NOTES DE LA FONDATION ROBERT SCHUMAN ■ NATIONAL PARLIAMENTS, A BULWARK FOR EUROPE

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Introduction

The role of national Parliaments is one of the topics being examined throughout Europe in the wake of the failure of the referendums in France and in the Netherlands.

On the 1st of February 2006, for example, Wolfgang Schüssel, the Austrian Chancellor and current President of the European Council of Ministers declared that "Dialogue between national Parliaments and European institutions is an essential point if the gap between the people of Europe and politics, between the citizens of the EU and its institutions, is to be narrowed". In the course of the same meeting, José Manuel Barroso, President of the European Commission, described the members of national Parliaments as "indispensable links" in the European strategy for growth and employment on account of their "special closeness to citizens" and their "traction" on governments.

Such statements show that attitudes have changed. Of course, the idea that national Parliaments, as such, should have a place in Europe's institutional architecture is no longer seen as heretical today, but the fact that their being more closely involved in the EU's activities can now be seen as a means of strengthening European integration, is a significant change.

To be sure, there is nothing new in the theme of the "democratic deficit" in European integration. On the contrary, it has been one of the dominant topics in the European debate. For a long time, however, there was a feeling that the democratic deficit was highlighted merely to demand an increase in the powers of the European Parliament, seen as the only way to democratize what was seen as a "technocratic" decision-making process.

The rise of the European Parliament

The result, in the successive treaties, was a steady rise in the Strasburg Assembly's influence among the European institutions:

- The treaties of 22nd April 1970 and 22nd July 1975 granted it wide budgetary powers.

- The "Single European Act" of 27th and 28th February 1986 subjected entry into the Community and Association Agreements with it to the agreement of the European Parliament. It also established, in certain fields, the "procedure of cooperation". This has now become residual, but it gave the Parliament a place in the legislative procedure that went beyond the consultative role it had previously held.

- The Maastricht Treaty of 7th February 1992 subjected a large number of decisions to the agreement of the European Parliament: the most important international agreements, rules concerning the right of residence and movement of the Union's citizens, basic rules concerning

the structural and cohesion funds, the statutes of the European System of Central Banks (ESCB), the uniform procedure for European elections. In addition, this treaty set up, in certain fields, the "codecision" procedure, in which the Council, even when unanimous, cannot adopt a text if the Parliament opposes it. In parallel, the cooperation procedure has been extended to new fields. Finally the Assembly's powers of scrutiny have been significantly extended: the Commission, which is now changed after each European election, must be approved by the Parliament (which has had the power of voting it out of office since the Treaty of Rome); in addition, the Parliament now has the right to set up committees of inquiry.

– The Amsterdam Treaty of 2nd October 1997 took this development further. The codecision procedure has been slightly modified so as to put the Parliament and the Council on a completely equal footing. Above all, with the procedure of cooperation, henceforth restricted to certain rules relating to Economic and Monetary Union (EMU), the codecision procedure has been extended to a large number of fields, so much so that it has become the normal legal procedure when the Council decides by qualified majority. The only significant exceptions are agricultural policy and trade policy. The Parliament's political scrutiny of the Commission has been strengthened by a mechanism of double investiture. The Parliament first approves the President of the Commission and then, after an approval hearing for each of the members designate, approves the Commission as a body. Finally, the Parliament has been granted an important means of influencing the Common Foreign and Security Policy (CFSP), since this policy is now financed out of the Community budget, unless the Council of Ministers unanimously decides otherwise.

- The Nice Treaty went even further by extending the codecision procedure to those new matters subject to qualified majority voting in the Council of Ministers. Moreover this text increased the Parliament's powers concerning referrals to the Court of Justice. Whereas it used to be able to call on the Court of Justice only to safeguard its own prerogatives or to certify the failure of another institution in implementing a provision of the treaties, it has now received, in the same conditions as Member States, the power to appeal against acts of the Council, the Commission or the European Central Bank (ECB) on the grounds of incompetence, breach of substantial form, breach of the European Community's founding treaty or abuse of power.

In this way, the European Parliament has come, nowadays, to wield very wide powers.

The budget procedure gives it the final say on non compulsory expenditures, i.e. mainly, non agricultural spending, which make up most of the EU's spendings.

In legislative matters, the codecision procedure applies in practically all the fields where the Council decides by qualified majority, and this is now the general rule. The agreement of the European Parliament, either because its "assent" is required, or through the codecision process, is also necessary for certain decisions taken unanimously by the Council.

