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The Convention and the national parliamentary dimension

By

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Abstract

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 subsequent Treaty amendments and revisions they accepted shifts of competencies to the European level, which reduced their final say over major areas of traditional legislative powers and the political control over governments. Recent academic interest in the role of national parliaments exceeds the focus on immediate procedural arrangements of the EU.

The European Convention on the future of Europe induced a debate between the different levels of EU parliamentarism about the optimal loci and phases of parliamentary involvement in EU affairs. The major puzzle of this paper is, why and under which legal and political circumstances political actors moved arguments in favour of different forms of parliamentary participation in EU policy making? The paper starts with a diagnosis on participation modes of national parliaments in EU policy-making. How do national parliaments (re)-act in and adapt to a dynamic institutional and procedural set-up. How and why 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?

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 in EU policy making is a significant indicator for the fundamental trends the national systems and the EU take in steering the fabric of multi-level and multi-actor governance. 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 parliaments 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.

1.1. The European Union's problems with regard to parliamentary 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 transfer of national parliamentary powers to the European level did not entail a complete and direct transfer of 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 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 and procedures in order to scrutinise their governments in the EC/EU decision-making process more effectively. Nevertheless, the degree, orientation and depths of parliamentary involvement vary a lot. Given different concepts and meanings of 'control', 'participation', and 'scrutiny', it ranges from simple ex-post information rules via so-called parliamentary scrutiny reserves to mandatory procedures.² And although some of the parliaments are provided with a high and comprehensive amount of EU documents, they do not necessarily influence their governments' stance in the Council of Ministers: Clearly, their effective impact on the formation and alteration of national views towards a given piece of EU draft legislation does not only depend on the amount and type of documents, but also on

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 Maurer, Andreas/Wessels, Wolfgang (Eds.): *National Parliaments on their ways to Europe. Losers or Latecomers*, Nomos, Baden-Baden 2001. For earlier findings, see Laprat, Gérard: 'Parliamentary Scrutiny of Community Legislation: An Evolving Idea', in: Laursen, 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.

the timing of intraparlimentary proceedings, on institutional capacities and personal resources available to deliberate efficiently and effectively on a given document.

1.2. The Constitutional Bases for Parliamentary Participation in EU integration

With the growth and differentiation of the EU system³ 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.⁴ 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:

- 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 methods used by 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.

Building on the experiences gained with the implementation of the Maastricht TEU, the 1996/1997 Intergovernmental Conference (IGC) then lead to the insertion of the "Protocol on the role of National Parliaments in the European Union" (PNP) into the Amsterdam Treaty.⁵

³ See Maurer/Wessels, 2001, [op.cit.](#)

⁴ See the documentation by Astrid Krekelberg in Maurer/Wessels, 2001, document No. 1.1.

⁵ See the documentation by Astrid Krekelberg in Maurer/Wessels, 2001., document No. 2.

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The PNP addressed 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. Serving as the main EU-wide legal basis for structuring national parliamentary involvement in EU affairs, 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 submit all legislative proposals to their parliaments. 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 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 to inform parliaments 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 Co-operation 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 governments to use the time provided by the EU institutions for informing their parliaments. Thus, the PNP provided a wide range of opportunities for parliaments and 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 recognised 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 lead to the question whether COSAC may become the appropriate body for these issues. The fact that the PNP’s Chapter II focused on the area of freedom, security and justice and on the fundamental rights policies has to be interpreted in the light of the EU’s para-constitutional development within the time-frame of the Amsterdam IGC. Chapter II reflects the political and legal sensibility of these issues in the EU member states at the time of negotiating the Treaty. If one adds this specification to the consultative role of the EP in the relevant policy area, one can observe the introduction of a certain, ideal kind of ‘three-level-scrutiny-mechanism’: At the first level, the EP is to monitor the European level of decision-making in the First and the Third Pillar. At the second level, provided that they organise their scrutiny mechanisms effectively, the national parliaments may unilaterally monitor their governments on matters falling under this policy area. At the third level, COSAC is enabled to deliberate these issues between the EP and the national parliaments.

There were at least three shortcomings with regard to the implementation of the PNP: First, the PNP did not improve the lack of parliamentary control with regard to the CFSP/ESDP pillar. The European Union’s Foreign and Security policy was introduced as a ‘domaine réservé’ of the Council and its administrative substructure. Democratic control of these policy fields was completely excluded. Secondly, neither the EP nor the national parliaments or COSAC were asked or allowed to monitor the process of transferring the ‘Schengen acquis’ into the EC/EU area. Nor does the PNP allow national parliaments, the European Parliament or COSAC to participate in the new forms of EU governance, the so-called “open method of co-ordination”. Thirdly, COSAC Delegations remained 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 was hardly conceivable how MP’s who mainly deal with horizontal EU issues would be apt to deliberate effectively on matters falling under the area of freedom, security and justice.

1.3. Diagnosis: National parliamentary participation prior to the Convention

1.3.1. Institutionalisation and Institutional Adaptation: The Creation of Committees

As regards the institution building of national parliaments to digest the EU's Amsterdam result, we clearly observe that the role of national parliaments focused on 'one-level'-scrutiny and advice within the model framework of government-legislature relationships.⁶ National parliaments exercise these roles according to the constitutional and political context of the country. Parliaments made some important changes to their procedures concerning the examination of EC/EU issues. Three major evolutions are worth considering:

- 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 through the management of EU-related internet pages. Finally, all EU committees of the EU-15 share the task to participate in COSAC as the main interparliamentary co-operation network. We thus 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.

The growing salience of EC/EU affairs would suggest that parliaments would adjust their existing resources accordingly. In institutional terms, one could expect that parliaments would

⁶ Norton, Philip (ed.): National Parliaments and the European Union, Special Issue of The Journal of Legislative Studies, No. 1/1995.

revise the composition and the relative strength of EU Committees in relation to other Committees. However, table 1 indicates a rather stable share composition of EU Committees.

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Table 1: Ratio of EU Committee members in relation to the total strength of Parliament

In per cent		1987/88	1992/93	1995/96	1999/2001
Belgium	Chambre	9.43	9.43	15.79	13.57
	Senate		20.75		
Denmark	Folketing	9.71	9.71	9.71	9.50
Germany	Bundestag	2.5	6.45	7.44	5.9
	Bundesrat	37.77	31.88	33.33	33.33
Finland	Eduskunta	-	-	12.5	12.5
France	Assemblée	3.13	6.23	6.23	6.23
	Senate	5.60	11.24	11.24	11.24
Greece	Voulí	-	10.33	10.33	10.33
UK	Commons	2.46	2.46	2.46	2.43
	Lords	1.87	1.87	1.87	3.00
Italy	Camera	n.a.	8.1	7.94	7.62
	Senate	7.92	7.92	7.36	7.36
Ireland	Dail	11.06	11.06	7.52	8.41
	Senate				
Luxembourg	Chambre	n.a.	18,33	18,33	18,33
Netherlands	Tweede Kamer	17.33	17.33	17.33	16.66
	Eerste Kamer	n.a.	n.a.	17.33	14.66
Austria	Nationalrat	-	-	14.75	15.85
	Bundesrat			11.48	25.0
Portugal	Assembleia	10,0	10,0	11,74	11,74
Sweden	Riksdag	-	-	4.87	4.87
Spain	Camera	n.a.	6.63	6.63	6.44
	Senate				

Source: Maurer 2001; Raunio/Wiberg 1999; WWW-Pages of the IPU and of the national parliaments.

However, the information recorded in table 1, does not allow to deduce an overall immunity of parliaments vis-à-vis the very dynamics of 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. As country studies in the Maurer/Wessels 2001 volume 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 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.

