



National Parliaments the EU - stock-taking for the Post Amsterdam Era

Helsinki 13 October 1999

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SEMINAR

**National Parliaments and The EU – Stock-Taking
for the Post-Amsterdam Era**

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In connection with the XXI COSAC in Helsinki in October 1999, the Secretariat for EU Affairs of the Finnish Parliament organized a seminar on the role of National Parliaments in the EU.

The purpose of the seminar was to provide an opportunity to exchange experiences concerning the different systems of national parliamentary scrutiny of EU affairs. Recent Finnish research relating to the role of national parliaments in the EU was also presented at the seminar. The seminar was mainly intended for parliamentary officers and for scholars of political science and law interested in institutional European issues.

On behalf of the Grand Committee, I'd like to thank all of you for taking part in this Expert seminar. It was interesting to exchange ideas and opinions concerning the different systems of national parliamentary decision making processes in EU-related matters. My special recognition goes to those of who gave your contribution to this booklet.

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**Parliamentary Scrutiny of EU Decision-Making:
Comparing National Systems**

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INTRODUCTION

National parliaments are involved in European Union (EU) decision-making in three ways: legislatures 1) scrutinise national policy formulation on Community legislation; 2) monitor Member State representatives attending the meetings of the Council of Ministers and the European Council; and 3) have specific Treaty-regulated functions such as ratification of Treaty amendments and implementation of directives. The first two aspects are not regulated by European legislation, and it is up to each national parliament — constitutional and political limitations notwithstanding — to decide to what extent it seeks to influence EU governance. Whatever organisational solution the respective legislatures implement, their input is always indirect, involving a delegation of authority to governments which represent Member States in the Council. Therefore the main problem facing legislatures is how to reduce informational asymmetry in order to ensure effective parliamentary accountability so that the agent (government) behaves according to the instructions of the principal (parliament).¹

This report analyses the formal, procedural similarities and differences between Member State legislatures in their scrutiny of EU decision-making, and discusses the political implications of the various organisational designs. The report is structured as follows. Part two contains a brief institutional discussion on how and when legislatures process European legislation. The third section focuses on specialized bodies within national legislatures, the European Affairs Committees (EAC). The fourth section examines factors which explain cross-national variation in parliamentary scrutiny. The fifth section suggests some practical improvements for improving the input of national legislatures.

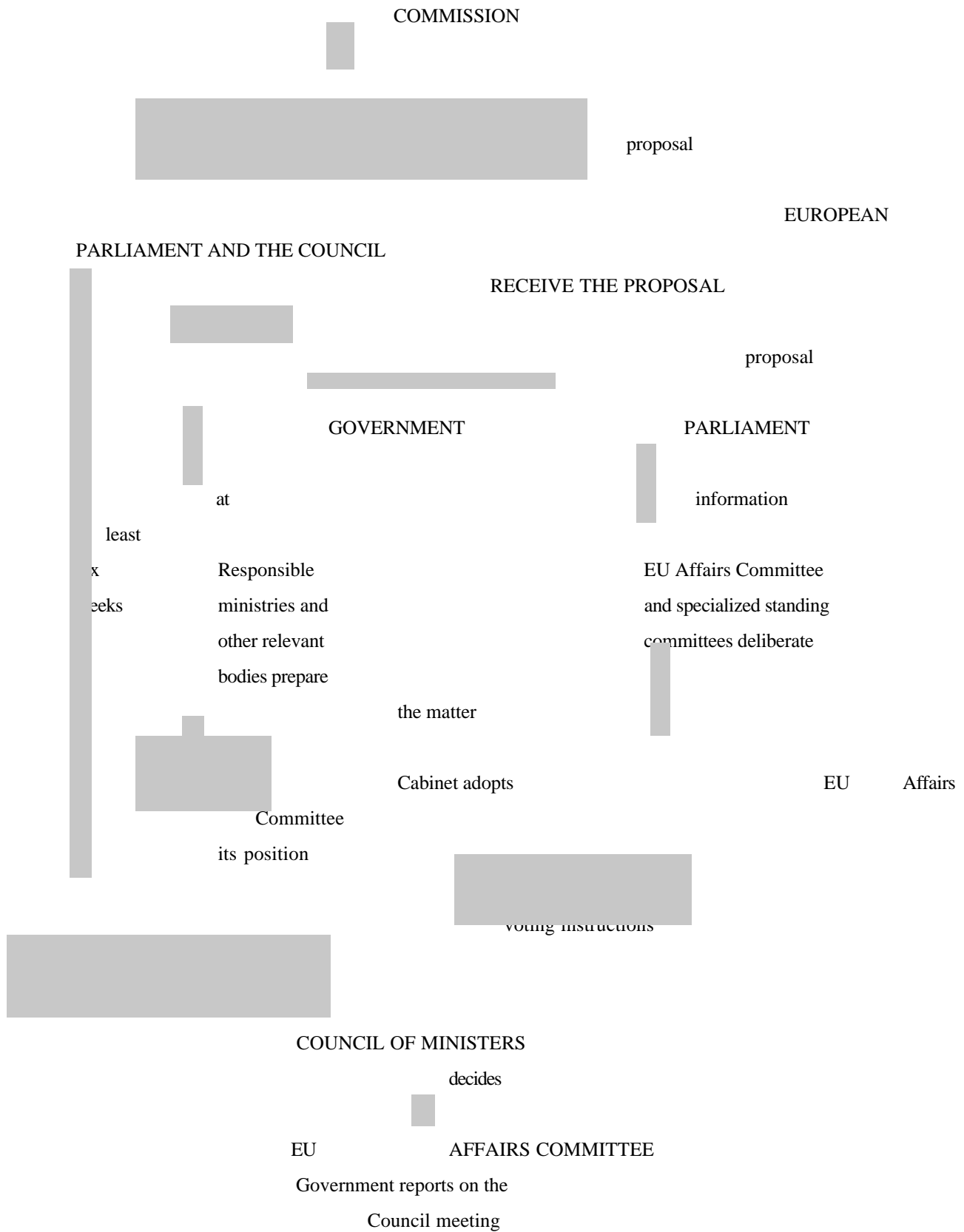
THE GENERAL MODEL OF PARLIAMENTARY SCRUTINY

While there is considerable variation in both the formal procedures and especially in the activity of the legislatures, the similarities nevertheless outweigh the differences. In principle parliamentary involvement at the national level follows the process described in Figure 1. The Figure is a simplified version of a much more diverse reality, but the main characteristics apply throughout the Union. The implementation phase is disregarded here, as we are interested in parliamentary scrutiny before decisions are taken by the EU institutions.²

¹ The role of national parliaments in EU governance has in the post-Maastricht era received much-needed attention from legislative scholars. For comparative research, see Bergman (1997), Judge (1995), Norton ed. (1996), Laursen and Pappas eds. (1995), Raunio (1999), and Smith ed. (1996). In the Nordic context, see Bergman and Damgaard eds. (2000) and Wiberg ed. (1997).

² The following is necessarily a broad overview and ignores detailed national differences. For more information on the formal procedures in the fifteen parliaments, see EP (1998).

Figure 1.
Parliamentary scrutiny of EU legislation at the national level



The main function of the EACs is to influence and control national decision-making on individual pieces of EC legislation. Member State governments have the obligation to inform national parliaments of Commission's legislative proposals that fall within the competence of the legislatures. In most countries legislatures have also the right to receive documents on the preparation of international agreements between the EU and third parties, co-operation in JHA and CFSP matters, Green and White papers, the proposal for the annual EU budget, and other Commission consultation documents. National legislatures receive also at the end of the year the Commission's annual legislative programme, and have thus the opportunity to prepare in advance for the forthcoming legislative initiatives.

The individual legislative proposal should, ideally from the parliament's point of view, reach the national parliament and the government at the same time. Unfortunately this is far too seldom the case. The government and the parliament then debate the issue. While certain legislatures, perhaps most notably the Finnish one, form their own separate viewpoints, far too often the parliaments simply rely on memoranda and summaries from the government. The government informs the parliament of its stand, and the legislature scrutinizes the cabinet position. It is essential that the parliament is kept up-to-date, as the initiatives are often quite significantly amended by the Council and the EP. Particularly important is the input of specialized standing committees. Their sufficiently early and active participation can substantially increase the whole legislature's policy expertise vis-à-vis the government, which due to its superior organizational resources and regular presence in the Council and Commission working groups enjoys a huge informational advantage over the parliament. The procedure is most developed in Finland, where the standing committees of the Eduskunta must according to the law process EU matters falling within their competence. (Wiberg and Raunio 1996) Also in the German Bundestag the standing committees have become actively involved. This has two positive consequences. Firstly, the whole parliament and the EAC benefit from the policy expertise of the committees when scrutinising government behaviour. Secondly, this mechanism provides an opportunity for all MPs — and not just the small minority sitting in the EAC — to handle EU matters. The EACs may fear that delegating authority to specialized committees will diminish their own role, but this need not happen when they reserve to themselves the right to give voting instructions to ministers. Thus EACs would benefit from the expertise of the standing committees while maintaining their position as the co-ordinating body on European questions. Despite improvements during the 1990s, in most parliaments the specialized standing committees still play only a secondary role.

Before the Council meeting the EACs receive the agendas of the meetings as finalised by Coreper together with government memoranda. The responsible minister then appears in person, or sends a communiqué, before the Committee to explain the government's final position. The EAC has the opportunity to put questions to the minister, following which it decides if there is a majority in favour or against the government position. Matters are seldom contested, and votes occur only very

seldom. After the Council meeting the minister reports back to the Committee, appearing in person if so required to give an account of the meeting.

The same procedure applies more or less to monitoring European Council meetings, IGCs, and ratifying Treaties. The heads of government or state usually have the duty to inform the EACs of the meetings of the European Council which take place normally 2-4 times a year. In some Member States the prime minister is also afterwards required to give account of the meeting to the Committee, or occasionally to the whole parliament. When the European Council has decided to convene an IGC for the purpose of examining the Treaties, the consent of national legislatures is required for amendments to the Treaties. The same applies to the accession of new Member States. The specific majority requirements vary between the parliaments. The ratification of the Maastricht Treaty showed that national legislatures can use the ratification process to squeeze domestic political concessions from their governments. (Laursen and Vanhoonacker eds. 1994)

CATEGORIZATION OF EUROPEAN AFFAIRS COMMITTEES

The EU consists of fifteen countries, each with her own political culture. In some Member States, such as Denmark, Italy, and the UK, the parliament has traditionally been very strong, while in other countries such as Ireland and Spain the legislature has cast only rather limited influence. This is clearly reflected in the scrutiny of EU decision-making. However, one thing is common: all parliaments have established an EAC for dealing with EU matters. The Austrian Nationalrat and the Finnish Eduskunta turned a pre-existing committee into an EAC. Of the bicameral parliaments, the Belgian, Irish, and Spanish legislatures have joint committees of the two chambers. Information on the EACs, upper houses included, is in Table 1.

Table 1.**European Affairs Committees in Member State Legislatures**

MEMBER STATE PARLIAMENT	EAC	ESTABLISHED	MPs (%)	FREQUENCY OF MEETINGS	
AUSTRIA Nationalrat	Hauptausschuß	15.12.1994	29/183 (15.8)	Twice a month	
AUSTRIA Bundesrat	EU-Ausschuß	8.2.1995	16/64 (25.0)	No regular meetings	
BELGIUM Chambre des Representants/Sena t ¹	Comité d'avis fédéral chargé de questions européennes	25.4.1985 / March 1990 / October 1995	30 (10/10+10 MEPs/150/71 (6.7/14.1)	Once a month	
DENMARK Folketinget	Europaudvalget	11.10.1972	17/179 (9.5)	Once a week (Fridays)	
FINLAND Eduskunta	Suuri valiokunta	1.1.1995	25/200 (12.5)	Twice a week (Wednesdays and Fridays)	
FRANCE Assemblée Nationale	Délégation de l'Assemblée Nationale pour l'Union européenne	6.7.1979	36/577 (6.2)	Once a week	
FRANCE Senat	Délégation du Sénat pour l'Union européenne	6.7.1979	36/321 (11.2)	Once a week	
GERMANY Bundestag	EU-Ausschuß	September 1991 / 14.12.1994	50 (39+11 MEPs)/656 (5.9)	Once a week (Wednesday)	
GERMANY Bundesrat	Ausschuß für Fragen der Europäischen Union	20.12.1957	18/69 (26.1)	Every three weeks	
GREECE Vouli Ton Ellinon	Epitropi Evropaikon Ypothesseon	13.6.1990	31 (21+10 MEPs)/300 (7.0)	No regular meetings	
IRELAND Dáil Éireann/ Seanad Éireann	Joint Committee on European Affairs	14.3.1995 / November 1997	19 (14/5) /166/60 (8.4/8.3)	Once every two weeks	
ITALY Camera dei Deputati	Commissione Politiche dell'Unione Europea	10.10.1990 / August 1996	48/630 (7.6)	Regularly, even 2-3 times a week	
ITALY Senato Della Repubblica	Giunta per gli Affari della Comunità europea	17.7.1968	24/326 (7.4)	No regular meetings	
LUXEMBOURG Chambre des Deputes	Commission des Affaires étrangères et communautaires	6.12.1989	11/60 (18.3)	No regular meetings; on occasion of important Council meetings	
THE NETHERLANDS Tweede Kamer	Algemene Commissie voor EU-Zaken	1986 / 18.5.1994	25/150 (16.7)	Once a week	
THE NETHERLANDS Eerste Kamer	Vaste Commissie voor Europese Samenwerkings- organisaties	June 1970	11/75 (14.7)	About twice a month	
PORTUGAL Assembleia da Republica	Comissão de Assuntos Europeus	29.10.1987	27/230 (11.7)	Once a week	
SPAIN Congreso de los Diputados / Senado	Comisión Mixta para la Unión Europea	27.12.1985	39 (23/16) /350/257 (6.6/6.2)	Once a week	
SWEDEN	EU-nämnden	16.12.1994	17/349	Once a week	

Riksdagen			(4.9)	(Fridays)	
THEUK House of Commons	Select Committee on European Legislation	7.5.1974	16/651 (2.5)	Once a week (Wednesdays)	
THEUK House of Lords	Select Committee on the European Communities	10.4.1974	20/1289 (1.6)	Twice a month	

Note: In several Member States the name, composition, and powers of the EACs have undergone substantial changes during EC/EU membership. The frequency of meetings column refers to periods when the legislature is in session. The MPs column reports the share of Members represented in the EACs. For Belgium, Ireland, and Spain, where a joint committee has been established by the two houses, separate figures are provided for each chamber.

¹ In Belgium the lower house established an EU Affairs Committee in April 1985 and the Senate in March 1990. The two committees were turned into one federal committee in October 1995.

Sources: EP (1998), Bergman (1997/mandating power), and own data.

The size and composition of the EACs vary considerably. The average size of an lower house EAC is 7.4 % of all representatives (maximum 18.3 % in Luxembourg, minimum 2.5 % in the UK).³ Members of the European Parliament (MEP) are represented in the Committees in the Belgian federal parliament, the German Bundestag, and Greek and Irish legislatures. In Belgium and Greece they have the same rights as national MPs, full voting rights included. In Bundestag MEPs do not have the right to vote, and in Ireland MEPs can attend the meetings without special invitation but without voting rights.⁴ There is likewise notable variation in the frequency of Committee meetings. The EACs of the Danish, Dutch (Tweede Kamer), Finnish, French (Assemblée Nationale and Senat), German (Bundestag), Italian (Camera dei Deputati), Portuguese, Swedish, and the UK (House of Commons) legislatures meet on a weekly basis. The remaining Committees concene less frequently. Considering that the Council of Ministers holds around 100 meetings per year, it is reasonable to assume that the more often the EACs meet, the better positioned they are to control their ministers. All EACs have jurisdiction over the first (EC) pillar of the Union. Approximately half of the Committees have the right to handle second pillar (CFSP) and third pillar (JHA) issues. In other parliaments CFSP issues are usually handled by the Foreign Affairs Committee.

The EACs of the Austrian Nationalrat and the Danish Folketinget have the right to issue binding voting instructions to government representatives. The German Bundesrat has the power to issue binding instructions in matters which fall under the exclusive competence of the Länder. Both chambers of the Dutch parliament and the Italian parliament have the right to issue binding instructions in third pillar matters. That is, the minister or other government representative must

³ Including upper chambers, 514 out of 7363 MPs/senators sit in the EAC: 358/4831 in the lower chambers, and 156/2532 (7 %) in upper chambers.

⁴ EACs in some Member State legislatures also utilize MEPs' policy expertise by arranging hearings. Specialized standing committees have also to a varying degree invited MEPs seated in the corresponding committee in the European Parliament to appear before the committee. However, the limitations of such interparliamentary co-operation are obvious: the work of an MEP is a full-time job, and more importantly, MEPs are not accountable to their national legislatures. During the 1990s national parties have started to make more use of their MEPs, and this party-based co-ordination offers a potentially cost-effective way to learn about EU developments, especially about forthcoming legislation. After all, national parties are in control of candidate selection in Euroelections, and MEPs thus have a career incentive to participate in the work of domestic party organs when so required. (Raunio 2000)

vote according to the Committee line in the Council, not against it. In particular the strong position of the Danish Europaudvalget vis-à-vis the national government has aroused both admiration and criticism outside Denmark. In certain countries — such as Greece, Ireland, Luxembourg, and Spain — the Committee is primarily a forum for exchanging information, with the ministers merely informing it of their positions prior to Council meetings. The remaining legislatures' mandating power falls somewhere in between, with governments usually following the recommendations of the EAC — or more likely, the other way around. To what extent the EACs make use of their mandating power is a matter requiring further investigation. In Austria, for example, the Hauptausschu has made rather limited use of its strong formal mandating powers, selecting for deliberation and issuing opinions only in a very small number of cases. However, the strong mandating position acts as an important pre-empting mechanism, encouraging governments to engage in a wider consultation and negotiation process than might otherwise be the case. (Müller 1999)

TOWARDS AN EXPLANATION OF CROSS-NATIONAL VARIATION

While there is substantial convergence in organisational adaptation, the main difference between the legislatures lies in their level of activity. Preliminary comparative research has indicated that the variation is primarily explained by two factors: the role of the parliament in the political system of the Member State, and public and party opinion on European integration. The key variable has been argued to be the executive-legislature relationship, with the parliament controlling the government to the same extent in European matters as it does in the context of domestic legislation. Similarly the contentiousness of the European dimension is important. (Fitzmaurice 1976, Judge 1995, Raunio 1999, Raunio and Wiberg 1999) The most sophisticated attempt to explain parliamentary scrutiny is Bergman (1997), in which the author employs five variables: public opinion, national political culture, federalism, the frequency of minority governments, and evidence of strategic action. Political culture was defined basically as a North-South dimension, with the latter set of mainly Catholic countries adopting a more lenient approach. According to Bergman all variables had an impact, with the timing of membership, i.e., the later you entered the stronger the scrutiny, and the political culture factor, which includes public opinion on integration, having most explanatory value. According to Pahre (1997) countries with domestic disagreements over foreign policy, and ideal points on the integration dimension near the status quo, are more likely to establish hand-tying institutions. Pahre (1997: 165-166) identifies three necessary conditions for strong parliamentary oversight: 'there must be a significant portion of the public, and at least one party represented in parliament, that prefers the status quo to further integration. Second, a country must have frequent minority governments. Third, there must be some party that would rather enjoy a policy veto through an oversight committee than join a majority government.'

Considering the small number of cases investigated, and the necessarily rather crude nature of the data used, these findings must be treated with caution. Further empirical research is urgently needed to properly evaluate both the effectiveness of the current institutional solutions and the political dynamics involved in explaining variation across the fifteen countries.

HOW TO IMPROVE PARLIAMENTARY SCRUTINY

Parliamentary scrutiny of EU decision-making suffers from two main problems, both of which are related to transmission and processing of information: the workload of the EACs, and the

identification of key documents. This section shall discuss these problems briefly, suggesting reforms which could improve parliamentary control of government

The priority of national MPs is domestic, not EC, legislation. The constant stream of legislative and non-legislative documents from EU institutions means that parliaments face an additional burden on their shoulders. The number of issues handled and the number of laws enacted by parliaments have both increased as a result of their countries' EU membership.⁵ The EACs must process too many initiatives in too little time. Busy agendas do not facilitate detailed scrutiny or constructive policy formulation.

Legislatures should institutionalize the input of specialized standing committees by making them legally bound to become involved in the processing of EC bills. Literature on committees has emphasized that committees provide MPs with the opportunity to specialize, and that such specialization can benefit the whole parliament. Committees have also been argued to be optimal decision-making units, allowing for reciprocal compensation and more reasoned deliberation, especially when there is continuity in committee membership. The distribution of committee seats is roughly proportional in all Member State parliaments. While there is significant cross-national variation, committees have become more influential in the majority of Member States in the processing of domestic legislation. (Mattson and Strøm 1995, Norton ed. 1998) As argued above in section two, further downward delegation of authority to standing committees would benefit both the government and opposition parties. A strong committee system facilitates efficient control over government. This could open the possibility for the opposition to influence government behaviour. While stable majority coalitions may exclude opposition power, the traditional government-opposition cleavage is often blurred on European questions as the anti/pro-integration cleavage cuts across the familiar left-right dimension. Granting the opposition a larger role in European matters, especially on more important issues such as Treaty amendments, will also increase the legitimacy of the decisions as parties share the responsibility for the outcome. (Maor 1998)

Secondly, parliaments should reserve themselves more time and resources, especially personnel, for European matters, a move most legislatures are constitutionally able to implement. This would be particularly useful in identifying key documents from the vast mass of EU material sent to the legislatures. At the moment the majority of legislatures rely either mainly or almost completely on summaries and memoranda provided by their governments. Hegeland (1999) has calculated that during the legislative year 1997/98 the standing committees of the Swedish Riksdag received 1098 EU documents, with the Foreign Affairs and Agriculture Committee receiving 60 % of the total. The House of Commons (1998) is estimated to receive around 900 EU documents per year. Considering the large number of documents, and the length and technical nature of much of EC legislation, it is unrealistic to expect even the most assiduous EAC Members to be able to read through all the material. One remedy is to organize regular meetings between standing committees and their respective ministers and departmental officials. Such meetings are already organized in some countries, providing the MPs with an early warning system of forthcoming legislation.