The Parliament's powers are also very wide when it comes to acting as a check on the executive: it approves the Commission and can vote it out of office whereas it cannot itself be dissolved, and can establish committees of inquiry.

These powers are all the more significant as the Parliament exercises them in an autonomous manner, since it is bound neither by the constraints of majority discipline, nor by the mechanisms of "rationalized parliamentarianism". Its powers, *mutatis mutandis*, seem more substantial than those of national Parliaments in Member States, where the executive has much greater weight.

A paradoxical outcome

The rise of the Parliament among European institutions has not, however, produced the effect expected. The feeling that there is a "democratic deficit" has not disappeared. And the turnout in European elections has kept going down, falling over 25 years from 63% to less than 46%. And it must be remembered, when evaluating this mediocre result, that voting is obligatory in some Member States. Contrary to expectations, the increase in the Parliament's powers has been accompanied by a declining interest in its elections.

Admittedly, European elections are not the only ones to be affected by the trend towards declining voter turnout, but this phenomenon does seem especially marked in their case. In France, the regional elections held in the same year as the European elections saw a turnout of 65% as against 43% for the latter. Two years before that, turnout in the presidential elections and the parliamentary elections had reached 80% and 64% respectively. Above all, in the case of the European Parliament, the increase in its power, and hence in the stakes involved, should have countered the trend to falling turnout.

It must therefore be recognized that the rise in the powers of the European Parliament had not been enough to bring European institutions closer to Europe's citizens.

How can this astonishing outcome be explained?

It may be pointed out that European parliamentarianism does not correspond very well to some of the rules of representative democracy[1]. Representative government supposes, first of all, the existence and expression of a public opinion in relation to which rulers are led to position themselves. Now, even though movements of opinion in Europe cross national boundaries, there is today no "European public opinion" and no "European public space". On the contrary, the European elections give rise to as many campaigns as there are Member States, and it is, moreover, above all in terms of the success or disavowal of national governments that they are interpreted from a political point of view. In other words, the common frame of reference that might give meaning to European elections has not really taken shape.

Then, and more importantly, what makes representative democracy work is the possibility of electoral punishment[2]. This remains an abstract hypothesis in the European system, where

(1) For the conditions in which it works, see Bernard Manin, *Principes du gouvernement représentatif*, Flammarion, 1997.

(2) "Rendering accounts has been, since the very beginning, the democratic element in the relationship of representation", Bernard Manin, op. cit. p. 301.

there is, properly speaking, neither a majority nor an opposition in any of the institutions; the system functions essentially by means of compromises between the main political tendencies.

Europe's institutional development has been based to a large extent on national models, especially the German model which appeared as the natural reference, since Germany was, for a long time, the only Member State organised on a federal basis and had, in any case, the Union's largest population. It became an accepted idea that the European Parliament was called upon to play the same role as the Bundestag in the German system, with the Council as the Bundesrat, the Commission as the Bundesregierung and the Court of Justice as the Federal Constitutional Court of Karlsruhe. This vision seemed all the more credible for the fact that the organisation of political parties at European level was to a large extent the reflection of the political parties that had grown up in Germany.

But isn't there something artificial about mapping a national pattern, even a federal one, onto a much more complex European reality? Even if political life in each Land has is own characteristics, there still exist a German public opinion that expresses itself in a shared public space, and the federal elections can be an opportunity for a judgement of the electorate leading to a change in the political majority. As we have just seen, these characteristics are not present in the European political system. And it cannot be expected that a mechanism for conferring legitimacy that is adapted to a national system should confer the same legitimacy on a system of an entirely different kind.

If ways of seeking increased legitimacy for European projects are to be sought, would not it be better to move to a more nuanced conception, one that is better adapted to the originality of the joint enterprise. After all, experience does not suggest that imitating national democracies is the best way of entrenching European democracy. For instance, it turned out, on the occasion of the referendum on the Constitutional Treaty, that the use of the term Constitution for a text of a non constitutional nature muddled the message for the electorate, so complicating the task for those who defended the project. Would not it be preferable to come more to terms with the specificity of the European project?

• Towards a different model?

Jacques Delors' formula of Europe, as a "federation of nation-States", is a move in this direction. A clear distinction must be made between a federal State, such as Germany, and a federation of nation-States. A federal State is a sovereign State that includes entities that, for their part, are no longer States in the sense international law gives to the term, for they are based on the constitution of the federal State and not directly in the international legal order[3].

