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National Parliaments after Amsterdam : Adaptation, Re-Calibration and Europeanisation by process

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1. European Integration as a Challenge for Parliamentary Democracy

The role of national parliaments in the European architecture is one of the main themes of the post-Nice reflection process on the future of the European Union (EU). It is interesting to note that the declaration did directly address the national parliaments. One could have also imagine a broader theme such as the role of parliaments or of parliamentary democracy in an enlarged Union. The reason for the concentration on one level of the EU's system might be the debate during the 'printemps constitutionnel' of 2000: Joschka Fischer, Jacques Chirac and Tony Blair refreshed a debate, which started during the Maastricht IGC on how to link national parliaments into a continuous process of problem-solving beyond the nation-state. Hence, the speeches did not directly affect the rolling agenda of the Nice negotiations. But they certainly provided a shadow behind which member states governments deliberated and decided on how and when to deal with an issue, which will affect the entry of new member states and 'young democracies'. Hence, Enlargement is not only about the votes of each country in the Council of Ministers and the seats in the European Parliament. The enlargement towards an EU XXL of 27 members also addresses a more general issue, that of means for organising a democratic aggregation, representation and mediation of interests, wishes, concerns, fears within a more and more complex system of governance. Although the elites of the candidate countries are aware of the effects of membership in institutional terms – including a loss of legislative powers for parliaments – sustainable legitimacy of EU membership needs more than the entry of the citizenry into an open and free market.

As the European Union moves forward to a more and more complex political system, which uses state-like instruments within a non-state polity, national parliaments and the European Parliament face a number of challenges which call their institutional position as directly legitimate and representative aggregates of the European Union's citizenry into question: They are constantly having to adapt and adjust the possibilities and arrangements for parliamentary involvement in response to Community legislation and Union action.¹

It is commonplace to note that the transfer of national parliamentary powers to the European level has not automatically entailed a transfer of these originally legislative powers to the European Parliament. Instead, "the transfer of powers from the national to the European level has been larger and more rapid than either the strengthening of the powers of the European Parliament or the supervision by national parliaments of the development of European legislation".² In addition, since Maastricht and Amsterdam, decision-making on an intergovernmental basis in the fields of CFSP as well as in the framework of Justice and Home affairs is recognised as a well-known and already practised (through EPC), but constitutionally new element of European governance, where neither the European Parliament nor the national parliaments are invited to participate actively in the formulation and codification of legal acts. Instead, parliamentary involvement is mainly restricted to consultation and ex-post information.

Since the ratification of the Maastricht Treaty on European Union (TEU), the loss of parliamentary legislative competencies at the level of the member states became one of the core issues in the Member States and their legislatures. Despite a gradual increase in the European Parliament's legislative and control powers, representatives in national parliaments and in the European Parliament detected various incompatibilities between the institutional and procedural structure of the TEU and the principles of democracy that apply in the European Union and its Member States. They argued that minimum criteria for ensuring compliance with the principles of democracy, to which the preamble and Article 6.1 of the TEU refer, are not fully satisfied.³

1.1. The structural deficit in parliamentary democracy of de-nationalised governance in Europe

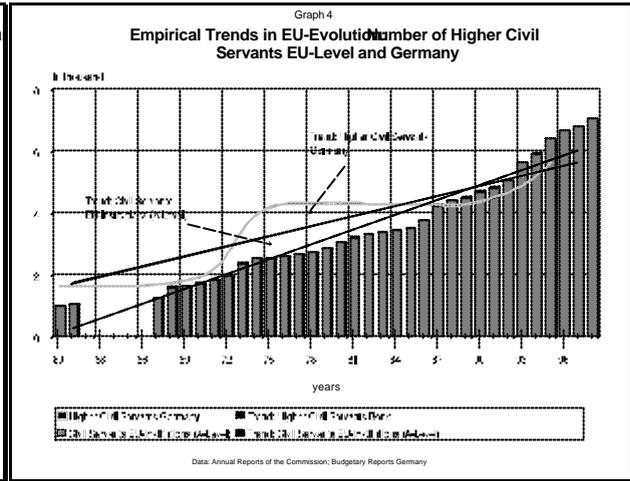
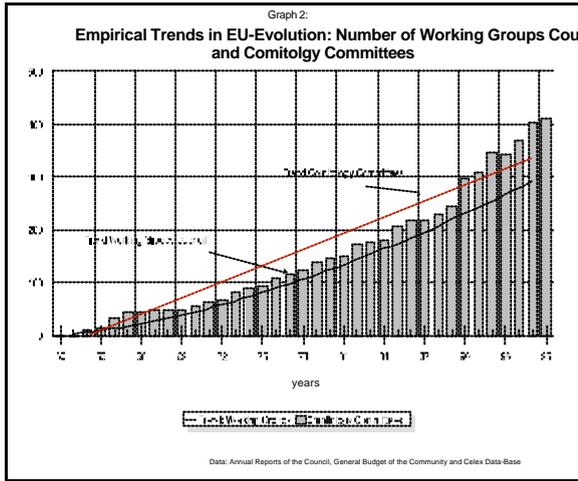
The European Union brings together democratic nation-states. One of the key elements of European democratic systems is that directly elected parliaments represent the citizens, aggregate and publicise their views, fears and opinions and act on their behalf. Whether post-1945 West-European and post-1989 East-European political systems are based on the general frames of parliamentary, presidential or

semi-presidential democracy, they all have a common basis: Democracy is understood as representative democracy, where a (s)elected part of the citizenry acts for a given period within a parliamentary assembly to participate in policy-making and authority-building by a given - constitution-based - set of instruments.

To a greater extent than any other international organisation, the EU has crossed the boundary from horizontal and single issue based, interstate co-operation to both horizontal and vertical policy making in a dynamic multi-level structure, in which Member States are but one level of an emerging Polity.⁴ In so far, one can conceive the EU as a dynamic political system, which exercises quasi-governmental power without being based on a single government but on various – unstable or fluid – kinds of government structures and governance procedures. Of course, the process of European integration does not feature the establishment of government structures according to a master plan provided by successful or as lesson of unsuccessful national constitutions. In the contrary, the main idea of and driving force behind European integration was and still is the continuous search for problem-solving capacities in specific policy areas without explicitly considering the mode of appropriate government structures. In this perspective, the EU may be regarded as some kind of a regulatory regime⁵ or a “special purpose organisation”,⁶ which is less dependant on its parliamentary democracy than on efficiently oriented policies – authorised in the name of and for the people(s). This “output-legitimacy” of the Union then “depends on its capacity to achieve the citizen’s goals and solve their problems effectively and efficiently: The highest this capacity, the more legitimate the system”.⁷ However, the EU’s development does not only feature an increasing and dynamic quest for effective policy production, but also an ongoing and collective search for efficient, transparent and democratic frames which enable policy outcomes to be interpreted as legitimate.

From the early 1950’s onwards we also witness an ongoing process of institutional as well as procedural and functional differentiation and complexity,⁸ which has not yet reached its final stage and may not do so in the near future. The nature of the EU has been characterised by a continuing extension of its responsibilities and authorities, which have enlarged the total range of policy areas community-wide. Simultaneously, more and more competencies have been partly transferred from the exclusive national to a supranational level. To reconcile the management of growing responsibilities successfully with the demands for real and functional participation of the political actors involved, new institutions have been established and the already existing institutional framework has been altered.⁹

The procedural and functional differentiation becomes visible when looking at some key aspects of the Union’s structure: We observe that the total number of Treaty articles dealing with specific competencies and decision-making rules – the *enumerative empowerments* - in an increasing amount of specific policy fields has considerably grown from 86 (EEC Treaty 1957) to 219 (Amsterdam Treaty 1999). Further illustrations for the broad scope are being given by the expansion of the number of Commission DG’s (from 9 in 1958 to 24 in 1999) and of autonomous executive agencies (from two in 1975 to 11 in 1998)¹⁰, the agendas of the European Parliament at its plenary sessions and especially the presidency conclusions published after each session of the European Council.¹¹ Also the respective composition of the sectoral Council formats (from four in 1958 to 23 in 1998)¹² as well as the extension of the administrative substructure indicate that governmental actors have become more and more involved in using ‘their’ Brussels network extensively and intensively.¹³



The complexity of the EU is a result of the huge number of its duties, legislative processes and implementation procedures and, at times, the unfathomable nature of the procedures and the roles of the actors involved. Above the five principle procedures ('Simple procedure' without any European Parliament involvement, Consultation, Co-operation, Assent, Co-decision), the Treaties and other inter-institutional agreements offer further decision-making courses depending on the voting rules of the Council and the participation of other institutions (Committee of the Regions, Economic and Social Committee, European Central Bank). The complex structure of the Community becomes visible in this variety of procedures and institutions. The decision-making methods differ both across the areas of application and across the institutions and bodies involved.¹⁴ The Maastricht Treaty introduced new institutions (Committee of the Regions, the European Monetary Institute which has been transformed into a European Central Bank with the beginning of the third phase to the EMU). This development – repeated during in the Amsterdam Treaty¹⁵ by the creation of new institutions (Employment Committee, Mr./Mrs. CFSP, Policy Planning and Early Warning Unit) and the Nice Treaty by the recreation of EUROJUST and the creation of a specific committee dealing with social security issues is an expression of the dynamic of growth and differentiation of European integration. Of course, new institutions and procedures are not established in order to swell even further the institutional structure of the EU, but because they are needed to deal with e.g. new monetary or social policy demands to and duties of the Union, to give the EU a single voice or interface for dealing with third countries and organisations, or – with regard to the Committee of the Regions - to generate an institutional feedback towards the regional and local level of governance. Institutions do not operate in a political vacuum but in a closely connected system of power distribution in which the architects of the Treaty have implemented them. Whenever new institutions gain specific tasks, they do not use them in isolation but in a framework of already established rules and bodies of political power. Concomitantly this process of institutional growth automatically attains a higher degree of complexity. This is obvious for actors involved in this decision-making process, but for the citizens of the EU, it is not.

Overall, the EU's institutional design faces a multitude of questions as to how representative this system of multi-level governance is, in which way its quasi-executive branches – the Council and the Commission - are accountable to the citizens via a directly legitimated body and how democratic the decision making procedures between the Union's legislative authorities are. Of course arguing about parliaments and their potential to provide the European "Demoi" – functionally, nationally or ideologically different realms of identity and interest formation, mediation and communication - a set of representative voices in the Union's policy cycle does not mean that de-nationalised, supra-national parliamentarism is the only way for bridging the gap between the citizens and the Union. One can easily assume that still after the entry into force of the Nice Treaty,¹⁶ many scholars and practitioners of European integration continue to argue that focusing on the 'input' structures of the Union is only one of several ways in which governance "beyond the state"¹⁷ might gain legitimacy. Hence, the German Constitutional Court's 1993 Maastricht ruling lead to a general critique of the EU's parliamentary model. The basic assumption of the Court and later on its protagonist commentators was that a Polity presupposes a demos in ethno-national or ethno-cultural terms (the "Volk" instead of the

“Gesellschaft” or “Gemeinschaft”), and that without a single European people sharing heritage, language, culture and ethnic background, that without a European public space of communication that could shape the wills and opinion of the population, no European statehood could be founded. For those who adopt this view¹⁸, it is apparent to simply deny the pre-constitutional conditions for further integration and therefore to conclude that in the absence of a single European demos there cannot be ‘real’ democracy at the European level.¹⁹ Assuming a socio-political entity – the European Council or any kind of a imaginable ‘constitutional body’ - which is willing to produce democratic forms of governance can not simply dictate structural prerequisites and pre-constitutional elements of the future Polity, one could develop these arguments further to conclude that any attempt of institutional and procedural reform is unreasonable unless the different European Demoi are not identifying themselves as part of an emerging European Demos. Consequently, if one adopts this perspective, the European Parliament remains an artefact of elitist integration and cannot be considered as a “Vollparlament”.²⁰ Strengthening the European Parliament by means of institutional and procedural reforms would not lead to any kind of a democratic system. Instead, one should concentrate on the legitimising function of national assemblies, which in turn would then get substantial participation powers back from the European Parliament.