⁵ A positive side of this problem is that national parliaments, some more than others, have become more involved in foreign policy decision-making, a policy domain traditionally dominated by the executive branch, and foreign ministry in particular. Participation in EU governance has internationalized legislatures and brought issues previously decided by national governments under increased parliamentary control. (Von Beyme 1998)

THE WAY FORWARD

The overwhelming majority of parliamentarians throughout the Union think that national parliamentary scrutiny of EU decision-making is too weak and should be strengthened. An elite survey carried out in 1996 asked MPs and MEPs, using a scale from 1 (too much) to 7 (too little), whether their national parliament 'is exercising too much or too little supervision over the positions of the [country] government in the Council of Ministers of the European Union?'. The averages were 5.35 for MEPs and 5.22 for MPs, showing that there is indeed a very broad consensus on the inefficiency of domestic control. Among the national sub-sets of MPs the range was from 4.18 in Spain to 5.90 in Greece. Basically those respondents who are generally satisfied with how democracy works in their own country are also more satisfied with parliamentary scrutiny of EU matters. Perhaps more interestingly, the same survey also asked the MPs and MEPs the following question: 'Some people regard the European Parliament as the democratic heart of the Union, because democratic legitimacy of the Union can only be based on a supranational parliament. Others say that this is a wrong ambition because the legitimacy of the Union is already based on the national parliaments'. The respondents were again asked to place their opinions on a scale from 1 (EP) to 7 (national parliaments). The averages were 3.04 for MEPs and 3.57 for MPs. Among the national sub-sets of MPs the range was from 3.13 in Spain to 5.50 in Sweden. An additional question showed that on average MPs think that the EP should have more influence on EU decision-making than national legislatures, with only the Swedish MPs ranking the institutions in the opposite order. (Katz 1999)⁶ The responses indicate that while MPs are dissatisfied with domestic parliamentary supervision, the majority of them also feel that controlling EU decision-making is primarily a job of the EP.

The EU decision-making system is evolving gradually towards a bicameral system. The principal actors in EU political system are nevertheless still Member State governments that make decisions in the European Council and in the Council of Ministers. When a national legislature wants to influence European legislation, this must also in the future occur through its national government. The democratic legitimacy of the EU is therefore derived both from the European Parliament and from the Council whose members are accountable only to their respective parliaments. While there is demand for organisational improvements which would facilitate more efficient parliamentary scrutiny, controlling the government on European questions is also important because of its legitimizing effect. According to Judge (1995: 96) 'national parliaments have proved indispensable in providing the overarching frame of legitimation required to develop the European Union.' At the same time the parliaments have neglected, probably mainly due to either partisan consensus on integration or to intra-party cleavages over Europe, their debating function, or that of acting as an outlet for tension release. This broader legitimizing function, closely linked to the efficiency of parliamentary scrutiny, constitutes probably the biggest challenge facing national legislatures as well as the whole European Union.

⁶ MPs from Austria, Denmark, Finland, France and the UK were not included in the survey.

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Parliamentary Scrutiny of EU Decision-making; Comparing National Systems

Comments on the report by Mr Tapio Raunio
to the seminar
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The views expressed in this document are those of the author and not necessarily those held by the European Parliament as an institution.

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- I. When discussing the various systems on national level for scrutiny of EU decision-making, one primarily concentrates on the functions and influence of the European affairs committees vis-à-vis their respective parliaments and, directly or indirectly depending on mandate, their governments, while the role of the other standing committees tends to be less interesting and less important.

As pointed out by Mr Raunio in his report, "in most parliaments the specialised standing committees still play only a secondary role". Fearing that more involvement from the standing committees could lead to a decrease in their powers, the European affairs committees, in order to uphold their positions as *the* parliamentary filters, often prefer to use the standing committees only for (expert) opinions, thus upholding and strengthening their own positions as coordinating bodies and maintaining somewhat of a monopoly for all questions relating to the EU.

Undoubtedly, a structure of this kind may result in a more effective decision-making and administration, especially when having the disadvantage of short deadlines and bulky and countless new documents - at least as long as the present parliamentary structures and ways of looking at EU matters are maintained.

- II. In his report, Mr Rauino explains that the priority of MPs is domestic legislation and not matters relating to the EU decision-making; there is no reason for questioning the accuracy of this statement. However, there are good grounds for arguing that MPs of this opinion, and indeed parliaments as such, i.e. the national political establishments, have not yet fully come to terms with the nature of European co-operation and EC legislation: everything with the prefix "European" is still looked upon as first and foremost something foreign or alien, rather than national and normal, even if EC law has supremacy over national law and thus forms an integral part of the national legal systems.

By this supremacy, EC law automatically becomes a domestic issue, just as the effects of other EU matters certainly are domestic issues, albeit in more than one country at the same time. This is *not* reflected in the present parliamentary structures for scrutiny of EU decision-making.

It is hard to believe that the present structures exist *only* for reasons of rationality. It is easier to think that the national political establishments, as pointed out above, have not yet come to terms with the fact, or indeed found it politically correct to promote the notion, that there is no difference between a Member State and Europe, or between Europe and a Member State - a Member State *is* Europe and Europe *is* its Member States.

- III. To compare with an example from the academic world: up to a couple of years ago, EC law was often seen and treated by universities as a separate discipline with separate courses and examinations. Today many law faculties have instead integrated EC law into its other courses, thus seeing it as forming a part of *the applicable legal system*, regardless of whether its origin is the national parliament or the EU; for the "users" – the courts, the lawyers and the general public – the effect is the same.

To argue that the same principles should apply to the national parliaments may seem rather utopian at this point in time. However, from a theoretical perspective, it is only logical that a co-operation of this kind, when it comes to scrutiny of decision-making, is seen on the basis of its content and not of its origin and that the matter at hand is dealt with accordingly.

- IV. Taken to its extreme, in the future this could lead to an abolition of the special European affairs committees as we know them today; the standing committees would be the committees responsible before parliament, while the European affairs committee might be asked for an opinion, i.e. the complete opposite to today's situation. Or there would simply be no need for a special European affairs committee.

- V. The purpose of the scrutiny by the national parliament is to control and/or influence a national government, the result of which then provides the legitimacy for the government to act before the Council, i.e. at this stage it is still a national/domestic matter and the "mandator" is the national electorate.

The purpose of the scrutiny by the European Parliament is different; its "mandator" is not the national, but the European electorate and the equivalent to the national parliament's "authorisation" to its government is not for any other party, but for the European Parliament itself.

Bearing this in mind, in this particular situation, formal contacts between national parliaments and the European Parliament are, theoretically, not entirely appropriate, and they could even lead to a conflict of interests. This is not to say that relations between national parliaments and the European Parliament in general is inappropriate, rather the contrary.

But in this particular situation, the two parties are, theoretically, just that – two parties on different sides of the negotiating table; the European Parliament on one side and on the other side – with an "authorisation" from her/his national parliament – the government representative. It would seem rather strange if the European Parliament then expected something from the national parliaments, or if the national parliaments saw the European Parliament as a tool for influencing the final outcome.

- VI. Taken together with the possibility of the abolition of European affairs committees as we know them today, this would put other and entirely new demands on parliamentary administrations, national as well as the European. Whatever the future may bring, a change in perspective of what is domestic and what is European seems inevitable. What this leads to for the political establishment in general and parliamentary scrutiny of EU decision-making in particular, still remains pure but intriguing speculations.

However, there has to be a preparedness, already at this stage, to think about how interparliamentary co-operation in EU affairs best be organised if it is to be done differently from today. What would be the role of the present co-ordinating bodies in the national parliaments and in the European Parliament? If standing committees are to be more actively involved in the domestic scrutiny of EU decision-making and, consequently, in general interparliamentary co-operation in EU affairs, what new demands would the national parliaments put on the European Parliament?

The answers to these questions very much depend on future political developments, but they also give a useful indication as to how the present co-operation and co-ordination could be improved even further.

Brussels, September 1999
Sten Ramstedt

Parliamentary Scrutiny of EU Decision-Making: Comparing National Systems Comments on the report by Tapio Raunio

Wanting more power...a struggle for what?

Ana Fraga^{1*}

I was asked to comment on the report presented by Professor Tapio Raunio, which is a most delightful task for two reasons. The first relies in the quality of the author's work that gives us an excellent and insight vision of the parliamentary intervention in EU matters with a comparative cross-explanation. The second because it allows me to get free from the normal discussion about the subject - explaining the different systems of parliamentary intervention, namely the Portuguese, and concentrate in some issues that are generally not discussed.

The whole discourse about the parliamentary intervention in EU matters is based on two ideas or principles. The first is that the legitimacy of the European Union derives not only from the European Parliament but also from the Council through a relation established between national governments and national parliaments. If national governments are accountable before national parliaments for the decisions they take in the Council then an indirect legitimacy is ensured. The second is that national parliaments have voluntarily given up their legislative powers, on certain issues, in favour of the governments assembled in the Council.² If their legislative power diminishes or is constrained by the Community acts that their government has negotiated, then the function of controlling and supervising its performance has to increase during the negotiations in Community instances. In other words, in virtue of the degradation of the direct legislative function, the control over the executive should be intensified. Indeed many authors, since John Stuart Mill, argue that the primary function of the parliament shouldn't be legislate but control those institutions that do that.

The main focus here is the relation between national parliaments and national governments. This relation is the object of analyses in Tapio Raunio's paper. In the first part of the text about the general model of parliamentary scrutiny he explains how things happen in theory and points out some problems. The main practical problems of the parliamentary intervention are related with time (the parliamentary procedure for

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² It is right to say that the evolution of the concept of separation of powers, with the government coming from a restricted notion of executive power, to the notion of an organ that conducts the common policy, assuming a more evident technical and political legislative role, is proper to the 19 and 20th century and exists, independently, of any regional integration process. However, this evolution is stressed in the current institutional system of the European Community.

appreciation of EU questions does not keep in pace with the European rhythm of decision-making), complexity (the European legislation is by large very technical and does not allow the parliament to understand their political implications for the country - the government, with its administration, has here a huge informational advantage over the parliament), legitimacy (if the parliament relies only on the information given by the government where is its added value?) and specialisation (European legislation is not an external affairs question but should be dealt as an integral part of the national legal system requiring the involvement of the entire parliament, namely of all the standing committees³). But the main theoretical problem concerns the balance between efficiency (leave enough room for the government to conduct the general EU policy and be responsible for it in the eyes of the electors) and democracy (how to control the government and make him accountable). It is this balance that is in stake when choosing the degree of parliamentary intervention.

The second part of the paper focus on a categorisation of European Affairs Committees based on a simple criterion, which is the possibility of having systematic binding instructions from the parliament. From this possibility, the influence of the parliament upon the government is measured in weak (no possibility), moderate (possibility of adopting a resolution) and strong (possibility of mandate). In fact, almost all the authors characterise the models of parliamentary intervention in this manner. The problem with this characterisation is that the models are based on effective influence (results) but the criteria is about possible influence. For two reasons these models could be contested. In the first place, real influence upon the national position during the negotiations is very difficult to measure⁴. Furthermore, one can discover that a parliament can adopt a more flexible approach to its intervention and achieve a greater influence upon the national position defended by the government during the European negotiations.

For this reason I prefer a categorisation based upon the method followed by parliaments, classifying the models as information and informal influence, systematic scrutiny and mandate. In the first model of information and informal influence, parliaments influence the national position through meetings with members of government during which a two-way communication is established (the government explains what is the subject in question and the parliamentarians express their opinion). This is done only for very important issues and not in a systematic way. This is the model followed by the majority of the parliaments. In the second model of systematic scrutiny, the parliament gives its opinion in a systematic way upon all subjects (or those included in the parliamentary reserved competence) through the adoption of a report or a resolution and calls the government to know if its opinion was followed during the negotiations. This is the model followed by the House of Commons, the Assemblée Nationale and the Bundestag. In the third model the parliament goes further in the adoption of a resolution and issues a

³ As Sten Ramstedt points out in his comments on Tapio Raunio's report.

⁴ The report by Mika Boedeker and Petri Uusikyla tries to measure this influence in Finland.

mandate for the government. This is the model followed by Denmark, the Nationalrat of Austria, Finland and Sweden.

Of course that one could always argue that these models correspond to the models of weak, moderate and strong, with different names only, and in theory this is true, especially because of the number of subjects covered in each model. However, one can discover that sometimes (in real important subjects for the country) the mandate issued by the parliament can be so broad that does not bind the government in a stronger way than a concerted position expressed during a meeting. This is also a question of balance between a relation of conflict or mutual reinforcement among parliament and government.

The third part of the paper deals with explanations of cross-national variation. The most used factors for explaining the variations are: political system (executive-legislative relation - repartition of competencies), opinion on European integration and the composition of governments (minority/coalition/majority). Other factors can be added like the conceptions of sovereignty (whether derived from the people or the parliament), conceptions of the legitimacy of the EU (whether derived from the Member States or from the European Parliament), party relationships (whether consensual or adversary), political culture, time of accession, country size, definition of a national position (strong or keep up with the others), etc. All these factors contribute in some extent to the choice of a model and one cannot argue that only one factor has explanatory value.

The last part of the paper tries to point out ways to improve parliamentary scrutiny such as the involvement of all the committees in the process of scrutiny and the reinforcement of technical resources. The improvement of the parliamentary intervention is stated as wanted by a majority of MPs on the basis of a study made by Professors Katz and Wessels.⁵ But why would MPs want a stronger intervention?

If one considers the parliament as an arena for political parties⁶ two different positions can be seen: MPs belonging to the party in government that wish to support the government and MPs belonging to the opposition that wish to criticise it. If there is a majority government then some MPs may think there is no need to intervene because the intervention would constitute a “suivisme”⁷ (those who belong to the majority party) or would be a waist of time (those who belong to the opposition parties). If there were a minority government then some MPs would think that a strong intervention would turn more fragile the position of the government and risk the defence of the national interest. Only when the ideology of a party is based on an opposition to the EU there is a clear

⁵ Study Number 3078 [MEP 96] e 3079 [MNP 96], Cologne, in Katz, Richard e Bernard Wessels (eds.), *The European Parliament, National Parliaments and European Integration*, Oxford University Press, 1999.

⁶ As stated by Hans Hegeland in his comments on Mika Boedeker and Petri Uusik's report.

⁷ As argued by Christian Lescot in his report, p. 4.

interest in having a strong intervention, and these parties aren't strong enough to dictate the degree of intervention.

Furthermore the work that a strong intervention requires (EU affairs are technical, complex and time consuming) represent a very high cost to a very low benefit (the intervention doesn't have immediate results or might have no results at all, the media coverage is very low and, in most countries, EU affairs win no votes).

So why bother? Why should they want more power? Only for the sake of having it? Mainly because, in spite of the absence of immediate results, the strong intervention of national parliaments can be a way to increase the involvement of national citizens in the European Union. This can only be achieved if national parliaments are themselves involved in EU affairs but also, and mainly, if they promote the citizen intervention in their work. The parliamentary intervention in EU affairs is not an end by itself but a way to reinforce the citizen's involvement in the EU.

Parliaments should assume in a stronger way their legitimacy role, acting as intermediates between the citizen and the decision-makers. If they don't assume this role, they would have no role at all in the political institutional architecture, national or european, and parliamentary democracy will be a concept of the past.

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INTERACTION BETWEEN THE GOVERNMENT AND PARLIAMENT IN SCRUTINY OF EU DECISION-MAKING; FINNISH EXPERIENCES AND GENERAL PROBLEMS

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INTRODUCTION

This paper is concerned with problems relating to parliamentary influence in the process of decision-making in the European Union. Parliamentary influence requires a certain interaction between governments and parliaments that concerns the flow of information and expressing of opinions.

The authors have divided this paper into two parts. Mika Boedeker is responsible for the first part which is concerned with general problems relating to the interaction between parliaments and governments and with organizational solutions to the problems. Petri Uusikylä is responsible for the second part which examines more thoroughly informal networks and empirical findings of Finnish experiences. Conclusions were written by both authors.

The first part begins with the democratic deficit generated by the transfer of powers from the national legislators to the representatives of the executive who represent the Member States at EU Council meetings. In this context the notion of a plural subject is introduced and used to describe a parliament. The intentions of the legislator are defined by means of joint intentions that are the intentions of plural subjects. After a short survey of the development of parliamentary participation in the decision-making and a brief introduction to the Finnish model, the first part examines the problems of access to information, i.e. the extent to which information is delivered to the government and the quality of the information delivered.

The problems concerning parliamentary scrutiny are widely defined as problems in selecting those matters to be more thoroughly scrutinized. The mandates given to the government representatives are finally linked to the accountability of government to parliament and the control exercised by parliament.

The second part of this paper focuses more on the informal relations between the Government and the *Eduskunta* (Parliament) in Finland based on a study done in collaboration with the Grand Committee of the Finnish Parliament and the Department of Political Science at the University of Helsinki (see Lampinen et al.). It starts by describing the formal decision-making processes of the preparation of EU affairs (so called U matters) and continues discussing the role of coordinating bodies (such as the EU-Secretariat under the Ministry of Foreign Affairs and the Government's EU-Committee. The empirical part is based on interviews with government officials responsible for drafting the Finnish positions on U matters under preparations. Respondents were asked to assess the relationship between the Ministries and the Eduskunta during the process of policy preparation, and express their own opinions on the Eduskunta's actual role in influencing EU-policies. In addition to this the informal networks (i.e. unofficial relations between the Ministries, the Eduskunta, EU-institutions as well as other external stakeholders such as NGO's, representatives of labour and employer organizations, business interests etc. were scrutinized by using semi-structured survey methods.

PART I: GENERAL PROBLEMS

Democratic deficit generated by the European legislation process

The democratic deficit that European decision-making has been criticized for is due to the structure of repartition of powers in the European Union. The repartition of powers between the European institutions differs from that in the Member States where a clear distinction is made between the legislative and executive power. In article 249 of the Amsterdam Treaty it is stated that the European Parliament (acting

jointly with the Council), the Council and the Commission shall make regulations and issue directives, take decisions, make recommendations and deliver opinions.

The decisions made by the European Union are legal instruments and the decision-making process is accordingly a legislative process, though the Member States are represented in the Council by the national Governments, which are vested with executive power. The fact that government representatives are in charge of the legislative process in the EU disturbs the balance between the legislative and the executive powers. The interaction between governments and national parliaments in EU decision-making strive to restore a balance between the executive and legislative powers.

National legislation is often characterized as an emanation of the will of the national legislator. In legal theory the legislator has been defined as a sovereign. Thus the question of legislation is intertwined with the problem of sovereignty which is regarded as one of the characteristics of a state. What is mostly meant by “sovereignty” is a state authorities’ ability to exercise its own and durable power over its territory. However, European integration has led to a situation where it is alleged that the Member States have partly lost their sovereignty, as the decisions taken by the European Union concern an increasing number of spheres formerly belonging to the competence of the Member States. The situation in the EU might actually be described as having developed beyond the sovereign state.

In the Member States of the European Union the national legislators are not sovereign in the classic sense of the term. Firstly, part of the legislative competence has been transferred to the Union and secondly, the *acquis communautaire* delimits their autonomy in national legislation. This delimitation is partly due to the *acquis communautaire* having to be taken into consideration in national legislation and partly in substantial demands when transposing directives into national legislation.

Even in jurisprudence, the term ‘legislator’ is often used without any specification concerning its connotation. It may then refer to the primary legislator, i.e. normally the parliament, or to the secondary legislator responsible for the delegated legislation. In this seminar we are mostly concerned with the primary legislator, as primary legislation that consists of the legislative acts in the domains of the constitution and ordinary laws are decisions of the national parliament. There are, however, exceptions such as the *ordonnances* in France that are hierarchical legal instruments on the same level as laws but are still decisions of the Government.

As a function of the respective constitution the primary legislator in the various Member States is made up of bicameral or monocameral parliaments which follow the procedures ascribed in the Constitutions. Given that the similarities between the procedures are great I will refer just to the legislator or national legislator if not speaking about a given parliament in a specific situation.

Logically, when using the apparatus of Margaret Gilbert, the national parliament might take a plural subject, i.e. a subject consisting of a multitude of actors that work for a certain goal. It may be regarded as something plural unified in such a way as to count as the subject of a single intention and thus a parliament constitutes a plural subject of the goal of legislating. For our study it is also important to note that the national parliaments are elected bodies and subsequently democratically representative. (Gilbert, 1997; Gilbert, 1987; Gilbert, 1996)

It is useful to introduce the term “plural subject” because it gives us a tool for describing the will of the legislator. The law may be perceived as giving an expression of the intentions of the legislator. When speaking of the intentions of the legislator it is not a question of the intention of one single person - we are not referring to the sovereign - but of a group of persons, i.e. of the parliament. It may be described as an intention of a plural subject, i.e. as a joint intention. Gilbert defines three criteria for joint intentions which are the obligation criterion, the permission criterion and the compatibility with lack of the corresponding personal intentions criterion. A joint intention is a phenomenon concerning at least two agents such that:

- (i) It does not necessarily involve corresponding personal intentions of these agents;
- (ii) The concept of intention is nonetheless operative in that the agents in question are jointly committed to intending “as a body”,
- (iii) Through the joint commitment each party is under an obligation to the others to conform to the shared intention, and the others have correlative entitlements to such conformity and hence entitlement to rebuke for non-conformity.
- (iv) The obligations and entitlements in question inhere in the joint commitment itself.
- (v) A shared intention provides a unique type of motivation source; it provided a single motivational source which is under the control of all the agents (the

- (vi) As a result, a shared intention is a robust framework for bargaining and negotiation, and a powerful tool for the solution of coordination problems, superior to a set of corresponding personal intentions, however closely intertwined. (Gilbert, 1997, p. 81)

If we apply the above criteria to the national legislator we get the following quite acceptable description of the intentions of a parliament:

- . It does not necessarily involve corresponding personal intentions of the MP's;
- (ii) The concept of intention is nonetheless operative in that the MP's in question are jointly committed to intending "as a body"
- (iii) Through the joint commitment each MP is under an obligation to the others to conform to the shared intention, and the others have correlative entitlements to such conformity and hence entitlement to rebuke for non-conformity.
- (iv) The obligations and entitlements in question inhere in the joint commitment itself.
- (v) A shared intention provides a unique type of motivation source; it provided a single motivational source which is under the control of all MP's (the underlying joint commitment cannot be rescinded unilaterally)
- (vi) As a result, a shared intention is a robust framework for bargaining and negotiation, and a powerful tool for the solution of coordination problems, superior to a set of corresponding personal intentions, however closely intertwined.