Such a model cannot properly be applied to the European Union, which is far from displaying most of the characteristics of a sovereign State:

- The EU has "no power to grant powers". On the contrary, it only enjoys those powers granted to it by treaties concluded between sovereign States, even though these States have

[3] See Hans Kelsen, "*Droit et État du point de vue d'une théorie pure*", Annales de l'institut de droit comparé de l'université de Paris, 1936, t. II, Sirey, pp. 51-52.

pooled a substantial part of their sovereignty within the framework of these treaties;

- The EU has no army of its own and is not a complete legal person on the international level;

- The EU depends on its Member States for the application of its decisions. It has neither the administrative and financial resources, nor the coercive instruments (police and courts) of a State;

- European citizenship, according to the treaties themselves, completes national citizenship but does not replace it.

In contrast, a federation of nation-States can rely principally on the means of action and coercion of its member States. Its capacity for action abroad can be partial and limited. It can wield only those powers granted to it. Its moving spirit is the pooling of different sovereignties and not the birth of a new sovereignty. This does not however mean that it can be assimilated to a confederation of States, which is simply an association of States normally governed by decisions taken unanimously. It involves much greater solidarity between the member States, enabling many decisions to be taken by majority voting and the emergence of an autonomous body of law that the member States are required to apply.

For this reason, a federation of nation-States cannot be based either on a federal style legitimacy, nor the legitimacy given to it by its member States. It must associate all the various types of legitimacy: this is what the expression "federation of nation-States" brings out, for it suggests that the EU's legitimization should derive not only from a developing European democracy, but also from the national democracies. This is what Joschka Fischer, former German Minister of Foreign Affairs, had in mind when he declared, during the debate preceding the launching of the Convention on the future of Europe that "the nation-State, with its cultural and democratic traditions, will remain irreplaceable in legitimizing a union of citizens and States that people will fully accept."[4].

Similarly, Jean Claude Juncker, Prime Minister of Luxemburg, recently stated: "Those who want to see nations-States disappear are making a great mistake. Europe must reckon with the fact that nations exist. It should blunt their claws whenever necessary, so as to take away from them everything that is excessive, pernicious and directed against others. But nations are not temporary inventions of history. The citizens of Europe do not want a United States of Europe, but a sharing of all areas of national sovereignty with a view to greater efficiency. Europe cannot be built against the deepest feelings of its peoples[5].

Defining Europe as a federation of nation-States thus opens the way to a nuanced and pluralist conception of how to confer democratic legitimacy on European unification. And, in particular, it implies that the national Parliaments, the embodiment of the "cultural and democratic traditions" mentioned by Joschka Fischer, should be in a position to contribute to conferring this legitimacy.

This approach can also be grounded in the fact

[4] See "*Le Monde*", 21st June 2000.

[5] See "*Libération*", 24th mars 2006.

that European integration is not based on one single method of taking decisions[6], but on a combination of different methods in which the different institutions occupy different places: the "community" method, the "federal" method, the "intergovernmental" method. One single type of democratic legitimization cannot correspond to such a complex combination, which is, however, the basis of the major balances in European integration.

• What kind of association for the national Parliaments?

Although there are strong reasons in favour of leaving the orthodox federalist schema behind, and associating national Parliaments more closely with European unification, the modalities of this association still raise difficulties and controversies.

The question did not arise so long as members of the European Parliament were members of national Parliaments designated by the assemblies they belonged to. The election of the European Parliament by universal suffrage, in 1979, brought to an end this kind of automatic and structural association. And yet, the question of the role of national Parliaments scarcely cropped up for about ten years.

The question appeared in the treaties, in the form of two declarations appended to the Maastricht Treaty (1992) in the perspective of developing cooperation between the European Parliament and the national Parliaments.

The first of these declarations recommended "encouraging greater involvement of national Parliaments in the activities of the European Union" and "stepping up the exchange of information between national Parliaments and the European Parliament" as well as "contacts" between them; it also requested governments to ensure that "national Parliaments receive Commission proposals for legislation in good time for information or possible examination."

The second declaration requested: "the European Parliament and the national Parliaments to meet as necessary as a Conference of the Parliaments (or 'Assises'). The Conference of the Parliaments will be consulted on the main features of the European Union, without prejudice to the powers of the European Parliament and the rights of the national Parliaments. The President of the European Council and the President of the Commission will report to each session of the Conference of the Parliaments on the state of the Union".