However, the EU’s story is not only about territory and identity or - in the language of the German Constitutional Court, about culture, shared heritage, language and ethnic belonging. Accordingly one can also assume that any kind of supra- or super-national governance structure without a directly elected parliamentary structure beyond the one-dimensional structure of national assemblies would pervert the Union into a quasi-dictatorial regime – a system apt to allocate values and able to deliver common goods, but not subject to any kind of continuous control and never able to guarantee that the ways decisions are taken respect general norms with regard to the rule of law. Therefore, I conceive the European Parliament and the “parliamentarisation” of the Union’s decision-making system through both the European and the national parliaments as one but an essential and necessary tool for building a legitimate European order.

1.2. The Democratic deficit revisited

The alliteration of the ‘democratic deficit’²¹ focuses mainly on the roles and functions of institutions which are designed to represent the different interests of the citizens and to establish different forms of linkage and interest mediation in and for a given Polity. I refer to a definition of democracy within the original framework of EU governance: the “institutionalisation of a set of procedures for the control of governance which guarantees the participation of those who are governed in the adoption of collectively binding decisions”.²² Of course, this definition does not automatically induce democracy to be synonymous with parliamentary involvement. At least theoretically, there are many ways to secure the participation of the citizenry in governing a given Polity. But if we take history seriously and turn to the evolution of the EU over the last decades, we observe a clear trend: The search for establishing some kind of representative governance structures, in which institutions aggregate participation needs and try to fulfil their general function as arenas and rules for making binding decisions, and for structuring the relationship between individuals in various units of the Polity and economy.²³ On that basis, I define the ‘democratic deficit’ of the EU process as a gap between the institution-linked powers transferred to the EU level on the one hand and the control of the European Parliament and the national parliaments over them on the other: legislative competencies have constantly been shifted from a national parliamentary level towards the Council of Ministers without at the same time including the European Parliament as an equal partner in the EC/EU legislative process at the same time.²⁴

In this sense, the lack of control over governments firstly on the national and secondly on the European level – the Council of the EU - originates a “double democratic deficit”.²⁵ Of course, those scholars and political actors stressing that national sovereignty resists European integration would argue that decision-making in the EU rests primarily upon the Member States and the Council of Ministers and, since Maastricht and Amsterdam, upon the European Council. Accordingly they would ascribe only a minor role to the European Parliament.²⁶ However, since Maastricht the real distribution of

powers goes far beyond this simple conceptualisation of the Union. Hence, the cumulative process of functional, special-purpose or single-policy oriented integration affects the institutional design and the decision-making process between institutions on both European and national (and to a growing extent even sub-national and sub-regional) levels of governance. According to this model, the process of co-operation and integration leads to a "fusion" of national and Community instruments where major actors of the EU member states try to achieve an increase in effectiveness for preparing, taking and implementing decisions through European institutions.²⁷ Subsequent 'constitutionalisations' of this process – the SEA, the Maastricht and the Amsterdam Treaty (TEU) - opened new opportunities for an original kind of parliamentary democracy in the EC/EU, but they left considerable gaps in parliamentary involvement and control in many policy areas which directly affect the way of living of the Union's citizens.

2. European integration as a process of de- and re-parliamentarisation

Despite the reduction of the democratic deficit in institutional terms, developments after the conclusion of the TEU have led to a loss of public support and made the project of integration more contested than ever within the Member States: The post-Maastricht discourse on democracy and democratic governance in the Union seems to have weakened the legitimacy of the Union.²⁸ Moreover, the decline in turnout of European elections indicates that the parliamentarisation of the EU's institutional terrain does not automatically lead to a higher profile of the European Parliament.

The European Union is seen as „a classical case of a gradual process of de-democratisation through integration.“²⁹ Hence, the partial or complete transfer of national competencies towards the EC/EU implies an immediate loss of legislative powers exercised by national parliaments towards the Council of Ministers, the European Commission and to a lower extent the European Parliament. Only after the introduction of the so-called co-operation procedure and the co-decision procedure, the European Parliament gained important rights in the field of EC legislation. But still after Maastricht, the transfer of national parliamentary powers to the European level has not entailed a transfer of these originally legislative powers to the European Parliament.

As regards the national level of policy-making in EC/EU politics, this loss of original legislative powers in the upstream process of policy-making may be compensated by an increase in the national parliament's control function vis-à-vis their Governments.³⁰ Hence, since the German Bundesrat's decision of 1957 to create a special EC affairs committee, national parliaments established institutions, general norms and procedures in order to scrutinise their governments in the EC decision-making process. Though, the degree of effective parliamentary scrutiny varies a lot, ranging from simple ex-post information rules to mandatory procedures.³¹

Institutionalisation of EC/EU Committees 1957 to 1997

Member State	Parliament	Committee Name and Date
Germany	Bundesrat	Ausschuss für Fragen der Europäischen Gemeinschaft (December 1957)
Belgium	Chambre des Représentants	Commission des Affaires européennes (May 1962)
Germany	Bundestag	Integrations-Ältestenrat (1963-1967): 6 meetings in 5 years
Italy	Senato	Giunta consultativa per gli Affari Delle Comunità Europee (July 1968)
Netherlands	Eerste Kamer	Vaste Commissie voor Europese Samenwerkingsorganisaties (June 1970)
Denmark	Folketing	Markedsudvalget (October 1972)
Italy	Camera dei Deputati	Comitato permanente per gli affari comunitari (February 1973)
Ireland	Oireachtas	Joint Committee on the Secondary Legislation of the European Communities (August 1973)
UK	House of Lords	Select Committee of the European Communities (April 1974)
UK	House of Commons	Select Committee on European Legislation (May 1974)
France	Assemblée nationale and Sénat	Délégation (de l'Assemblée nationale / du Sénat) pour les Communautés européennes (July 1979)
UK	House of Commons	Standing Committee on European Community Documents (1980)
Germany	Bundestag	Europakommission (1983)
Belgium	Chambre des Représentants	Comité d'Avis chargé de questions européennes (April 1985)
Spain	Cortes Generales	Comisión Mixta para las Comunidades Europeas (December 1985)
Netherlands	Tweede Kamer	Vaste Commissie voor EG-Zaken (October 1986)
Germany	Bundestag	Unterausschuss des Auswärtigen Ausschusses für Fragen der EG (June 1987)
Italy	Camera dei Deputati	Commissione Affari Esteri et Comunitari (July 1987)
Portugal	Assembleia da Republica	Comissao de Assuntos Europeus (October 1987)
Germany	Bundesrat	Kammer für Vorlagen der EG (June 1988)
Luxembourg	Chambre des Députés	Commission des Affaires étrangères et communautaires (December 1989)
Belgium	Sénat	Comité d'Avis chargé de questions européennes (March 1990)

Greece	Vouli Ton Ellinon	Epitropi Evropaikon Ypothesseon (June 1990)
Italy	Camera dei Deputati	Commissione speciale per le politiche comunitarie (October 1990)
UK	House of Commons	Standing Committee A for Agriculture, Fisheries, Environment and Transport, Standing Committee B for remaining issues (1990)
Germany	Bundestag	EG-Ausschuss (June 1991)
Ireland	Oireachtas	Joint Committee on Foreign Affairs mit dem Sub-Committee on E.C. Legislation (1992)
Denmark	Folketing	Europaudvalget (November 1993)
Spain	Cortes Generales	Comisión Mixta para la Unión Europea (May 1994)
Germany	Bundestag	Ausschuss für Angelegenheiten der Europäischen Union (December 1994)
Netherlands	Tweede Kamer	Allgemene Commissie voor EU-Zaken (May 1994)
Austria	Nationalrat	Hauptausschuss (December 1994)
Sweden	Riksdagen	EU-Nämnden (December 1994)
Finland	Eduskunta	Suuri valiokunta / Stora utskottet (Yesnuary 1995)
Ireland	Oireachtas	Joint Committee on European Affairs (March 1995)
Belgium	Chambre and Sénat	Comité d'avis fédéral chargé des questions européennes (October 1995)
Italy	Camera dei Deputati	Commissione politiche dell'Unione europea (August 1996)

Based on: European Parliament: European Affairs Committees of the Parliaments of the Member States, Directorate General for Committees and Delegations/Directorate General for Research (Andreas Maurer), Brussels/Luxembourg 1995; and own research.

Ratio of EU Committee members in relation to the total strength of parliament

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

Source: WWW-Pages of the IPU and of the national parliaments

2.1. Bringing national parliaments back into the process: Institutional reform from Maastricht to Amsterdam

In view of the ratification of the Treaty on European Union (TEU) and the prior referendums held in Denmark, Ireland and France, the results of the Maastricht IGC in some cases led to extensive constitutional reforms amending the role of national parliaments in European Union affairs.³² All these changes occurred in a situation, where public opinion in Europe became more critical vis-à-vis the integration process and its achievements. Following proposals expressed by the United Kingdom and France, the Maastricht Treaty included a declaration on the role of national parliaments in the EU.³³ Accordingly, the governments were called to ensure, "that national parliaments receive Commission

proposals for legislation in good time for information or possible examination". This declaration constituted a discretionary provision without any legal binding effect. However, it became a source for political debate and conflict between governments and parliaments, between national parliaments and the European Parliament on the effectiveness of parliamentary accountability in EU affairs.

2.2. Options for institutionalised democracy-building: The Amsterdam process in retrospective

The 1996/1997 Intergovernmental Conference (IGC) on revision of the Treaty on European Union attracted greater attention, interest and expectations in the national parliaments of the EU Member States than any of the revisions and extensions of the Treaties establishing the EC's carried out hitherto. This was closely tied with the question of what institutional role the European Parliament and the national parliaments will have to play in the future of the Union. What was Amsterdam about in terms of parliamentary democracy? Comparing the documents produced during the IGC process,³⁴ the proposals made under the headings of "democratisation" and "parliamentarisation" can be classified as follows: The first option – based on the assumption that the European Parliament performs as the general feedback of EU citizens in European governance - focused on its policy-making, institution-building and interaction functions.

A second strategy for democratisation of EC/EU decision-making procedures was discussed with regard to the roles of the national parliaments. During the IGC negotiations the national delegations of France³⁵, the United Kingdom³⁶ and Denmark³⁷ tabled concrete proposals arguing for a strengthened role for national parliaments in the EC/EU decision-making process. Proposals varied between

- (a) those who opted for the introduction of direct participatory or control powers for national parliaments within the legal framework of the EC/EU,
- (b) the introduction of a provision within the EC/EU Treaty framework guaranteeing national parliaments some unilateral control mechanisms vis-à-vis their respective governments, and
- (c) the formal upgrading of existing multilateral scrutiny regimes bringing together members from both the European Parliament and the national parliaments.

Several ideas had been suggested to institutionalise the roles of national parliaments in the European policy process. The former President of the French National Assembly, Séguin, proposed the establishment of a second chamber.³⁸ In this body, national parliaments would play the role of a lower chamber and the European Parliament that of an upper chamber. Sir Leon Brittan's proposal for the establishment of a Council of the National Parliaments was similarly designed to involve national parliaments directly in the Community decision-making process. This Council of the National Parliaments should discuss the Commission's draft legislative program and directives at first reading stage.³⁹ In a report submitted by French Senator Guèna (RPR) the French Senate's Delegation for European Union Affairs proposed the creation of a second chamber of national parliaments for the European Union's CFSP and justice and home affairs policies. The report also advocated that this chamber should have competence in the areas of the own resources system in the Community budget, the enlargement of the Union, the association agreements and the monitoring of compliance with the subsidiarity principle.⁴⁰ The report of the French National Assembly's Delegation for European Union Affairs also called for the direct participation of the national parliaments in the decision-making process before the Council takes its decisions. The setting up of an interparliamentary committee composed of a limited, equal number of representatives of each Member State was aimed to ensure this direct involvement of national parliaments within the institutional realm of the Union. According to the report, this committee was designed to approve or oppose certain texts at monthly meetings of limited duration without being able to amend them.⁴¹

The other national parliaments were critical to negative in their attitude towards the creation of a chamber of national parliaments involved in the Community legislative process. Their argument held that the introduction alongside the Community institutions of a body representing (in theory and by derivation from Community law) the same, or broadly the same, interests as the Council would threaten not only the European Parliament's institutional position but also the institutional balance re-

quired by the EC Treaty and the whole institutional structure of the Community. Given the strong reluctance of the majority of the Member States and the EU institutions, the concept of institutionalising the 'Assizes model' seemed unlikely to perpetuate interparliamentary co-operation, mainly because this model would have had the contradictory effect of distorting the democratic foundations for the legitimisation of parliamentary control and law-making activities in the Community.

