lausunto (SF)
SWG	S�dtiroler W�hlergemeinschaft (I)
TACIS	Technical Assistance for the Commonwealth of Independent States
TD	Tachta Dala (IRL)
TEU	Treaty on European Union
UDF	Union Pour la D�mocratie Fran�aise (F)

UK	United Kingdom
VAS	Vasemmistoliitto (SF)
VIHR	Vihreä Liitto (SF)
VNS	Valtioneuvoston selonteko (SF)
VVD	Volkspartij voor Vrijheid en Democratie (NL)
WEU	Western European Union
WTO	World Trade Organisation

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