This second declaration was an implicit reference to the Conference of the Parliaments held in Rome in November 1990, while the Maastricht Treaty was being negotiated. This Congress, two thirds of whose membership came from the national Parliaments and the remaining third from the European Parliament, was to debate a message to be sent to the intergovernmental Conference. In fact, being entirely organised by the European Parliament, the Conference of the Parliaments boiled down to a ratification of the positions the European Parliament had already laid down. This somewhat unconvincing experience doubtless explains why the

(6) See Hubert Haenel and François Sicard, *Enraciner l'Europe*, Seuil, 2003, pp. 90-107.

"Conference of the Parliaments" has never met, although, on paper, it was an attractive formula that would have allowed national Parliaments both to express their views on European questions and to dialogue with the Commission and the current EU presidency.

An initiative that was to have a brighter future was launched at almost the same time. This was the "Conference of European Affairs Committees" (COSAC). It was made up mainly of representatives of the European Committees of the national Parliaments. COSAC is focussed on cooperation between the national Parliaments, with each of them, like the European Parliament, having six representatives, and has met at regular six-month intervals in the State currently holding the Union presidency, ever since its creation in 1989.

The question of the role of the national Parliaments was taken up again during the negotiation of the Amsterdam Treaty. Finally, a protocol on "the role of the national Parliaments in the European Union" was appended to this treaty. This was an important development from the legal point of view. Whereas declarations, like those appended to the Maastricht Treaty, are not binding, a protocol has the same authority as the treaty to which it is appended. The role of the national Parliaments was thus granted legal recognition.

In substantive terms, the Amsterdam protocol includes two separate parts.

The first provides, in particular, for the Commission's legislative proposals to be transmitted to the national Parliaments and guarantees them a period of six weeks to examine the proposals before the Council makes a decision.

The second part of the protocol officializes the existence of COSAC, which had been established on a customary basis, and spelled out its role. COSAC may submit any contribution it sees fit to the attention of the European Union's institutions, especially on the basis of projects transmitted to it of common accord by EU governments. COSAC may, in addition, examine any proposal in relation to the establishment of a space of freedom, security or justice. Finally, it may address to either the European Parliament, the Council or the Commission any contribution it thinks fit concerning the European Union's legislative activities, particularly with respect to the application of the principle of subsidiarity, the space of freedom, security and justice, and issues relating to fundamental rights.

The movement of recognition of the role of national Parliaments continued after the Amsterdam Treaty came into force.

For example, the Convention responsible for drawing up the European Union's Charter of Fundamental Rights gave significant weight to representatives of the national Parliaments: the Convention's 62 members included 30 members of national Parliaments.

The "declaration on the future of the European Union" appended to the Nice Treaty of 9th December 2000 made the "role of the national Parliaments in the European architecture"

one of the four priorities to be tackled by the Intergovernmental Conference (IGC) to be summoned in 2004.

Representatives of the national Parliaments, with fifty-six members out of the total of one hundred and five were in the majority in the Convention on the future of the EU summoned to prepare the IGC.

And the European Constitutional Treaty, signed on the 29th of October 2004, provided for the first time for a direct role for the national Parliaments in the European decision-making process by allowing them to address "reasoned opinions" to the European Union's institutions concerning the respect of the principle of subsidiarity and enabling them to seize the Court of Justice in the same field.

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A clear trend has therefore emerged over the last few years in favour of a closer association of the national Parliaments in the EU's activities.

However, whereas the Constitutional Treaty seemed to have brought out some consensual elements as far as the form of this association is concerned, the breakdown in the ratification process means that the problem remains pending.

It is therefore worthwhile to take stock of the role of the national Parliaments within the framework of the treaties currently in force before going on to examine the prospects for change in the context created by the failure of the referendums in France and in the Netherlands.

Summary

The "democratic deficit" has for a long time been one of the main criticisms addressed against the European Union. But until recently the remedies pinpointed to make good this deficit have mainly been internal: this meant increasing democratic features within the European institutions. As an autonomous political entity the Union should have as its foundation its own democratic base and its own representative institutions. The main historical consequence of this approach was the strengthening of the role and powers enjoyed by the European Parliament. Since the 1970's successive treaties have continuously enhanced the role of the latter until today it has become a partner equal to the Council of Ministers in most of the European Union's areas of action. This essential development which was to be completed by the draft treaty establishing a Constitution for Europe does not appear to have been adequate enough in bringing the citizens closer to the European institutions.