In turn, proposals to strengthen the supervisory powers of national parliaments vis-à-vis their Governments flourished in all EU member states.

The Danish Folketing advocated increasing the influence of the national parliaments' European affairs committees by taking measures as conferment of powers similar to those of the Folketing's relevant committee, the appointment of an official to represent each parliament in Brussels, closer but informal co-operation within COSAC as well as closer multilateral co-operation between equivalent parliamentary committees in all the parliaments of the Union. The Danish Government put forward three further proposals: the incorporation of a specific reference to the national parliaments in the Treaty on European Union; and granting national parliaments an opportunity to deliver an opinion during the preliminary legislative phase - within a limited period to be determined - on Commission proposals before they are officially submitted by the Commission. The German Bundestag called for a stronger role of the European Parliament and the national parliaments in intergovernmental activities, but strongly opposed any kind of formalisation of COSAC. The Finnish Parliament pointed out that national parliaments should have access not only to Commission proposals but also to Commission preparatory working parties, whereas the Government⁴² underlined to make co-operation between the European Parliament and national parliaments more efficient within the existing framework of declaration No. 13 of the TEU. The Finnish Parliament's Grand Commission, in its statement of November 1995 stressed to examine suggestions to assign national parliaments rights or duties under the Treaties with great caution. For the Luxembourg Government, MEP Charles Goerens wrote a report on strengthening the unilateral control functions of national parliaments. He believed that consideration should be given to a kind of 'charter' of 'minimum obligations which all governments would be likely to accept vis-à-vis their parliaments' with respect to parliamentary scrutiny of Community affairs. In his view, the best method would be to incorporate in the Treaty the 'minimum obligations of governments vis-à-vis the national parliaments' and 'to strengthen the Community institutions' obligations - already set out in the Treaty - vis-à-vis the European Parliament. He therefore proposed more extensive powers of scrutiny, specified in the Treaties, for the national parliaments in respect of their government's action since 'it is no longer possible to leave the governments to decide what information should be forwarded to their parliaments and when this should be done'. The United Kingdom took a view similar to that of Denmark. The White paper on the Governments approach on the IGC of 12 March 1995, stressed that the Maastricht Declaration No. 13 should become legally binding through integrating it into the Treaty. In addition, a minimum period for national parliaments should be introduced in order to scrutinise Community documents and draft legislation.

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

The PNP addressed both the problems of scope and timing of unilateral parliamentary scrutiny as well as the issue of locking interparliamentary co-operation into the inter-institutional framework of the EU. Following the proposal made by the Dublin COSAC meeting of 16 October 1996, which for the first time adopted conclusions on the reinforcement of Declaration No 13 of the Maastricht Treaty, the PNP holds the following:

Firstly national parliaments shall receive all Commission consultation documents such as green and white papers or communications. These documents shall promptly be forwarded to national parliaments. The Protocol however, leaves the question open as to whether the governments of the Member States, the European Commission or any other European institution will provide the parliaments with these documents. Instead, the PNP simply stipulates that each Member State may ensure that its own

parliament receives the proposals 'as appropriate'. Thus it remains unclear if the governments are obliged to send all legislative proposals to their parliaments or if the PNP implicitly scapegoats these tasks to another body, institution or network.

Secondly, the PNP implicitly excludes the following types of documents of the general provision for the transmission of legislative proposals to national parliaments:

- All documents falling under the CFSP pillar, all documents concerning the entry into closer co-operation,
- all documents prepared by Member States for the European Council, and
- all documents falling under the procedure of the 'Protocol on integration the Schengen acquis into the framework of the European Union'. However, once the Schengen acquis is integrated into the EC or EU pillar, the appropriate legislative and scrutiny procedures for both the EP and the national parliaments will apply.

The PNP also includes a commitment of timing addressed to the Commission and the Council. Firstly, the Commission shall ensure that the legislative proposal is 'made available in good time'. Secondly a six week period between issuing a "legislative proposal or a measure to be adopted under Title VI" TEU and its discussion or adoption by the Council has to elapse. These two provisions on timing of the legislative process are geared to allow the governments to inform their parliaments on the proposal and leave parliaments time for discussion. However, as it has been said the protocol does not constrain the governments to really use the time provided by the Community institutions for informing their parliaments. Thus, it remains up to the parliaments and their governments to negotiate on the content and the procedures to be applied for the implementation of the PNP.

3. Parliamentary Involvement in EC/EU Affairs – empirical findings

The process of co-operation and integration leads to a "fusion" of national and Community instruments where major actors of the EU Member States try to achieve an increase in effectiveness for preparing, taking and implementing decisions through European institutions while keeping a major say by "a broad and intensive participation".⁴³ Accordingly, we assume that not only the European Parliament, but also national parliaments must constantly adjust and recalibrate the possibilities and arrangements for parliamentary activity in response to new European Community legislation and other activities related to the European Union:

The increasing scope of EU activities is affecting and undermining the traditional legislative function of national parliaments.⁴⁴ European legislation through the Council of Ministers and the establishment of a directly elected European Parliament reduced the function of national parliaments in the EC decision making process to three major tasks: making ministers accountable for their activity in European affairs and ratifying fundamental amendments to the Treaties, the approval of legal acts in the Community and (since Maastricht) in the Union framework.⁴⁵ Provided national parliaments are understood as the "national authorities" to which Article 249 ECT leaves the choice of form and methods in order to achieve the results of a directive, national parliaments have a growing role in the transposition of Community secondary legislation.

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

Much attention has been given not only to the effects of the shift of competencies from the national level of governance towards the EU but also to the effects of the introduction of qualified majority voting for decisions in the Council of Ministers instead of unanimity. Norton notes that this innovation "limited even further the scope for indirect influence by national parliaments"⁴⁶ because Member States can be overruled by a decision of a qualified majority in the Council.⁴⁷ Thus, even in cases where parliaments may affect the position of their government in the Council of Ministers effectively (e.g. through the adoption of binding mandates), qualified majority voting generates a decrease of the capacity for national parliaments to influence the outcome of European decision-making.⁴⁸ Moreover, since the Council until 1999 was not compelled to publish the results of qualified majority voting,⁴⁹ parliaments did not have the opportunity to verify how their government's representative negotiated and voted in the Council. Accordingly, it could be argued that unanimity instead of majority voting would lead to a higher degree of parliamentary participation if not influence because each Member Government is responsible for the Council decisions and, "as such, accountable for them to its national Parliament".⁵⁰

The Maastricht Treaty led to a limited range of new provisions affecting the role of national parliaments in monitoring their governments' activity in EC/EU affairs. According to Declaration No. 13 of the Maastricht TEU version, member states government agreed that "it is important to encourage greater involvement of national parliaments in the activities of the European Union". In this context, they committed themselves to "ensure, inter alia, that national parliaments receive Commission proposals for legislation in good time for information or possible examination".

During the Maastricht ratification process, a number of governments gave undertakings vis-à-vis their parliaments with regard to the communication of information and consultation mechanisms. In the course of these constitutional reforms, national parliaments amended their rules of procedure.

Institutional adjustments on the structure and possible exercise of parliamentary scrutiny constitute no guarantee for effective and efficient monitoring of national representatives in the Council of Ministers and its substructures. To identify and explain variations in the participation of national parliaments in EU policy making,⁵¹ we need to take other indicators also into account. Political systems differ with regard to the established relationships between government and parliament, party systems and the ideological spectrum mirrored by parties and other societal groups. Moreover, the internal organisation of parliaments, the roles, functions, styles of and relationship between standing committees, special committees, the plenary as well as cross-party working groups and their impact on potential behaviour of individual members, political groups and parliamentary committees need to be looked at. With regard to European integration, specific factors have to be considered: Public opinion on European integration in general, on democracy and the loci of democratic legitimisation of policy-making, on institutions and inter-institutional relationships, on the functional scope of EC/EU politics and the allocation of powers differs widely between the EU member states.⁵²

Apart from these general factors, we refer to the criteria originally proposed by Laprat. Accordingly the efficiency and effectiveness of parliamentary scrutiny in European affairs should be evaluated in addressing the following three criteria:⁵³

A. The **scope of parliamentary control** which firstly results from the extent of documents forwarded to parliaments by their governments: To what extent do national parliaments receive draft proposals of legislative acts and other acts, i.e. white and green papers, recommendations, declarations, documents produced by COREPER, the Council working groups, the European Parliament and its committees etc.? The scope of parliamentary scrutiny secondly concerns not only the type and number of documents which the governments transmit to their legislatures but also the effect on the widening of the scope by different methods of the interinstitutional sift of documents. Hence, the general orientation of and ideas associated with the parliament's control function as well as the financial, personal and managerial resources of a parliament may lead to the exclusion of various types of documents produced and disseminated in the EC/EU arena (legislative draft proposals, Commission's white papers or

communications, draft proposals related to the second and third pillars of the TEU etc.) from the following phases of the scrutiny process: How do national parliaments sift documents forwarded by their respective executives? Since the Maastricht Treaty contained amendments on the Treaties establishing the (supranational) European Communities on the one hand and established two intergovernmental areas related to the European Union and not to the Communities (Titles V and VI) on the other, the scope of parliamentary scrutiny may have also been constrained by legal interpretations of what is understood as a document open to parliamentary scrutiny. Thus, our third question is: To what extent do parliaments supervise governmental action in matters regarding the Common Foreign and Security Policy, Co-operation in Justice and Home Affairs and European Monetary Union?

Evolution of the scope of information for national parliaments 1987 to 1998

	1987-1992 (SEA-Period)	1992-1997 (Maastricht-Period)	Since 1997 (Amsterdam-Period)
Belgium	Draft regulations and directives, other normative acts, explanatory information of the government. No systematic transfer of COM-Docs., which are relevant for Belgium.	Unchanged	Unchanged
Denmark	Systematic transfer of all EC-Docs.	All Commission documents (COM and SEC), important documents of the Council, factual notes of the government . Extension to pillars II and III and other – non-legislative – documents	More systematic transfer of pre-legislative documents
Germany	All legislative and pre-legislative EC-documents	All EU proposals according to Art. 23 of the Basic law, progress reports prepared by Council Working groups, views of the government	Unchanged
Finland	-	All EC and EU-documents	Unchanged
France	Non systematic transfer of legislative COM documents	All EC draft acts including provisions of a legislative nature according to Art. 88-4 and 34 of the Constitution, Agendas of the Council, at irregular intervals notes of the government on the French position. Since 1994 also documents of the EU	All EC and EU documents of legislative nature
Greece	The government submits a report on developments in EC affairs and the end of each parliamentary session	Unchanged	Unchanged
UK	All legislative COM-documents	All legislative documents except II. and III. pillar documents.	All EC and EU documents
Italy	Non systematic transfer of legislative COM documents	All Commission draft proposals, fact sheets of the government .	Unchanged
Ireland	Legislative documents at the government's discretion	Drafts acts falling under Art. 189 ECT, opinions of the Council, programmes and guidelines of the Commission, explanatory memoranda of the government	Unchanged
Luxembourg	Non systematic transfer of legislative documents at the government's discretion.	Draft regulations and directives, documents arising out of the 'Comitology', decisions of the Commission. Additional information of the government..	Unchanged
Netherlands	Tweede Kamer receives a monthly table of new COM-proposals. Eerste Kamer only deals with implementation of EC law	Tweede Kamer: Binding responsibility of governmental transfer of documents only for III pillar proposals	Unchanged
Austria	-	All EU proposals. Explanatory memorandums by the Government	Unchanged
Portugal	Non systematic transfer of EC draft acts at the government's discretion	Since 15. June 1994 systematic transfer of EC draft proposals	Unchanged
Sweden	-	Transfer of all EC and EU draft acts	Unchanged

Spain	All legislative proposals of the Commission, information on the state of negotiations, brief reports of the government	Since 1994 information on all EC draft acts	Unchanged
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Source: Own findings on the basis of COSAC questionnaires and answers 1992-1999.