1.3.2. 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.⁷ The scope of parliamentary participation in EC/EU affairs results from the extent of documents forwarded to parliaments by their governments. The country reports in Maurer/Wessels 2001 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. The extend of information forwarded to national parliaments may be restricted according to national hierarchies of norms.⁸ The French Constitution's 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,

⁷ See Schüttemeyer, Suzanne: 'Funktionsverluste des Bundestages durch die europäische Integration?', in: Zeitschrift für Parlamentsfragen, No. 2/1979, p. 261.

⁸ See the contribution by Andrea Szukala and Olivier Rosenberg in Maurer/Wessels, 2001.

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, but succeeded to bound their governments to provide comprehensive explanatory informations in order to facilitate the sift of documents between MP and committees. These focused 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).

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 2: Evolution of supplementary information practices 1992-1999

	1992/1993		1995		1997/1999	
	Initial	Continuous	Initial	Continuous	Initial	Continuous
B	0	0	Unchanged	On demand	2	Unchanged
DK	2	3	3	Unchanged	Unchanged	Unchanged
D	2	3	3	Unchanged	Unchanged	Unchanged
E	0	1	2	On demand	2	Unchanged
F	1	0	2	2	3	3
GR	0	0	Unchanged	Unchanged	Unchanged	Unchanged
I	1	1	Unchanged	On demand	Unchanged	Unchanged
IRL	1	0	1	On demand	2	Unchanged
LUX	0	On demand	Unchanged	Unchanged	2	Unchanged

NL	3	2	Unchanged	Unchanged	Unchanged	Unchanged
A	n.a.	n.a.	3	3	Unchanged	Unchanged
P	0	0	2	1	Unchanged	Unchanged
S	n.a.	n.a.	3	3	Unchanged	Unchanged
SF	n.a.	n.a.	3	3	Unchanged	Unchanged
UK	3	2	Unchanged	Unchanged	Unchanged	3

Legend for initial phases of the EU's policy cycles ('Initial'): 0 : No supplementing information, 1: Some supplementing informations like summaries of the draft: 2: document summaries, agendas and minutes of Council of Ministers, 3: 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'): 0 : No information at all; 1: Short hand information about the envisaged dates of the decision-making process; 2 Commented information about the stance of other EU actors in the decision-making process; 3: 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 was the fact that relatively new - post-SEA - policy fields and new modes of governance⁹ evade any parliamentary guidance or control.¹⁰ 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 thus created new democratic deficits on both levels. The recent tendency to replace the 'Community method' became obvious with the heads of state and governments' decisions on ESDP, where the intergovernmental dimension in steering the

⁹ 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, 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.

¹⁰ See also the European Commission's White Paper on European Governance, COM(2001) 428, 27. July 2001, pp. 21-22.

Union had 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.¹¹

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 1997/1999, 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 Treaties of Amsterdam and Nice, 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 traditional 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.

1.3.3. Timing and Management

Parliamentary involvement in EU affairs is 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.¹² 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, member states and supranational institutions can, in an increasing

¹¹ See Maurer, Andreas: *Parlamentarische Demokratie in der Europäischen Union. Der Beitrag des Europäischen Parlaments und der nationalen Parlamente*, Baden-Baden, Nomos 2002, pp. 345-361.

¹² See Maurer/Wessels, 2001, op.cit.

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.¹³

From a national government's perspective, this growing variation of institutions and procedures means a mixed set of opportunity structures and "engrenage-like"¹⁴ networking systems for access and participation in the EC/EU policy cycle.¹⁵ Assuming that the resulting bureaucracy¹⁶ is not just an accidental product of personal mismanagement, national parliaments are thus 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. 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.

About half of the parliaments are able to run with their governments in EC/EU affairs effectively. 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. Commission initiatives and EP draft reports are available the day after their adoption.

¹³ See for a detailed analysis: Maurer/Wessels, 2001, op.cit.

¹⁴ 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 Maurer/Wessels, 2001.

¹⁵ 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.

¹⁶ 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, Alaisdair R. (eds.), *Participation and Policy-Making in the European Union*, Oxford 1997, pp. 17-41.

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.

1.3.4. The Understanding and Orientation of "Scrutiny"

Parliaments are confronted with a dilemma in relation to EC/EU affairs for which they are mainly responsible themselves: 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. In this regard, the activity of parliamentary 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.

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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.

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. 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. 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 3: 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 towards supportive Scrutiny	Orientation towards formulating and/or voting instructions		Anticipative, ex-ante examination of EC/EU legislation	Reactive, ex-post consideration of EC/EU legislation	
Main Focus on EU Committee	SF, IR	F,	DK, A	DK, SF, A, UK	IR	

Strong involvement of Specialised Standing Committees	D, NL, SF, I	UK	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 Maurer/Wessels, 2001; Maurer 2002; Raunio/Wiberg 1999.

Given the self-made multitude of portfolios, the 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 exceptions¹⁷, 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.

1.3.5. Influence and Impact: Parliaments as 'Supportive Scrutinisers'

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.

¹⁷ See the contributions by Finn Laursen on the Danish Parliament and by Tapio Raunio on the Finnish Parliament in Maurer/Wessels 2001.

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'".¹⁸ 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".¹⁹ Thus, the scrutiny reserve facilitates parliaments to strengthen their potential for worst-case-situations. But the logic behind the reserve mechanism is a Parliament, which acts as a 'supportive scrutiniser'²⁰ of and not - systematically - against its government.

The protagonists of a strengthened role of national parliaments in EU affairs 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

¹⁸ 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.

¹⁹ 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.

²⁰ See the contribution by Sven Hölscheidt in Maurer/Wessels, 2001.

take the opinion of the committee into careful consideration”²¹. 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.

2. Analysis: The One-Level-Only Problem of MP's

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. 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. 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

²¹ 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.

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.

Figure 1: Real 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 [DK, SF]	European players [EP]
	↑	[S, D, B, UK, F]	
	↑	National players	Slow adapters
	Weak	[A, NL]	[IR, LUX, I, E, P, GR]

This record 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.

If we take our 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 explanation. I suggest to start from the role attribution

normally given to national parliaments as major *actors*.²² 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. 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.²³ 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'.²⁴ 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.

Table 4: Real types of national parliamentary participation in EU affairs

	1. Scope of Information			2. Start of parliamentary scrutiny		
	ECT	TEU: CFSP and HJA	EU information dependant on government's policy	After Commission's initiative	After common position of the Council	During all stages of EU decision making
D	C	C	Very low	✓	✓	✓

²² See the contribution by Andreas Maurer in Maurer/Wessels 2001.

²³ See Lijphart, Arend: *Patterns of Democracy. Government Forms and Performance in Thirty-Six Countries*, New Haven/London 1999, pp. 62-89.

²⁴ See in this regard the analysis by Ben Hoetjes on the Dutch system and Sven Hölscheidt on the German system in Maurer/Wessels 2001.

F	C	R	High	✓*	✓*	
I	R	R	High	✓	-	-
NL	C	R	Low	✓	✓	-
B	C	R	Low	✓*	-	-
LUX	R	R	High	✓*	-	-
GB	C	R	Low	✓*	✓*	✓*
DK	C	C	Very low	✓	✓	✓
IRL	R	R	High	-	✓*	-
E	R	R	Very high	✓	-	-
P	R	R	Very high	✓	-	-
GR	R	R	Very high	-	-	-
A	C	C	Very low	✓	✓	✓
S	C	C	Very low	✓	✓	✓
SF	C	C	Very low	✓	✓	✓
	3. Frequency of Committee meetings	4. Organisation and Management of intraparlimentary EU proceedings	5. Impact of Scrutiny on government's room of manoeuvre			
			Low	Veto or Delaying	Very high: Co-Participation	
D	High	Reactive	-	✓	✓	
F	High	Proactive	-	✓	-	
I	Low	Reactive	✓	-	-	
NL	High	Reactive	-	✓	-	
B	Low	Reactive	✓	-	-	
LUX	Low	Reactive	✓	-	-	
GB	High	Reactive	-	✓	-	
DK	High	Reactive	-	-	✓	
IRL	Low	Reactive	✓	-	-	
E	Low	Reactive	✓	-	-	
P	Low	Reactive	✓	-	-	
GR	Low	Reactive	✓	-	-	
A	High	Proactive	-	✓	✓	
S	High	Proactive	-	✓	✓	
SF	High	Proactive	-	✓	✓	

Legend: C = Comprehensive; R = Restricted. ✓*: Parliaments report on a frequent non-compliance of governments with regard to the timely transmission of documents.