The Finnish position in EU decision-making that is formed by parliament and government interaction, may also be described using the term "joint interaction".

There are some additional difficulties in describing the European legislator, because the European legislative process involves a larger number of actors and the procedures are more complex than the national ones. A clear national distinction of partition of powers according to Montesquieu does not exist in the European Union where we have a partition of powers between different European institutions. The first difficulty is the most important legislative actor being the Council which consists of the national Governments which form the executive power in the Member States. This already implies a confusion between the legislative and executive powers. The European Parliament is, however, an increasingly important actor in legislative work in the Union, but still we may argue that there is a democratic deficit in the European Union.

It is not my intention here to go into the different European legislative procedures such as the co-decision procedure, the cooperation procedure and the consultation procedure. It is sufficient to state that EU decision-making is a complex procedure involving several actors both on the European and national level. Moreover, the actors represent both the legislative and executive powers but they do not form a single legislative body. As the European legislator is not constituted of an elected body and is not democratically representative it cannot be sufficiently described by means of a plural subject.

Since none of the Institutions of the European Union is answerable to any national parliament, it follows that national parliaments can only exercise their powers and directly influence their own Ministers as national representatives in the decision-making process. Thus, the best means to increase the democratic influence in the European legislation is to involve the national parliaments in the scrutiny of EU decision-making. This implies that we have to analyse more thoroughly the different actors in the process and the interaction of governments and parliaments.

Evolution of parliamentary participation in decision-making

In the first stage European integration was very much conducted by the Governments. Generally the original Member States had generally not introduced systems for parliamentary interaction in European affairs. In France the Government was leading European affairs without even having to inform the Parliament. The only information channel for the Parliament in European affairs was through MPs also being Members of the European Parliament. Moreover, the only mode of control left for Parliament was a vote of no-confidence. In Belgium there was originally a provision (Article 2 Law on ratification of the Rome Treaty) obliging the Government to inform both Chambers by means of an annual report. However, there was never any regular reporting according to this provision. (Kamann, 1997)

New Member States joining the European Communities in 1973 felt a need to include the national

importance of documents drawn up by the Commission for submission to the Council of Ministers or the European Council. In Ireland a joint Dail/Seanad committee on the secondary legislation of the European Communities was established when they joined the Communities in 1973. In Denmark article six of the 1972 Accession Treaty obliges the Government to report to the Folketing on developments in the European Communities and to notify a Committee of Parliament of proposals for Council decisions that will become directly applicable in Denmark. Since the first enlargement, Member States have developed different models for the scrutiny of EU decision-making which correspond to their national political and democratic traditions. (Norton, 1995; Arter, 1995; O'Halpin, 1995)

In Finland it was deemed crucial that the national legislator, the *Eduskunta*, be involved in the European legislation process. Before joining the European Union it was thought that membership of the European Union would affect the relationships of the government organs through the Communities' norm-giving powers; authority vested in the President of the Republic and in the Parliament would be transferred to the Union. On the other hand the decision-making power of the EU Council was to emphasize the role of the Council of State which is answerable to Parliament.

To safeguard the influential role of the *Eduskunta* it was considered necessary to have a regular and sufficient inflow of information to the *Eduskunta* on issues currently under preparation in the EU, and also that the *Eduskunta* be given an opportunity to convey its views on EU affairs to the Council of State already at the preparatory stage. As the EU Council meetings are attended by those members of the government who accordingly enjoy a central position vis à vis the preparation of Union related matters it was stipulated in the Constitution on the interaction between government and parliament in matters related to the European Union. The basic provision set out in Sec. 33 a paragraph 1 of the Constitution Act of Finland, states that "Parliament shall participate in the national preparation of decision to be made by international organs in the manner prescribed in the Parliament Act". Detailed provisions are found in Chapter 4a concerning the consideration of the affairs of the European Union. (Valtiosääntökomitean 1992:n mietintö, Komiteamietintö 4:1994)

The Government shall communicate to the Speaker any proposition for an act, agreement or other measure to be decided by the Council of the European Union and which are within the remit of the *Eduskunta* (Sec. 54 b). The matter (called a "U-matter") shall be submitted to the Grand Committee and for scrutiny to one or more Specialized Committees which shall deliver an opinion to the Grand Committee (Sec. 54 d). The Speaker's Council may decide to take up the matter for debate in a plenary session at which, however, the *Eduskunta*, however, shall make no decision on the matter at that stage (Sec 54 c). This is a prerogative of the Speaker's Council that has so far never been used.

The Grand Committee shall, on request and otherwise when circumstances warrant, receive a report from the Government concerning the preparation of matters in the European Union (Sec. 54 e). Pursuant to this provision the committee obtains not only EU documents and special reports (so called "E matters") but also regular information on the EU Council meetings by the Ministers who appear at the Grand Committee each Friday preceding the meeting of the Council of the European Union.

The scrutiny of European affairs in the *Eduskunta* has been delegated to the Grand Committee in matters of the first and third pillars and general budgetary and institutional questions of the Union. When the matter concerns the Common Foreign and Security Policy of the Union the competent committee is the Foreign Affairs Committee. The work of the Grand Committee relies on the preparatory examination of the EU documents made in the Specialized Committees in charge of their respective spheres of competence. When necessary the Grand Committee or the Foreign Affairs Committee may deliver an opinion to the Government. Thus, the *Eduskunta* always has the possibility to express the intentions of the national legislator on all European affairs within its remit.

The importance of the national parliaments has also been acknowledged in the Maastricht Treaty and the Amsterdam Treaty. In Declaration No 13 on the role of national parliaments in the European Union annexed to the Maastricht Treaty the Intergovernmental Conference considered that it is important to encourage greater involvement of national parliaments in the activities of the European Union. It was stated that the governments of the Member States will ensure that national parliaments receive Commission proposals for legislation in good time for scrutiny. The Protocol on the role of national parliaments in the European Union annexed to the Amsterdam Treaty ensures that the national parliaments receive all Commission consultation documents i.e. green and white papers and communications. The Protocol also foresees that they are provided in reasonable time. Moreover, a six week period shall elapse between a legislative proposal or a proposal for a measure to be adopted under Title VI of the Treaty on European Union being made available in all languages to the European Parliament and the Council by the Commission, and the date when it is

Information by the Government

In interaction between the Government and the Parliament a crucial point is access to the relevant information. Accordingly, both in the Declaration annexed to the Maastricht Treaty and the Protocol annexed to the Amsterdam Treaty, the receipt of relevant documents by the Parliament was emphasized. Since it is the governments which participate in European cooperation, the European institutions send the documents to the government representatives. Therefore a special mechanism is always required before the information is at the disposal of the national Parliament. Problems related to such a mechanism concern, firstly, the obligation to inform Parliament and likewise the right to get information, and secondly the time lapse in furnishing the relevant information.

When Finland joined the Union the obligation to inform the Eduskunta of European affairs was established by introducing new regulations in a Parliament Act. The Prime Minister has an obligation to inform the *Eduskunta* “in advance on matters that will be considered in a meeting of the European Council” (Sec. 54 a) and on “matters that will be considered and that have been discussed at conferences of the representatives of the governments of the Member States of the European Union considering the Amendment of the Treaties on which the European Union is founded” (Sec. 54 g). The statutes regulating this duty to inform do not specify the scope of the obligation nor the form. The information usually presented to the Grand Committee before the European Councils has been given orally; afterwards the Committee has also received the Conclusions of the Presidency. The information on the last Intergovernmental Conference was transmitted as a government report, i.e. an “E-matter”, on which the Committee was informed during the proceedings of the IGC.

The Government has an obligation to send to the Speaker a communication on EU proposals within the remit of the *Eduskunta*. This obligation, in Sec. 54 b of the Parliament Act, to send a communication has been specified by the Grand Committee in its opinion N:o 3/session 1995 on the “*Scrutiny of matters related to the European Union in the Grand Committee and the Specialized Committees which give an opinion to the Grand Committee*”. The Grand Committee required that the communication shall give a short résumé on the matter and its legislative, economic, and other possible consequences, for Finland. Existing jurisdiction and the consequences of the proposition must also be explained. The Government shall give its opinion on the legal basis for the act. The Government’s position on the matter shall be explained in the communication or alternatively at a later stage to the Grand Committee. Documents related to further development in the matter shall be forwarded to the Grand Committee.

Among other things the Grand Committee required that a proposition constituting a “U matter” shall be sent as a communication to the *Eduskunta*, even though it might not necessitate an actual change in national legislation. In obscure cases the matter can always be sent to the *Eduskunta* as a report constituting an “E-matter” which gives the *Eduskunta* the possibility to express its opinion.

The scope of the obligation to inform Parliament varies from one Member State to another. In the United Kingdom the obligation to inform the House of Commons includes, for example, any proposal under the Community Treaties for legislation by the Council or the Council acting jointly with the European Parliament, as well as proposals in the fields of the Common Foreign and Security Policy and of Justice and Home Affairs. After the deposit of the documents a further explanatory memorandum which is an important part of the scrutiny process must be submitted to the House of Commons. (The European Scrutiny System in The House of Commons, 1998) In Austria the Government has an obligation to communicate any document related to the European Union to Parliament but no obligation to comment in any way on the deposited documents. Though these obligations are wider than the obligations in the Finnish Constitution they do not exclusively define the range of Parliamentary scrutiny.

The right of the European Affairs Committee to request information affects largely its possibility to influence the national European policy. The Grand Committee has been granted a constitutional right to request a report from the Government on the preparation of any matter in the European Union. The Government is also under an obligation to provide information of this kind to the Grand Committee on its own initiative when necessary.

Meetings of the Grand Committee are held *in camera*, though the minutes and the annexed documents becomes public when they are signed as a correct record. However, if the Government asks for confidentiality on a matter the committees participating in the consideration of the matter may decide that the members of the committee shall observe the confidentiality which the Committee, after hearing the

The Government and its members have a legal responsibility to ensure that the *Eduskunta* acquires all necessary information for the scrutiny of European affairs. This obligation concerns both the substantial scope of information and the delay in which the information shall be furnished. If the *Eduskunta*, because of short delays, has not had time to examine a matter the Government has to make use of appropriate scrutiny reservations during the Council preparations.

In its opinion N:o 3/session 1995 on the “*Scrutiny of matters related to the European Union in the Grand Committee and the Specialized Committees which give an opinion to the Grand Committee*” the Grand Committee has emphasized the constitutional obligation of the Government to send the communication without delay to the Grand Committee (Sec. 54 b) and has required that a reasonable lapse of time should normally be some weeks after receipt of the proposition. Normally it is known in the Ministries that a proposition is been prepared in the Commission which helps them to evaluate its consequences and to prepare the communication to the *Eduskunta*.

In the UK the European Scrutiny Committee has been consistently critical of the problems that the delays create for National Parliaments, though any document which is subject to scrutiny must be formally deposited within two working days of its arrival at the Foreign and Commonwealth Office in London. The explanatory memorandum must be submitted within ten working days. The lack of translations frequently prolongs access to documents in the capital cities of the Member States. This makes the time lapse furnished by the protocol annexed to the Amsterdam Treaty important.

Scrutiny by Parliament

The extent of parliamentary scrutiny is not only defined by the scope of information but also by the method of selection of matters for scrutiny. In Finland the selection is regulated in the Constitution. Matters falling under the competence of the *Eduskunta*, so-called “U matters”, shall be communicated without delay to the Speaker who will forward them to the Grand Committee and a Specialized Committee for examination and an opinion. The Specialized Committee is obliged to provide an opinion on the matter. This opinion shall be sent to the Grand Committee which will deliver its opinion on behalf of the *Eduskunta*. Preparation of these matters in the Specialized Committees which have expertise in specific matters is a Finnish speciality in the domain of parliamentary scrutiny.

Other matters such as reports requested by the Grand Committee or otherwise acquired (so-called “E-matters”), matters concerning the European Council and amendments to the treaties on the establishment of the European Union, might well be examined thoroughly, but do not always undergo such an examination. The Specialized Committee uses its own discretion concerning the extent of scrutiny which sometimes might be as thorough or even more detailed than the one concerning normal “U matters”. On the other hand, the Specialized Committee may even just take note of the matter without any further examination.

In Finland the amplitude of scrutiny is *de facto* and mostly determined in the Specialized Committees charged with the preparation of the European affairs. Firstly, they have to deliver an opinion on all “U matters”, but the extent to which the matter is studied varies. Secondly, they may use their discretion as to whether to examine an “E-matter” or not. The Grand Committee may, however, always remit a matter for more detailed examination.

In most Member States the selection of matters for scrutiny poses problems due to the immense inflow of documents. The different solutions to this problem vary considerably. In the UK the selection is made by the European Scrutiny Committee and the consequent scrutiny by the European Standing Committee A, B or C. In Austria the selection is made by the parliamentary groups consenting to put a matter on the agenda of the *Hauptausschuss* of the *Nationalrat*. After the amendment of 25 January 1999 the solution in the French Constitution concerns Acts by the European Communities and the European Union. The Government may, however, also submit other projects or propositions for acts as well as any document by an Institution of the EU. The amendment considerably enlarges the field of scrutiny that was formerly restricted to acts of a legislative nature, i.e. according to the French Constitution. Now it also concerns documents in the second and third pillar. (Sauron, 1999)

The time when the parliamentary opinion expressing the joint intention of parliament is given to the government affects parliament’s actual influence on the matter. An opinion communicated to the Government at an early stage has greater possibility of being taken into consideration in the European decision-making process. After the Single European Act decisions made by qualified majority voting have

accordingly be made at an early stage, i.e. preferably when the matter is still being discussed in the Council working groups. Then the position of the national legislator may still have a concrete influence on the decision-making in the EU institutions.

EU decision-making and parliamentary control of governmental actions

The accountability relating to the parliamentary opinion communicated to the government differs in the various scrutiny systems adopted in the Member States. Some of the strongest mandates given to the governments are to be found in Austria and Denmark, where the Government is legally bound by Parliament's opinion. However, the mandates to the government vary even between these countries. After joining the Union the *Hauptausschuss* in Austria pronounced a few limited mandates to the government. Later the policy changed and the government nowadays has more room of manoeuvre in negotiations in the European Union. In Denmark the mandates by the *Europaudvalget* have been rather restraining for the Government which often necessitate parliamentary scrutiny reservations during the negotiations in the Union. One difference between countries is that Denmark has mostly minority governments and the government in Austria usually has a majority in Parliament.

In Finland the mandating power is moderate in the sense that it involves a political accountability but not a legal one. A resolution by Parliament when adopting the Constitutional amendments relating to the European Union provides that the conclusions of a competent committee form the "directive point of departure" for the action of Finland's representatives in the Council. Any departure from this position by a Finnish Minister must either be referred to the *Eduskunta* if it occurs before the decision-making in the Council, or be justified and explained to the *Eduskunta* if it happens because of a change in circumstances when the decision-making took place. A Minister not following the opinion expressed by the *Eduskunta* must thus take into account a possible vote of confidence. (Jääskinen & Kivisaari, 1997)

The opinions expressed by the Grand Committee are prepared by the Specialized Committees and accordingly they set a frame for the Government's margin of manoeuvre. There have only been two occasions where the opinions of the Grand Committee and the Government have diverged greatly. On one occasion an issue was re-debated in advance with the Grand Committee and the Minister concerned, and in the other the Committee was furnished with an adequate explanation afterwards. In most cases the opinions of the Grand Committee which endorse the opinions of the Specialized Committees converge to a large extent with the position presented by the Government. One reason for this is that governments formed after Finland joined the European Union have enjoyed a large majority in the *Eduskunta*.

The opinions of the *Eduskunta*, which are an expression of the joint intentions of the national legislator, have, together with Government's positions, formed the Finnish position. In negotiations the opinions formed by the *Eduskunta* support the Government and at the same time, to a certain degree, hinder the Government from deviating from the Finnish position. The Finnish position being a joint intention formed by both the national legislator and the executive power thus forms a strong tool for negotiating in a larger European context.

In European affairs the *Eduskunta* exercises its control over the Government partly *ex ante* and partly *ex post*. The matters are sent to the *Eduskunta* for scrutiny before they are decided in the European Union, but the obligation of the Government to inform the *Eduskunta* is not over when a decision is made in the Union. The Government still has a duty to report to the *Eduskunta* on the decision.

The control *ex ante* is exercised in all matters sent to the *Eduskunta* for scrutiny, though it might be argued that the powers exercised in matters within the remit of parliament, strictly speaking, belong to the legislative competence of parliament. In the domain of "U matters" the interaction between the Government and the *Eduskunta* attains a special dimension since both Parliament and Government act in the domain of their proper competence. As a result the national position forms a true joint intention which cannot be changed without breaking with the constitutional provisions that form the necessary criteria for the joint intention.

In other domains parliament exercises a more obvious control function. These matters come under the competence of the Government and therefore decisions are always made by the Government. The Government is, however, always politically accountable to the *Eduskunta* for all its decisions, including European affairs.

PART II: GOVERNMENT - PARLIAMENT RELATIONS IN FINLAND'S EU AFFAIRS

PART II: GOVERNMENT PARLIAMENT RELATIONS IN FINLAND'S EU AFFAIRS

A formal description

Ministries are responsible for monitoring and preparing affairs concerning the European Union and for determining Finland's position on such affairs according to their sphere of authority. At Council meetings Finland is represented by the appropriate ministers. Finland's position is coordinated by the European Union Committee which operates under the direction of the Prime Minister. The Committee for EU Affairs is an advisory body which includes high-level officials employed by ministries, the Prime Minister's Office, the Office of the President of the Republic, the Bank of Finland, the Office of the Attorney General and Åland. The committee has 36 sections operating under the appropriate ministries. These also include representatives of interest groups.

Officials present matters to sections for discussion and inform them of reports and statements in preparation. If mutual agreement exists on a matter and other steps are not required, the section procedure provides sufficient basis for determining Finland's final position. In other cases the matter is presented to the Committee for EU Affairs and/or the European Union Committee.

The Council of State brings all EU affairs requiring Parliament's approval to the attention of the *Eduskunta* in advance, and keeps it up to date on other matters under discussion in the EU. Parliament's key forum for handling EU affairs is the Grand Committee. The Prime Minister reports to the *Eduskunta* before and after meetings of the European Council.

The Grand Committee considers the "U matters" and expresses the view of the *Eduskunta* with regard to these. After examining the EU decision proposal, the communication of the Government on the proposal and the opinions of the specialised committees, the Grand Committee expresses the view of the *Eduskunta* regarding the proposal. Before doing so, the Grand Committee may also hear the competent Minister together with the civil servants and other experts who advise the Minister. The position of the Grand Committee usually takes the form of an oral conclusion based on the deliberation of the Grand Committee and submitted by its Chairman. The position of the Grand Committee may also be formulated in a written report. Due to the principle of accountability to Parliament, the view expressed by the Grand Committee on a U matters is politically binding on the Government. If the Government has been unable to comply with the view of the Grand Committee, for example because of a change in circumstances, then it must notify the Grand Committee immediately of the reasons for its actions. In order that the *Eduskunta* may, through the Grand Committee, guide the activities of the Government at the Council of the Union, an effort is made to formulate the view of the Grand Committee before the consideration of the U matters begins in the organs which prepare the decisions of the Council. The actions of the Government are also monitored as the negotiations proceed. A U matters continues to be pending before the Grand Committee until the Council of the Union has made its final decision on the matter.

Membership to the European Union has increased the overload of policy formulation and growth of the central government. Table 1 shows how direct EU-tasks have affected the need for new staff in various policy fields.

Table 1. The Impact of Finland's membership to the EU on the increase of the number of staff in different ministries.

Ministry	1995	1996	1997
Prime Minister's Office	0	1	1
Ministry of Foreign Affairs	15	38	39
Ministry of Justice	0	10	10
Ministry of the Interior	11	11	11
Ministry of Defence	0	0	0
Ministry of Finance	5	11	11
Ministry of Education	0	15	15
Ministry of Agriculture and Forestry	34	64	119
Ministry of Transport and Communications	4	8	8
Ministry of Trade and Industry	21	23	23
Ministry of Social Affairs and Health	4	6	6
Ministry of Labour	3	3	3
Ministry of the Environment	0	3	4
TOTAL	97	193	250

Source: State Audit Office (1997).

Table 1 shows that the biggest increase in recruitments has taken place in the Ministry of Agriculture and Forestry. There the number of new recruitments has nearly doubled every year starting from 34 new recruitments in 1995 and increasing to 119 taken in 1997. There has also been an above average increase in the number of staff in the Ministry of Trade and Industry and in the Ministry of Foreign Affairs. It should be noted that the preparation of Finland's Presidency of the EU has also meant many new recruitments in other sectors. This can be seen from the 1998 and 1999 statistics.

Informal networks

EU-membership has not only had an impact on the size of the government but, as some critics have put it, also shifted actual power from the Parliament to the Government. This is due to the complex and technical nature of the EU-policies under preparation which increases the power of experts inside the government as well as outside of it.