The **scope of information** forwarded to parliaments was and remains particularly low in the case of the Greek, Italian, Irish, Belgian, Spanish and Portuguese parliaments. If Parliament in Belgium is kept informed at an insufficient level of scope, colleagues in Italy are not even consulted on general orientations of government and the Council of Ministers. According to the "Fabbri" Law No. 183-1987 and the "La Pergola" Law No. 86/1989, the government transmits to both houses of the Italian Parliament all "legislative proposals submitted by the European Commission" and is obliged to present to Parliament "a bill which comprises all the legal acts necessary to transpose extant Community jurisprudence up to July of the previous year". The case of France shows that the extend of information forwarded to national parliaments may be restricted according to national hierarchies of norms. The concept of proposals "containing provisions of a legislative nature" implies that Parliament only receives those draft acts, which, if they were to be adopted in France would form part of the law within the meaning of Article 34 of the Constitution. Thus, Article 88-4 leaves to the "Conseil d'État" and the government the decision whether draft proposals constitute legislative acts. The supply with information is much more comprehensive in Denmark, Germany, the Netherlands and Austria.

Practice of scrutiny in the House of Commons

	1992	1993	1994	1995	- 18.7.1996
Scrutiny events*	801	823	1022	980	633
Of legal and/or political importance	342	366	438	427	354
Tabled for Plenary debate (debates)	25 (6)	15 (5)	11 (3)	12 (3)	6 (2)
Tabled for SCECD (debates)	46 (25)	51 (34)	58 (38)	34 (23)	31 (22)
Recommendations for SCECD A (debates)	12 (6)	24 (17)	25 (14)	15 (9)	14 (10)
Recommendations for SCECD B (debates)	34 (19)	27 (17)	33 (24)	19 (14)	17 (12)

Eigene Zusammenstellung auf der Basis von: House of Commons: SCEL, 27th Report on the Scrutiny of European Business, 18 July 1996, S. 18, 21, 24; und: Cygan, Adam: The United Kingdom Parliament and EU Legislation, Den Haag/London 1998, S. 79-81.⁵⁴

Practice of scrutiny in the House of Lords

	1990	1991	1992	1993	1994	1995
Proposal dealt in SCEC	869	813	848	861	896	971
Classified as A-documents	586	605	645	670	667	778
Classified as B-documents	283	208	203	191	229	193

Quelle: Cygan, Adam: The United Kingdom Parliament and EU Legislation, Den Haag/London 1998, S. 148.

Implementation of Article 88-4 of the French Constitution

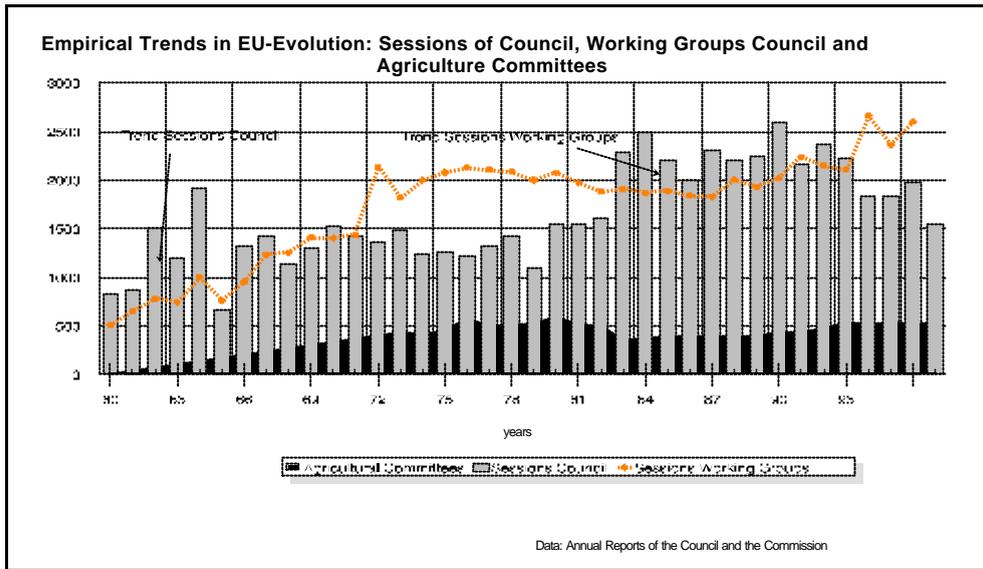
Year	Documents forwarded to the Conseil d'État				Classified as 'legislative' documents				Documents classified as non relevant for 88-4;	Classified as non-legislative	Percentage of legislative documents in relation to total incoming documents
	EC	CFSP	CJIA	Schengen	EC	CFSP	CJIA	Schengen			
1993	542				179				71	292	33,02%
1994	483				172				49	262	35,61%
1995	488				213				50	225	43,64%
1996	439	3	95	14	192	0	44	4	72	239	43,55%
1997	357	0	90	42	214	0	52	1	76	152	54,60%
1998	316	0	80	17	277	0	50	0	63	123	79,17%
Summe	2625	3	265	73	1147	0	146	5	232	1293	43,76%

Eigene Zusammenstellung auf der Basis von: Nuttens, Jean-Dominique/Sicard, Francois: Assemblées parlementaires et organisations européennes, Paris 2000, S. 73 ; Sauron, Jean-Luc: « Le contrôle parlementaire de l'activité gouvernementale en matière communautaire en France », in : Revue trimestrielle de droit européen, Nr. 2/1999, S. 179.

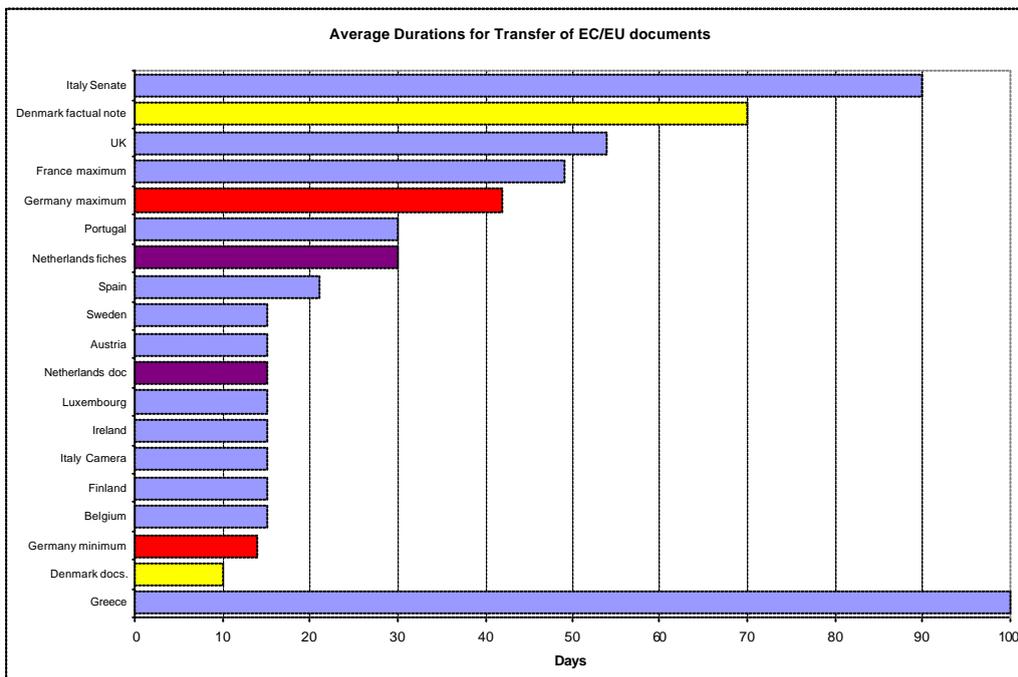
The Scope of information for national parliaments in 1999

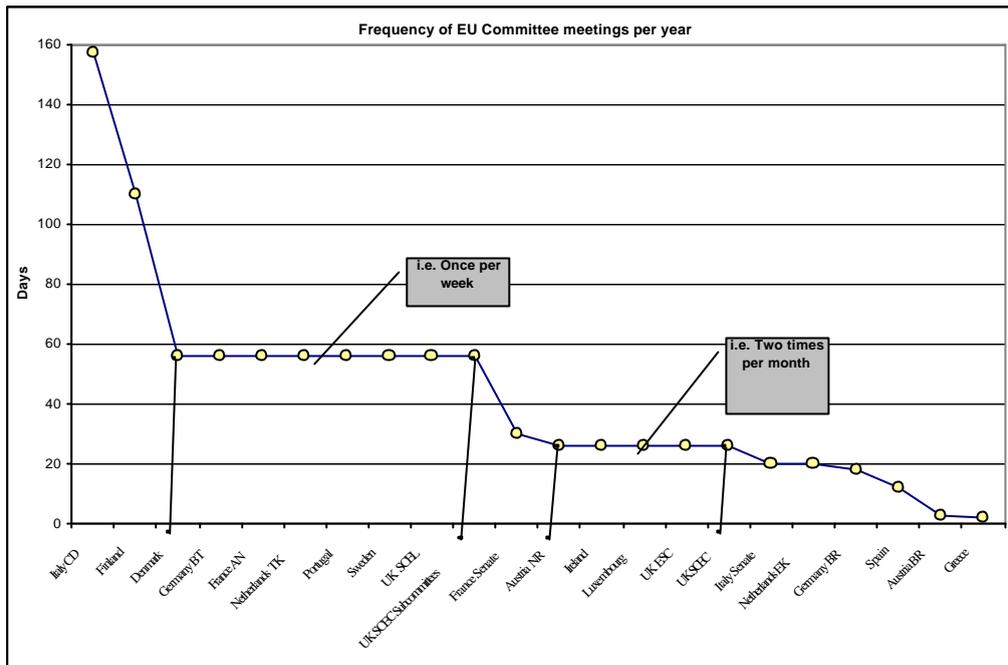
Member State	European Community Treaty	EMU	CFSP	CJHA
Belgium	Draft regulations and directives, other normative acts, which have implications for federal competencies. Explanatory information of the government.		Traditional instruments: Hearings, written and oral questions	Traditional instruments: Hearings, written and oral questions
Denmark	All Commission documents (COM and SEC), documents of the Council. Factual notes of the government.		Analogous to the EC pillar, internal co-operation between EU affairs and Foreign affairs committees	Analogous to the EC pillar, internal co-operation between EU affairs and Internal affairs committees
Germany Bundestag	All EU proposals according to Art. 23 of the Basic law. Progress reports prepared by Council Working groups, views of the government.	Consultation required prior to any decision by the Council of Ministers under Art. 121(3) or (4) ECT	Yes, in general through the Committee for Foreign affairs	Analogous to the EC pillar
Bundesrat	All Commission and Council documents, reports of the working groups. Additional information of the government on negotiations in progress.		No	Analogous to the EC pillar, special consultation procedure for 'framework decisions' under Art. 34(2) b) TEU.
Greece	The government submits a report on developments in EC affairs and the end of each parliamentary session.		At the government's discretion	No
Spain	All legislative proposals of the Commission, information on the state of negotiations, brief reports of the government.		At the government's discretion	At the government's discretion
France	All EC draft acts including provisions of a legislative nature according to Art. 88-4 and 34 of the Constitution, Agendas of the Council. At regular intervals notes of the government on the French position.		Yes, since October 1995	Yes, since June 1994
			No	Irregularly
Ireland	European Commission drafts acts falling under Art. 250 ECT, opinions of the Council, programs and guidelines of the Commission. Explanatory memoranda of the government.		All documents which are legally binding for Ireland	All documents which are legally binding for Ireland
Italy	All Commission draft proposals. Fact sheets of the government.		At the government's discretion	At the government's discretion
			At the government's discretion	At the government's discretion
Luxembourg	Draft regulations and directives, documents arising out of the 'Comitology', decisions of the Commission. Additional information of the government.		No	At the government's discretion
Netherlands Tweede Kamer	All Commission draft proposals and communications. Additional 'fiches' of the government.	Parliament was required to give its approval to the position adopted by the government on the assessment of the four convergence criteria.	Yes, through the Committee for Foreign Affairs	Yes, because of the parliament's assent required
Eerste Kamer	Draft acts arising from EC directives, which have to be transposed into national law.		No	
Austria NR	All EU proposals. Explanatory memorandums by the Government		Analogous to the EC pillar	Analogous to the EC pillar
Bundesrat	All EU proposals, which could have a bearing on, the independent sphere of activity of the Austrian 'Bundesländer'.		Only if the competencies of the Bundesländer are affected	Only if the competencies of the Bundesländer are affected
Portugal	Draft secondary legislation of a binding nature, draft agreements and conventions, other important drafts of non-binding acts.		At the government's discretion	At the government's discretion
Finland	All documents tabled for the Council of Ministers meetings.		Analogous to the EC pillar but executed through the Committee for Foreign Affairs	Analogous to the EC pillar
Sweden	All Commission draft proposal, communications, agendas of the Council. Background information on all important issues and on the preliminary position of the government.		Analogous to the EC pillar	Analogous to the EC pillar
United Kingdom	All proposals for legislation by the Council of Ministers, any document related to the European Council, any document forwarded by one EC institution to another one. Explanatory memorandums of the government.	Parliament is required to give its approval on: (1) the government's intention to move to the third stage, (2) on the annual report of the Governor of the Bank of England, (2) on the government's assessment according to Art. 99 and 104 ECT.	All texts of CFSP statements, declarations, common positions and joint actions once they are agreed, CFSP documents submitted be one Community institution to another, other documents at the government's discretion	Restricted: The first full text of any convention requiring, if agreed, later primary legislation in the UK, other documents at the government's discretion.