To turn the argument around - also in view of the concepts and post-Nice/Convention 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.

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. The 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 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 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.

3. National Parliaments in the Convention

The role of national parliaments in European integration became a central issue of the EU's Convention on the future of Europe for two reasons at least. The 2000 Nice European Council, in the Declaration No. 23 annexed to the Treaty²⁵, stated that it was one of the four topics to be placed at the centre 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: 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. Declaration No. 23 raised 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.

3.1. Ways of Improving National Scrutiny Systems

Initially, the debate about how to strengthen national parliaments concentrated on how to involve them more directly at the European levels of decision-making. Nevertheless, since scrutiny of their own government continues to represent one of their most important 'European functions' of MP's, it is important to analyse what kind of improvement could have been made at the national levels - beyond, below or irrespective of the Convention's actual outcome. To encourage parliaments to analyse and improve their systems, "best practice" studies had been proposed within the NP's self-regulating arenas such as COSAC. In contrast to this kind of informal recalibration process, the idea put forward by the spring 2000 speeches of Fischer, Blair and Chirac was to equip NP's with certain 'rights' in the European Treaties. It remained open, whether relevant provisions could be made either through extending the scope of existing 'rights' included in the PNP or by making specific references to specific functions, roles and powers for national parliaments into certain Treaty articles.²⁶

²⁵ See the documentation by Astrid Krekelberg in Maurer/Wessels, 2001, document No. 3.

²⁶ See House of Commons, The European Scrutiny Committee, European Scrutiny in the Commons - Thirtieth Scrutiny Report, www.parliament.the-stationery-office.co.uk

3.1.1. The Informal Way: Best Practice

Comparing the different national systems was already facilitated within COSAC and - to a much lower extent - within the Conference of the Presidents. Some positive effects may have resulted from the fact that deputies from national parliaments with little influence felt that other parliaments had a higher weight.²⁷ The Convention's proceedings on the issue of national parliaments induced a fresh wave of analysing the different systems. In particular the working group on National Parliaments (WG IV) performed as an open forum for interparliamentary exchange about the pros and cons of national parliamentary scrutiny. Many contributions to WG IV explained national characteristics of modes of parliamentary participation and the scrutiny systems. Some even made specific proposals for improving their own national procedures or explained several mechanisms that could be of use for other parliaments.²⁸ In particular those parliaments that perform as weaker national players as well as the candidate states may have profited from these comparisons. Yet it is questionable to what extent 'best practice' studies²⁹ will incite changes and should therefore be institutionalised – as for example in 'a forum of best practices' which could be part of COSAC.³⁰ Arguably the effects that such comparisons are very limited. Copying the European affairs scrutiny system of another Parliament may not mean copying the same effect. There are too many other factors (such as the political system, the political culture and - most important - the orientation of parliamentary participation in EU affairs, see table 3) which determine how the system works in practice. Proposals to institutionalise best practice systems were seen to be helpful, but many members in the Convention argued that it may not necessarily help to bring about real success in terms of improving the effectiveness of a system, given that there are too many relevant country-specific factors that would have to be taken into account. As it is very unlikely that a weak national player can develop into a strong European player by learning from another (for example the Danish Parliament), the effects spurred by best practice are likely to remain weak.

²⁷ See Maurer 2002 and Pöhle, Klaus, „Das Demokratiedefizit der Europäischen Union und die nationalen Parlamente. Bietet COSAC einen Ausweg?“, in Zeitschrift für Parlamentsfragen, No.1/ 1998, p. 82

²⁸ Proinsias de Rossa describes the changes to the Irish scrutiny mechanisms. According to him “drafting the proposals has been greatly facilitated by the exchange of information on best practices”, Proinsias de Rossa (Member of the Irish Parliament), “Role of National Parliaments”, WD 010 - WG IV, Brussels, 15 July 2002; See also the contribution of Van Baalen, Hans (Member of the Dutch Parliament), “On time it is too late”, WD 011 - WG IV, Brussels, 15 July 2002; Kiljunen also recommends the use of reserves in the Council to other parliaments. See Kiljunen, Kimmo (representative of the Finnish Parliament), “Securing the influence of National Parliaments - use of reserves in the Council”, WD 016 - WG IV, Brussels, 22 July 2002 ,

²⁹ Also proposed by Stuart, Gisela, Mandate of the Working Group on National Parliaments, CONV 74/02 Brussels, May 30 2002

³⁰ Proposal made by Proinsias de Rossa (Member of the Irish Parliament), “Role of National Parliaments”, WD 010 - WG IV, Brussels, 15 July 2002

3.1.2. Minimum Rights for NPs: Extending the Scope of the Amsterdam Protocol

More successful could have been a more formal way, by granting further rights to national parliaments as it was done in the Amsterdam PNP. Proposals to formulate the PNP provisions as “obligations” for the governments and the European institutions had been made by several members of the Convention. The idea was that by extending the scope of information within an amended PNP parliaments could be provided with a better - i.e. EU-regulated - position vis-à-vis their governments. A different and less formal approach was suggested by the House of Commons to adopt a “Charter for National Parliaments”, which would include the “broad principles and objectives to guide national parliaments in relation to their role in the European Union and to which national parliaments would subscribe.”³¹ The Charter was proposed as a binding instrument for the national parliaments but not for the European institutions or the governments. However, most members in WG IV reacted rather negative, highlighting the problems of binding national parliaments via *EU Treaty changes* that would need constitutional changes in the Member states.³²

New Treaty articles that would specifically define the role of national parliaments may be an effective way to raise the awareness of the ‘European functions’ of MP's. But even a simple reform of the PNP may have spurred constitutional changes. A further relatively simple change was proposed by WG IV Chairman Mendez de Vigo who asked for the definition of the Commission and not the member states’ governments as being responsible for forwarding legislative proposals directly to the NP's.³³ According to a prior COSAC resolution proposals could be forwarded “as soon as they are adopted by the college of Commissioners” – preferably “by electronic means.”³⁴ The Commission “would have no difficulty in sending proposals directly (to NPs) if Member States are content that this is consistent with each

³¹ This Charter should include “a pledge by national parliaments to promote the openness and transparency of decision-making in the European Union; a pledge by national parliaments to review their own procedures with a view to increasing the opportunities for holding their own government ministers to account in relation to EU decision-making and a pledge by national parliaments to review their own procedures with a view to promoting the engagement of the citizen in the European Union.” See House of Commons, The European Scrutiny Committee, *European Scrutiny in the Commons - Thirtieth Scrutiny Report*, www.parliament.the-stationery-office.co.uk

³² This question was also raised in the first meeting of WG IV, the need to respect “the national constitutional requirements” were also - as in the current form of the PNP- stressed; See European Convention Secretariat to Working Group IV “National Parliaments”, Summary of the meeting held on 26 June 2002, CONV 128/02 , WG IV, Brussels , 1 July 2002, p. 3

³³ The Chairman of by WG I also enclosed this proposal on his list of points to be examined. See Mendez de Vigo, Iñigo (Chairman of WG I), “Initial proposals for conclusion”, Working Group I on the Principle of Subsidiarity, WG I- WD 09, CONV 210/02, Brussels, 29 July 2002 , See also Proinsias de Rossa (Member of the Irish Parliament), “Role of National Parliaments”, WD 010 - WG IV, Brussels, 15 July 2002

³⁴ See XXIIIrd COSAC, Versailles, October 2000, <http://www.cosac.org>

country's constitutional relationship between governments and national parliaments."³⁵ The idea indirectly limited the scope of information forwarded to national parliaments, since Commission proposals would apply to first pillar matters only. Interestingly, no member of WG IV raised the question about the self-restriction of national parliaments in this specific regard.