Therefore the role of the Finnish *Eduskunta* in formulating EU policies should not only be assessed from the point of view of the *Eduskunta's* formal decision-making authority based on the Parliament Act. It is also important to study the role and relative power of the *Eduskunta* in informal processes of the formulation on Finland's position on EU affairs. That is, how the parliamentarians have received relevant information and *de facto* have been given an opportunity to influence the preparations of the EU policy in Finland. Recent studies on EU policy making (Eliassen et al. 1993) have emphasized the role of informal policy networks during the process of decision-making. Parliament's role in the national process of EU-policy formulation can also be studied from the policy network point of view. Before scrutinizing in more detail the Government – Parliament relations in EU affairs in the light of the empirical findings of the Lampinen et. al study (1998) some conceptual clarifications have to be made. Firstly, when discussing EU-policy formulation a clear distinction has to be made between *high politics issues* and *low politics issues*. By high politics issues we refer to the 'history making decisions' or the series of politically important decisions to be decided in arenas such as the European Council. These are the policies and decisions that receive considerable public attention and are debated among political leaders and in the media. Most of the academic works on European policy making are dealing with such issues. There is much less research on the every day policy formulation and drafting carried out by various ministries.

Empirical findings

In their study Lampinen et al. (1998) have analysed the formulation process of 46 U matters by interviewing civil servants in various ministries as well as the Chairmen of the Parliamentary Committees, to grasp an overall picture of the informal policy network of the EU-policy formulation in Finland. Special attention was paid to the *Eduskunta*'s role in the preparatory process. The study concluded that in principle the *Eduskunta* was furnished with the necessary information and documents according to the information requirement as stated in the Parliament Act. However, the problems seem to be the low quality of information, the lack of accuracy of information and the *Eduskunta*'s limited capacity to process and discuss the substantial questions under concern. The amount of information is so vast and scattered that Parliamentarians do not have the capacity to process it. Also the hectic and sporadic nature of the policy formulation creates circumstances where draft texts are constantly changing due to intergovernmental negotiations.

The study suggested that new horizontal links should be created between Parliamentary committees and ministries to enhance the dialogue and exchange of information. Also special committees need to have more resources to screen and monitor the U matters falling within their competence. The hearing institution was found to be a very effective model to inform parliamentarians about the U matters coming to the *Eduskunta*.

To get an overall picture of the informal policy network Lampinen et al. (1998) asked those civil servants responsible for the preparation of the specific U-matter to self-assess their informal contacts and sources of information during the preparatory process. Respondents evaluated the frequency and importance of their contacts by using a scale of 0 to 3, where 0 meant no contacts or no importance and 3 frequent contacts and high importance. Table 2. shows which organizations were evaluated as having high impact on the Finnish EU-position in the 46 U matters studied.

Table 2. The number of notions of important impact on Finland's U matters (N=46) by the stakeholder group.

	Lead Ministry	Other Ministry	Central government agency	Coordinative body	The Parliament	EU-Institutions	Industry	Others
Ministry of Foreign Affairs	4	3	0	0	0	0	1	1
Ministry of Transport and Communications	5	0	2	0	0	0	1	3
Ministry of Trade and Industry	6	1	2	1	2	0	2	3
Ministry of Agriculture and Forestry	6	4	0	4	2	1	2	3
Ministry of Justice	5	3	0	0	1	0	0	0
Ministry of Education	2	0	0	2	2	0	0	0
Ministry of the Interior	4	1	0	0	0	0	0	0
Ministry of Social Affairs and Health	4	3	0	2	0	0	0	0
Ministry of Finance	7	6	2	0	2	0	0	0
Ministry of the Environment	3	1	0	0	0	0	1	0
TOTAL	46	22	6	9	9	1	7	10

It can be seen from Table 2. that the ministries responsible for monitoring and preparing affairs concerning the European Union had the biggest role in determining Finland's position. In half of the cases a ministry other than that responsible for preparing the policy was seen as having an important role in determining Finland's position. During the preparatory process there are several consultations between ministries on an individual level. This helps the coordination of different ministries' positions in the Committee for EU Affairs. Committees or institutions at the EU-level do not have such an important effect on the determination of the national position. During the first years of Finland's membership to the EU coordinating bodies at the national level (such as at the Committee for EU Affairs or the EU Secretariat at the Ministry of Foreign Affairs) played an important role in orchestrating the preparatory work of EU affairs. According to the number of respondents the role of these co-ordinating bodies have become more technical due to improved drafting capacity and competence in EU affairs in line ministries.

The assessments of the *Eduskunta's* role in influencing the Finnish positions in EU affairs varied considerably. A number of respondents felt that its role is of a more formal and technical nature, i.e. it is sent all the relevant information according to the obligations of the Parliament Act, but is clearly lacking in the *de facto* power of influencing EU-policies. However, others (especially the interviewed officials at the Ministry of Trade and Industry and Ministry of Agriculture and Forestry) felt that the *Eduskunta* had had, if not a decisive role, at least some important influence on final formulations of the policy. In general, it was reported that the obligation to inform *Eduskunta* is a useful, but also a very time consuming and complicated procedure. Nevertheless, it was seen as an important stage in creating the joint intentions that formulate the national position.

External stakeholders (such as social partners, NGO's, industry etc.) seem to hold, especially in some sectors such as Traffic, Trade and Industry, Agriculture and Forestry, a fairly strong position in influencing policy making. In 7 cases out of 46 it was mentioned that a representative of an industrial group or institution had an important role in the process of policy formulation.

Finally Figure 1 shows the overall profile of the inter-organizational links between various stakeholders

Figure 1. The intensity and importance of communication between the Ministries and their main stakeholders during the preparatory process of U matters in Finland

As far as the frequency of exchange of information is concerned the representatives of the lead ministry as well as coordinating bodies at the national level (EU Committee as well as Finland's Permanent Representation in the EU) seem to be in the most central position. The flow of information into the EU institutions can be seen in Fig.1. Flows of information are most often targeted either to the responsible Working Groups in the Council, COREPER or the responsible DG in the Commission.

Conclusions

One of the problems concerning the European Union is the alleged democratic deficit. In order to cope with the problem a dimension representing the citizens of Europe must be introduced. Therefore it is essential that the preparation of EU decision-making be based on a parliamentary dimension which ensures a broader acceptance by the citizens of European. Including the national parliaments in the preparation of European affairs affects the balance between the legislative power and the executive power and gives a democratic aspect to EU decision-making. A national parliament may well be described using the term "plural subject" and "joint intentions". We have seen that a national position for EU decision-making might also be defined in terms of joint intension. This shows us that a national position based on interaction between parliament and government is a robust framework for bargaining and negotiations, and a powerful tool for the solution of co-ordination problems.

Decisive for parliamentary scrutiny is the access to information. The Finnish model shows clearly that it is important that the information be delivered, not only to a sufficient extent, but also in a qualitatively accurate form. Therefore the extent of the government's obligation to inform parliament must be large and it shall also include an obligation to comment on the EU material sent to parliament. As the interaction between government and parliament is an issue about forming the national position for the negotiations in the EU Council, parliament must know the government's position on the matter under scrutiny, in order to be able to influence the national position. Moreover, parliament must be able to examine the EU affairs at an early stage, i.e. when the national position may still be changed and the actual negotiation process may be

This paper has argued that the Finnish *Eduskunta* regularly receives a sufficient inflow of information on EU affairs, as Sec 54 formally authorizes. However, given the vast amount of information flowing into the *Eduskunta* and the tight schedules of the affairs under preparation, its real opportunities to influence the Finnish EU-positions seem to be rather limited. The *Eduskunta* also seems to have difficulties in monitoring and following up the decision-making process after it has given its opinion on a particular matter.

From the point of view of the representatives of central government parliament has rarely played a decisive role in the process of EU policy preparation. In most cases coordinating bodies such as the EU Committee as well as Finland's Permanent Representation in the EU and other line ministries at the national level and responsible Working Groups of the Council, COREPER or the responsible DG in the Commission at the EU-level seem to play the most important role in affecting the policy contents in the preparatory stages.

There is a wide diversity concerning national solutions to the accountability of government *vis-à-vis* parliament. The mandates given to the governments in the Member States vary from strong legally binding mandates to weak ones. One advantage of a moderate mandate which sets a framework for the government actions in the actual decision-making is that it often strengthens the national position in European decision-making. The inclusion of parliaments in the preparation does not automatically mean that a diverging component would be added to the preparation; on the contrary a converging factor is more often added to the national preparation.

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**Les interactions entre le Gouvernement et le
Parlement dans le processus de décision
communautaire
Co-Rapporteur : M. Christophe LESCOT
Assemblée nationale**

Permettez-moi d'abord de féliciter les deux rapporteurs pour la qualité de leur travail qui constitue une excellente analyse de la question difficile des interactions entre le Gouvernement et le Parlement dans le processus de décision communautaire.

Il m'est demandé de vous faire part de mes remarques sur les conclusions de leur rapport en me basant sur l'expérience française de contrôle des affaires communautaires. Je tâcherais de le faire en suivant la méthode stimulante utilisée par les deux rapporteurs, qui consiste à mêler considérations générales et exemples concrets tirés de la pratique parlementaire.

Les délégations parlementaires pour l'Union européenne : une mission traditionnelle d'information qui se double d'une participation active au contrôle parlementaire de la prise de décisions communautaire.

Le rôle que peut jouer le Parlement français dans le processus de décision communautaire repose essentiellement sur ses deux délégations pour l'Union européenne, l'une à l'Assemblée nationale, l'autre au Sénat. Ces deux instances ont été créées par une loi du 6 juillet 1979 afin d'assurer l'information des assemblées sur les travaux conduits par les institutions européennes. Leur création apparaît comme la conjonction de deux facteurs. Le premier est la décision prise en 1976 d'élire le Parlement européen au suffrage universel qui a eu pour conséquence la disparition des délégations des Parlements nationaux composant l'Assemblée de Strasbourg. Le deuxième est la prise de conscience de l'emprise croissante du droit communautaire sur les législations nationales : afin de lutter contre les empiètements de souveraineté, les promoteurs de la loi de 1979 ont souhaité mettre en place une structure parlementaire spécifique chargée d'alerter les assemblées sur les risques de dessaisissement au profit des Communautés européennes.

Mais les délégations n'ont jamais répondu à cette « attente ». D'abord parce qu'elles sont vite devenues favorables au principe même de la construction européenne.

Ensuite parce que les moyens qui leur ont été accordés se sont révélés insuffisants pour leur permettre de peser sur la politique européenne. La principale activité des délégations a longtemps consisté à publier des rapports d'information sur des sujets de leur choix, comportant le plus souvent un pré-examen de projets législatifs communautaires. Mais ces rapports étaient dépourvus de toute portée, de sorte que les délégations n'avaient aucune capacité réelle d'intervention sur les affaires communautaires. Cette situation n'était pas fortuite : elle était le fruit des efforts conjugués des commissions permanentes des assemblées, peu désireuses de se voir concurrencées par un nouvel organe, et du Gouvernement, qui pratiquait avec un art consommé, la rétention d'information. On en voudra pour preuve le refus des Gouvernements successifs, jusqu'en 1987, d'autoriser les ministres à venir s'exprimer devant les délégations.

Le réveil date du début des années 1990. La loi du 10 mai 1990 a permis une amélioration incontestable de l'information des parlementaires en faisant obligation au Gouvernement de transmettre toutes les propositions d'actes communautaires avant leur adoption. Cette obligation a été étendue aux projets d'actes (deuxième et troisième piliers) par une loi du 10 juin 1994. Mais c'est la révision constitutionnelle préalable à la ratification du Traité de Maastricht qui a permis aux délégations de franchir un saut qualitatif. Le 25 juin 1992, le Congrès du Parlement a inséré dans la Constitution un nouvel article qui :

- d'une part, fait obligation au Gouvernement de soumettre aux assemblées les propositions d'acte communautaire comportant des dispositions de nature législative dès leur transmission au Conseil ;

- d'autre part, prévoit la possibilité pour chaque assemblée de voter des résolutions sur ces textes.

Complétant ce dispositif constitutionnel, une circulaire du Premier ministre du 19 juillet 1994 a instauré un mécanisme de réserve parlementaire comme il en existe dans la plupart des Etats membres. Ce dispositif prévoit que les assemblées ont un délai d'un mois, à partir de la transmission d'une proposition d'acte communautaire de nature législative, pour déposer une proposition de résolution et que le Gouvernement doit s'opposer à l'inscription d'urgence du texte à l'ordre du jour du Conseil, ou demander le report de son adoption à un ordre du jour ultérieur, tant que la procédure de l'article 88-4 n'aura pas été menée jusqu'à son terme.

Les nouveaux mécanismes de contrôle : une portée appréciable

Par le double jeu de l'article 88-4 et du système de la réserve parlementaire, les délégations parlementaires pour l'Union européenne sont désormais en mesure de se saisir en amont des projets de textes communautaires et de se prononcer à leur sujet par le biais de résolutions avant leur adoption définitive par le Conseil. Le Parlement est passé de la simple information sur les projets communautaires à ce qui apparaît comme étant une forme de contrôle sur le processus de décision.

Cette percée juridique doit être appréciée dans le contexte du système institutionnel de la Vème République. Il faut, en effet, savoir que les affaires internationales sont, depuis 1958, de la responsabilité exclusive du Gouvernement et du Président de la République et que les pouvoirs du Parlement ont toujours été, dans ce domaine, embryonnaire. C'est bien pourquoi la possibilité de voter des résolutions parlementaires sur des projets communautaires et le mécanisme de la réserve n'ont pas été sans susciter des inquiétudes. Certains ont pu redouter que l'on dérive progressivement vers un régime d'assemblée, sur le modèle de la IVème République, qui constitue, dans l'imaginaire politique français, le contre-exemple à ne pas suivre. Le vote de résolutions ne risquait-il pas de priver le Gouvernement des marges de manœuvre nécessaires dans la négociation au Conseil ? L'obligation qui leur est faite de s'opposer à l'inscription d'un texte à l'ordre du jour du Conseil pour la simple raison qu'une proposition de résolution serait en cours d'examen n'allait-elle pas aboutir à lier le déroulement d'une négociation internationale au bon vouloir du Parlement ?

Ces craintes étaient révélatrices des éternelles objections que soulève l'octroi au Parlement d'une compétence nouvelle – même limitée – dans l'ordre international. Elles se sont, évidemment, révélées dépourvues de tout fondement.

D'une part, le mécanisme de la réserve d'examen parlementaire, a été mis en œuvre de façon suffisamment souple pour garantir l'exercice par le Parlement de ses prérogatives et le bon déroulement de la procédure communautaire. C'est ainsi que les délégations parlementaires ont mis en place une procédure d'urgence qui permet la levée, par anticipation, de la réserve d'examen dans l'hypothèse d'un calendrier accéléré d'adoption du texte par le Conseil. La circulaire du Premier Ministre permettrait même au Gouvernement de se passer de l'avis de l'Assemblée en cas d'urgence.

D'autre part, les résolutions sont vite apparues pour ce qu'elles sont : de simples avis dépourvus de portée contraignante pour le Gouvernement. Le Conseil constitutionnel a même cru bon de préciser qu'elles ne sauraient conduire à une remise en cause de la responsabilité gouvernementale. Cette situation n'est d'ailleurs guère contestée : personne

dans le personnel politique français ne revendique sérieusement que le Parlement puisse dicter au Gouvernement sa position au cours des négociations communautaires.

Le vote de ces résolutions a-t-il, pour autant, un impact sur la position officielle de l'exécutif ? Un Gouvernement peut-il adopter une position qui soit contraire aux demandes ou aux recommandations figurant dans une résolution ?

En droit, une résolution ne lie pas le Gouvernement mais ce dernier est invité, par la circulaire du Premier Ministre de 1994, à prendre en compte, dans le respect des prérogatives de l'exécutif et, le cas échéant, à tirer parti, dans la négociation communautaire, des dispositions exprimées par le Parlement. C'est ainsi que les résolutions adoptées font l'objet d'un examen interministériel et qu'elles figurent dans le dossier des négociateurs français au Conseil.

De façon générale, on peut dire que la prise en compte d'une résolution par le Gouvernement dépend de deux facteurs. Le premier tient au moment de l'adoption : plus une résolution sera connue de façon précoce, plus le Gouvernement sera en mesure de l'intégrer dans sa position de négociation. Le second est lié à son mode d'adoption : une résolution adoptée en séance publique, après que l'ensemble des groupes politiques se soit exprimé, aura une valeur politique plus forte que si elle avait été seulement votée en commission.

Mais cette question de l'incidence des résolutions sur la position gouvernementale ne se pose guère dans la pratique. Les résolutions tendent en effet à conforter, plutôt qu'à contredire, les positions officielles. L'objectif est moins d'affirmer un point de vue divergent que de soutenir une position gouvernementale isolée au Conseil, ou insuffisamment prise en compte. Ce « suivisme » des parlementaires est non seulement un effet de la logique majoritaire qui imprègne nos institutions, mais aussi une conséquence de la convergence de vues objective qui unit parlementaires et représentants de l'exécutif pour la défense des intérêts nationaux.

La vraie question qui se pose est, dès lors, de savoir à quoi sert l'article 88-4 : à partir du moment où les résolutions sont de simples avis reproduisant peu ou prou un point de vue officiel, quel peut être la portée réelle de cette procédure ?

En réalité, son utilité est double.

Le vote de résolution permet, en premier lieu, au Parlement de débattre sur l'Europe et de discuter au grand jour des principaux aspects de la législation communautaire. Cet examen préventif des projets de textes communautaires ne peut que faciliter ensuite la

transposition en droit interne : ceux qui seraient tentés de s'opposer à un projet de loi transposant une directive ne pourront tirer argument du fait qu'ils ne « savaient pas ». L'article 88-4 est, à ce titre, une des réponses possibles au discours récurrent sur le déficit démocratique. Il arrive même que les débats sur les projets de résolution au Parlement prennent une importance qui dépasse le texte communautaire en discussion. C'est ainsi que le vote d'une résolution a permis à la représentation nationale de se prononcer sur les conditions de passage à l'euro. Et il n'est pas exclu que cette procédure soit utilisée à nouveau pour consulter la représentation nationale lors de l'éventuel passage à la majorité qualifiée, dans cinq ans, pour les matières de libre circulation des personnes, d'asile et d'immigration.

L'autre portée de l'article 88-4 est qu'il crée les conditions d'une collaboration « interactive » pour reprendre une expression de Mika BOEDEKER entre le Parlement et le Gouvernement. L'intervention du Parlement par voie de résolution peut donner une plus grande force à la position défendue au Conseil par un ministre, ce dernier pouvant tirer argument des demandes présentées par la représentation nationale pour rester ferme sur certains points en négociation. Alors que l'intervention du Parlement dans les affaires communautaires tendait, jusqu'ici, à être considérée comme un facteur de désordre et de complication, le Gouvernement commence à comprendre le parti qu'il peut en tirer. Mais cette prise de conscience reste embryonnaire comme le démontrent les conditions encore défectueuses de mise en œuvre de l'article 88-4.

Un champ d'application tronqué

Les délégations parlementaires sont destinataires de tous les documents produits par les instances européennes : documents consultatifs, rapports, communications, proposition de directive ou de règlement... Mais une partie de ces textes seulement est susceptible de faire l'objet d'une résolution. L'article 88-4 prévoit, en effet, jusqu'à sa révision de 1999, que sont soumis au Parlement, avec possibilité pour ce dernier de voter une résolution, les textes répondant aux trois conditions suivantes : être une « proposition d'acte communautaire », faire l'objet d'une transmission au Conseil et comporter des dispositions de nature législative. Cette disposition est interprétée de manière assez étrange par le Conseil d'Etat : d'un côté, il a considéré comme relevant de l'article 88-4 des textes dépourvus d'intérêt pour la France, dépourvus de portée sur la concurrence et sur les finances communautaires (exemple : fiscalité des huiles usagées au Portugal), qui viennent encombrer l'ordre du jour de notre Délégation ; de l'autre, il écarte de son champ d'application des textes de grande portée.

Parmi les textes exclus de l'article 88-4 :

- les documents consultatifs de la Commission (livres verts, livres blancs ...) qui ne sont pas considérés comme des propositions normatives, bien qu'ils peuvent se trouver à l'origine d'initiatives législatives ultérieures,

- les projets d'acte relevant des IIème et IIIème piliers de l'Union européenne, qui, jusqu'à la dernière révision constitutionnelle, ne relevaient pas de l'article 88-4, alors que leurs enjeux, en terme de souveraineté, sont très importants ;

- les accords interinstitutionnels, parce qu'ils ne font pas l'objet d'une « transmission » de la Commission au Conseil ;

- la fixation des prix agricoles qui, selon le Conseil d'Etat, ne relève pas du domaine législatif, mais dont les incidences sur la vie économique et sociale sont loin d'être négligeables.

Pour tous ces documents, le Parlement se voit dans l'impossibilité d'adopter une résolution. Il peut demander au Gouvernement de faire prévaloir une interprétation politique de l'article 88-4 et de lui transmettre un projet de texte communautaire malgré l'avis contraire donné par le Conseil d'Etat. Mais l'acceptation du Gouvernement n'est pas de droit. Autre possibilité, les délégations peuvent se prononcer, dans le cadre de rapports d'information, sur ces documents en adoptant des conclusions. Mais ces conclusions n'engagent que les délégations et n'ont pas la même portée qu'une résolution adoptée par une assemblée. C'est ainsi que l'Assemblée nationale n'a pu se prononcer sur la communication de la Commission « Agenda 2000 » alors même que ce document allait être à l'origine d'une vaste réforme de la P.A.C., des fonds structurels, et de l'adoption des perspectives financières : un important travail d'analyse a été effectué par la Délégation pour l'Union européenne qui n'a débouché que sur de simples conclusions adoptées par elle. Ce n'est que plus tard, au printemps de 1998, que la Délégation et l'Assemblée nationale tout entière ont pu prendre position par voie de résolution sur les propositions de règlements transmises par la Commission au Conseil (P.A.C., fonds structurels, cadre financier 2000-2006).