B. The timing and management of parliamentary scrutiny: Effective scrutiny presupposes that parliaments receive draft proposals for legislation in good time and that they have enough time for examination. Timing and the management of parliamentary scrutiny varies according to its implications on the government's European policy. Timing as a criterion to measure the effectiveness of parliamentary scrutiny in the framework of EC/EU affairs therefore firstly depends on the constitutional and legal provisions concerning the transmission of EC/EU documents to parliaments. In this connection, some rules governing the parliamentary monitoring process in the handling of European affairs may oblige the governments to transmit the relevant documents at the 'earliest possible date', 'in advance on the preparation of meetings of the Council of Ministers' or within a certain time limit such as 'after receipt of a document by the government'. The timing of scrutiny may also vary according to the internal management of European Affairs on the governmental as well as on the parliamentary level and depending on the implications of parliamentary scrutiny powers for the government's European policy. If ministers are bound by decisions of their parliament (e.g. Denmark, Netherlands, Austria, Germany), governments are politically obliged to forward the relevant documents within a certain period of time allowing national parliaments the examination before the meeting of the Council of Ministers. Finally the timing of parliamentary scrutiny also varies along the frequency of meetings of the legislative actors involved. Since meetings of the Council of ministers and its subordinated bodies like the working-groups and COREPER are based on a weekly basis, parliaments need to manage their own organisation of meetings according to the rolling agenda of the EU institutions. Hence national officials work closely together for preparing decisions of the Council in approximately 350 working groups under the Council and the Committee of Permanent Representatives.⁵⁵ These interaction patterns involve many sectors and levels of the national administration hierarchy. The working groups have a significant impact on the decision-making arena. Around 90% of EC legislation is pre-cooked at this stage.⁵⁶ Furthermore, the Brussels-based infrastructure is surrounded by consultative and advisory committees - almost private, i.e. non-governmental and sectoral specialists who provide expertise at both the decision-preparation and -implementation phases. As a mirror of the EC/EU's external policy activities, one can also find joint committees, bringing together administrations from the EU institutions, the member states and third parties. The potential influence of committees differs largely according to the phase and the policy sector. The involvement of national civil servants in the EU policy-cycles is not just a "watch-dog exercise". Both for the Commission and the national institutions the "engrenage"-like⁵⁷ interlocking of actors is an important component for a calculable joint management of the policy making process. If any major element is to be made responsible for the criticised bureaucratisation⁵⁸ in 'Brussels' it is this quite intrinsically network of multi-level administrative interpenetration.



Assuming this bureaucracy is not just an accidental product of personal mismanagement, national parliaments are confronted with an ever-growing realm of policy-making infrastructures, which is less open to parliamentary oversight than bodies bringing together politicians. At which stage of the EU's arenas' decisions-making process do parliaments start the monitoring process vis-à-vis their governments? Are the procedures established to monitor the Government's policy constrained by time limits?





C. The **impact of parliamentary scrutiny** differs in every parliament of the EU. We can roughly distinguish between formal and informal arrangements between Parliament and Government, between procedures aimed at substantially influencing the position of government in the Council and those simply aimed at tactically delimiting the relative independence of governmental representatives when acting in the Council. Impact differs between parliaments which are able to mandate their government's representative before a Council decision takes place and parliaments, which simply do not have any formal means for influencing their government's standpoint in the Council. Between these two extremes Parliaments might be able to express their views on a certain proposal, but their governments decide whether to incorporate them or not. Apart from the mandate, several Parliaments refer to the so-called "parliamentary scrutiny reserve" mechanism. In close relation to the criterion of the impact of parliamentary scrutiny, the basic interests and ideas behind parliamentary involvement in European decision-making needs also to be addressed. Moreover, one should not forget that a given – at first sight impressive - set of scrutiny rights provided for parliaments may be instrumentalised by their respective governments in order to block Council decisions. Hence, the Danish mandatory procedure works in close connection with the fact of minority governments, which depend much more on parliament's assent than the British government in relation to its Parliament. Therefore, the criterion on the impact of parliamentary scrutiny should encompass also the issue of the level and minimum number required for effective parliamentary intervention.

At first glance criterion (A) presupposes the other two criteria: If parliaments do not get any information about relevant activities in European affairs, possible findings and conclusions on timing, time limits and the impact of parliamentary scrutiny are irrelevant. However, if parliaments are legally provided with a right to engage themselves in gathering and treating information independently from what they get from their governments, their parliamentary scrutiny mechanisms may be more effective.

Laprat's criteria for measuring effective and efficient parliamentary control in European affairs lead us to the problem on how to classify national parliaments with regard to the application of scrutiny powers in the policy processes. One established model for classification of national parliamentary scrutiny derives from earlier studies formulated by Mezey⁵⁹ and subsequently modified by Norton.⁶⁰ Both authors developed frameworks for classification of legislatures in various countries. They are based on two basic criteria, the *policy-making strength* and the *support for the legislature*. Mezey defined the policy-making strength as "the constraint that the legislature is capable of placing on the policy-

making activities of the executive".⁶¹ On the basis of the first criterion (policy-making strength), Mezey distinguishes between three categories of parliaments:

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

Norton's work concentrates on the first two categories. He underlines the fact, that the possession of a right to reject policy proposals does not automatically result in a real, proactive policy making power of parliaments.⁶² Accordingly the category of parliaments possessing strong policy-making power should encompass "policy making" legislatures that can modify, reject or substitute policy of their own while the category of parliaments with modest policy-making power should only include "policy influencing" legislatures capable to modify and to reject but not to substitute policy proposals.⁶³ The difference between these two categories is the qualification of parliaments as legislative bodies, which are able to generate own sets of proposals, and which may substitute the original government position.⁶⁴

In this context, the substantial criteria "scope", "impact" and "timing" of parliamentary scrutiny serve as the main variables on which a classification in one of the three aforementioned categories "policy making parliaments", "policy influencing parliaments" and "parliaments possessing neither a policy making nor a policy influencing" power can be based.

	Scrutiny Variables according to Laprat		
	Scope of information	Timing and Management	Impact of Scrutiny
Categories according to Mezey/Norton			
Weak legislature	Rather low	Low	Inexistent
Policy influencing legislature able to			
- modify proposals	Low – high	Low	Medium
- reject proposals	Low – high	Low	High
Policy making legislature also able to			
- substitute proposals	Low – high	High	High

Still after Maastricht, the scrutiny power of some parliaments is strictly limited to ex-post information. Consequently, possible examination has any effect on the government's European policy management. But some national parliaments now aspire, not only to know what legislation is foreseen in the EU, but also to affect their government's stance on it in the Council of Ministers.

In Germany, Article 23 of the Basic Law states that laws transferring sovereign powers always require the consent of both houses of Parliament. More important - with regard to EU action under the third pillar - the third sentence of Article 23 states that for "the establishment of the EU as well as amendments to its statutory foundations and comparable regulations which amend or supplement the content of this Basic Law or make such amendments or supplements possible" must comply with the rules pursuant to Article 79 (2), on the adoption of Laws amending the Constitution, i.e. a two thirds majority in both houses. As Oschatz and Risse note, the insertion of the words "and comparable regulations" by the Bundestag's special committee on Maastricht was "merely meant to prevent ordinary legislation updating 'evolutionary clauses' which materially amended the Constitution".⁶⁵ As far as EU legislation apart from this provision is concerned Government is required to "base its position in the Council of Ministers" on a proposal of the Bundestag provided that the latter expressed its views. The Bundestag itself considers the importance of a draft act in the three pillars of the EU. On the other hand, the Gov-

ernment's position is not subject to the assent of the Bundestag. Assent is required in the Bundesrat, where Government under certain conditions is bound by the decision of the chamber in cases where a proposal requires approval pursuant to domestic law or in instances where the Länder have jurisdiction. Moreover, where exclusive competencies of the Länder are involved, Germany is represented in the Council of Ministers by a minister of the Länder nominated by the Bundesrat. In Denmark, ministers get a mandate on the basis of which they can negotiate and take part in any decision of the Council of Ministers. He or she can not give agreement to a proposal where the process of parliamentary scrutiny has not been completed. In the Netherlands, a special procedure for parliament's participation in CJHA was established: Any draft decision falling within the scope of Title VI TEU that is intended to bind the Netherlands is subject to the consent of the States-General. In practice, the ministers for home and justice affairs send Parliament an annotated agenda together with the background documents. This agenda states which decisions are in the government's view binding the Netherlands and thus require the assent of Parliament. Thus, Parliament's approval right is dependent to Government's power in the framework of agenda-setting on the third pillar. The Netherlands's Government's position on each agenda item is also stated. The Standing Committees on Justice and Home Affairs of the Dutch States-General may hold consultations on these subjects with the ministers before the Council meeting takes place, after which the Chambers may give a formal ruling in plenary sitting on draft decisions for which the assent of parliament is required. However, tacit consent is deemed to have been given in case the desire to give explicit approval has not been expressed by or in the name of one of the Chambers within 15 days of the draft being submitted to the States-General. A similar consent procedure applies in Austria, where the Government is bound by a decision of the Nationalrat, if the draft act "to which the decision relates must be transposed by means of a Federal law or it is designed to provide for the adoption of a directly applicable act concerning a matter which would otherwise have been regulated by a Federal law". This rule generally applies for all draft conventions.

Impact of parliamentary scrutiny

	Criteria according to Mezey/Norton		
	Weak legislature	Policy influencing	Policy making
Germany	Bundestag 1963 → → 1991 → 1994 Bundestag a. Bundesrat		
France	1979 → Assemblée a. Senate → 1992		
Italy	Camera and Senate		
Netherlands	Eerste Kamer		Tweede Kamer
Belgium	CR a. Senate		
Luxembourg			
UK	1974 → HC and HL → 1997		
Denmark			
Ireland			
Spain			
Portugal			
Greece			
Austria		Nationalrat a. Bundesrat	Nationalrat
Sweden			
Finland			

4. Conclusions and Outlook

In a large number of European Union member states (B, D, E, IR, LUX, NE, P) prior to the Maastricht Treaty, national parliaments were regarded as the victims of the integration process.⁶⁶ Due to the growing supremacy of national governments in the European decision making process on the one hand, and because of governments' ability to use the knowledge and powers of their administrations on the other, national parliaments were either left outside of the EU policy cycle or were only marginally involved. Neither their financial nor their human resources could cope in any way with the increasing amount of EU legal acts – though in all national systems, formal legislative competencies are traditionally in the hands of parliaments. The role of national parliaments is particularly limited with

regard to EC directives. Though directives allow the member states some room for manoeuvre in national transposition – in contrast to the directly applicable regulations – governments are very often not capable or willing to adapt the content of the respective act. In addition, some national parliaments have shown little interest in EU affairs, which can be explained to a certain extent by the complex internal structure of the legislatures (D, F, NL). As the German case illustrates, between 1980 and 1986 about 65 per cent of the EC documents considered by the Bundestag, were already in force when they were debated for the first time.⁶⁷

Since the coming into force of the Maastricht Treaty, perceptions have changed significantly.⁶⁸ National parliaments have recognised not only that the EU has acquired new policy fields and competencies, but also that they themselves are losing their traditional access and influence especially in view of their scrutiny functions vis-à-vis governments. Aiming to move beyond the conventional instruments of parliamentary questions and debates, parliaments in all member states have called for more influence over their governments. With regard to the EC/EU decision making process, parliaments have asked to be informed earlier and more comprehensively about legislative proposals debated in the Council of Ministers. As became evident in the overview of national systems, a major step in improving the performance of national parliaments concerns their access to information.