There were several doubts whether a majority of member states and parliaments would support changes of the PNP that could partly interfere in the "constitutional organisation and practice of each Member State".³⁶ As the House of Commons put it, "parliaments, as sovereign bodies, will want to decide how best to exercise their own scrutiny role according to their own traditions and norms."³⁷ Most proposals that have been made in the Convention thus limited their effective range rather to possibilities of involving NPs directly at the European level, either by establishing new mechanisms or even by establishing a new institution comprised of national parliamentarians.

3.2. When and How to Involve NPs at the European Level?

Other proposals for new roles and new bodies comprised of national parliamentarians had been made throughout the debate on the future of Europe and prior to the negotiations of the Nice Treaty.³⁸ By drawing attention to the subject, these different visions also helped the issue to be included in the priority list of the Nice agenda as well as on the agenda of the Convention.

The Amsterdam Intergovernmental Conference prompted a debate on the question of institutionalising the Assizes model. The former President of the French National Assembly, Séguin, proposed the establishment of a *second chamber*.³⁹ 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

³⁵ See European Commission, Paper from the Commission to WG IV on "Implementation by the Commission of the Amsterdam Protocol on the role of national parliaments in the European Union", WD 009 - WG IV, Brussels, 12 July 2002, p.4

³⁶ Protocol on the role of the national parliaments in the European Union (Treaty of Amsterdam), Protocol No.9 , <http://www.cosac.org/eng/basic/index.html#Protocol>

³⁷ See House of Commons, The European Scrutiny Committee, European Scrutiny in the Commons - Thirtieth Scrutiny Report, www.parliament.the-stationery-office.co.uk

³⁸ As for example in certain speeches by Joschka Fischer, Tony Blair and Lionel Jospin. See introduction for the references to their speeches.

³⁹ See Le Figaro, 7 December 1994.

Community decision-making process. This Council of National Parliaments was supposed to discuss the Commission's draft legislative programme and directives at first reading stage.⁴⁰ 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.⁴¹ 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.⁴² 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 defence matters. In addition, the interparliamentary committee should scrutinise 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 *Interparliamentary committee*, the Parliament now proposed to institutionalise 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

⁴⁰ See Sir Leon Brittan: *Europe: The Europe We Need*, London: Hamish Hamilton 1994, p. 227.

⁴¹ 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.

⁴² 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.

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. 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.⁴³

The other national parliaments were at least critical if not overtly 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.⁴⁴ Given the strong reluctance of the majority of the member states' parliaments and governments as well as of the EU institutions, the concept of institutionalising COSAC seemed unlikely to perpetuate interparliamentary co-operation. The mainstream argument against such an increased role held that the further institutionalisation of COSAC would have had the contradictory effect of distorting the democratic foundations for the legitimisation of parliamentary control and law-making activities in the Community.

In turn, proposals to strengthen 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.⁴⁵ 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

⁴³ Ibid., pp. 98-100.

⁴⁴ 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.

⁴⁵ Ibid.; and European Parliament, DG II/Task Force IGC 1996/1997: Briefing on the role of national parliaments, Briefing No 6, Luxembourg, March 1996.

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 formalisation 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 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".⁴⁶ 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."⁴⁷ 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 scrutinise Community documents and draft legislation.

The European Parliament's Neyts-Uyttebroeck report on relations between the European Parliament and the national parliaments synthesised 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 organised 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 report needs to be considered as its direct reaction to the Dublin COSAC meeting of 16 October 1996, which for the first

⁴⁶ See Goerens, Charles: Die Rolle der Parlamente in der Europäischen Union von Morgen. Bericht für Ministerpräsident Jean-Claude Juncker, Luxembourg 1996.

⁴⁷ Ibid.

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.⁴⁸ 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, 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.

Overall thus, the proposals for a '*second chamber*' comprised of national parliamentarians within or independently of the EP, a (permanent) '*congress*,' or a '*subsidiarity committee*' were not new.⁴⁹ For the first time, however, they were part of an EU-wide debate. It was however questionable, if the Convention's focus should be on the question in what way and by which institution NPs may be involved better (a congress, a committee, a chamber). More essential seemed the question where and when to involve NPs at the different levels and during the different stages of the EU policy process. The Convention thus examined *at what stages* national parliaments could participate. The following possibilities were discussed: the involvement in the making of primary law through the Convention or IGC's, the participation in the legislative process and in the appointment procedures – if they were to be remodelled.

⁴⁸ 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.

⁴⁹ See Pöhle, Klaus, 1998, op.cit., p.85

3.2.1. Involvement in the Making of Primary Law: the Convention

As the constitutional character of the European treaties became more and more apparent and “their modifying impact on the normative reality of the national constitutions is undeniable, a more direct involvement of citizens and their democratic representatives in the process [of Treaty revisions] needs to be organised.”⁵⁰ To date, NPs have only been indirectly involved in the making of primary law. An institutionalisation of the European Convention would alter the modes of Treaty revisions fundamentally and this would be - as most observers acknowledged - a step in the right direction.⁵¹ The overall advantages of institutionalising the Convention would be the deliberative nature of parts of its proceedings (namely, the early phases of joint problem definition as well as the debates within the working groups) and the public debates prior to an IGC. However, the Convention induces limited "side effects" for NPs, because this "additional" method of Treaty revisions is applied only temporarily and could thus be combined with other new mechanisms for NPs during a rather short time-frame. The Convention had “no formal” powers and did only prepare the IGC. During the Convention, national parliamentarians were directly involved at the European level (at least the few representatives of each Parliament) and they learned of the different points of view of other MPs and MEPs and government representatives. They gained and actively contributed to “first-hand experience of EU affairs”.⁵²

3.2.2. Direct Involvement in the Legislative Process: a Role in Subsidiarity?

The legislative function of national parliaments has been affected through the transfer of competencies from the national to the EU level. NPs implement a large amount of European legislation without having a real, i.e. ex-ante say in the decision-making processes. In addition, the majority of EU directives contain such precise provisions that national parliaments only “rubber stamp” what has been decided in Brussels.⁵³ Given the large differences in effectiveness of the national scrutiny procedures many members of the Convention proposed to involve national parliaments directly and at an earlier stage in the legislative process at the EU level. The arguments put forward concentrated on two issues:

⁵⁰ See Pemice, Ingolf: The role of National Parliaments in the European Union, Walter Hallstein-Institut, WHI-Paper 5/01, Juli 2001, p. 4.

⁵¹ European Parliament, Committee on Constitutional Affairs: Report on relations between the European Parliament and the national parliaments in European integration, Rapporteur: Giorgio Napolitano, 23 January 2002

⁵² Duff, Andrew, Paper for the Working Group IV – “Role of National Parliaments”, Working document 4, Brussels, 5 July 2002, p. 5

⁵³ See Praesidium of the European Convention, The role of the national parliaments in the European architecture, Brussels, 29 May 2002, CONV 67/02, p. 5

first, to guarantee an “equal standard” of participation for NPs, and secondly to grant national parliaments with a role in guarding compliance with the principle of subsidiarity. On the other hand, the Conventionnels did not raise the Maastricht-Amsterdam-Nice parliamentary deficits with regard to CFSP/ESDP, closer co-operation, the open method of - intergovernmental - coordination. Accordingly, within the Convention, the issue of subsidiarity became increasingly regarded as *the* political question to be addressed to national parliaments.⁵⁴ Proposals identified different stages for national parliaments to be involved in the legislative process - co-shaping the broad political agenda (the pre-legislative phase), participating in the legislative and in the post-legislative phase.