La réforme constitutionnelle intervenue cette année a apporté un début de solution à ces dysfonctionnements. La loi constitutionnelle du 28 janvier 1999 a d'abord étendu aux projets d'acte des IIème et IIIème piliers la procédure de l'article 88-4. C'est à ce titre que notre Délégation a pu dernièrement adopter une proposition de résolution sur un espace européen de liberté, de sécurité et de justice. La révision constitutionnelle a également permis d'ajouter à l'article 88-4 un paragraphe ouvrant la faculté au Gouvernement de soumettre au Parlement tout autre projet ou proposition d'acte : cette disposition donne au Parlement la

possibilité de se prononcer par voie de résolution sur tout document émanant des institutions de l'Union européenne, mais à condition que le Gouvernement fasse usage de sa faculté de transmission. Cette possibilité existait déjà dans la pratique, mais elle est désormais codifiée dans le texte constitutionnel. Dans les faits, si la Délégation souhaite intervenir sur un projet de texte communautaire qui ne remplit pas les conditions prévues à l'article 88-4, le Président de la Délégation demandera au Président de l'Assemblée nationale de saisir le Gouvernement pour que ce texte nous soit transmis au titre de cet article. C'est ainsi que le Gouvernement a accepté de soumettre au Parlement la Communication de la Commission sur le prochain cycle de négociations de l'OMC : la Délégation a pu ainsi procéder à un très important travail d'analyse qui a débouché sur l'adoption d'une proposition de résolution qui sera discutée avant la fin octobre en séance publique. Je crois que l'Assemblée nationale est la seule chambre des Etats membres à avoir effectué un pré-examen de cette nature du texte qui constituera la base du mandat de négociation de la Commission à l'OMC.

Certains ont regretté – et ils n'ont pas tort sur le fond – que cette extension de l'article 88-4 à l'ensemble des documents communautaire dépende du bon vouloir du Gouvernement. D'autres ont estimé – et ils auront peut-être raison – que le Gouvernement fera preuve de libéralité dans sa mise en œuvre. Il reste que le champ d'application de la procédure de résolution se trouve ainsi au cœur d'un rapport de forces entre Gouvernement et Parlement qui, depuis 1958, est plus favorable au premier qu'au second.

Un manque de transparence dans l'accès à l'information

L'autre difficulté à laquelle se heurte le Parlement dans la mise en œuvre de ses pouvoirs de contrôle tient au manque de transparence dont fait preuve le Gouvernement sur les affaires communautaires.

Certes, l'information dont disposent les délégations sur les questions européennes est d'un volume important. Outre l'ensemble des documents émanant des institutions de l'Union européenne dont elles sont destinataires, les délégations procèdent à des auditions régulières des ministres compétents, des organisations économiques, professionnelles et syndicales, des membres de la Commission européenne. Depuis 1994, les membres français des commissions du Parlement européen sont invités à participer aux réunions de la Délégation consacrées à l'examen des rapports d'information. Des débats réguliers sont organisés en séance publique sur les questions européennes, notamment avant chaque Conseil européen.

Mais, comme le souligne Mika BOEDEKER, le problème est d'avoir accès à l'information « pertinente », celle qui sera utile aux parlementaires pour apprécier en amont les enjeux d'un projet communautaire et exercer son contrôle sur la position prise par son

Gouvernement. Or, la situation française n'est pas bonne de ce point de vue. Lorsqu'une proposition communautaire est soumise par le Gouvernement au titre de l'article 88-4, le document qui nous est transmis contient le texte communautaire (c'est-à-dire le dispositif accompagné de l'exposé des motifs), le bordereau de réception par le Secrétariat général du Conseil et l'avis du Conseil d'Etat relatif au caractère législatif de ses dispositions. Rien de plus. Le Gouvernement ne transmet pas, comme cela se fait dans d'autres pays, une note présentant la position officielle sur le texte communautaire.

Aucune information n'est non plus systématiquement donnée sur l'évolution des discussions au Conseil à propos d'un texte communautaire, alors que la loi du 10 mai 1990 prévoit expressément que les délégations sont tenues informées des négociations en cours. C'est ainsi que les Présidents de délégation ne sont pas destinataires des télégrammes diplomatiques rendant compte des travaux au sein du COREPER et des groupes de travail du Conseil. Or, les spécialistes des affaires communautaires que vous êtes savent que c'est au sein de ces instances que se joue la négociation. Les seuls télégrammes que le Gouvernement accepte, dans sa grande mansuétude, de nous transmettre sont aussi ceux qui nous sont les moins utiles : il s'agit des comptes rendus des réunions du Conseil qui sont abondamment commentés dans les dépêches de presse.

Cette situation met le Parlement dans l'impossibilité d'assurer un suivi régulier dans résolutions adoptées. Comment vérifier si le Gouvernement a défendu des positions correspondant aux demandes exprimées dans une résolution si les délégations ne sont pas régulièrement informées de l'évolution des discussions communautaires ?

Certes, nous arrivons le plus souvent à obtenir les éléments d'information qui nous sont nécessaires auprès du S.G.C.I. et des ministères techniques. Mais l'accès à l'information ne va jamais de soi : l'information utile nous est donnée mais après sollicitation et de manière chaotique ; et elle n'est pas toujours aussi exhaustive que nous le souhaiterions. L'expérience montre aussi que la qualité de l'information transmise dépend, comme l'a fait remarquer Jean LAPORTE, directeur du service des affaires européennes du Sénat, de l'existence ou non d'une volonté politique : il sera plus facile à un parlementaire désigné pour faire un rapport d'information d'obtenir les informations pertinentes dans le cadre de son travail d'information et d'analyse que si le fonctionnaire doit s'adresser seul aux ministères.

La mise en place d'antennes permanentes à Bruxelles permettrait-elle aux Parlements nationaux d'avoir accès en amont à des informations utiles pour le traitement des projets communautaires ? C'est ce qu'estiment le Folketing danois, l'Eduskunta finlandais, la Chambre des Communes britannique et le Sénat français, qui ont décidé d'installer en

permanence un fonctionnaire de leurs services à Bruxelles pour entretenir des contacts utiles avec les institutions européennes. L'Assemblée nationale française n'ayant pas décidé de mettre en place une telle structure, je me contenterai de poser deux questions : le fonctionnaire présent à Bruxelles pourra-t-il avoir connaissance des travaux du Conseil ou ses contacts ne seront-ils pas plutôt avec le Parlement européen – qui intervient en aval – et la Commission – dont la fonction d'initiative la situe plutôt en amont du processus de décision ? Des informations, obtenues très en amont, à un stade où le projet de texte n'a pas encore été transmis au Conseil, sont-elles pertinentes pour les parlements nationaux ?

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En conclusion, je me limiterai à faire un certain nombre de remarques.

Le contrôle sur les affaires communautaires n'a sans doute pas atteint, en France, le degré d'achèvement qu'il connaît dans d'autres pays. Le Parlement trace avec peine son chemin dans un paysage institutionnel marqué par l'impérialisme de l'exécutif et la tradition du secret. Son droit de regard sur les affaires communautaires s'exerce dans le cadre d'un rapport de forces qui est depuis 1958 favorable à l'exécutif. Dans un article récent – cité par Mika BOEDEKER, dont je salue à l'occasion la lecture attentive qui a fait des revues françaises de droit public – Jean-Luc SAURON invite le Parlement à passer d'une stratégie d'opposition à une logique d'association et de collaboration avec les acteurs du jeu communautaire. L'invite est tout à fait fondée : c'est certainement en jouant le jeu d'une coopération interactive avec le Gouvernement que le Parlement pourra élargir son droit de regard sur les affaires communautaires. Mais la recommandation faite par M. SAURON devrait plutôt s'adresser au Gouvernement. C'est surtout à l'exécutif de prendre conscience de toutes les potentialités qu'offre la participation du Parlement au contrôle du processus décisionnel. Il doit comprendre que le Parlement peut être un appui dans les négociations et un relais vers l'opinion.

De nouvelles réformes constitutionnelles sont peut-être moins nécessaires qu'avant : le sentiment prévaut que les mécanismes juridiques existants vont aussi loin que possible dans le cadre des équilibres qui prévalent sous la Vème République. Ce qui fait en revanche défaut, c'est une pratique de transparence qui fasse du Parlement un lieu de circulation de l'information sur des dossiers communautaires. C'est autour des assemblées – et à partir des travaux réalisés par leurs délégations pour l'Union européenne – que peut se construire une relation pédagogique nouvelle entre les citoyens et le monde communautaire.

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National Parliaments as Arenas and Actors in Scrutiny of EU Decision-Making – A comment on the report by Mika Boedeker and Petri Uusikylä.

In the report by Boedeker and Uusikylä the notion of a plural subject is used to describe a parliament. Joint intentions are the intentions of a plural subject. However, in many ways this is a misleading description of the role of national parliaments in EU matters. Describing a parliament as a unitary actor means that the different opinions between the political parties may not be adequately reflected in the analysis. Politically, these differences may be more interesting than those matters where the discussions in the parliament does not show any disagreement among the political parties. Still, there are expressions formulated by a parliament as a whole, which are most appropriately described as joint intentions.

To capture both these sides of a parliament, the concepts of *actor* and *arena* are more appropriate than the notion of a plural subject. A parliament may be regarded as an actor when it unanimously expresses a certain standpoint. This may be the case on issues that are regarded as being of great national importance. However, the same cleavages that appear between the political parties on traditionally national issues may also be of relevance when EU matters are discussed. This means, for instance, that the traditional right-left dimension in national politics is valid also on EU matters. On these matters, when the political parties typically present diverging opinions, it is more reasonable to see national parliaments as arenas for political parties.

In the same way as the parliament as a whole can be regarded as an actor or as an arena, the European Affairs Committees can be regarded both ways. In a study of the committees (not only the European Affairs Committee) in the Danish parliament, Jensen (1995) shows that it is more appropriate to analyse the committees as arena for the political parties rather than as independent actors in Danish politics.

European Affairs Committees are mostly arenas for the opposition parties. The political parties that are in government have other channels to exercise influence than through committee meetings in the parliament. It can be noted that regarding the House of Commons it has been said that the MPs who are most opposed to the EU have been most active in EU matters (Miller and Ware 1996:191). The same is true for Sweden and probably many other EU states as well.

In the Swedish parliament, the *Riksdag*, the Advisory Committee on European Union Affairs (the European Affairs Committee) deliberates with the ministers each Friday before the meetings in the Council. There are shorthand minutes taken at the meetings of the European Affairs Committee. These verbatim records provide evidence that the

opposition parties are the most active parties in the discussion with the government. Members from the main opposition party, the Moderate party, stand for one third of the activity from the political parties in the Committee, while the members from the ruling Social democrats only contribute with 8 % of the activity from the parties. The Left Party and the Green Party, which are negative to the European Union, together stand for one third of the activity (Christensen 1997). It should be said that these figures are from 1995 and 1996, and the dimension "positive – negative towards the EU" has probably declined in salience in Sweden since then. Anyway, the European Affairs Committee is still more of an arena than an actor. The Committee meetings provide an opportunity for the Members of the parliament to let their views become known to the ministers. Sometimes the ministers explicitly ask for the opinion of the committee. The ministers may say that it would be valuable in the EU negotiations to have unanimous support on certain matters. When all parties in the committee agree, it may be reasonable to view the committee as a plural subject with joint intentions.

According to Boedeker and Uusikylä a national position for EU decision-making may also be defined in terms of joint intentions. However, using that perspective may lead to an underestimation of the informal networks and the dynamics in the EU decision-making process. There are transnational groups and interests and the political parties have more contacts at the European level now than say two decades years ago. Before European Council summits the party leaders meet (Johansson 1999) and the party groups in the national parliaments also have close contacts with their counterparts in the European Parliament in the day-to-day handling of issues.

In the Swedish parliament, as well as in other national parliaments, the most frequent contacts with the European Parliament thus take place through the party groups. During the deliberations with the government members of the European Affairs Committee occasionally refer to what has happened in a certain issue in the EP. For instance, a member may remark that a member of "their" party group has been particularly active. The Swedish MEPs, or at least their political assistants, receive the document of the European Affairs Committee, and there are contacts almost every day between the assistants in the EP and in the Swedish parliament, not least electronically. The parties are keen to behave consistently in both parliaments, both the national one and the European one, and therefore co-ordinate their views in the two parliaments.

Probably the contacts at the European level between the political parties will increase in importance due to the more important role of the EP given to it by the Amsterdam Treaty. At present, most national governments consist of social democrats. This may lead to an increase in the co-operation between the national social democratic parties that see an opportunity to pursue their policies at the European level as well. Likewise, parties on the non-socialist side of the political spectrum may try to form alliances across the nation borders to decrease the impact of the social democratic governments. The strong position of the European Peoples Party in the European Parliament is of crucial importance in this game. In sum, this means that it will be less relevant to describe the position of a national government in an EU matter as a *joint intention*, even if a majority in the national parliament supports the position.

The Finnish system

A strength in the Finnish system, described by Boedeker and Uusikylä, is that there are mechanisms which ensure that the individual EU matters are discussed. Commission proposals, which may lead to EC-legislation on issues earlier reserved to the *Eduskunta*, are explicitly discussed in the committees and an opinion is formulated and conveyed to the government. Thus, the *Eduskunta* has channels for both input and output also before the matters are on the agenda at Council meetings.

This is in contrast to the Swedish and Danish systems. The system in the Swedish *Riksdag* was formed after the well-known Danish European Affairs Committee (cf Hegeland and Mattson 1996, 1997). This means that focus is on deliberations with the government on a Friday before the Council meetings in the next week. Those deliberations take place by routine (in a positive sense) in both Denmark and Sweden and are important arenas for EU matters. However, both Denmark and Sweden suffer from the same problem in regard to the specialised committees in the parliaments. In Denmark and Sweden the committees receive the Commission proposals, and explanatory memoranda from the government, but unlike Finland, the committees are not obliged to deal with these matters. The experiences in Denmark and Sweden are strikingly similar: the specialised committees do not engage in EU matters to any great extent. There are exceptions, but the conclusion could probably be made fairly generally; unless there are suitable channels for the output of the political deliberations of EU matters, the specialised committees in national parliaments are not likely to be successful in influencing their respective government. Neither the role as arena nor that as an actor will be fulfilled unless there are appropriate routines for the political process.

Empirical findings presented by Boedeker and Uusikylä

The empirical findings Boedeker and Uusikylä present are very interesting. However, it would also be interesting to compare the results with how the interviewed persons would regard the influence of the *Eduskunta* on individual national matters which are not dealt with at the EU level. Perhaps the main role of the national parliament is not to deal with the often technical and detailed proposals for EU legislation but to discuss the major issues the country in question should prioritise in the European co-operation? This is not to say that the individual directives are of minor interest, but often it seems difficult to arouse political debate about them. If the parliament is seen as arena for political debate on more general issues rather than a unitary actor on individual matters, we may not be surprised that the parliament scores low on influence in these matters. Still, it is the individual matters that make up the totality, which implies that the national parliaments should care both about general issues as well as single proposals for EU legislation.

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INTERACTION BETWEEN THE GOVERNMENT AND PARLIAMENT IN THE SCRUTINY OF EU DECISION-MAKING; FINNISH EXPERIENCE AND GENERAL PROBLEMS

Co-report by Mrs Elizabeth Flood, Clerk of the European Scrutiny Committee, House of Commons

Introduction

In this paper, I would like to focus on three issues brought up in the excellent paper by Mika Boedeker and Petri Uusikylä on the interaction between Government and Parliament in the scrutiny of EU decision-making. These issues are: the type of information provided by Governments to National Parliaments and the use made of that information; the timeliness — and therefore the degree of influence — of the views of National Parliaments; and the effectiveness of such scrutiny. I do not describe the House of Commons scrutiny system in detail: anyone who is interested in finding out more about it should read *The European Scrutiny System in the House of Commons*, A short guide for Members of Parliament by the staff of the European Scrutiny Committee, which is available from that Committee.

However, it is worth briefly stating the key elements of the UK's scrutiny system. First, it is document-based: every proposal for EU primary legislation has to be scrutinised by Parliament, and several other categories of documents also have to be submitted for scrutiny.¹ Secondly, both Houses of Parliament have established procedures for identifying and selecting (“sifting”) documents of particular legal or political importance so that the later stages of the scrutiny process (published Reports and debates) concentrate only on the more significant documents.² Thirdly, Select Committees in both Houses have powers to take oral or written evidence, from government departments, EU institutions and any other interested bodies, so that each House is provided with enough information to enable it to come to a view on the EU proposal. These Select Committees publish Reports on some (in the case of the House of Lords) or all (in the case of the Commons) documents which have been identified as legally or politically important. If the Select Committee considers a document/issue particularly important, a debate on it has to take place. Finally, a Resolution of the House of Commons restrains Ministers from agreeing to legislation in Council until the scrutiny process has been completed in both Houses of Parliament (“the Scrutiny Reserve Resolution”).

In the Commons, the Select Committee tries to ensure, whenever possible, that the scrutiny process has been completed before the Council is due to hold substantive discussions on the proposal. This means that the Committee is under constant time pressures.

The other important feature to bear in mind is that, although the primary aim of the scrutiny system in both Houses is to influence Ministers and, through them, the outcome of negotiations in the Council of Ministers, the Committees in both Houses are also trying to provide information and views to other Members of Parliament, interested groups outside Parliament, the wider public in the UK, the European institutions and other National Parliaments. Both Houses regard this wider role as necessary to ensure democratic accountability for decisions taken in the EU.

¹ See below for a description of the types of documents that must be submitted for scrutiny (“deposited”).

The provision of information by Government

As Mika Boedeker and Petri Uusikylä describe in their paper, UK governments have fairly extensive obligations to provide information to Parliament. The detailed requirements are not laid down in statute but in Parliamentary rules of procedure (“the Standing Orders”). Standing Order No. 143 of the House of Commons describes the European Union documents which are to be examined by the European Scrutiny Committee (and by implication have to be deposited in Parliament by the Government). These documents are:

- “(i) any proposal under the Community Treaties for legislation by the Council or the Council acting jointly with the European Parliament;
- “(ii) any document which is published for submission to the European Council, the Council or the European Central Bank;
- “(iii) any proposal for a common strategy, a joint action or a common position under Title V of the Treaty on European Union which is prepared for submission to the Council or to the European Council;
- “(iv) any proposal for a common position, framework decision, decision or a convention under Title VI of the Treaty on European Union which is prepared for submission to the Council or to the European Council;
- “(v) any document (not falling within (ii), (iii) or (iv) above) which is published by one Union institution for or with a view to submission to another Union institution and which does not relate exclusively to consideration of any proposal for legislation;
- “(vi) any other document relating to European Union matters deposited in the House by a Minister of the Crown.”

This rather obscure wording has been deliberately devised to catch as many useful documents as possible, so that the House can scrutinise not just draft legislation but also other major EU documents. Also, by not being over-prescriptive, it allows some room for interpretation if other forms of documentation are developed by the EU institutions. The types of documents deposited in Parliament are: draft primary legislation such as **Regulations, Directives** and Council **Decisions**; together with **Budgetary documents** (sub-paragraph (i)); indications of future action such as **Commission Green and White Papers, Communications** to the Council, **Commission reports** and draft **Council Recommendations and Resolutions** (sub-paragraph (ii)); documents relating to **EMU** (sub-paragraph (ii)); **Second Pillar** documents (sub-paragraph (iii)); **Third Pillar** documents (sub-paragraph (iv)); **reports of the Court of Auditors** (sub-paragraph (v)); **Treaty texts, IGC** documents which do not fall within any other category, and significant secondary (**Commission**) **legislation**, identified as such by the relevant government department, either at its own discretion or following a request by the European Scrutiny Committee (sub-paragraph (vi)).

Furthermore, as far as draft primary legislation is concerned, the Standing Order is held to apply not only to the initial Commission proposal but also to all subsequent stages of the legislative process, so that European Parliament amendments and the Commission’s Opinion on them, Commission amended proposals and Commission re-examined proposals are all documents that must be deposited for scrutiny by Parliament. The Select Committees in both Houses have also argued vigorously — and usually successfully — that they should be kept fully informed of unofficial texts, like Presidency texts. The

This system is reasonably comprehensive: it nets about 900 documents a year. It is also geared to the need to consider documents and take decisions swiftly. All official documents have to be deposited in Parliament within two working days of their arrival with the Foreign and Commonwealth Office in London (it is, of course, the responsibility of the UK Permanent Representation in Brussels to ensure that documents are transmitted back to the Foreign Office as quickly as possible after their distribution by the Council Secretariat).

However, simply depositing a text of a European document is not enough. Parliament needs to be informed systematically of the Government's views on documents. As with the Finnish system of government "communications" on EU proposals, the UK government has to provide an Explanatory Memorandum on every document deposited.³ The content of Explanatory Memoranda has been agreed between government and both Houses, and is broadly similar to the content of the Finnish communications: a short description of the purpose of the EU document, its legal base in the Treaties and the timetable for its consideration by the EU institutions (particularly the Council); whether (in the Government's view) it meets the requirements of subsidiarity; the impact on UK law and any administrative costs arising from it; any costs which would be imposed on business, and, in the case of more technical proposals, a risk assessment and scientific justification; a description of any consultation with interested parties undertaken by the Commission or by the UK Government, with an indication of the views expressed by those consulted; and a clear explanation of the document's policy implications.

Explanatory Memoranda are public documents: although prepared with a view to the Parliamentary scrutiny process, they are available to all Members of Parliament and Peers and any interest group, journalist or individual who cares to ask for a copy. This is one of the main reasons why they are designed to be as comprehensive as possible: a non-expert should be able to gather all the main points about a European document from the Explanatory Memorandum. Explanatory Memoranda also constitute the Government's formal evidence to Parliament about European documents: for this reason, except in rare (and pre-agreed) instances, each Explanatory Memorandum has to be signed by the main responsible Minister.