The forms and implications of parliaments' attempts to increase their role differ across member states. Nevertheless, some common features can be emphasised concerning constitutional changes, specific laws, declarations and reports. In some countries the new rights of national parliaments were based on constitutional revisions and amendments. Basic constitutional reforms due to the Maastricht Treaty have taken place in France and Germany. The amended Article 88 (4) of the French constitution or Article 23 of the German Basic Law, which calls 'the Federal Government [to] inform the Bundestag and the Bundesrat comprehensively and as quickly as possible', are expressions of the parliaments' demands for more efficient participation. In Germany the new Committee on European Union Affairs can even be authorised by the Bundestag to take decisions for the Bundestag as a whole.

In the Belgian *Chambre des Représentants*, the Spanish *Congreso de los Diputados*, the Irish *Dáil Éireann*, the Dutch *Tweede Kamer* and the Portuguese *Assembleia da República*, special laws and agreements between governments and parliaments were adopted in order to strengthen parliamentary scrutiny rights in European affairs. In the Netherlands the former Standing Committee for European Affairs became a General Committee on EU Affairs with a mission to increase EU awareness among all MPs.

In some countries the improvements to parliaments' role in European policy-making resulted frequently from their own declarations or reports which bound governments and improved the participation rights of the national parliaments (DK, E, I, NL, UK).

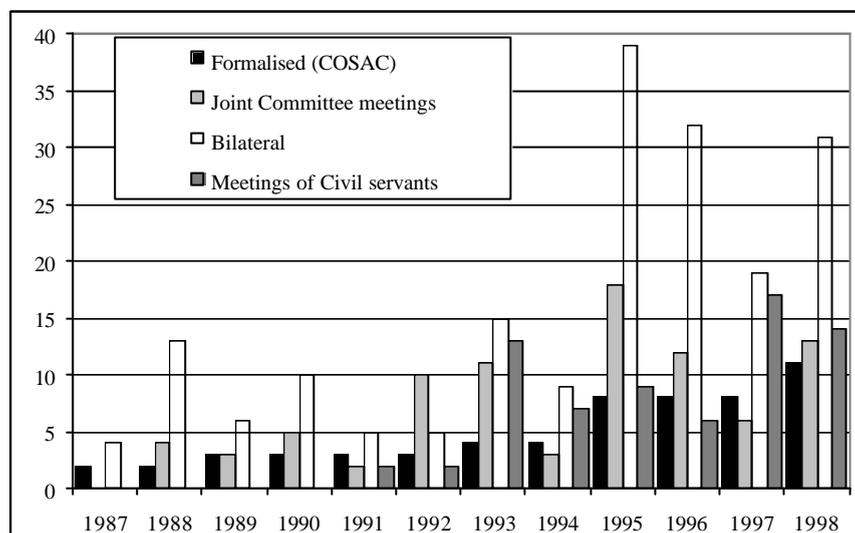
Moreover, parliaments have attempted to play a more effective part by strengthening the role of specialised committees. Though the establishment of committees on European affairs in all member states has been increased at the end of the 90s, the impact of the new established committees is still not clear as yet. One cannot overlook the possibility that rival parliamentary committees will be reluctant to allow the European dimension of their work to slip away into the hands of the new specifically EU related committees. National parliaments, such as the Finnish for example, are following in the footsteps of Denmark where the *Folketing* is regarded as a policy-making assembly which has retained its position after entering the Community. The Danish parliament has exercised vast control over European policy. The Danish European Affairs Committee, the former Market Relations Committee, mandates its ministers in the Council. In Austria, the constitution guarantees participation in cabinet meetings for the influential Main Committee of the Parliament and the heads of the parliamentary groups of the government parties.

It can be concluded that in nearly all member states, national parliaments have strengthened their formal role in the EU decision making process. Though decision making continues to be primarily in the hands of governments, their room for manoeuvre in Brussels negotiations will be restricted to an increasing extent

by national parliaments and particularly by their specialised committees. Some legislatures (DK, F, I, S, SF, UK) have even created their own points of contact in the European Parliament's Léopold building in Brussels. It seems that parliaments no longer simply follow their governments in European policy but try instead to prescribe their government's actions in EU policy-making. Some expect that the further development of the European Union might not take place without a more active role for national parliaments especially in the phases of preparation and control of EU decisions.

In this context increasing levels of inter-parliamentary co-operation can be seen. Since the end of the 1980s there have been regular meetings of the presidents and speakers of the national parliaments. Since 1989 national parliaments' specialised EU committees have met every six months in the framework of the so-called COSAC (Conference of Parliamentary Committees specialised in European Affairs). The Amsterdam Treaty protocol on the role of national parliaments may alter COSAC's informal profile. It is remarkable that both the European Parliament and the Council of Ministers have amended their rules of procedure in order to recognise national parliaments and COSAC as consultative bodies within the EU policy-making framework.⁶⁹

Interparliamentary Co-operation 1987-1998



National parliaments have learned and tried to cope with European challenges by adapting some of their procedures. Nevertheless, the relative weakness of national parliamentary institutions at the EU level cannot be overlooked. The patterns of national governments and administrations in preparing EU matters have been affected only to a limited degree. Continuous deficits in parliaments' ability to play the multi-level game reduce the influence of national deputies. The involvement of parliaments in the EU policy cycle remains weak and largely reactive.

The overall trend of reinforcing the role of national parliaments in the ratification of the Maastricht Treaty might also be explained as a consequence of popular discontent. However, parliaments have not become an opposition force putting forward the critical views of the public. The logic of parliamentary government with the basic cleavage between the executive and the parliamentary majority on one side, and the parliamentary minority on the other, has not been replaced by a return to the classical division of power between executive and legislature. Indeed the incentives of the European arena have strengthened governmental actors and further reduced the influence of parliaments. The increased activities of some of the latter have not fundamentally shifted the institutional (dis-) equilibrium. Thus, at the end it is not an issue of resources but national parliaments have not been able to gain a decisive voice. Despite some constitutional changes most national parliaments have remained 'supportive scrutiners' (D, B, A), or 'weak adapters' (I, P, GR, SP) with regard to the European policy cycle. Some have kept or gained a performance as national performers.

Confronted with considerable challenges - the processes and potential effects of para-constitutional communitarisation, sectoral differentiation, procedural differentiation, institutional differentiation, and actor differentiation - we observe a remarkable and persistent shift of attention, personal and institutional resources to a participation on the EU policy-cycle both on the national as on the 'Brussels' arena.

However, we do not find any revolutionary change in the governmental and administrative set-up in any national system nor the construction of a new harmonized model of dealing with EU matters. Traditional national patterns are resistant and apparently flexible enough to be sufficiently complacent to cope with the challenges from the European level.

The EU is deeply anchored in the national systems; the gains might be larger for some than for other actors which lost influence. However winners and losers are broadly spread and the struggle for influence still continues in all member countries. With this special regard to the national systems, the institutional system of the EU cannot be characterized as an isolated or as a - single level - closed system.

4.1. No structural revolutions: Asymmetry between levels instead

A major finding that can be observed in the light of the evolution at the European level on the one side and the fifteen member states levels on the other side is asymmetry. The rate, frequency and cumulative effects of changes at the Brussels arena are larger and faster than on the national level. Two explanations might be linked to that statement. Either there is a considerable time lag which would indicate a retarded adaptation by parliaments, or it would document that parliaments and 'their' governments are able to deal with these challenges by adapting their existing machinery and structures incrementally. Experience so far shows however, that except for some actors new constitutional frames and opportunities in the member states have been used only to a limited extent and that no elaborate positions which would be unknown or detrimental to the cornerstones of national systems have been developed yet. We witness intra-systematic adaptations due to the differentiation challenges coming from the EC/EU system but no 'revolutions'.

4.2. No uniform model

The findings on the reaction patterns at the national level with regard to the simple shifts of awareness, attention and mobilization leads to another conclusion: the constitutional, institutional and administrative systems and their effective use have not converged into one uniform model. The EU remains with 'Fifteen-plus-One' quite different component units – indeed in some cases the observations point at the reconfirmation and restoration of well known patterns. These findings give answers to the question about the existence or likelihood of an overall dominating national 'adaptation' model: hence, we do not identify any kind of cross-national institutional hierarchies between ways of reaction to the common challenges and opportunities produced at the EC/EU level.

This conclusion is, however, not without ambiguities. Some actors like the German Bundesrat/Länder and the French Parliament have conquered positions which are different from the time before the nineties. The persistent effects are yet difficult to identify. A skeptical view would claim that most efforts of these actors have increased the complexity of national procedures without any real effect on national decision making for Europe; others would discover a long term trend towards new institutional balances both on the national as well as on the European level. This debate points at one basic problem of our no-uniform-model-thesis.

The period under scrutiny of our research might be too short: The autonomy of national central banks as a consequence of EMU, the upgrading of yet to be designed regions due to the structural funds and the Committee of Regions, the changing role of national parliaments in their relations towards their

government due to the propensity of reducing the democratic deficits – all these elements might look like formal steps of minor importance to the established patterns of national decision making which would be adapted but not basically overhauled to the challenges of the EU. But we might also identify some incremental steps towards an adaptation process which would converge into *one* specific type of member state. The spill down process from the European level might be more persistent than we can realize at the moment. The changes in the UK might support the hypothesis that the ‘corridor of variations’ in the member states structure might become smaller when looking into the future. This process would not lead to develop a single type of member state, but the historical differences would lose its enduring strength and the new EU Polity would become the force dominating national structures. If such a convergence would make the life of the EU system easier it needs additional research.

4.3. No imports: limited usefulness of best practices

The rate of implanting apparently successful components of other national systems is surprisingly limited. A screening in view of best practices is not pursued on a systematic level – and rightly so: recent analysis on European policy making structures in the member states make clear that an imitation will follow the rule of unintended consequences; i.e. it is against all probabilities that an institutional and procedural device which worked efficiently in one member state will have the same effects in a different environment.

4.4. No optimal models: about misfits

After looking at the real varieties on both levels only cautious conclusions of ‘winners and losers’ are possible. Both on the national and on the European level a simple answer is problematic. In view of national characteristics it is extremely difficult to make any serious and valid statements on who is more or less successful. Any blue print for an optimal model is academically and politically risky. Best practices should be compared but carefully evaluated in terms of the respective constitutional, institutional and political features as well as to the characteristics of the policy field. One issue is already linked to indicators of success. If we take the rate of implementation of EC law as a sign of successfully adapting national parliaments to the legal output of the EC/EU we get another rating than if we look at similarities of constitutional features or – another area of variation and competition – at the substantial national, regional or local output on specific EC/EU policies. At the national level, systems which might look rather fragmented might turn out to be quite strong on certain issues where leadership can be mobilized on the basis of a large national or sectoral consensus. Also the availability of different power resources is of importance, which does not imply that smaller states are not competitive.

The overall process of europeanisation has been asymmetrical. Not the complete set-up of the Fifteen has moved but mainly the politico-administrative machinery, and to some degree the courts. The fusion process has extended to regions in a particular degree. National parliaments have not got into the train to Brussels. The trend towards deparliamentarisation on the national levels and bureaucratization keeps on going – although some of the dramatic loops of this development have decreased.