3.2.3. A New Role in Shaping the Broad Political Agenda?

With regard to giving NPs a role in the long-term monitoring ("*Vorfeldbeobachtung*") WG IV discussed the involvement of parliaments directly in the preparation of the Commission's annual work and legislative programme.⁵⁵ Inviting NP's to issue their demands and opinions on pre-legislative material meant to activate a parliamentary scrutiny mechanism at the earliest possible stage. At present NPs receive the legislative programme from the European Parliament, the institution that is jointly responsible for the programme together with the Commission.⁵⁶ This way, NPs are able to plan when and what to scrutinise or implement, since the legislative programme “establishes the priorities in the legislative field and fixes a timetable for the submission by the Commission of all the proposals and documents contained in the programme and for their examination by Parliament and the Council.”⁵⁷ National parliaments may question their ministers "to ascertain what their governments think of the legislative programme as proposed, and to find out the priorities their ministers have set."⁵⁸ It might, however, be of advantage, if there were rather European (than national) debates. This could be achieved in co-operation with the Commission and the European Parliament. British and Irish members of the Convention thus proposed to organise regular hearings of

⁵⁴ Mendez de Vigo, Iñigo (Chairman of WG I), “Initial proposals for conclusion”, Working Group I on the Principle of Subsidiarity, WG I-WD 09, CONV 210/02, Brussels, 29 July 2002

⁵⁵ See Maurer, Andreas, “Beyond unilateral scrutiny: The scope of options”, Paper for Working Group I (Subsidiarity), Working Document 7, Brussels, 16 July 2002; also Secretariat of the European Convention, Working Group IV on “National Parliaments”; See also “Summary of the meeting held on 18 July 2002”, CONV 204/02, Brussels, 16 July 2002; Secretariat of the European Convention, Working Groups on Subsidiarity and National Parliaments, “Summary of the joint meeting on Monday 22 July 2002”, CONV 210/02, Brussels, 30 July 2002

⁵⁶ Laprat, Gerard: „Parliamentary Scrutiny of Community Legislation: An Evolving Idea”, in: Finn Laursen/Spyros A. Pappas (Hrsg.): *The Changing Role of Parliaments in the European Union*, Maastricht 1995, p. 14

⁵⁷ See Information on the “Commission's programme of work and legislative initiatives” and the “Rule 57 of Parliament's Rules of Procedure” on the Homepage of the EP, <http://wwfdb.europarl.eu.int/dors/oeil/en/inter21.htm>

⁵⁸ Laprat, Gerard, 1995, op. cit., p. 12

Commissioners within the national parliaments after they have received the programme.⁵⁹ The presence of Commissioners in the national parliaments would ensure that all deputies could participate (and not only a minority as with the COSAC or joint parliamentary meetings). Nevertheless, these hearings could also take place together with the EP.⁶⁰ These hearings could be followed by debates taking place simultaneously in all parliaments.⁶¹ Real improvement of the parliamentary influence would mean that parliaments could make their voice heard. This could at first be done individually⁶² and then collectively – for example by using the already established mechanisms such as COSAC meetings but also the specialised committee meetings. Those concerns that are listed by NPs could firstly be presented to the EP, which would take them into account in the legislative process.⁶³ Furthermore, reports could also be sent to the *Commission* and in particular to *General Affairs Council* which prepares decisions on the following years programme.⁶⁴ Nonetheless, this kind of anticipating scrutiny should not only be restricted to the annual legislative programme of the Commission but also apply to the programmes of the Council and the European Council. Therefore the “*multi-annual programme*” of the European Council and the “*annual operating programme of Council Activities*” as proposed by the Seville European Council⁶⁵ might also be scrutinised by national parliaments.⁶⁶

3.2.4. A New Warning Mechanism in the Legislative Phase?

Apart from involving national parliaments better in the pre-legislative phases through scrutiny of the annual strategies and legislative programmes of the European institutions, the vast majority of the Convention's members, the Presidium and Giscard asked to strengthen the

⁵⁹ The European Scrutiny Committee of the House of Commons proposed that Parliaments request “a ‘Queen's Speech’ type briefing from the Commission on its annual legislative programme (similar to the broad economic guidelines and the financial framework).” See House of Commons, The European Scrutiny Committee, European Scrutiny in the Commons - Thirtieth Scrutiny Report, www.parliament.the-stationery-office.co.uk

⁶⁰ This had already been proposed by the EP. See European Parliament, Committee on Constitutional Affairs: Working Document on the Commission's annual legislative programme (Rule 57 of the Rules of Procedures), Rapporteur: Cecilia Malmström, PE 304.282, 31 August 2001

⁶¹ Duff, Andrew, Paper for the Working Group IV – “Role of National Parliaments”, Working document 4, Brussels, 5 July 2002

⁶² “National parliaments or national parliamentary committees could then publish a consultation document on the forthcoming legislative programme, request submissions from interest groups, civil society, etc and then feed this back to the Commission” See House of Commons, The European Scrutiny Committee, European Scrutiny in the Commons - Thirtieth Scrutiny Report, www.parliament.the-stationery-office.co.uk

⁶³ See Maurer, Andreas, “Beyond unilateral scrutiny: The scope of options”, Paper for Working Group I (Subsidiarity), Working Document 7, Brussels, 16 July 2002, p. 15

⁶⁴ Duff, Andrew, Paper for the Working Group IV – “Role of National Parliaments”, Working document 4, Brussels, 5 July 2002

⁶⁵ From December 2003 onwards European Council started to adopt a multi annual strategic programme for the three years to come and an “annual operating programme of Council activities shall be submitted to the General Affairs Council in December each year. This programme shall be proposed jointly by the next two Presidencies in line and shall have regard, inter alia, to relevant points arising from the dialogue on the political priorities for the year, conducted at the Commission's initiative. The final version of the annual programme shall be drawn up on the basis of the General Affairs Council's discussions.” See European Council, Presidency Conclusions Sevilla, 21 and 22 June 2002

NP's role within the legislative phase. Currently, NPs can make their positions known to their national governments and the EP, but they do not have a 'real say' in these process at the European level. Proposals were ranging from general vetoes on legislative proposals⁶⁷ via pledges for a new "political body"⁶⁸ or simple mechanisms assuring that NPs are at least consulted.

When analysing the discussion in WG IV and WG I of the Convention, one identifies a majority of proposals for an "early warning mechanism" for NPs to prevent breaches of the principle of subsidiarity and to ensure that concerns by NPs are taken more fully into account by the EU legislators.⁶⁹ The mechanism was proposed not only in order to enable parliaments to react to Commission documents but also to allow MP's to interfere at later stages of the legislative process, since Commission proposals are significantly altered by the EP and the Council.⁷⁰ With regard to the codecision procedure Andrew Duff asked to introduce a "complaint procedure" to be triggered by a significant majority of NP's. By issuing "a reasoned amendment" this majority could ask for a third reading within the Conciliation Committee. If the Council and the EP want to retain their original positions, they would have to achieve a higher threshold (a "super QMV" in the Council and an absolute majority in the EP) during the voting procedure. According to Duff, NP's should have been allowed four weeks to register such complaints and to submit a reasoned amendment .⁷¹

3.2.5. Parliamentary Participation in the Procedures of Appointment

By legitimising the decisions made by their national governments, NPs have also a role in controlling the governments' European appointment policies.⁷² Despite the changes in Maastricht and Amsterdam which strengthened the EP⁷³ and the President of the Commission (in choosing the Commissioners), national governments still play a central role in the

⁶⁶ Proinsias de Rossa (Member of the Irish Parliament), "Role of National Parliaments", WD 010 - WG IV, Brussels, 15 July 2002

⁶⁷ Proposal by Jens-Peter Bonde (MEP) . See House of Commons, The European Scrutiny Committee, European Scrutiny in the Commons - Thirtieth Scrutiny Report, www.parliament.the-stationery-office.co.uk

⁶⁸ See for example Glotz, Peter/ Hübner, Danuta/ McSharry, Ray/ Moscovici, Piere, "Division of competencies" CONV 88/02, CONTRIB 46, Brussels, 14 June 2002, p.4.