The democratic management of community affairs in the Member States must also feature alongside the democratic development of the European Union. In effect this implies enhancing the role played by the national Parliaments in this area. It is also via the intermediary of national representations that it will be possible to increase regular involvement of European citizens in issues and debates that form the political life of the European Union.

This requirement which is now well acknowledged by European leaders has already led to a series of reforms. The Maastricht Treaty planned for a dual development with regard to this: the launch of a permanent co-operation mechanism between the European Parliament and the various national Parliaments; work towards greater association between the respective parliaments in the decision making process with regard to Europe, notably by communicating the Commission's legislative proposals in "good time" to them. Since then this final obligation has always featured in the treaties. "A Conference of Organisations Specialised in Community Affairs" was also established, the role of which, originally informal then formal, has continually been enhanced over the years. This development was to culminate, as in other areas, in the constitutional project which included, for the very first time, direct involvement on the part of the national Parliaments in the European decision making process.

In spite of the French and Dutch "NO" to the constitutional treaty the issue of developing the role of the national Parliaments in the decision making process within the European Union is still, now more than ever, a priority. Indeed such a development remains one of the means to restoring the legitimacy of the European project in the opinion of citizens and their representatives.

1 Current roles of national Parliaments

The role of the national Parliaments in the European Union's life takes on several forms. They have a legislative role that has two different forms. The national Parliaments are basic legislators in so far as their approval is necessary for the Union's most fundamental acts. At the other end of the legislative process, they intervene to transpose Community directives into national law. National Parliaments also have a mission to scrutinize the action of their governments in the Council of the Union: this scrutiny is an important aspect of the democratic legitimization of the Union. Finally, inter-parliamentary cooperation is appearing as an increasingly important dimension of the association of national Parliaments in the European Union's activities.

1.1 The legislative role

1.1.1 Approval of certain acts

The approval of the national Parliaments is required whenever the treaties[7] mention that an act has to be adopted or ratified by the Member States "according to their respective constitutional rules" or "according to their respective constitutional requirements".

This is the case of the Union's most fundamental acts:

- revision of the treaties (TEU Article 48),

- entry of new Member States (TEU Article 49);

- setting rules relating to the Community budget's own resources (TEU Article 269);

- any future decision to set up a common defence (TEU Article 17).

It is also the case for certain acts that can be assimilated to modifications of the treaties;

- any future decisions to transfer matters belonging to the Union's third "pillar" to the first "pillar"[8] (TEU Article 42);

- any future decision to add to the list of rights making up European citizenship (TEC Article 22);

- decisions concerning the adoption of a uniform procedure or common principles for the rules governing the election of MEPs (TEC Article 190).

The approval of national Parliaments is also required for conventions established within the framework of the Union's third pillar (TEU Article 34).

[7] These are the two basic treaties in European integration: the Treaty on the EU (TEU) and the Treaty setting up the European Community (TEC).

[8] The third "pillar" of the EU is intergovernmental and covers police cooperation and legal cooperation in criminal matters. The first "pillar" is the European Community in which, as a general rule, the Council decides by qualified majority in codecision with the European Parliament under the scrutiny of the Court of Justice.

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Current roles of national Parliaments

Concerning agreements with States or international organisations in the context of the Common Foreign and Security Policy or police and legal cooperation, the TEU Article 24 specifies that "no agreement is binding on a Member State whose representative in the Council declares that he must comply with his own constitutional rules"; in the light of this provision, nearly all the Member States approve these agreements only once their national Parliaments have authorized them to do so. However, the French government, despite repeated requests from the National Assembly and the Senate, has hitherto considered that these agreements needed no authorization from Parliament.

1.1.2 Transposition of directives

TEC Article 249 stipulates that "a directive is binding on the Member State to which it is addressed as far the result to be reached is concerned, with national authorities retaining competence over forms and means". In theory, national law-makers have some scope for judgement when transposing Community directives into national law. The obligation concerns the results (transposition must take place within a period of time fixed by the directive) and not means.

In practice, the spirit of this article is far from being respected in every case. Directives are often very detailed and leave only a narrow margin to national law-makers.