Types of parliamentary involvement in EU decision making

	Parties in parliament with critical EU and EP positions	Scope of information				Timing			Frequency of meetings	Management	Impact		
		EC area	EU area	Transfer of information dependent on government	Interparliamentary activity	After COM proposal	Before Council	During Council			Weak	Policy influencing	Policy making
D	No	Comprehen.	Comprehen.	Very low	Very Intensive	X	X	X	High	Proactive		X	X
F	Yes	Comprehen.	Limited	High	Very Intensive	X*	X*		High	Proactive		X	
I	No	Limited	Limited	High	Low				Low	Reactive	X		
NL	No	Comprehen.	Limited	Low	Low	X	X		High	Reactive		X	
B	No	Comprehen.	Limited	Low	Low	X*			Low	Reactive	X		
LUX	No	Limited	Limited	High	Very low	X*			Low	Reactive	X		
GB	Yes	Comprehen.	Limited	Low	Very Intensive	X*	X*	X*	High	Reactive		X	
DK	Yes	Comprehen.	Comprehen.	Very low	Intensive	X	X	X	High	Reactive			X
IRL	No	Limited	Limited	High	Low		X*		Low	Reactive	X		
E	No	Limited	Limited	Very High	Low				Low	Reactive	X		
P	No	Limited	Limited	Very High	Very low				Low	Reactive	X		
GR	No	Limited	Limited	Very High	Very low				Low	Reactive	X		
A	Yes	Comprehen.	Comprehen.	Very low	Intensive	X	X	X	High	Proactive		X	X
S	Yes	Comprehen.	Comprehen.	Very low	Very Intensive	X	X	X	High	Proactive		X	X
SF	Yes	Comprehen.	Comprehen.	Very low	Very Intensive	X	X	X	High	Proactive		X	X

X*: Parlamente berichten über häufige Abweichungen von der Regel der fristgerechten Übermittlung kontrollrelevanter Unterlagen. Eigene Zusammenstellung.⁷⁰

Assessing the overall development of national parliaments after Amsterdam leads to an ambiguous picture. Amsterdam marks a significant effort to strengthen the accountability of the executive with regard to the Commission. Moreover, the European Parliament's involvement in Justice and Home Affairs has been relatively increased. On the other hand, the fact that unanimity in the Council and consultation of the European Parliament still dominates the matters of justice and home affairs falling under Title VI TEU and under the Title IV TEC reflects a strong reservation in the majority of the member states against a wider recourse to genuinely supranational means of decision-making in these sensitive but – for the population living inside and outside the Union - important spheres.

The greater involvement of the national parliaments in the Union's policy process may help to render Governments more accountable for what they do in the Council of Ministers and its subordinated working bodies.

The PNP might become a useful instrument for those parliaments, which already dispose of some kind of parliamentary scrutiny reserve powers. For example, in future the Dutch government will be politically obliged (by reference made to the PNP) to send the relevant Title VI documents to its parliament in a reasonable time-period of at least six weeks. The same might apply to the parliamentary scrutiny systems in the United Kingdom, Austria, Sweden, Finland and Germany. As regards the scope of information to be forwarded to national parliaments, the PNP at least politically obliges the governments of Greece, Spain, Portugal and Luxembourg to improve the information flow.

Besides the provisions on the improvement of national parliamentary scrutiny mechanisms, the PNP of the Amsterdam Treaty recognises COSAC as a means to contribute to the lack of parliamentary scrutiny in EC and EU Affairs. Hence, the PNP specifies three areas for deliberation within the COSAC framework: According to articles 5 and 6 of the PNP, COSAC may examine "any legislative proposal or initiative in relation to the establishment of an area of freedom, security and justice", "legislative activities of the Union, notably in relation to the application of the principle of subsidiarity" and "questions regarding fundamental rights".

Thus, the PNP leads to the question, whether COSAC may become the appropriate body for these issues. The fact that Chapter II of the Protocol focuses on the area of freedom, security and justice and on the fundamental rights policies reflects the political and legal sensibility on this issue in the EU Member States. If we add this specification in the PNP to the new consultative role provided for the European Parliament in the context of the policy area concerned, we observe the introduction of a certain kind of "three-level-scrutiny-mechanism" with regard to judicial and home affairs in the framework of the future EU:

- Firstly, the EP will control - of course to a limited extent - the European level of decision making in the first and the third pillar.
- Secondly, provided that they organise their scrutiny mechanism effectively, the national parliaments may monitor unilaterally the stance of their governments on matters falling under this area.
- Thirdly, COSAC will become able to deliberate these issues between the European Parliament and the national parliaments of the Member States.

At least three shortcomings will certainly occur: Firstly, the PNP does not improve the lack of parliamentary control with regard to the CFSP pillar. Given that the European Union's Foreign and Security policy may not be simply conceived as a "domaine réservé" of the collective bodies of the executives of the Member States and given that the EP's budgetary power is limited to the framing of CFSP's financial aspects on a yearly basis it is not understandable, why democratic control of action in this field is completely excluded. Secondly, neither the EP nor the national parliaments and COSAC are given a right to monitor the process of transferring the Schengen acquis into the EC/EU area. If this lack of democratic control may be reduced due to further negotiations on both the European and the national

level, a third structural problem will certainly not be resolved in the next years: By definition COSAC delegations are constituted by the MP's of the Committees responsible for handling EC/EU affairs and not of the Committees on civil liberties, justice and/or home affairs. Therefore, it is hardly conceivable, how MP's dealing mainly with horizontal issues of European Affairs will become able to deliberate effectively on matters falling under the area of freedom, security and justice.

One should also bear in mind that the simple formalisation of COSAC within the realm of the new Treaty also renders the Union more complex and less understandable. The 'ordinary' citizen to which we referred at the beginning may ask: If the (directly elected) European Parliament's represents the peoples of the Union, the Council of Ministers the member states through (elected) governments, the European Economic and Social Committee some of the most important interest groups of the Union, and the Committee of the Regions the (elected) representatives of some of the Union's regional and local communities, what is the surplus of a body bringing together some members of the European Parliament with some Members of the national parliaments? Joschka Fischer might be right in his analysis about the lack of linkage between the Union and its citizenry. But creating a second – or, given the Council acting as a chamber - third chamber composed by national MP might simply engender more discontent with 'those in Brussels'.

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- 1 See Hervé Groud; "Les délégations parlementaires pour les Communautés européennes. Adaptation des assemblées au processus de construction européenne?", in: *Revue du Droit Public et de la Science Politique en France et à l'Étranger*, No. 5/1991, p. 1311.
 - 2 Charles-Ferdinand Nothomb; "The role of national parliaments and the European Parliament in building the European Union", in: *The Brussels Review*, No. 4th Quarter 1994, p. 12.
 - 3 According to this fundamental Article, "the Union shall respect the national identities of its Member States, whose systems of government are founded on the principles of democracy". Hence the TEU itself does not provide an operational definition of the principle of democracy. Article 51 consists only a simple indication of one but essential common ground for European integration, namely that all Member States are founded on some principles of democracy.
 - 4 See: Jachtenfuchs, M. (1998), *Democracy and Governance in the European Union*, in: Follesdal, A./Koslowski, P. (eds.): *Democracy and the European Union*, Berlin/New York/Tokyo (Springer), pp. 37-64.
 - 5 See: Majone, G. (1994), 'The Rise of the Regulatory State in Europe'. *West European Politics* 3, 78-102; Majone, G. (1996), 'European regulatory state?', in J. Richardson, ed. *European Union. Power and Policy-Making*. London: Routledge, pp. 263-277.
 - 6 Dehousse, R. (1998), *European Institutional Architecture after Amsterdam: Parliamentary System or Regulatory Structure?* RSC No 98/11, EUI Working papers, Florence.
 - 7 Schimmelpfennig, F. (1996), 'Legitimate Rule in the European Union. The Academic Debate'. *Tübinger Arbeitspapiere zur Internationalen Politik und Friedensforschung* 27, Tübingen: 19.
 - 8 Wessels, W. (1996), 'The Modern West European State and the European Union: Democratic Erosion or a New Kind of Polity?' in S.S. Andersen and K.A. Eliassen, eds. *The European Union: How democratic is it?* London: Sage.
 - 9 See: *ibid.* and Wessels, Wolfgang: "An Ever Closer Fusion? A Dynamic Macropolitical View on Integration Processes", in: *Journal of Common Market Studies*, No. 2/1997.
 - 10 See Alexander Kreher (ed.), *The EC agencies between Community institutions and constituents: autonomy, control and accountability*, conference report, (Florence: European University Institute 1998).
 - 11 See e.g. the Presidency conclusions of the Cologne (June 1999) and Helsinki (December 1999) summits: <http://ue.eu.int>.
 - 12 See Martin Westlake, *The Council of the European Union*, (London: Cartermill, 1995), pp. 164-167.
 - 13 See also: Wolfgang Wessels, *Die Öffnung des Staates. Modelle und Wirklichkeit grenzüberschreitender Verwaltungspraxis 1960-1995*, (Opladen: Leske & Budrich, 2000), pp. 195-260.
 - 14 For example, only the EC Treaty chapter on EMU contain nine different decision-making procedures: assent of Parliament and unanimity of the Council: two times; co-operation procedure: four times; consultation of Parliament and unanimity of the Council: seven times; consultation of Parliament and qualified majority voting of the Council: seven times; information of Parliament and qualified majority voting of the Council: six times; information of Parliament and unanimity of the Council: two times; unanimity in the Council without any participation of Parliament: three times; qualified majority voting in the Council without Parliament's participation: nine times; two thirds majority of weighted votes of the Council without Parliament's participation: once.
 - 15 Dehousse, F./Vandamme, J./Le Hardy de Beaulieu, L. (1998) (eds.): *Union européenne: quels défis pour l'an 2000?*, Bruxelles, PIE ; Têlo, M./Magnette, P. (eds) (1998): *De Maastricht à Amsterdam. L'Europe et son nouveau traité*, Bruxelles, Editions Complexe ; Westlake, M. (ed.) (1998): *L'Union Européenne au-déla d'Amsterdam. Nouveaux concepts d'intégration européenne*, Bruxelles, PIE.
 - 16 See on the debate regarding the Nice IGC: Lehne, Stefan: „Institutionenreform 2000“, in: *integration*, No. 4/1999, pp. 221-230; European Institute of Public Administration Hrg.: *Rethinking Europe for the New Millennium: A New Institutional Framework for an Enlarged Union*, Background material, Maastricht, November 1999; Janning, Josef: „Das Regierungssystem der „großen EU“. Anforderungen und Optionen der Regierungskonferenz 2000“, in: *Europäische Rundschau*, No. 1/2000, pp. 9-15; Kohler-Koch, Beate: „Regieren in der Europäischen Union. Auf der Suche nach demokratischer Legitimität“, in: *Aus Politik und Zeitgeschichte*, Nr. B 6/2000, pp. 30-38; Best, Edward/Gray, Mark/Stubb, Alexander Eds.: *Rethinking the European Union. IGC 2000 and Beyond*, Maastricht 2000.
 - 17 Jachtenfuchs, M./Kohler-Koch, B. (1996): *Regieren im dynamischen Mehrebenensystem*, in: M. Jachtenfuchs and B. Kohler-Koch (eds), *Europäische Integration*, Opladen: Leske und Budrich.
 - 18 Kielmansegg, P. Graf (1996), *Integration und Demokratie*, in: Jachtenfuchs, Markus and Kohler-Koch, Beate (eds.), *Europäische Integration* (Opladen: Leske + Budrich) pp. 47-72.
 - 19 For the critique on these interpretations see: Weiler, J. (1992), 'After Maastricht: Community Legitimacy in Post-1992 Europe', in