⁶⁹ This would be from parliamentary view relying on political criteria. See Secretariat of the European Convention, Working Groups on Subsidiarity and National Parliaments, "Summary of the joint meeting on Monday 22 July 2002", CONV 210/02, Brussels, 30 July 2002; See also Mendez de Vigo, Inigo (Chairman of WG I), "Initial proposals for conclusion", Working Group I on the Principle of Subsidiarity, WG I- WD 09, CONV 210/02, Brussels, 29 July 2002

⁷⁰ Kiljunen, Kimmo (representative of the Finnish Parliament), "Oversight of Subsidiarity", WD 007 - WG IV, Brussels, 5 July 2002

⁷¹ Duff, Andrew, Paper for the Working Group IV – "Role of National Parliaments" , Working document 4, Brussels, 5 July 2002

⁷² Pernice, Ingolf, 2001, op. cit., p. 8

⁷³ According to article 214.2 TEC the EP has to give its consent to the nomination of the President and the College of Commissioners.

nomination procedures.⁷⁴ This also accounts for the nomination of other leading positions at other European institutions (for example the European Court of Justice and Court of first Instance, the European Central Bank, the Court of Auditors and others).⁷⁵ Given that there are hardly any legal provisions at the national level which provide for parliamentary participation in these appointment procedures,⁷⁶ it seemed to be essential to examine possible new ways of involving NPs – either at the national⁷⁷ or even at the European level. With regard to the latter proposals had been made to involve NPs in the election or nomination of a “President of the Union.”⁷⁸ Executive powers could either be further attributed to the Commission or to the Council. French, Spanish and British proposals called for the nomination of a President of the Council⁷⁹ as opposed to proposals for electing the President of the Commission.⁸⁰ In both cases national parliaments could have been involved. Andrew Duff called for the President of the Commission to be elected by some form of *assembly* comprised of European and national parliamentarians.⁸¹ Suggestions along these lines were also made by the current President of the Commission, Romano Prodi.⁸² Different ideas came from the President of the European Convention. He wanted to see NP's equipped with less powers. According to him there could be some role for NPs in “confirming” the nominations of the heads of state of government.⁸³

3.2.6. New Institutions or Reforms of the Existing Mechanisms?

The most radical proposals regarding new forms of involvement had been the creation of a ‘second’ or ‘third chamber’, the former being a chamber within the EP⁸⁴ and the latter being a

⁷⁴ Pernice, Ingolf, 2001, p. 8

⁷⁵ Ibid, p.8

⁷⁶ Ibid, p.8

⁷⁷ If there are “no revolutionary decisions” such as electing the President of the Union or the Commission, there would still be possibilities of involving NPs in the national nomination procedures by giving them at least a direct say on who is nominated by each government as a candidate for such a position. See Pernice, 2001, op. cit., p. 16

⁷⁸ Barrau envisaged a Congress that would elect the “President of the Union” on the basis of a list drawn by the heads and states of government. Normally this term refers to a President of the Council, Barrau is not very clear on this. See Barrau, Alain (Assemblée nationale française), “National Parliaments”, Contribution to the Convention, CONV 84/02, CONTRIB 40, Brussels, 31 May 2002

⁷⁹ The idea of an appointed EU council president was introduced by Mr Chirac in a speech in Strasbourg on March 7 and is also supported by the British Prime Minister Blair and the Spanish head of government Aznar. A Council president is also favoured by Valéry Giscard d'Estaing. See Parker, George, “France and UK call for new force at top of EU”, May 15th 2002, <http://news.ft.com/>

⁸⁰ That would be in line with the ideas of the European Commission, The European Parliament and others in favour of attributing the executive power to the Commission and developing a true bicameral system (Council and EP).

⁸¹ Using the term “congress” Andrew Duff speaks in favour of the German Pattern for the election of the Federal President, a “Bundesversammlung” composed of the whole EP and an equal number of national parliamentarians meeting every five years in July immediately following the European Parliamentary elections to elect the new President of the Commission, See Duff, Andrew, Paper for the Working Group IV – “Role of National Parliaments”, Working document 4, Brussels, 5 July 2002. p.5

⁸² Parker, G., “Prodi changes his mind on electing European president”, Financial Times, July 29 2002, p. 5

⁸³ Describing his idea of a congress Giscard however only mentions the possibility that NPs may playing some role in some nomination procedures. He is not very clear on this. Giscard, d'Estaing, Valéry, «La dernière chance de l'Europe unie », the article was published on the Monday 22nd of July 2002 in « LE MONDE » and on the 23rd of July in the “Süddeutsche Zeitung” (Nr. 168, p.9)

⁸⁴ This idea was for example presented by Vaclav Havel in March 1999 in the French Senate, See French Senate, « Une deuxième chambre européenne », Report 381 (2001 –2002) by D. Hoefel, http://www.senat.fr/rap/r00-381/r00-381_mono.html and also by

new independent chamber.⁸⁵ The first proposal implied that the present EP would become the lower chamber, the upper chamber would be comprised of representatives of the national parliaments either with the same number of representatives per state or with the number of representatives varying accordingly to the population of the state. The idea risked to “duplicate national representation at the European level unless the Council was substituted by such a second chamber.”⁸⁶ Unless the Council would not undergo such a revolutionary reform, there would be the danger that the functions of the institutions would overlap. This might not necessarily be the case with a third chamber, which would not have legislative competencies but perhaps some role in the second and the third pillar.⁸⁷ Nevertheless, these proposals would have rendered the institutional system more complex than more transparent.⁸⁸ Other proposals referred to a ‘permanent conference’ or a ‘congress’⁸⁹ or a ‘Parliamentary Subsidiarity Committee’ (PSC).⁹⁰ These were presented as more flexible arrangements. Regular meetings could take place on an ad-hoc basis.⁹¹

Nevertheless, these ideas largely ignored already existing mechanisms such as COSAC. Independently of the precise role that one would attribute to a new body, there were various possibilities of reforming COSAC. If “heavy mechanisms” were to be avoided,⁹² because of their potential negative consequences for the European institutions and the decision-making process, a reformed COSAC seemed to be a more appropriate solution. Although this might imply that COSAC changed its name and composition,⁹³ it could easily play a role in safeguarding subsidiarity, in some appointment procedures, in debating the legislative programme of the Commission and the multi-annual programme of the European Council and it could even play a role in CSFP.⁹⁴ There could be also “non-routine joint conferences of

Joschka Fischer, „Vom Staatenverbund zur Föderation - Gedanken über die Finalität der europäischen Integration“, Speech at the Humboldt-University, 12th of May 2000

⁸⁵ See for example Blair, Tony, Speech on the 6th of October 2000 in Warsaw, <http://www.number-10.gov.uk/news.asp?NewsId=1341&SectionId=32>

⁸⁶ Pernice, Ingolf, 2001, op. cit., p. 13

⁸⁷ See proposal made by Tony Blair.