The Explanatory Memorandum is a vital part of the scrutiny process. The European Scrutiny Committee in the Commons places a lot of weight on the Explanatory Memorandum in reaching its decision on whether the EU document is of legal or political importance to the UK. Because of the time pressures arising from the need to complete the scrutiny process (wherever possible) before a document is considered in Council, the Committee has to work swiftly. Although it has powers to take written and oral evidence from interest groups and individual experts, the European Scrutiny Committee usually cannot initiate long-term inquiries into a subject area.⁴ It is able and willing to take into consideration any unsolicited submissions from interested parties, but in practice few groups are sufficiently organised to send in their views in time for them to be taken properly into account. Members of the Committee of course have their own particular areas of interest and expertise, and knowledge of constituency interests, any of which may alert them to difficulties not highlighted by the Explanatory Memorandum. However, it seems that, in nominating the Committee members, the business managers of the political parties make no real attempt to ensure a wide range of experience and expertise. For example, though this has been suggested on a number of occasions, the House of Commons has not taken the option of forming the European Scrutiny Committee from the membership of the subject-related (specialist) committees or of providing that the European Scrutiny Committee may co-opt members of other committees. And, unlike the Eduskunta, the House of Commons does not require the subject-related committees to scrutinise

³ This requirement is waived for certain types of documents which are essentially routine, trivial or where Parliamentary interest is limited, such as minor Transfers of Appropriations and Anti-Dumping Duties. Explanatory Memoranda have to be submitted within ten working days of the deposit of the document.

⁴ This makes the work of the Commons Committee very different from that of its sister Committee in the House of

relevant European legislation (they are not required to scrutinise domestic legislation either, so there is no discrimination!). Some subject-related committees do examine European proposals from time to time but their enquiries are not part of the scrutiny process, so again the timing often means that their final conclusions cannot be taken into account by the European Scrutiny Committee.⁵

Such reliance on Explanatory Memoranda may lead to problems. Through ignorance, oversight or a deliberate wish to mislead, government departments might not provide enough, or sufficiently accurate, information in the Explanatory Memorandum. In fact, maintaining the quality of Explanatory Memoranda is an endless battle: government departments often do not regard the drafting of these Memoranda as a priority, so they are frequently delegated to insufficiently senior staff (some of whom either do not fully understand the subject with which they are dealing or do not understand the use that is going to be made of the Explanatory Memorandum). There is therefore a danger that, if too dependent on such information, the European Scrutiny Committee might be unable to exercise its judgment properly. There are currently three lines of defence against this danger, and a fourth is being developed.

The first line of defence is provided within the Government itself. The UK has always been concerned that Ministers in Council should accurately represent the Government's views on issues, and not merely their own or their Department's views. The Cabinet Office, which has responsibility for a number of general subjects that cut across government departments, was given the task of co-ordinating the UK's stance on European issues.⁶ The Cabinet Office considers that its main task is, together with the UK's Permanent Representation in Brussels, to ensure that government business is done efficiently and effectively. This encompasses not only tasks like solving disputes between departments at home but also avoiding difficulties such as the need to impose Parliamentary scrutiny reserves in Council.

The result is that the Cabinet Office is a powerful ally of the two scrutiny committees in ensuring that departments give sufficient good-quality information to enable the scrutiny process to be completed. Cabinet Office officials provide 'quality control' of Explanatory Memoranda, because they know that if these are not good enough the Committees will retain the EU documents under scrutiny until adequate information has been supplied. The Cabinet Office issues guidance on good practice to departments,⁷ checks that all appropriate documents and all Explanatory Memoranda have been deposited, takes to task any departments that provide information late or badly, and is the Committees' main interlocutor in government for developing and improving the scrutiny system.

The second line of defence is provided by the Committee. The European Scrutiny Committee has a number of options for obtaining expert advice and assistance: it could use the facilities generally available to Parliamentarians (the Library and the Parliamentary Office of Science and Technology); it could employ advisers (consultants or academics) on an *ad hoc* basis as the subject-related select committees do; or it could employ full-time advisers. Although the general Parliamentary facilities are valuable,⁸ the staff have many calls on their time and expertise. They cannot guarantee to provide information whenever the Committee needs it. As for *ad hoc* advisers, the number of subject areas covered by the Committee's work and the short timescales to which it operates would mean retaining a large number of advisers, all of whom would have to be prepared to do work for the Committee at very short notice. Except where the Committee undertakes longer-term inquiries, it would be too expensive and impracticable to employ consultants. The Committee therefore employs full-time advisers (four "Clerk/Advisers" and two Legal Advisers). The four Clerk/Advisers between them cover all the subject areas dealt with by the Committee. Their background is interesting. The Committee has in the past employed some academics,

⁵ The relationship between the European Scrutiny Committee and the subject-related committees is discussed further below.

⁶ This role appears to me to be similar to that played by the Prime Minister's Office in some other Member States and applicant countries.

but not all these appointments were successful: some of the academics felt uncomfortable tackling subjects outside their immediate area of study, others had insufficient knowledge of the workings of government. Now the Committee normally recruits former senior civil servants⁹. These people have a number of advantages: they often have a broad range of experience in several government departments (wide subject knowledge); they have an insider's view of how British government works (they know how, and from whom, to obtain information quickly and effectively); having advised Ministers themselves, they know how to brief politicians, both on paper and orally; and often they have taken part in negotiations in Brussels themselves (experience of how EU institutions work in practice). Apart from these formal qualifications, they have also developed an instinct for detecting problems: even in subject areas outside their immediate experience, they have a talent for identifying weaknesses in government arguments.¹⁰

The third line of defence against being misled by Government Explanatory Memoranda comes from the fact that the Lords and Commons scrutiny committees co-operate closely. Copies of all letters to departments are sent to the sister committee. Information from other sources is shared, including written and oral evidence given to one or other of the Committees. As far as possible, the two committees — and especially the two Chairmen — maintain a common position on the requirements of the scrutiny system. This all enables the Commons Committee to benefit from the experience and expertise of the members and staff of the Lords Committee.

At present, the Commons Committee is also, rather cautiously, developing relations with the subject-related Select Committees. Last November, the Commons debated reform of its system of European scrutiny, and one of the results of the debate was that, for the first time, the European Scrutiny Committee was given powers to exchange papers with any of the subject-related committees, hold joint meetings with them, and seek from any such committee “its opinion on any European Union document, and to require a reply to such a request within such time as [the European Scrutiny Committee] may specify”. All committees within the House of Commons are equal, so it is a sensitive matter to give one committee power to require another to give an opinion.

To date, no formal request for an opinion has been made, but the new powers have proved useful in building relations with the subject-related committees that have a special interest in EU affairs. For example, subject-related committees have suggested issues that the European Scrutiny Committee should explore (and vice versa), have drafted papers with a view to informing debates on European issues, and have joined the European Scrutiny Committee in a pincer movement on Government when one or other committee has felt that the House of Commons was not being supplied with information.

If, as a result of all these checks, the Committee feels that it has not received enough information to make the key decisions on whether the document is of legal or political importance, and whether it should be debated by the House, then the Committee can seek clarification from the government department concerned, either in the form of a Supplementary Explanatory Memorandum or by means of correspondence between the Chairman of the Committee and the Minister. While this further information is being sought, the European document is retained under scrutiny and the Scrutiny Reserve Resolution continues to apply to it.

The use of information

⁹ The senior Legal Adviser employed by the House for this work has also usually been a former senior Government lawyer. The last two have come to the House from the post of principal legal adviser on European Affairs in the Cabinet

What does Parliament do with all this information? A sceptical observer might doubt the benefits of 'catching' so many documents a year, given the danger of being swamped with paper and being unable to distinguish the important from the less important. The fact is that the fishing net has to have a fairly fine mesh to ensure that Parliament is kept informed of all significant developments within the European Union. Many important documents are draft primary legislation, but if Parliament concentrated solely on these it would have missed a number of very important opportunities. In the last two years, the European Scrutiny Committee has referred for debate: the budget documents¹¹, Agenda 2000¹², The European Monetary Institute's and Commission's Reports on progress towards convergence for the third stage of EMU, the annual Court of Auditors Report (twice) together with documents on the Sound Financial Management initiative, the Commission Green Paper on Food Law, a Commission Report on Fisheries monitoring under the CFP, various documents (draft legislation, a White Paper, the Presidency text of a draft Council Resolution) on the EU's policy on renewable sources of energy, the Commission Communication on the "Social Action Programme 1998-2000", the Commission's White Paper on transport infrastructure charging, the Commission Communication on the proposed Galileo satellite navigation service, and the Commission's Action Plan on financial services. These are in addition to about 20 debates on individual pieces of draft legislation, ranging from the draft Harmonisation of Copyright Directive, through Air Transport Competition Rules, to Assistance to the NIS and Mongolia, to the Welfare of laying hens.

Even where the Committee has not referred documents for debate, it has sometimes taken other action to highlight particular issues. For example, it held public evidence sessions with Ministers on the Fifth Framework Programme on Research and Development, and on MAI (the Multilateral Agreement on Investment).¹³ These sessions give the Committee members an opportunity to explore the Government's views on proposals and to press Ministers for more information on what they hope and what they expect (not necessarily the same thing!) the outcome of negotiations will be. Broadcasters are allowed, if they wish, to film and transmit these evidence sessions.

Even where there are no debates or sessions of oral evidence, the European Scrutiny Committee publishes a report on each of the documents it considers legally or politically important. The Reports are made weekly, after each normal meeting of the Committee, and are published, usually within ten days, in both hard copy and on the Internet.¹⁴

Together with the House of Commons Library, the Select Committees in both Houses are also developing a European Scrutiny Database, comprising all the documents deposited and containing information about their status, the progress of scrutiny in both Houses, and giving links to the Committees' Reports and other relevant information. At present, this is still at the development stage, and it is intended to be only for internal Parliamentary use at first, but consideration is being given to giving public access to the database via the Internet.

Another new development in the House of Commons in the last year is the European Scrutiny Committee's decision to undertake more systematic scrutiny of Council meetings. The Committee and its predecessors have been aware for some time that there appeared to be a significant gap in the system in that, once documents had been cleared from the scrutiny process, there was no formal mechanism for tracing what happened to them. Ministers provided brief written post-Council reports, which were published in Hansard,¹⁵ but these were often produced some weeks after the Council meeting. During last

¹¹ This is an annual debate and affords the only opportunity for the House of Commons to consider the EU budget.

¹² On six occasions, with reform of the CAP, the Structural Funds proposals and the proposed Financial Perspective each being debated twice, the first time in December 1997 and then, in the light of developments, in spring 1999.

¹³ The document on MAI, of course, was deposited under sub-paragraph (vi) of the Standing Order.

year's review of the House of Commons scrutiny system,¹⁶ the European Scrutiny Committee announced its intention of asking departments for detailed, annotated agendas before each Council meeting (and, where necessary, taking further written or oral evidence from officials and Ministers about the agenda), and for systematic written reports on the outcome of Councils (again, with the ability to take oral evidence if necessary).¹⁷ Given its continuing detailed scrutiny of individual documents, the Committee did not think it necessary (nor does it have the time) to take oral evidence from Ministers before every Council meeting; but it does take oral evidence on particularly interesting Councils once or twice a month. It has also taken oral evidence after a Council on two occasions, once to give a quick report on the outcome of last December's Budget Council meeting to enable it to decide whether or not a further debate on the Budget documents was necessary, and once to ask a Home Office Minister for clarification about the Government's decision to seek to opt in to some of the Schengen provisions. All evidence sessions are public, though, if national security or commercial confidentiality required it, the Committee might consider holding evidence in private.

A large amount of information about developments in the European Union is put into the public domain by the scrutiny process. Assessing the effect on Government and the other members of the target audience is difficult. This is discussed further in the section of this paper on the effectiveness of scrutiny.

Timeliness and influence

The scrutiny system in the House of Commons has been designed to provide a 'House of Commons view' on European documents as quickly as possible, given that items may be added to Council agenda almost until the meeting starts. The requirements for prompt deposit of documents in Parliament and production of Explanatory Memoranda have been imposed because of the need to deal with documents quickly. In general, all the briefing materials for the Committee are ready in time for the document to be placed on the agenda for the first Committee meeting after the Explanatory Memorandum has been received. This means that, if the Committee wants to pursue issues further before coming to a decision, there is usually time to obtain extra written or oral evidence or to consult other committees¹⁸ before the relevant Council meeting. Of course, some difficult decisions have to be taken: the Committee sometimes decides that a debate should be held before all relevant information has been obtained because there is insufficient time to do both. In these circumstances, the Committee normally highlights in its published Report the gaps, so that Members may, if they wish, ask the Minister for the further information during the debate on the document.

Although traditionally the Commons scrutiny system has focussed particularly on draft legislation, Members of Parliament are aware that the extension of Qualified Majority Voting has significantly reduced the amount of influence that a single Minister can have over the decisions made by the Council. Furthermore, the growth of co-decision has so far led to an increasing number of texts being drastically amended in the later stages of the legislative process (such as Conciliation) which are not transparent and are tightly timetabled. The result is that it is very difficult to provide effective scrutiny of this legislation by National Parliaments.¹⁹ The Protocol on the role of National Parliaments annexed to the Amsterdam Treaty will not help here, as it deals with only the original Commission proposal and not with the later

¹⁶ By the Committee on the Modernisation of the House of Commons, which published its Report on this subject in July 1998 (Seventh Report of Session 1997-98).

¹⁷ This has been a further area where co-operation with other Select Committees has benefited the House of Commons in general. At first, the annotated Council agendas were provided only to the European Scrutiny Committee. Then, after some pressure, departments agreed also to send the agendas to interested subject-related committees. Now, with the encouragement of the European Scrutiny Committee, they are available to any Member of Parliament.

¹⁸ And, if necessary, to hold a debate.

stages of legislation. Anyway, it is coming to be accepted in relation to national as well as EU legislation that it is often too late by the time of formal discussions to influence legislation significantly: legislators have formed attitudes and sometimes have even made commitments to interest groups before the formal text is discussed.

Members of Parliament are increasingly aware that to have real influence on Ministers, the House of Commons needs to give some indication of its views on an issue before the legislation itself has been drafted. Increasingly, the European Scrutiny Committee is referring documents like Commission Green and White Papers for debate.²⁰ This has advantages and disadvantages: it enables Ministers to gauge general views on subjects for possible legislation early in the process; but sometimes the areas covered by Commission documents are so broad, and the outlines of proposals so unformed, that it is difficult for Members to concentrate on the most significant issues. The result is that some debates on pre-legislative documents are successful, giving Ministers a clear indication of what the House considers important and appropriate, while others are unfocussed and inconclusive. It is not easy for the European Scrutiny Committee to predict which a debate will be because a lot depends on whether the Members taking part in the debate are able to bring extra knowledge and expertise to it, whether from their experience as party spokesmen, as members of subject-related committees, as constituency MPs, from lobbying material provided by interest groups, or from former employment or interests.

However, despite the difficulties, scrutiny by the House of Commons will almost certainly concentrate increasingly on pre-legislative documents. Not only is this likely to increase the influence that the House's views have on Government; it also more effectively alerts the other members of the target audience (other Members of Parliament, interest groups, the wider public in the UK, perhaps even other National Parliaments) to what is happening in the EU *in time for them to have an opportunity also to make their views known*.

The need to provide an 'early warning system' has led the House of Commons to consider whether it may be possible to obtain information even before official documents have been published. This is one of the reasons why the House has now established a National Parliament Office in Brussels. The Office is intended to provide a channel of communication between Westminster and the European institutions less formal and more direct than that provided by the Government via the United Kingdom Permanent Representation.²¹

The Second and Third Pillars of the EU pose their own difficulties. So far,²² the European Scrutiny Committee's experience of Second Pillar proposals is that they either emerge at very short notice in response to emergencies (such as the imposition of sanctions on FRY), or they have been so carefully and delicately negotiated before they are officially produced that significant damage would be caused to both national and EU interests if any elements were changed so there is no realistic scope for National Parliaments to press for alterations (common strategies, for example). However, the degree to which Second Pillar decisions are taken in private is not a surprise to the UK Parliament. Foreign policy is an area which has been jealously guarded by the Executive in the UK: for example, treaties do not have to be approved by Parliament; the Government may ratify them without Parliament's even debating them. The Select Committee sees its work on the Second Pillar as being mostly simple provision of information, but also an opportunity to learn lessons for the future.²³

²⁰ See the debate subjects listed above.

²¹ Also, some difficulties can be caused by the fact that the Permanent Representation exists to represent the views of the UK Government, not Parliament. There are therefore constraints on both sides.

²² The European Scrutiny Committee has had power to deal with Second Pillar documents only since 18th November

The Third Pillar presents different problems. Proposals tend to make slower progress than in the Second Pillar, but many are extremely complicated, with effects on other Third Pillar and First Pillar proposals. The main difficulty experienced by the Committee so far²⁴ is keeping up with the changes to texts, and deciding when is the most appropriate moment to offer substantive comment or debate on them. On the other hand, this is an area where potentially National Parliaments might have a strong influence, particularly because of public sensitivity on many Third Pillar issues. Members of the European Scrutiny Committee have stated in public that, until they started the formal process of scrutinising Third Pillar texts, they were unaware of much that was being discussed within the EU on these issues; and the lead government department, the Home Office, appears to welcome the opportunity to explain and to seek views from Members of Parliament.²⁵

²⁴ Again, the Committee has been empowered to consider Third Pillar documents only since 18th November 1998.

²⁵ It may be significant in this context that Explanatory Memoranda from the Home Office often reveal that there has

Effectiveness of scrutiny

The benefits of the UK scrutiny process are often not obvious to government departments. The system requires officials to do a lot of work, frequently with no obvious end result.²⁶ The Scrutiny Reserve Resolution is an annoyance to officials who do not wish to be distracted by the requirements of the scrutiny system while occupied with complicated and delicate negotiations. Government departments and those who manage government business²⁷ are sometimes unenthusiastic about — and have even been known to try to discourage — the House of Commons debating European documents.

It is also very difficult to cite instances where Parliamentary scrutiny has clearly changed the course of a proposal in the EU. After all, given the secrecy of Council proceedings, it is impossible to know what arguments were used in reaching decisions;²⁸ and, because of the horse-trading that goes on, there is scope for doubt that individual decisions are always taken on their own merits anyway. It is even difficult to prove that Parliamentary scrutiny has had a decisive effect on the attitude of UK Ministers. How can one judge whether it was the view of Parliament, or the persuasion of departmental officials, or the lobbying of interest groups that led a Minister to take a particular position? Without having conducted any surveys of official attitudes, I would guess that the weight given by government officials to the views of the House of Commons is similar to that given by Finnish officials to the Eduskunta in the results reported by Mika Boedeker and Petri Uusikylä.

However, this is not to conclude that Parliamentary scrutiny is superfluous even from a narrow view of the Government's interest. While the European Scrutiny Committee cannot necessarily claim to have changed the Government's mind about a proposal, it has been told on several occasions that it has raised issues of which the Government had previously been unaware, sometimes legal points (like an inadequate or even wrong Treaty base) and sometimes political (such as unintended consequences of an apparently harmless change in legislation). Ministers then take these points to the Commission or the Council legal service, and sometimes changes are made to proposals.

Moreover, the simple fact that departments have to produce an Explanatory Memorandum, for Ministerial signature, can be a good thing. It helps to concentrate the minds of officials involved on the essential elements of an issue; and, because of the requirement for a Minister to sign the Explanatory Memorandum, it gives officials an opportunity to get Ministers to focus on the proposal. Many Ministers take the production of Explanatory Memoranda very seriously: I know of several who regularly insist on quite extensive redrafting of Explanatory Memoranda, especially of the section on policy implications.

Furthermore, 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”.

From the House of Commons point of view, the scrutiny system is not just a means for changing Ministers' minds: it is also a preventive system. It is, of course, impossible to prove the effectiveness of this: how many times would Ministers have failed to reach the correct decision/keep the public informed/take into account the full spectrum of views if the scrutiny system had not existed? However, in this respect Parliamentary scrutiny of European issues is no different from Parliament's role of holding Ministers to account generally; and the effectiveness of Parliamentary scrutiny of European affairs is determined to a large extent by the general relationship between Parliament and Government.

²⁶ For example, for the 450 or so documents a year which the European Scrutiny Committee considers are not legally or politically important so no further action is taken on them.

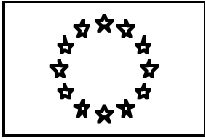
In the case of the UK, whatever party has been in power, there have been occasions when the Government has tried to avoid its scrutiny obligations or disarm the scrutiny process, whether by being obstructive when asked to supply information or by trying to avoid debate. However, the variations in Government behaviour appear to have been affected more by general political considerations (vulnerability because of a very small Parliamentary majority, for example) than by any specific characteristic of the European scrutiny system itself. And the House's response to these tactics has been influenced more by Members' general views of the relationship that should prevail between Parliament and the Government than by any particular 'European' element.

Conclusion

In this paper, I have tried to highlight the features of the UK system which I think are the most significant in terms of the interaction between the Government and Parliament in the scrutiny of EU decision-making. In relation to provision of information, I think that the notable features of the UK system are the wide range of documents which have to be deposited and the obligation on Ministers to provide comprehensive, public information. The House of Commons uses this information to select major issues for debate and/or for exploration by means of oral evidence in public. In addition, the European Scrutiny Committee tries to highlight all important issues by means of its published Reports. In its quest for adequate and timely information, the House is helped by the fact that its interests are compatible with those of an important government department, the Cabinet Office; and the Committee is assisted by — to use the English phrase — “poachers turned gamekeepers”, former civil servants who now work for Parliament.

The House of Commons scrutiny system is gradually adapting to major developments within the EU such as the extension of co-decision and of Qualified Majority Voting. To counterbalance the loss of influence of individual Ministers in Council votes and the difficulty for National Parliaments of reaching a view on rapidly evolving legislative texts, the European Scrutiny Committee is trying to concentrate on pre-legislative decision-making in the EU.

Finally, it is extremely difficult to judge the effectiveness of a Parliamentary scrutiny system. Parliament is only one forum for expressing views and influencing Government. However, it is not enough simply to estimate active influence in order to gauge success: one should also take into consideration the benefits to be gained from holding Governments *in terrorem*.



EUROPEAN COMMISSION
CABINET OF Mr ERKKI LIIKANEN

The Head of Cabinet

Brussels, 14 December 1999

National Governments and the European Union after the Treaty of Amsterdam¹

Dr. Olli Rehn

COSAC seminar on post-Amsterdam
Eduskunta, the Parliament of Finland
Helsinki, 13 October 1999 at 14.30

Updated version, 14 December 1999

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¹ The views expressed are those of the author and do not necessarily reflect those of the European Commission.