- W.J. Adams, ed. *Singular Europe: Economy and Polity of the European Community after 1992*. Ann Arbor: University of Michigan Press, pp.11-41; Weiler, J. (1997), 'Legitimacy and Democracy of Union Governance', in A. Pijpers and G. Edwards, eds. *The Politics of European Treaty Reform. The 1996 Intergovernmental Conference and Beyond*. London: Pinter; Weiler, J., Haltern, U. and F. Mayer. (1995), 'European Democracy and Its Critique'. *West European Politics* No.4, 24-33. Craig, P. (1997), 'Democracy and Rulemaking within the EC: An Empirical and Normative Assessment'. *European Law Journal* No.3, 105-130; Craig, P. (1999): "The Nature of the Community: Integration, Democracy and Legitimacy", in: Craig, P./De Búrca, C. (eds.): *The Evolution of EU Law*, Oxford University Press.
- 20 Lübke, H. (1994): *Abschied vom Superstaat. Die Vereinigten Staaten von Europa wird es nicht geben*, Siedler, Berlin: 147; Schröder, M. (1994): "Das Bundesverfassungsgericht als Hüter des Staates im Prozeß der europäischen Integration", in: *Deutsches Verwaltungsblatt*, Nr. 6: 318 - a fully fledged or 'real' parliament.
- 21 Hänsch, Klaus (1986): 'Europäische Integration und parlamentarische Demokratie', in: *Europa-Archiv*, 7; Reich, Charles (1991): 'Qu'est-ce que...le déficit démocratique?', in: *Révue du Marché Commun*, 343; Williams, S. (1991), *Sovereignty and Accountability in the European Community*, in: Keohane, R./Hoffmann, S. (eds.), *The New European Community*, Boulder (Westview Press), pp. 155-176; Neunreither, K. (1994): "The democratic deficit of the European Union: Towards closer co-operation between the European Parliament and the national Parliaments", in: *Government and Opposition*, No. 3; Pliakos, A. (1995): "L'Union européenne et le Parlement européen - y a-t-il vraiment un déficit démocratique?", in: *Révue du droit public et de la science politique et France et à l'Étranger*, No. 3; Birkinshaw, P./Ashiagbor, D. (1996), 'National participation in Community affairs: Democracy, the UK Parliament and the EU', in: *Common Market Law Review*, No. 33; Follesdal, A. (1998), *Democracy and the European Union: Challenges*, in: Follesdal, A./Koslowski, P. (eds.) *Democracy and the European Union*, Berlin/New York/Tokyo (Springer), pp. 1-10.
- 22 Jachtenfuchs 1998: 47
- 23 Hall, P. (1986), *Governing the Economy: The Politics of State Intervention in Britain and France*, New York.
- 24 For the original definition of the democratic deficit see the so-called Vedel-report of the European Commission 1972: 4 'and the Toussaint par Michel Toussaint, PE DOC A 2276/87 of 1 February 1988.
- 25 See: Lodge, J. (1996): "The European Parliament", in: Andersen/Eliassen (Ed.): *The European Union. How democratic is it?*, Sage, London, pp. 190-191; Gérard Laprat: "Reforme des Traités: Le Risque du double déficit démocratique", in: *Revue du Marché Commun*, No. 351/1991, p. 721.
- 26 In this regard, the 1996/197 IGC blueprint of the old British Government is highly illustrative: "A Partnership of Nations: The British Approach to the European Union Intergovernmental Conference 1996", Presented to Parliament, March 1996.
- 27 Wessels 1996
- 28 See: Telò, Mario: « Démocratie internationale et démocratie supranationale », in: Telò, Mario ed. : *Démocratie et Construction Européenne*, Brussels: Editions de l'Université de Bruxelles 1995, p. 18.
- 29 Seidelmann, Reimund: „Democracy-Building in the European Union. Conditions, Problems, and Options“, in: Telò, Mario (Hrsg.): *Démocratie et Construction Européenne*, Brüssel 1995, S. 73-89, hier S. 79.
- 30 Schüttemeyer, Susanne (1979): 'Funktionsverluste des Bundestages durch die europäische Integration?', in: *Zeitschrift für Parlamentsfragen*, 2: 261.
- 31 Laprat, G. (1995): "Parliamentary Scrutiny of Community Legislation: An Evolving Idea", in: F. Laursen/S. A. Pappas (eds.): *The Changing Role of Parliaments in the European Union*, Maastricht, European Institute of Public Administration 4-10; Norton, Philip (1995) (ed.): *National Parliaments and the European Union*, Special Issue of *The Journal of Legislative Studies*, Vol. 1, 3.
- 32 Masclat, Jean-Claude et Maus, Didier (1993) (eds.): *Les Constitutions nationales à l'épreuve de l'Europe*, Paris, La Documentation française.
- 33 Corbett, 1993: 61-62; Maurer 1997: 434-426
- 34 Jopp, Mathias/Maurer, Andreas/Schmuck, Otto Hrsg.: *Die Europäische Union nach Amsterdam. Analysen und Stellungnahmen zum neuen EU-Vertrag*, Bonn 1998; Neunreither, Karlheinz/Wiener, Antje Hrsg.: *European Integration after Amsterdam, Institutional Dynamics and Prospects for Democracy*, Oxford 2000; Dehousse, Franklin 1999, *Amsterdam, The Making of a Treaty*, London 1999; Dehousse, Renaud, *European Institutional Architecture after Amsterdam, Parliamentary System or Regulatory Structure?* RSC No 98/11, EUI Working papers, Florence ; Duff, Andrew, *The Treaty of Amsterdam. Text and Commentary*, London 1997; Hummer, Waldemar Hrsg., *Die Europäische Union nach dem Vertrag von Amsterdam*. Wien 1998.
- 35 See: France: "Pour une implication renforcée des parlements nationaux dans la construction européenne", 5 June 1996 no CONF. Number.
- 36 See: United Kingdom proposal on the role of National Parliaments in the European Union, CONF/3961/96, October 1996.
- 37 See: Denmark: Memorandum on the fight against fraud, Consumer Protection, Subsidiarity and National Parliaments, 1 November 1996 no CONF. Number.
- 38 See: *Le Figaro*, 7 December 1994.
- 39 Brittan 1994: 227
- 40 Sénat, 15 février 1995; Sénat, 2 décembre 1994
- 41 Assemblée nationale, 8 Février 1995: 98-100
- 42 in a communication from the Finnish Council of Ministers to the Finnish Parliament on the aims and objectives of Finland regarding the 1996 IGC from the 27 January 1996
- 43 Wessels, 1996: 58; See also Raunio 1999: 182-184.
- 44 Seider, Rainer (1990): *Die Zusammenarbeit von deutschen Mitgliedern des EP und des Deutschen Bundestages und ihr Beitrag zum Abbau des parlamentarischen Defizits in der EG*, Lang, Frankfurt/Bern/New York/Paris.
- 45 Herman and van Schendelen, 1979: 268; Coombes, 1980: 138; Steffani, 1995: 46-47. The following policy areas are subject to national parliament's approval: Amendments to the Treaty Art. N, Accession of new Member States Art. O, Conventions in the field of CJHA Art. K.3 2-c, Shifts from Article K.1. 1-6 into Art. 100c ECT Art. K.9, Additions to citizens rights Art. 8e, Uniform electoral procedure for EP Art. 138-3, Decisions on EC's own resources Art. 201, and Conventions under Art. 220.
- 46 Norton, 1995: 6
- 47 As Pimentel 1995 in analysing the Danish scrutiny model recently puts it: "Le contrôle danois est également un moyen de responsabilisation, surtout depuis la généralisation du vote à la majorité qualifiée: la menace de voir le Danemark mis en minorité à Bruxelles permet d'éviter tiement les tentations maximalistes". See: Schüttemeyer, 1979: 268; Marquand, 1981: 226; Hänsch, 1986: 197; Saider 1990: 88
- 48 See: Birkinshaw/Ashiagbor, 1996: 503 and 526
- 49 See: Code of Conduct on public access to the minutes and statements in the minutes of the Council acting as legislator, General Secretariat of the Council, Doc. No SN 3604/1/95 REV 1, Brussels 2 October 1995.
- 50 Marquand, David (1981): 'Parliamentary accountability and the European Community' in: *Journal of Common Market Studies*,

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- XIX, 3: 226
- 51 See the contribution by Ana Fraga in this volume (forthcoming 2001); Pahre, Robert, "Endogenous Domestic Institutions in Two-Level Games and Parliamentary Oversight of the European Union", *Journal of Conflict Resolution*, No. 1/1997, pp. 147-174; Bergman, Torbjorn, "National parliaments and EU Affairs Committees: notes on empirical variation and competing explanations", *Journal of European Public Policy*, No. 3/1997, pp. 373-87; and Wiberg, Matti/Raunio, Tapio, "Does Consensus lead to Ignorance? National Parliaments and the Legitimacy of EU Governance", paper presented at the ECPR Mannheim Joint Sessions of Workshops, 26-31 March 1999.
- 52 See on these factors especially Norton, Philip Ed.: *Parliaments in Western Europe*, Portland 1990; Olson, David M.: *Democratic Legislative Institutions. A comparative View*, London 1994; Blondel, Jean: *Comparative Government*, Hertfordshire 1995; Blondel, Jean/Sinnot, Richard/Svensson, Palle Eds.: *People and Parliament in the European Union*, Oxford 1998; Katz, Richard S./Wessels, Bernhard Eds.: *The European Parliament, the National Parliaments and European Integration*, Oxford 1999; Lijphart, Arend: *Patterns of Democracy. Government Forms and Performance in Thirty-Six Countries*, New Haven/London 1999.
- 53 Laprat, 1995: 4-8.
- 54 SCECD A für die Bereiche Landwirtschaft, Fischerei, Forsten, Umwelt und Verkehr; SCECD B für alle anderen Bereiche.
- 55 The German Presidency of the Council January – June 1999 listed 351 operating working groups. See the contribution of Andreas Maurer in this volume.
- 56 See Peter van der Knaap, *Government by Committee: Legal Typology, Quantitative Assessment and Institutional Repercussions of Committees in the European Union*, in: Robert Pedler and Günther Schäfer eds., *Shaping European Law and Policy: The Role of Committees and Comitology in the Political Process*, Maastricht: EIPA, 1996, pp. 83-116 here p. 114. The Council itself notes that some two thirds of its rolling agenda is closed by COREPER, out of which 70 % are agreed at the working groups level. See *Rat der EG, Der Rat der EG, Luxembourg: Amt für amtliche Veröffentlichungen*, 1990, p. 22; See also Wessels 2000, op.cit., pp. 228-229.
- 57 See Sasse et.al. 1977.
- 58 See Guy Peters, *Bureaucratic Politics and the Institutions of the European Community*, in Alberta Sbragia ed.: *Euro-Politics: Institutions and Policymaking in the 'New' European Community* Washington: Brookings, 1992, pp. 75-122; Wolfgang Wessels, *The Growth and Differentiation of Multi-Level Networks: A Corporatist Mega-Bureaucracy or an Open City?*, in: Helen Wallace and Alasdair R. Young eds, *Participation and Policy-Making in the European Union*, Oxford: Oxford University Press, 1997, pp. 17-41.
- 59 Mezey 1979: 21-44, and 1990: 149-176.
- 60 Norton 1984: 198-221; and 1990: 1-9.
- 61 Mezey 1990: 153. As our paper is concerned only on the role parliaments play in the European decision making process, we neglect Mezey's second criteria which is oriented towards the general profile of legislatures.
- 62 In "Comparative Legislatures", Mezey acknowledged the missing of the combination "parliaments possessing the power to reject but not to modify". For him, it was "inconceivable that a legislature could have the power to reject proposed legislation but not have the power to modify it". Mezey, 1979: 43 Footnote 1.
- 63 Norton 1990: 5 and 1984: 201
- 64 In the context of European legislation the question should be: Are national parliaments able to substitute policy against the original government proposals on the so-called "common positions" for the Council of Ministers?
- 65 Oschatz/Risse, 1995: 4; BT-Drs. 12/3896, p. 18.
- 66 See Klaus Pöhle, 'Die Parlamente in der EG, Formen der praktischen Beteiligung', in: *Integration* No. 2/1992, p. 72-82; Tanja A. Börzel, 'Europäisierung und innerstaatlicher Wandel, Zentralisierung und Entparlamentarisierung', in: *Politische Vierteljahresschrift*, No. 2/2000, pp. 225-550.
- 67 See Wolfgang Ismayr, *Der Deutsche Bundestag. Funktionen – Willensbildung – Reformansätze*, (Opladen: Leske und Budrich, 1992), p. 205.
- 68 See Torbjörn Bergman, 'National parliaments and EU Affairs Committees. Notes on empirical variation and competing explanations', in: *Journal of European Public Policy* 3/1997, pp. 373-387; Finn Laursen/Spyros A. Pappas (eds.), *The Changing Role of Parliaments in the European Union*, (Maastricht: EIPA, 1995); Philip Norton (ed.), *National Parliaments and the European Union*, Special Issue of the *Journal of Legislative Studies*, Vol. 1, No. 3/1995; Philippe A. Weber-Panariello, *Nationale Parlamente in der Europäischen Union – Eine rechtsvergleichende Studie zur Beteiligung nationaler Parlamente an der innerstaatlichen Willensbildung in Angelegenheiten der EU im Vereinigten Königreich, Frankreich und der Bundesrepublik Deutschland*, (Baden-Baden: Nomos, 1995).
- 69 See Andreas Maurer, 'The European Parliament and national parliaments after Amsterdam', in: Finn Laursen (ed.), *The Amsterdam Treaty: National Preference Formation, Interstate Bargaining, Outcome and Ratification*, 2000 (forthcoming).
- 70 See Raunio 1999, and Raunio, Tapio/Wiberg, Matti: „Does Support lead to Ignorance? National Parliaments and the Legitimacy of EU Governance“, in: *Acta Politica*, No. 2/2000, S. 146-169.