⁸⁸ See Pflüger, Friedbert, MdB, Vorsitzender des Deutschen Bundestages für Angelegenheiten der EU, „Europa wohne Bürger? Mehr Parlament wagen?“, Europa-Fokus Niedersachsen, Ausgabe 2001/3/ August 2001, www.eiz-niedersachsen.de.

⁸⁹ Jospin, Lionel, Speech on the 28th of May 2001 in Paris, Maison de la Radio, www.eiz-niedersachsen.de

⁹⁰ Pernice, Ingolf, The role of National Parliaments in the European Union, Walter Hallstein-Institut, WHI-Paper 5/01, Juli 2001, p. 15

⁹¹ Kiljunen, Kimmo (representative of the Finnish Parliament), “Oversight of Subsidiarity”, WD 007 - WG IV, Brussels, 5 July 2002

⁹² Mendez de Vigo, Iñigo (Chairman of WG I), “Initial proposals for conclusion”, Working Group I on the Principle of Subsidiarity, WG I-WD 09, CONV 210/02, Brussels, 29 July 2002

⁹³ See Danish proposal for developing COSAC into a “Forum of the Parliaments”; European Affairs Committee of the Danish Parliament/ The Danish COSAC Chairmanship, Draft Contribution for the COSAC meeting in Copenhagen October 16th – 18th 2002 – Proposals for Enhancing the Role of the National Parliaments in European Politics and for the Reform of COSAC into the Forum of Parliaments, Christiansborg, 11 July 2002

⁹⁴ See also proposals for a “Parliamentary Conference on ESDP” on a regular basis by the Committee on foreign affairs, human rights, common security and defence policy”; European Parliament, Committee on Constitutional Affairs: Report on relations between the European Parliament and the national parliaments in European integration, Rapporteur: Giorgio Napolitano, 23 January 2002, p.22;

MPs and MEPs“ which would discuss particularly problematic dossiers (such as enlargement or reform of CAP) bringing together the specialists and not the EU generalists of the EC/EU Affairs Committees.⁹⁵

4. The Convention's result

The Draft Constitutional Treaty (DCT) provides national parliaments with an original set of new powers for participating in EU decision making. They will be informed and consulted

- before any Commission initiative with regard to the so-called flexibility clause of Art. I-17.2,
- before any decision of the European Council to transfer a rule for unanimity into qualified majority according to Art. IV-7a,
- before any decision is made on the entry of a new Member State to the EU according to Art. I-57.2,
- on the scope and modalities of implementation measures with regard to the room of freedom, security and justice (Art. III-161),
- on the proceedings of the Standing Committee working in the field of justice and home affairs (III-162), and
- on proposals submitted to the Council of Ministers with regard to future DCT amendments (Art. IV-7.1).

In addition, Art. IV-7a.3 provides each national parliament with a right to veto any transfer from unanimity in qualified majority. The most important reform of the European Convention is a new mechanism of direct parliamentary participation in the subsidiarity principle's application. Under the DCT's article I-32 and the new Protocol on the application of the principles of subsidiarity and proportionality the Commission would directly send its legislative drafts to all national parliaments for a 'preliminary reading'. Within six weeks of the proposal's transmission, parliaments may draft their position on whether the proposal does comply with the subsidiarity principle or not. All positions will be weighted and counted: unicameral parliaments have two votes, in bicameral ones each chamber has one vote. If 1/3 (1/4 for proceedings under art. III-160 concerning drafts on

See also reference made to the Chevalier/ Mahoux-Report by De Gucht, Karel, „Another role for national parliaments in the EU“, CONTRIB 63, CONV 183/02, Brussels, 11 July 2002

judicial co-operation in criminal matters and police co-operation) of all chambers draw up negative positions, the Commission has to review its proposal and subsequently either withdraw, amend, or maintain it. This first round takes place exclusively between the Commission and the chambers of national parliaments. It is only after that 'reading' that the Commission submits the possibly revised proposal to the ordinary legislative process. Finally, those parliaments which have drafted a negative position have the possibility to take legal action against the Commission at the EJC on the grounds of an infringement of the subsidiarity principle. During the Court proceedings parliaments will be represented by their governments which act on their behalf.

What will be the procedural and institutional consequences for national parliaments? Two variants can be deduced from the DCT's texts:

First, it is conceivable that parliaments submit explicitly positive positions to the Commission. On the one hand, parliaments could in this way support government's positions against the interests of third parties. On the other, parliaments could clarify their own points of view at this early stage and set limits for their own government's negotiations in the Council of ministers. It is also likely that such positive positions set signals for the European Parliament, as its political group majorities in Brussels or Strasbourg become clear. Secondly, it is also likely that strong governments would use the mechanism to back up their position in Brussels by simply advising parliaments to submit negative positions. The instrumentalisation of parliaments such as in France or in the UK could become a general rule.

Therefore, the effective use of the mechanism depends not only on institutional arrangements but on the self-perception of parliaments regarding their scrutiny role vis-à-vis the executive and the EU institutions. Strongly scrutinising parliaments concerning EU-business will behave differently from those which rather tend to support their government in international and European affairs. The NP' desire to use the opportunity for direct, active participation and scrutiny will necessitate a certain structural re-organisation due to the crucial variables of cost and time: An effective scrutiny within the short period of six weeks requires a central, comprehensive, efficient parliamentary organisation that is able to collect, filtrate and digest information independent of governmental expertise.

⁹⁵ Duff, Andrew, Paper for the Working Group IV – "Role of National Parliaments", Working document 4, Brussels, 5 July 2002

In most parliaments the EU Committees will remain or become the central body to receive, collect, select and forward all EU documents to the special committees. Ideally, assuming a strong filter and processing function of the EU Committees in relation to the other committees, the EU bodies would be in overall charge in dealing with the Commission's proposals. The policy-focussing Standing Committees would only have consultative status and be asked to give their opinion on the respective draft. The procedure would be different if the EU Committees and the special committees remain of equal status. In this case, it is more likely that at an earlier stage an independent body (i.e. the parliamentary presidium, a parliamentary unit etc.) co-ordinates the forwarding of documents to the committees in charge and those with consultative status. One or more rapporteurs of the respective committees would then draw up a 'subsidiarity monitoring report' and as a result of this, add a proposal for the parliamentary position on the Commission's draft. If the special committees or the EU Committees are not in charge to act on parliaments behalf, the position would then be forwarded to the plenary in form of a resolution proposal. After a formal decision, the position would be passed on to the EU Commission.

Article 4 of the DCT's subsidiarity protocol obliges the Commission to precisely justify its proposals with regard to the principles of subsidiarity and proportionality. Since a few years the Commission already adds a subsidiarity statement (fiche de subsidiarité) which shall now give detailed information making it possible to appraise compliance with the principles. It mentions explicitly information on the financial impact and, in the case of a framework law, the implications for the rules to be put in place by the Member states, including regional legislation. If the Commission finally believes an objective to be met most efficiently at EU level, it must be able to give qualitative and quantitative evidence. It "shall take account of the need for any burden, whether financial or administrative, falling upon the union, national governments, regional or local authorities, economic operators and citizens, to be minimised and commensurate with the objective to be achieved."