Introduction

During the last 50 years, European integration has transformed the role of the nation-state in the EU member states and, consequently, driven them to adjust their political systems. This transformation has been interpreted, for instance, as “the pooling of sovereignties”, “institutional fusion”, or “Europeanisation of decision-making”.

Perhaps the most original and, to my mind, intellectually one of the most attracting interpretations has been made by Alan S. Milward, who has called the phenomenon as “the European rescue of the nation-state”². Milward argues that the pooling of sovereignties - or the “European rescue” - has made the nation-state stronger in terms of fulfilling its original objectives, i.e. providing security, welfare and basic rights to its citizens. Compared to the 1930s, when European integration was virtually non-existent, the 1960s, or for that matter the 1990s, portray a stronger nation-state in terms of fulfilling these basic functions.

Be that as it may, the negotiations on and especially entry into force of the Treaty of Amsterdam in May 1999 is the latest step in the process. My aim in this paper is to assess the implications of the Amsterdam Treaty to the balance between the national governments and the Union, and to the overall institutional balance between the main institutions. I shall also briefly tackle some of the future issues of institutional reform after the Helsinki Summit.

Even if I am fully aware that one cannot simply consider the Council as an amalgam of national governments, my focus is on the role of the Council. It is nevertheless the closest approximation of national governments in the EU decision-making. Its legitimacy is based on its nature as the representative of the national governments and, indirectly, of national parliaments.

2 The results of Amsterdam in a nutshell

In terms of competencies of the main EU institutions and of its institutional balance, the new provisions introduced by the Amsterdam Treaty are not insignificant (the list is selective and not exhaustive):

1. the extension of the co-decision procedure into a substantial number of new policy areas and to areas where consultation or co-operation procedure used to apply (combined with the virtual abolishment of the co-operation procedure);

² Milward, 1992.

2. the simplification of the co-decision procedure, which places the European Parliament on an equal footing with the Council as to having a proposal adopted after a stalemate in the Conciliation Committee;
3. the revised requirement as to the appointment of the Commission President, who “shall be approved by the European Parliament” (the term used to be “consulted”; as to the new Commission as a whole, the EP has had the right of approval since the Maastricht Treaty);
4. the increase of the budgetary powers of the EP by shifting the expenditure on CFSP and Police and Judicial Co-operation in Criminal Matters into the Community budget;
5. a moderate extension of qualified majority voting in the Council into certain new areas of EU decision-making;
6. the establishment of a European area of freedom, security and justice with clearly defined objectives, timetables and procedures, including the transfer of asylum and immigration policies and judicial co-operation from the intergovernmental third pillar to the first pillar; and
7. the creation of the High Representative (M. PESC) and the early-warning and policy planning unit of CFSP under the auspices of the Council, as well as the streamlined decision-making in the Council applying the principles of flexibility and “constructive abstention”.

However, the negotiations were concluded with certain leftovers, the so-called *unfinished business*. This refers to the stalemate in the three constitutional issues, i.e. the size and composition of the Commission, the re-weighing of votes in the Council, and a further extension of QMV. The Treaty includes a Protocol providing a provisional solution to this problematic triangle up until the 6th new member state joins, but this solution may not turn out to be the last word.

3 Institutional balance revisited?

By and large, *the European Parliament* is regarded as the main beneficiary of the Amsterdam Treaty. Indeed, the above-mentioned Treaty changes imply a certain reinforcement of the EP’s powers in the institutional set-up of Union. In fact the EP has partly already used these powers. This was seen e.g. in the appointment of the new Commission President, Romano Prodi. He had to pay significant attention to the demands of the EP especially as to the reforms of the Commission.

The impact of the extension and simplification of the co-decision procedure remains yet to be seen. It is already estimated that the number of legislative

acts in the co-decision procedure will eventually triple³. The EP sees this as an opportunity and has already invested a lot of intellectual energy and manpower to fully utilise these changes. For the Council and the Commission this poses a new challenge, as they have to follow the EP work much more closely and precisely than before.

What about the powers of *the Council*, and subsequently, the national governments and parliaments?

Firstly, looking at the extension of co-decision, it should not be taken for granted that the Council loses if the EP gains. Despite the growth of EP powers, the Council nevertheless maintains its primary legislative power, including the possibility to stop or freeze legislation by the required blocking minority of the QMV. Further, the EU decision-making is not a sheer zero-sum game; more mature procedures may benefit the Union as a whole.

Secondly, the Council should clearly strengthen its role in CFSP, which may not be taken away from other institutions, as this merely or at least primarily fills in an existing policy-making vacuum. However, this may include a gradual transfer of policy-making power - or at least policy-making drive - from the national governments (of larger member states) to the intergovernmental Council. Moreover, it may enable the Council to occupy the space that the Commission would have perhaps preferred to occupy - and could have done so in some other circumstances.

Thirdly, the Council may benefit institutionally from the establishment of the European area of freedom, security and justice. The new Treaty provisions imply that a number of areas, such as asylum, immigration and other policies related to the free movement of persons will be transferred from the intergovernmental third pillar to the Community or first pillar – albeit that only with a transitional period of five years. This should improve effectiveness of the Council decision-making in these areas so essential to the Union's credibility in its citizens' eyes.

How about *the Commission*, then? It may sound paradoxical, but there is reason to argue that the Commission has also gained from the stronger controlling and legislative powers of the European Parliament.

First and foremost, the increased powers of the EP in relation to the Commission may enable the latter to recover its partly lost legitimacy in the eyes of the European citizens. President Prodi in July 1999 and the new Commission as a whole later in September received an unequivocal

³ This is an unofficial estimate provided by a senior EP staff member. It is echoed by the Trumpf report, which estimates that over half of the Articles in the Treaties providing a legal basis for Community action will concern legislative business, with over 40 % of these requiring the co-decision procedure.

democratic backing of the European Parliament in its investiture votes – at least for the time being, and to start with. This provides Prodi with a strong political mandate to move on with an active policy agenda.

Secondly, the Commission gains from a better-functioning Union in general. As the Commission usually is the symbol of the EU in the eyes of the European public, it can only benefit from a more effective and efficient decision-making in the Union. Not for its own sake, but for the sake of its European mission, which may pay off for the institution, too.

Overall, and related to the previous point, let's not forget a fundamental truth. In the eyes of our citizens, the EU as a whole is the focus of legitimacy, not predominantly its separate institutions. This was proven in the European elections last June. The rather united criticism by the Parliament against the Commission did not seem to pay off for the institution. Instead it was one factor that contributed to the lowest-ever turnout in the history of European elections.

4 Beyond Amsterdam

The European Council of Helsinki in December 1999 launched the IGC on the institutional reform, to be convened in February 2000. It also welcomed a report prepared by the Finnish Presidency on the issues and options the IGC will be confronted with.

Helsinki summit did not extend the initial agenda of the IGC beyond the unfinished business of Amsterdam. This covers the size and composition of the Commission, the weighting of votes in the Council and the possible extension of the qualified majority voting. In addition only certain connected issues are taken on board.

However, the Portuguese presidency may propose additional issues to be taken on the agenda.

Certain recent events have had a significant impact on the circumstances in which the IGC will take place - and thus, possibly, to its agenda. I am referring to three in particular.

Firstly, the Kosovo crisis again demonstrated the limitations of the Union's security-policy role. As a consequence, a process on the development of the common European policy on security and defence will run in parallel with the IGC. Progress during the Portuguese presidency will give an indication on whether or not Treaty amendments are judged necessary.

Secondly, the need to project stability in Southeast Europe in the aftermath of the Kosovo war has changed the expectations as to the next enlargement.

At the latest now the EU leaders have to take the prospect of a Union with around 30 Member States seriously. After Helsinki, the accession process already comprises 13 candidate states, including Turkey. This speaks in favour of a more comprehensive institutional reform than envisaged so far.

Thirdly, the political stalemate between the Parliament and the Commission (the Council being an innocent observer) in winter 1998-99 triggered an institutional confusion. This should encourage Europe's leaders to tackle profoundly the problems in the institutional set-up of the Union.

Regarding the size and composition of the Commission the legitimacy argument seems to prevail over the efficiency argument. Prevailing view in the Member States seems to be that the legitimacy of the Commission is best ensured by having one national from each Member State in the College.

The weighting of votes in the Council has a link with the future shape of the Commission. The countries losing commissioners should be winners when votes are re-weighted. It appears that a dual majority option (votes and population) is seen as being too cumbersome compared to re-weighting of the current votes. In any event, a balanced reflection of the respective population sizes of the Member States is likely to be on the bigger Member States' agenda.

The possible extension of qualified majority voting is a hard nut to crack. While it is admitted that QMV is a key to efficient decision-making, a number of areas seem destined to remain subject to unanimous decision-making even in an enlarged Union. Nevertheless, it is of utmost importance to extend QMV with the prospect of enlargement. For instance, it should be extended to provisions in closely related areas of Community policy where QMV already applies, such as the single market, the Community budget, and external economic relations.

5 Reforming the Council

The challenge of enlargement and search for efficiency are also reshaping Council working methods. This need was well recognised in the Report of Secretary-General Jürgen Trumpf on the operation of the Council, published in March 1999.

The necessity to streamline and reinforce co-ordination, starting within the Member States themselves, is regarded as the crucial remedy. Comparative research has proven that it is indeed possible to construct effective and efficient co-ordination mechanisms of EU policy-making, such as the ones

build around the French SGCI and British Cabinet Office, or their equivalents in some smaller member states.⁴

The European Council of Helsinki endorsed the operational recommendations of the Trumpf report and the conclusions of the Finnish Presidency by stating

*Each Member State will keep under permanent review its internal co-ordination arrangements for EU matters so that they are tailored to ensuring the optimum functioning of the Council. On the basis of a contribution from each Member State giving a practical description of internal co-ordination procedures on EU matters, a summary of co-ordination systems in different Member States will be compiled by December 2000.*⁵

One of the focal points is saving – or rather reinforcing or perhaps even reinventing – the horizontal policy co-ordination role of the General Affairs Council by means of the better agenda management and suitable Member State representation. The Helsinki Conclusions state that

*The General Affairs Council must be in a position to deal effectively with horizontal internal issues including overall policy co-ordination. The GAC agenda shall accordingly be divided in two distinct parts. Member States shall ensure that they are suitably represented at ministerial level at both parts of the session.*⁶

Consequently, the GAC ought to be divided, firstly, into a co-ordination Council or a “true GAC”, and secondly, into a Council responsible for foreign and security policy. How the Member States will be represented in the first one, is left for them to solve. If the new arrangements start truly to take off, one could witness a variety of ministerial positions present in the new co-ordination GAC, stretching from Deputy Prime Ministers to Foreign Ministers and Ministers responsible for European Affairs. At any rate this solution should produce a better outcome in terms of genuine policy co-ordination than the present rather “virtual” co-ordination done by Foreign Ministers, which has led in practice to a situation where the Coreper is in charge of policy co-ordination. The pooling of sovereignties in economic policy and public policy in general should naturally lead to the strengthening of domestic-policy component in EU policy co-ordination.

Other working methods to be reformed include reduction of Council formations and concentration on the legislative role of the Council by

⁴ Lampinen-Rehn-Uusikylä 1998, 17-24.

⁵ Council 1999d, 10.

⁶ Council 1999d, 2.

refraining from adopting high numbers of less important texts. For instance a merger of Industry, Internal Market and Telecoms Councils could pave the way to a more modern and relevant Competitiveness Council. It would have the role of the key microeconomic Council in parallel with the central macroeconomic formation, the Ecofin Council.

6 A balance sheet

Wolfgang Wessels has introduced four models that describe the policy-making system of the Union:

- 1 the Technocracy Model (Commission as the predominant institution and as a body of “wise persons”),
- 2 the Federal Model of the United States of Europe (Commission as the proto-government, in balance with the Parliament of strong powers),
- 3 the Intergovernmental Model of a Confederal Europe (the European Council and the Council as predominant institutions; the Commission as the secretariat of the Council, and the EP as a “forum”),
- 4 the Co-operative Federal Model of a Merged Europe (the four institutions in balance; the Commission as a promotional broker).

If the early days were dominated by the technocratic model of “the wise men’s Commission”, the institutional balance shifted in 1966 several steps towards the intergovernmental model. From the mid-1980s, or from the Delors days and Kohl-Mitterrand era onwards, the Council, especially the European Council, and the Commission dominated the scene. The Council-Commission axis has been the predominant one, although the Parliament has emerged as a more affirmative challenger and an occasional partner since the Single Act and the Maastricht Treaty.

What happens to the institutional balance once the impact of the Amsterdam Treaty is fully felt? Are we moving towards the ‘co-operative federal model’ of Wessels? Of course it is too early to say anything conclusive today. Yet, a more affirmative Parliament is a fact of life for both the Commission and Council. However, as said before, this is not and should not be treated as a matter of a zero-sum game.

One option is to resort to a more functionalist than federalist approach. If the respective institutions are able to invest in a co-operative relationship in a profoundly professional way, and if they can thus improve the overall effectiveness of the EU decision-making, then the Union as a whole will have a lot to gain. To my mind, the Union suffers as least as much from an *effectiveness deficit* than from a *democratic deficit*.

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**Seminar National Parliaments and the EU – Stock-taking for the post–Amsterdam era
on 13th October 1999, Eduskunta (Parliament of Finland), Helsinki, Auditorium**

**National Parliaments and governments in the EU institutional system after the
Amsterdam Treaty**

**Co-rapporteur: Dr. Michael Fuchs, Head of the Secretariat of the Committee on the
Affairs of the European Union, Bundestag, Germany**

1.

The position of the German Bundestag in the field of European policy was already prior to the Amsterdam Treaty very strong.

This was due to the judgement of the Federal Constitutional Court of 12th October 1992 on the Maastricht Treaty. In the headnotes to its judgement, the Court stated inter alia that „democratic legitimation is achieved by referring the activities of European bodies to the Parliaments of the member states“. The amendment of the Basic Law, which took place at the same time as the ratification of the Maastricht Treaty and which gave the German Bundestag broader powers of participation and control in the field of European policy, was taken by the Federal Constitution Court as one of the main grounds for judging the Maastricht Treaty to be compatible with the German constitution, thus allowing the Federal Government’s law of ratification to pass.

In its own wording the Federal Constitutional Court judged as follows: „If a union of democratic states performs sovereign tasks through the exercise of sovereign authority, it is first and foremost the citizens of the member states who must legitimise such action through a democratic process via their national parliaments. Thus democratic legitimation is achieved by referring the activities of European bodies to the parliaments of the member states; in addition, as the nations of Europe grow closer together, democratic legitimation will increasingly be supplied, within the institutional structure of the European Union, by the European Parliament, which is elected by the citizens of the member states. The pivotal factor is that the Union’s democratic basis must be extended in line with the progress of integration and that living democracy is maintained in the member states during that process. If, as at present, the citizens supply democratic legitimation via their national parliaments, then the expansion of the responsibilities and authority of the European Community is limited by virtue of the democratic principle. The German Bundestag must be left with a substantial level of such tasks and authority“.

2.

Following this judgement of the Federal Court the Basic Law was amended. So, in Germany we are in the fortunate position that the European Affairs Committee and its powers are set forth in the Constitution, which gives this Committee a powerful position. Out of twenty-three standing committees only four are mentioned in the Constitution, above them the European Affairs Committee.

In order to guarantee the exercise by the Bundestag of its rights in the European policy, Article 45 of the Basic Law was amended and now stipulates the appointment of a parliamentary committee on the affairs of the European Union. In a departure from the principle that parliamentary committees merely have the task of preparing decisions to be taken by the plenary, the EU committee may under certain conditions state opinions directly to the Federal Government. Thus it has decision-making powers, which under the Constitution may in principle only be exercised by the plenary.

Article 23 of the Basic Law considerably extended the rights of the German Bundestag with regard to its influence on European legislation. The new Article 23 stipulates that the Bundestag and the Bundesrat shall participate in the shaping of European legislation. The Federal Government is obliged to inform the Bundestag and the Bundesrat comprehensively and as quickly as possible on all relevant matters. Moreover the Bundestag must have an opportunity to state its opinion on these matters before the Federal Government takes a binding position in the European decision-making bodies in which it represents the Federal Republic of Germany. If the Bundestag states an opinion on a given matter, the Federal Government is obliged under Article 23 to take account of this opinion in its negotiations with the governments of other member states of the European Union. Therefore, for the first time the Bundestag has the formal ability of exerting influence on the elaboration of European directives and regulations before they are adopted by the Council of Ministers and thus become law. The Federal Government must now „take account of“ the opinions and decisions of the Bundestag. Although there is room for doubt as to the „legally“ binding nature of such opinions on the Federal Government, they do reinforce the obligation of the Federal Government to deal with certain matters with due care and attention and to explain its reasons for taking a particular course of action. If the Federal Government deviates or wishes to deviate from the position taken by the Bundestag, it has an obligation to account and provide the reasons for such a step. Incidentally, this obligation also derives from the general accountability of the Government to Parliament.

It must be noted that, in accordance with Article 23, paragraphs 4 and 5 of the Basic Law, the Bundesrat also has a right to state opinions to the Federal Government, which do not necessarily have to coincide with those of the Bundestag. It remains to be clarified how a conflict resulting from diverging opinions, which has yet to occur in the practical work of the EU committee, could be resolved. From the point of view of the Bundestag, where conflicting opinions are stated by the Bundestag and the Bundesrat on a matter of Federal competence, which in the framework of the national legislative process would not be subject to the consent of the Bundesrat, the Bundestag's position would form the main basis for action by the Federal Government. It must also be borne in mind here that the readdressing of the „democratic deficit“ within the EU requires genuine „parliamentary“ control. In contrast to the members of the Bundestag, however, the representatives of the Land governments in the Bundesrat do not enjoy direct democratic legitimation. Conversely, in cases „where essentially the legislative powers of the Länder, the establishment of their authorities or their administrative procedures are affected“ the opinion of the Bundesrat would prevail in the

the Federal Government would in principle be free to decide itself which opinion it wished to adhere to.

Also in 1993, the Bundestag passed a law designed specifically to enable cooperation with the Federal Government in line with Article 23 of the Basic Law. In section 3 this law stipulates that the Federal Government must inform the German Bundestag as soon as possible of all initiatives launched within the framework of the European Union which could be of interest to the Federal Republic of Germany. Under section 4 the Federal Government is obliged to submit to the Bundestag all the relevant regulations in their initial draft form, to inform the Bundestag of the plan of discussion of these drafts at European level and to explain the position it intends to take in these deliberations. It must also inform the Bundestag of the opinions of the European Parliament and the European Commission, the opinions of the other member states, and of the decisions taken. Section 5 defines more precisely the Federal Government's obligation under Article 23 paragraph 3 of the Basic Law to give the Bundestag an opportunity to state its opinion before participating in the legislative process within the European Union. The period within which the Bundestag may state its opinion must be such that Parliament has sufficient opportunity to consider the item concerned. The Bundestag expects the Federal Government to recommend an appropriate time for considering the item in question and for stating its opinion. If it is not possible for the Bundestag to consider the item in time, the Federal Government cannot agree to the proposed legislation in Brussels and must launch a so-called „parliamentary proviso“ in the Council of Ministers, i.e. a statement to the effect that its decision is conditional on an opinion being stated by the Bundestag. Once the Bundestag has had an opportunity to state its opinion, the Federal Government can lift its „parliamentary proviso“ at the next meeting of the Council of Ministers and taking into account the Bundestag's opinion, it may continue the negotiations.

3.

The strong position of the German Bundestag and its European Affairs Committee also results from special powers of the EU committee which are set forth in the Bundestag Rules of Procedure. This further underlines the special role of the EU committee, intended by the law makers in ensuring parliamentary oversight and monitoring of the process of European integration.

a)

The German Bundestag can empower the EU committee to exercise the rights of the Bundestag in relation to the Federal Government for a given EU item. This possibility is unique in German parliamentary history. The underlying reason for this arrangement is that decisions on European policy often have to be made during times of great pressure, depending as they do more on the timetable in Brussels than on the schedule of work in the Bundestag. Essentially, the Bundestag only convenes in plenary in weeks of sittings fixed long in advance by the Council of Elders. Hence, owing to its far greater flexibility, it can occur that the Council of Ministers takes a decision before the plenary of the Bundestag is able to deal with the EU item in question during its next week of sitting. A similar situation can also arise during the parliamentary recess. Now, however, the Bundestag can leave it to the EU committee to deal more quickly and flexibly with the new items, thereby ensuring close parliamentary monitoring of negotiations at European level and avoiding unnecessary delays in the legislative process.

b)

Important for the work of the EU committee is, furthermore, the arrangement whereby the committee can state binding opinions on EU items to the Federal Government without the specific authorisation of the plenary, if, beforehand, it reaches agreement with the specialised committees involved.

c)

With regard to the opinions it regularly submits on EU items dealt with by the Bundestag's specialised committees the EU committee also enjoys a special position. If, once an EU item has been dealt with by all the relevant committees, a specialised committee – as the committee responsible – submits a report and recommendation for a decision to the plenary, only the EU committee is entitled to move amendments to them during the plenary deliberations. This arrangement is intended primarily to allow rapid modification of the Bundestag's stance in response to the legislative process in Brussels. If, in its recommendation for a decision by the plenary, a specialised committee responsible for dealing with an EU item fails to take into account the opinions submitted by the EU committee, the latter can press for its position to be taken into account in the plenary's deliberations by moving an amendment to the recommendation. This arrangement also gives the EU committee a privileged position vis à vis the specialised committees in the case of EU items.

d)

A further special power vested in the EU committee but not in the Bundestag's specialised committees is its enhanced room for maneuver in planning its meetings. Given that as little time as possible must elapse between the meetings of the EU institutions and those of the EU committee, the committee chairman has the power, in consultation with the President of the German Bundestag, to convene the committee outside parliament's scheduled weeks of sittings.

e)

Finally in accordance with the Bundestag's Rules of Procedure the Chairman of the EU committee in agreement with the specialised committees, submits to the President of the Bundestag a proposal for referral to committee of the EU items received and of other EU documents declared by the committees to be items for discussion. In consultation with the Council of Elders, the President then refers each item to one committee as the committee responsible and to other committees as committees asked for an opinion. In practice, the Chairman's proposal, which is often the outcome of a laborious process of consultation and coordination with the specialised committees carries great weight in the decision on referral subsequently taken by the Council of Elders and the President.