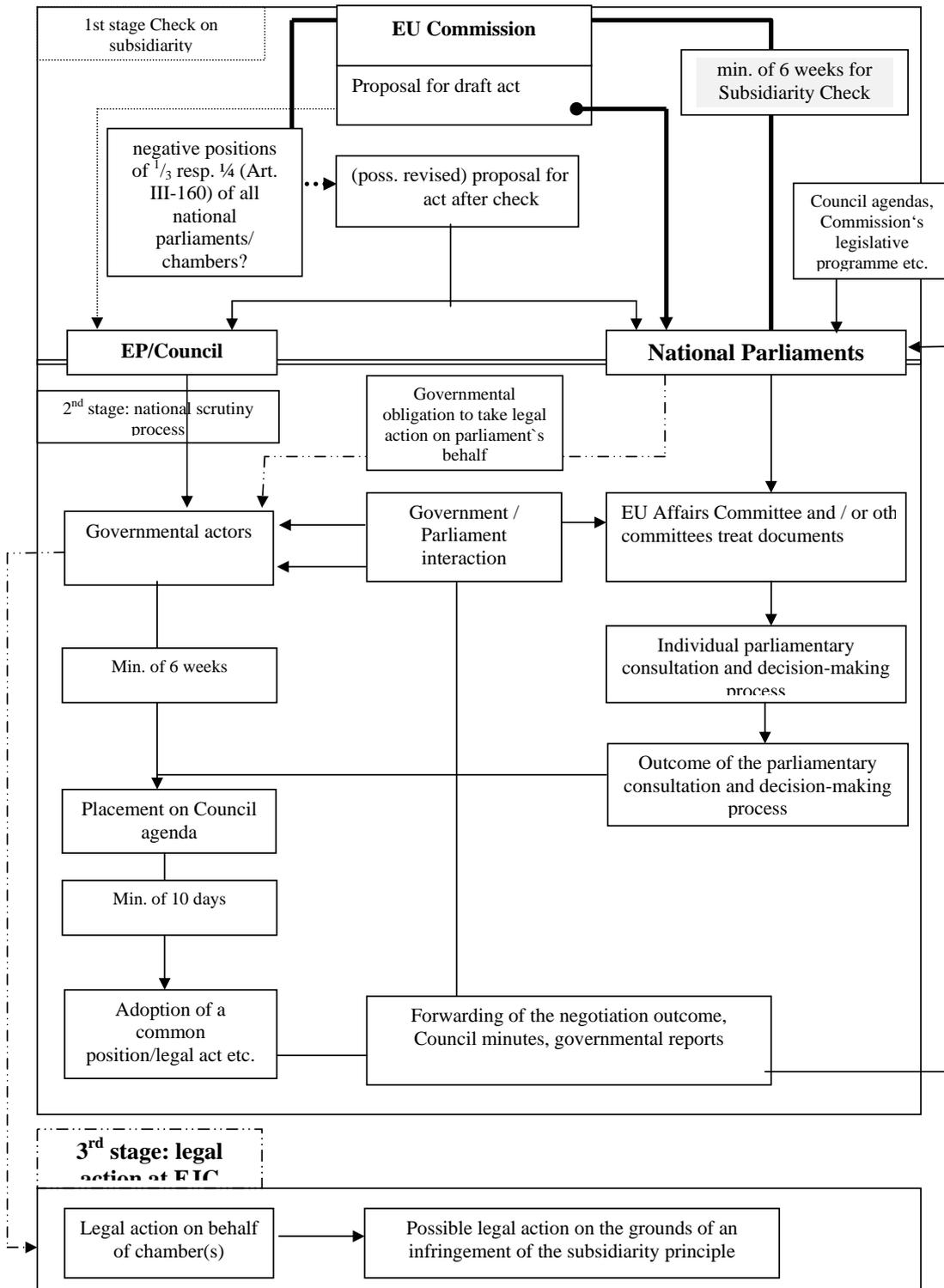
It should be expected that the Commission will fall back upon parliaments to raise necessary data. Therefore it is inevitable that parliaments think of a procedure to reply to such requests within the framework of the "early warning system". They must generate their own information or make use of governmental expertise already at the planning stage of a proposal

of the Commission. Otherwise parliaments might at a later stage be pressed for time and completely depend on governmental expertise thereby lessening their influence.

An EP-like rapporteur-system could serve to prevent an instrumentalisation of the mechanism by governments that try to impose their political objectives through parliamentary majority. The system could allow MPs in the position as a committee's rapporteur and expert in the respective field of knowledge, to distinguish themselves by taking stand, possibly even against the governmental position.

If the early warning system will be implemented as laid down in Convention's protocol, the still widely claimed decrease in parliaments' influence due to the European integration process won't bear close examination. The immediate possibility of objection by parliaments – outside formal governmental influence and with the direct supply of information - before the actual legislative process strengthens parliaments' autonomy vis-à-vis their governments. The right to directly give their opinion ex-ante and to take legal action if overruled ex-post could – if taken seriously – may lead to an emancipation of parliaments in the face of their governments. In any case, the EP is not likely to simply ignore the new actors – both the national parliaments and the strengthened European Council. However, if national parliaments' emancipation vis-à-vis their government will lead to stronger co-operation between the EP and the national Parliaments depends more on a shift of orientation by MP's than on a reorganisation of the EP.

Graph 1: The future participation of national parliaments in EU policy making



5. Conclusion

National Parliaments provide the “formal” frame of legitimacy in which European integration could take place. Due to the transfer of powers to the European level, their legislative role has been significantly undermined. As National parliaments, however, ratified each Treaty revision, they cannot be seen as ‘losers’ of the integration process. Neither have national parliaments ‘failed’ to adapt to the changed domestic and European environment, but the process of adaptation has been rather slow and reactive, rather than anticipative and proactive. This is true for both, their responses at the European but also at the national level. Until today several forms of co-operation at the EU level have been established helping national parliaments to get direct information of developments at the supranational level. Co-operation with other parliaments and in particular the EP has become an integral part of their day-to-day affairs. NPs are participants of the EU’s multi-level game. However, they do not yet speak with a forceful collective voice nor do they activate their collective fora as a means to establish or to mirror some kind of a European Public. Resolutions that are passed by the interparliamentary conferences have not yet effects for the European institutions (apart may be form the EP) nor the European decision-making process, nor on NPs themselves.

The role NPs play in the EU thus consists mainly of their one-level activities. Initially, there were similar institutional responses to the challenges of European integration in all parliaments. The established procedures were however shaped by country specific factors and these factors have also affected the way the established mechanisms work. This is why some parliaments are better scrutinisers of their governments than others - this general rule also applies to scrutiny of the executives in EU affairs. This is why the role of NPs in the EU in terms of participating and having an impact differs.

This analysis does not mean that NPs do not exercise essential "European functions". All NPs act towards the EU. Their European role consists in legitimising primary and secondary legislation by deliberating on and ratifying treaty amendments or giving assent to acts which might have implications for the national constitutions. This may be only a little impact, because NPs are to decide upon matters that have been decided already (in Brussels). The modest possibilities they have to be involved at an earlier stage are mainly due to their effective (non-)participation in the national policy formulation process.

Still, NPs are important European actors when it comes to the process of implementation. This is a vital and necessary task in order to communicate the multi-level nature and multi-actorness of the EU. NPs will have to continue to hold their governments accountable. This is why reforms of the national procedures and mechanisms are more important than focusing on additional rights at the European level. Progress may be reached to a limited extent through best practice mechanisms. Benchmarking may help but its effects may be limited as to spurring real changes. Further considerations should be given to the already existing "rights" of NPs in the PNP and the Draft Constitution's Protocol on the role of the national parliaments.

Better forms of involvement at the EU level will remain temporarily exercised tasks, such as the participation in the Convention or a role in possible new appointment procedures. However, the existing structures through which NPs might become multi-level actors could also be reformed. In particular COSAC and the joint meetings of specialised committees do provide a good basis for reforms below the level of Treaty amendments. NPs should give prove of their added value in exercising their powers with regard to the early warning mechanism: at the pre-legislative stage this could be the scrutiny of the legislative programme of the Commission and the (multi-)annual strategies of the Council and the European Council. This task would also help parliaments to plan and time their actions and reactions at the national level, and to europeanise their institutions beyond the core of the EU affairs committees.