4.

A further element in the strong position of the Bundestag and its EU committee is the fact that German members of the European Parliament shall have access to the meetings of the EU committee and that additional German members of the European Parliament shall be entitled to attend as substitutes. Thus the EU committee of the Bundestag and its members are not only dependent on the information given by the Federal Government, they also have access to the decision-making process of their parliamentary colleagues from the European Parliament

are not entitled to vote, are appointed to the committee by the President of the German Bundestag on the basis of nominations submitted by the parliamentary groups until the next elections to the European Parliament or, at most until the end of the electoral term of the German Bundestag. For the current fourteenth electoral term parliamentary groups have agreed on a total of fourteen committee members from the European Parliament in line with the relative strength of the parties in the EP: the CDU/CSU has appointed seven, the SPD five, the Alliance 90/The Greens one, and the PDS one to the committee. The FDP is not currently represented in the EP. As committee members the members of the European Parliament may attend committee meetings, table proposals for the agenda, provide information and state opinions. However, only the members of the German Bundestag on the committee have a right to vote. The importance of participation by MPs in the work of the EU committee should not be underestimated, even if they rarely attend its meetings. An exchange of information on issues of common concern often serves to strengthen common positions, for instance on the negotiating stance to be taken by the Federal Government at the IGC.

Séminaire sur "les Parlements nationaux et l'U.E. "
Perspectives au lendemain d'Amsterdam
Helsinki – 13.10.99

thème 3: Les Parlements nationaux et les Gouvernements dans le système institutionnel après le Traité d'Amsterdam.

Co-rapport de D. Lucion, secrétaire du Comité d'avis chargé de questions européennes de la Chambre des représentants de Belgique

1 Introduction

La Belgique a toujours défendu l'idée de l'intégration européenne. Cet objectif n'a jamais fait l'objet de différends politiques profonds.

Lors des dernières élections législatives en Belgique, en juin 1999, l'Europe n'a pas constitué un point controversé durant la campagne électorale. Les divergences politiques en matière européenne ne sont que des différences de nuance qui reflètent l'idéologie intrinsèque des partis. Dans sa déclaration du 14 juillet 1999 devant la Chambre des représentants, le nouveau gouvernement belge s'est engagé à poursuivre l'approfondissement de l'Union européenne dans une perspective fédérale et à renforcer la crédibilité européenne de la Belgique, en veillant notamment à ce que les directives européennes soient transposées dans les délais.

Comme nous allons le préciser ci-dessous, l'entrée en vigueur du Traité d'Amsterdam n'a pas entraîné en Belgique de modifications sensibles en ce qui concerne les relations entre le gouvernement belge et le Parlement fédéral.

1 Le Traité d'Amsterdam et les Parlements Nationaux

Le protocole sur le rôle des parlements nationaux dans l'Union européenne qui figure dans le Traité d'Amsterdam rappelle fort judicieusement que le contrôle exercé par les différents parlements nationaux sur leur propre gouvernement, pour ce qui touche aux activités de l'Union, relève de l'organisation et de la pratique constitutionnelle propres à chaque État membre.

Ce même protocole précise que les documents de consultation de la Commission (livres verts, livres blancs et communications) sont transmis rapidement aux parlements

nationaux et que les propositions législatives de la Commission sont communiquées suffisamment à temps pour que le gouvernement de chaque État membre puisse veiller à ce que le parlement national de son pays les reçoive comme il convient.

Enfin, un délai de six semaines doit s'écouler entre le moment où une proposition législative ou une proposition de mesure à adopter en application du titre VI du TUE est mise par la Commission à la disposition du Parlement européen et du Conseil dans toutes les langues et la date à laquelle elle est inscrite à l'ordre du jour du Conseil en vue d'une décision, soit en vue de l'adoption d'un acte, soit en vue de l'adoption d'une position commune...".

1 Relations entre le gouvernement belge et le Parlement fédéral en matière communautaire

3.1. Transmission des propositions législatives de la Commission aux Parlements nationaux

a Situation en Belgique

Le contrôle parlementaire classique se fonde sur les articles 100 et 101 de la Constitution.

Suivant l'article 100, la Chambre des représentants peut requérir la présence des ministres; l'article 101 stipule que les ministres ne sont responsables que devant la Chambre des représentants et plus devant le Sénat. Ces deux articles illustrent la prééminence du pouvoir législatif en Belgique.

C'est dans ce cadre que le contrôle parlementaire, également sur les Affaires européennes, s'est toujours exercé. A la demande des parlementaires, le Gouvernement est tenu de fournir au Parlement toute information utile en matière européenne.

A l'occasion de la réforme de l'État, la loi spéciale du 5 mai 1993 sur les relations internationales a introduit une obligation d'information du Gouvernement fédéral (et des gouvernements régionaux) aux assemblées parlementaires: Chambre, Sénat et autres Conseils régionaux.

L'article 4, intitulé: "Information des Chambres et des Conseils sur les propositions d'actes normatifs de la Commission des Communautés européennes", stipule : "Dès leur transmission au Conseil des Communautés européennes, les propositions de règlement et de directive et, le cas échéant,

des autres actes à caractère normatif de la Commission des Communautés européennes sont transmises aux Chambres et aux Conseils chacun pour ce qui le concerne".

La transmission systématique des propositions d'actes communautaires par le Gouvernement ne répond pas au modèle parlementaire belge. Les propositions ayant un caractère politique important peuvent aussi, mais cela n'est pas systématique, être traitées par des initiatives parlementaires (interpellations, questions écrites et orales, propositions de lois, ...)

Le Parlement belge a, comme en toute matière de sa compétence, le droit de s'informer au sujet des propositions législatives de la Commission sans pour cela devoir faire appel au Gouvernement. Il n'en va pas toujours de même dans d'autres pays membres qui dépendent formellement de leur gouvernement pour être informés et saisis des textes communautaires. En Belgique, le contrôle parlementaire en général et aussi en matière européenne (et ceci pour les 3 piliers) s'exerce de façon plus indépendante. La loi spéciale susmentionnée n'a fait que confirmer une coutume parlementaire bien ancrée.

Cette obligation d'information n'a donc pas entraîné de modifications fondamentales en ce qui concerne le contrôle, par le parlement fédéral, du processus de décision européen.

Cette nouvelle disposition législative n'a fait que confirmer une procédure informelle qui s'est développée au sein du Comité d'avis chargé de questions européennes¹ qui s'informe des propositions de la Commission européenne via le Journal officiel des Communautés européennes.

Le secrétariat du Comité d'avis reçoit également copie de tous les documents et de toutes les propositions d'actes normatifs de la Commission européenne. Une sélection est ensuite opérée par les membres et des fiches techniques sont élaborées pour chaque document sélectionné et publiées sous forme de document parlementaire (voir description de la procédure en annexe 1).

La disponibilité des textes communautaires ainsi que les délais de transmission et d'examen n'ont que rarement constitué un réel obstacle au développement d'un travail parlementaire de qualité en matière européenne. En outre, les textes les plus importants font souvent l'objet d'un processus d'adoption assez lent par les institutions communautaires. Le fait que l'aboutissement de la procédure d'adoption au sein des institutions

¹ Le Comité d'avis se réunit, en principe, une fois par mois, en réunion publique pendant les périodes de session parlementaire. A son initiative ou à la demande d'un parlementaire national ou européen, il donne des avis, sous forme de rapports publiés dans la série des documents parlementaires, sur des questions européennes au sens large.

communautaires ne viennent priver le Parlement belge de la faculté d'exprimer, s'il le souhaite, son avis sur un texte communautaire important, reste une exception. En outre, contrairement à la procédure mise en place par l'Assemblée nationale française², le Conseil d'État en Belgique n'a pas la compétence pour procéder a priori à une analyse systématique des propositions d'actes normatifs européens. Le Conseil d'État n'est saisi qu'à partir du moment où le gouvernement doit le consulter à propos d'un projet d'ordre législatif ou réglementaire transposant les directives européennes en droit interne. Il est à noter que le Conseil d'État ne procède pas davantage au suivi systématique de la transposition ni à son évaluation.

Par ailleurs, le Parlement fédéral belge ne procède pas à un examen systématique de toutes les propositions d'actes communautaires (l'investissement en temps est considérable et la valeur ajoutée n'est pas toujours – me semble-t-il – à la hauteur des efforts consentis).

Outre cette procédure, le contrôle parlementaire sur le II^{ème} et III^{ème} pilier se fait également par les méthodes de contrôle parlementaire classique (interpellations suivies d'une motion de confiance, questions écrites et orales, demandes d'explications, auditions,...). Ces méthodes de contrôle ont donc une portée plus large que dans d'autres États membres.

Dans le domaine de la justice et des affaires intérieures, le rôle des parlements nationaux doit être organisé afin d'exercer le contrôle parlementaire qui s'impose sur ce troisième pilier. C'est notamment ce que prévoit le point II du protocole sur le rôle des parlements nationaux dans l'Union européenne, relatif à la Conférence des organes spécialisés en affaires communautaires³.

C'est surtout le point II du protocole relatif au rôle des parlements nationaux qui constitue l'avancée la plus importante (le point I ne fait, dans une certaine mesure, que codifier la pratique existante au sein des parlements nationaux des États membres). La COSAC voit en effet ses compétences

² En vertu de l'article 88-4 de la Constitution française, le Gouvernement français est tenu de soumettre à l'Assemblée Nationale toutes les propositions d'actes communautaires à caractère législatif. Le Conseil d'État français est chargé d'établir le caractère législatif des propositions d'actes communautaires. Les délais de transmission de ces textes aux Assemblées parlementaires en sont parfois prolongés.

³ La COSAC peut examiner toute proposition ou initiative d'acte législatif en relation avec la mise en place d'un espace de liberté, de sécurité et de justice et qui pourrait avoir une incidence directe sur les droits et les libertés des individus. Le Parlement européen, le Conseil et la Commission sont informés de toute contribution soumise par la COSAC au titre du présent point. La COSAC peut adresser au Parlement européen, au Conseil et à la Commission toute contribution qu'elle juge appropriée sur les activités législatives de l'Union, notamment en ce qui concerne l'application du principe de subsidiarité. l'espace de liberté, de sécurité et de justice, ainsi que les questions relatives aux droits fondamentaux.

renforcées et pourra désormais adopter des textes qui seront transmis aux institutions européennes.

1 Conclusions

Le rôle des parlements nationaux se situe plutôt en amont du processus de décision communautaire.

Le renforcement du contrôle des parlements nationaux sur la prise de décision au niveau européen présente deux limites:

- les parlements nationaux ne pourront jamais exercer leur contrôle que sur leur gouvernement; c'est-à-dire sur un seul des quinze membres que compte le Conseil des ministres européen.
- en outre, le parlement national se trouve institutionnellement dans une situation d'infériorité par rapport à son propre gouvernement qui, en qualité de membre du Conseil des ministres européen, agit en tant que législateur.

Il ne faut également pas perdre de vue que le contrôle parlementaire est aussi soumis à des restrictions particulières lorsqu'une décision est prise à la majorité qualifiée au sein du Conseil. Le point de vue du gouvernement national peut en effet être rejeté par un vote. Si le gouvernement a maintenu son point de vue, le parlement national ne peut rien lui reprocher. La prochaine C.I.G. devrait d'ailleurs élargir le champ d'application de la procédure majoritaire.

Le Parlement belge n'a pas jugé utile d'instaurer une réserve d'examen parlementaire (Grande-Bretagne, France) ou l'octroi d'un mandat obligatoire (Danemark). Ces pratiques ne signifient pas nécessairement un examen indépendant des Chambres. Ne s'agit-il pas parfois de légitimer les positions adoptées par le gouvernement?

Le gouvernement belge ne doit donc pas attendre que le Parlement ait formulé ses observations avant de prendre position au sein du Conseil des Ministres européen.

La Chambre dispose toutefois du pouvoir de sanctionner, le cas échéant, la politique mise en oeuvre par le gouvernement en matière européenne en renversant ce dernier.

Le Parlement belge exerce plutôt un pouvoir d'influence et de surveillance à l'égard du gouvernement. –Les résolutions adoptées par le Comité d'avis sont transmises directement à la séance plénière et débattues en présence du gouvernement. L'organisation systématique de réunions du Comité d'avis fédéral et de la Commission

des relations extérieures de la Chambre et du Sénat, avant et après chaque Conseil européen des chefs d'État et du gouvernement, en est un exemple.

Ainsi, suite à l'échange de vues avec le Premier ministre belge, G. Verhofstadt, le 30 septembre dernier, sur la position que la Belgique défendra au Conseil européen de Tampere, le gouvernement belge a incorporé dans sa note de base, à la demande des parlementaires et avant même que le Conseil des ministres belge n'arrête sa position définitive, un paragraphe consacré aux causes des flux migratoires et des demandes d'asile.

Le gouvernement s'est engagé à défendre l'insertion de ce point dans les conclusions du Conseil européen de Tampere. Grâce à ce débat démocratique, le Parlement belge a pu faire connaître, à temps, son opinion sur les décisions à prendre après avoir entendu le Premier ministre exposer les priorités du gouvernement belge en la matière.

Si la volonté politique des parlementaires nationaux de suivre les affaires européennes est importante, celle du gouvernement de rendre compte au parlement ne l'est pas moins.

Ainsi, le gouvernement belge dans sa déclaration du 14 juillet 1999 devant la Chambre des représentants, s'est clairement engagé à associer plus étroitement le Parlement fédéral à la préparation de sa politique européenne et à inviter le Parlement à organiser un débat avant chaque grande échéance européenne.

Quelles que soient les formes que revêt le contrôle parlementaire de la construction européenne, il n'en reste pas moins que les parlements nationaux et leur commission spécialisée en affaires européennes se sont, au fil du temps, révélés être des interlocuteurs incontournables, à mesure que l'intégration européenne progressait.

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7. 10. 1999

Annexe 1:

Examen par le Comité d'avis fédéral chargé de questions européennes des propositions d'actes normatifs et autres documents de la Commission européenne

Le Comité d'avis fédéral a mis en oeuvre, à partir de janvier 1996, une procédure permettant une analyse plus "systématique" des propositions d'actes normatifs des Communautés européennes.

Au cours de la session, le Comité d'avis fédéral reçoit mensuellement une liste de propositions d'actes normatifs et d'autres documents (Livres verts et blancs, Rapports, Communications, Avis,...) de la Commission européenne.

Chaque groupe politique représenté au Comité d'avis introduit une proposition qui doit être prise prioritairement en considération pour la rédaction d'une fiche technique. Les thèmes choisis doivent d'une part avoir trait aux compétences fédérales et d'autre part, être pertinents pour le Comité d'avis. Le Comité peut y ajouter d'autres propositions.

Chaque mois, un rapporteur est désigné pour l'ensemble des propositions sélectionnées et une fiche technique succincte est consacrée à chacune d'entre elles.

A cet effet, le rapporteur peut rassembler des informations auprès des instances concernées (en particulier le Ministère des Affaires étrangères, Service de l'intégration européenne).

Les projets de rapports, contenant les fiches sur les documents sélectionnés par les groupes politiques, sont examinés au cours des réunions mensuelles. Le Comité d'avis peut conclure à la saisine d'une Commission permanente, invitée à suivre l'affaire de près, à des demandes d'explications, remarques et suggestions adressées au gouvernement ou à la nécessité d'un examen approfondi dans le cadre d'un rapport spécifique susceptible d'aboutir à une proposition de résolution adressée au gouvernement, et soumise à l'approbation de la séance plénière de la Chambre et/ou du Sénat.

Enfin, la Chambre des représentants prend acte en séance plénière des conclusions formulées, par le Comité d'avis, à la suite de l'examen des fiches techniques.

Depuis octobre 1995, le Comité d'avis fédéral a publié une dizaine de rapports consacrés à l'examen des propositions d'actes normatifs de la Communauté européenne.

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7.10.1999

Seminar in the Parliament House in Helsinki Wednesday 13 October 1999

Theme III: National Parliaments and Governments in the EU Institutional System after the Amsterdam Treaty

Co-rapporteur Bjørn EINERSEN, Head of the EU Secretariat, Folketinget, Denmark

As the last of the co-rapporteurs it is my task to comment on the report from Dr. Olli REHN, Head of Erkki LIIKANEN's Cabinet in the European Commission. It is a pleasure because Olli REHN's report is an excellent one. It is a sound and precise analysis based on the development of the European Union from the Rome Treaty to the Amsterdam Treaty. And it also contains some very inspiring perspectives for the future, presented here as Olli REHN's purely personal views.

In his discussion on the theme: "Who was the winner in Amsterdam?" Olli REHN gave an interesting answer:

- The European Parliament was the winner
- The Council of Ministers was the winner - and
- The European Commission was the winner

I think this is a correct answer because the negotiations that resulted in the Amsterdam Treaty were not a zero-sum game.

I would like to add that there was also a fourth winner in the game:

- The National Parliaments were also the winners

I hereby refer to the Protocol to the Amsterdam Treaty on the role of National Parliaments in the European Union. I will come back to this protocol later. And of course: If the Council of Ministers is the winner the national parliaments will also be the winners because national governments derive their power from national parliaments. I think that if the institutions of the European Union can work well together and achieve a common goal it will benefit everybody.

Having said that, I would like to add, however, that the fight between the institutions that we so often envisage in the daily functioning of the European Union is in danger of making us all losers. Dr. Olli REHN said today that ordinary citizens do not distinguish between the Commission, the Council and the European Parliament. That is also the impression I have got from speaking with ordinary Danish citizens. When the European Union Machine does not deliver the result, the citizens criticise - or reject - the Union as a whole. They do not use the term Olli REHN uses in his written report where he talks about an "effectiveness deficit", but that is what they mean.

In my view the solution to the democratic deficit is not to give more power to the European Parliament. Because to the ordinary voters the European Parliament is an institution far away from their daily life. Jean LAPORTE from the French Sénat said that you could not have a debate in the European Parliament broadcasted in French television. It would not interest a French audience. The situation is exactly the same in Denmark. Many Danish voters only read about the Members of the European Parliament in their newspaper when there is a new scandal of misuse of funds or extravagant travel allowances.

I do not have the solution to the problem of the real democratic deficit: the gap between the European Union as such and the ordinary voter. But two key words are "openness" and "transparency".

The third key word is "national parliaments". Here I am in line with Dr. Michael FUCHS who cited the German Federal Court's judgement:

"If a union of democratic states performs sovereign tasks through the exercise of sovereign authority, it is first and foremost the citizens of the member states who must legitimise such action through a democratic process via their national parliaments."

The voters have far more confidence in their nationally elected parliamentarians. The turn out at national elections proves that. By strengthening the influence of national parliaments we can strengthen the public support for the Union project. And opinion polls show us that the project needs it.

This brings me back to the protocol to the Amsterdam Treaty on the role of National Parliaments in the European Union. The protocol that in its preamble talks about the desire "to encourage greater involvement of national parliaments in the activities of the European Union and to enhance their ability to express their views on matters which may be of particular interest to them."

I will not discuss the role of COSAC - that was done yesterday by the politicians at the COSAC meeting - but raise a question concerning one provision in the protocol. This provision was also cited before by Daniel LUCION from the Belgian Chambre des Représentants. The provision reads:

"All Comomission consultation documents (green and white papers and communications) shall be promptly forwarded to national parliaments of the Member States."

The question I will raise may be regarded as a technical one, but I think it has also some political implications. And it is relevant in the context of the theme of this seminar: National Parliaments and Governments in the EU Institutional System after the Amsterdam Treaty. I raise the question today because perhaps Dr. Olli REHN, who has a high post in the Commission, can give us an answer. The question is:

Will the Commission in the future forward these consultation documents promptly and directly to national parliaments of the Member States? That is not only through the national governments.

I agree with Elizabeth FLOOD from the House of Commons who in her co-report pointed out that it would be worth while to deal with green and white papers from the Commission at an early stage. Since the entry into force of the Amsterdam Treaty the Danish Parliament has taken this matter of scrutinising green papers from the Commission seriously. We try to examine the papers at a public hearing. At this hearing spokesmen from all political parties discuss the green paper with the relevant minister and with experts. And after the hearing the spokesmen try to agree on a resolution. If they agree, the chairman of the European Affairs Committee sends the resolution to the Commission and to the other bodies of the European Union.

But sometimes we have a time problem. It may take two or four weeks from the date the Commission agrees on a green paper to the date the Folketing receives it from the Danish Government. I know that sometimes you can get the text from the Internet before the paper version reach you. But if the fathers of the protocol to the Amsterdam Treaty mean what they wrote about the desire to encourage greater involvement of national parliaments it would be natural that the originator of the green paper, namely the Commission, sends it to the national parliaments and asks their opinion. If this was done I think the national parliaments would feel more obliged to examine the green paper and react.

I admit that it is not crystal clear who shall send the green paper to the national governments. But if you look at the provision in the context of the following provisions in the protocol the most logical reading would be that it is the Commission that shall send the green papers directly to the national governments.

Article 2 talks about "Commission proposals" and specify that these are sent through the government. The same procedure was followed before the Amsterdam Treaty.

Article 3 talks about "legislative proposals" from the Commission and specify that they shall be available to the Council for a six week period before a decision is made in the Council. But article 1 talks about "all Commission consultation documents" and specifies that they "shall be promptly forwarded to national parliaments of the Member States". The different wordings of the three articles indicate that the procedure should not be the same for all three types of documents. As it was before the Amsterdam Treaty where all Commission documents were sent to the Council.

I hope article 1 will be practised in this way from now on:

"All Commission consultation documents (green and white papers and communications) shall be promptly forwarded *from the European Commission directly* to the national parliaments of the Member States."

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