It is nonetheless up to national law makers to introduce the provisions of directives into domestic law, while taking the national legal context into account. In some Member States, some transpositions may belong, in whole or in part, to the competence of regional Parliaments. In the case of France, transposition is a government competence unless the text contains a legislative provision within the meaning of Article 34 of the Constitution. In spite of these exceptions, incorporating directives into the law of the Member States is, essentially, a responsibility of the national Parliaments.

National Parliaments also transpose into domestic law the "framework-decisions" concerning police and legal cooperation in criminal affairs (TEU Article 34).

1.2 Scrutiny of governments' European action

The Council of the Union, which draws up European legislation in conjunction with the European Parliament and also has executive functions, especially in foreign and defence policy, is made up of representatives of governments. CET Article 203 specifies that "the Council is made up of a representative of each Member State at ministerial level with authority to make commitment binding on the government of that Member State".

The Council's democratic legitimacy is based on the fact that the Ministers who represent the States are accountable to their respective Parliaments, which themselves represent the

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various peoples. Given the importance of the Council's place among the Union's institutions, the scrutiny of governments' European action by national Parliaments is one of the main aspects of the democratic legitimization of the Union.

Although the effectiveness of this scrutiny is a matter of common interest, the way it is carried out depends on each country's own institutional context. There are as many systems of scrutiny as there are Member States. Only a few examples will be given here.

1.2.1 The Danish and Finnish systems: setting limits to governements' action

The Danish system -often cited as an example- is based on the fact that the government's European action is limited by briefs to which the European Affairs Committee of the Parliament (Folketing) has given its agreement.

The government sends members of Parliament a "preliminary memorandum" analysing what is at stake in the text and spelling out any possible consequences for Danish law on the occasion of every European legislative draft as well as for the European Commission's "green papers" and "white papers"[9].

The European Affairs Committee meets weekly to examine the points on the agenda of the Council meetings to be held in the forthcoming week. The government provides members with "topical memoranda" setting out the current state of the questions to be examined. In the course of the meeting, the relevant Minister speaks on the positions he wishes to defend in the Council. This speech is followed by a debate in which the Minister may go into further detail as to the intentions he has expressed or modify them. Unless there is a majority hostile to the positions thus put forward, these positions become the government's negotiating brief.

In addition, the Prime Minister, before each European Council meeting, goes before the European Affairs Committee on the questions to be dealt with and the positions the government intends to take up. This speech is followed by a debate without, usually, the adoption of a negotiating brief. After the European Council meeting, the Prime Minister once again goes before the European Affairs Committee to report on the results.

The scrutiny exercised by the Finnish Parliament (Eduskunta) includes, for its part, two aspects.

The first is the examination of texts. Draft European acts are transmitted to the Parliament, together with a communication from the government. The proposals are then referred to the relevant Committee, which is obliged to issue an opinion. This opinion is then communicated to the Parliament's "great Committee" which, on this basis, defines the position the Parliament asks the government to take up.

The second aspect is that Ministers taking part in a European Council meeting the following week appear before the great Committee. At this meeting, Ministers provide a memo on the state of the negotiations. The great Committee com-

[9] These are the consultative documents preparing the Commission's legislative initiatives.

pares developments in the issue with the position it had previously defined. A few days after the Council meeting, the government makes a written report on the results.

1.2.2 The British system: "pending parliamentary scrutiny"

In the United Kingdom, "pending parliamentary scrutiny" is the basis of parliamentary scrutiny of the government's European policy. Normally, a Minister can make no decision on a text in European Council if one of the two Houses has decided to examine it but has not yet finished doing so.

Within ten days of a European text being tabled, the government releases an explanatory memorandum that presents the content of the text and its impact on the UK, asks if it raises issues of subsidiarity and spells out the position of the government.

In the House of Commons, the Select Committee on European questions draws up an opinion on the legal and political importance of each document and may recommend an in-depth examination by one of the House's three European Standing Committees, each with a different area of specialization. Examination by the relevant Committee usually begins with a communication from the Minister in charge, followed by a discussion. The Committee then debates a "motion" to be put to the government. The government may decide that the text calls for a debate on the floor of the House.

In the House of Lords, the main scrutinizing body is the Select Committee on European Affairs, with eighteen members. Each of them is a Member of at least one of the seven theme-based sub-committees, but other Lords are also co-opted onto these sub-committees, so much so that around 70 members are involved in scrutinizing Community texts. The sub-committees' role is much the same as that of the Commons' European Standing Committees. They carry on a written and oral dialogue with the relevant Ministers on the texts selected for scrutiny. The reports of the sub-committees must then be approved by the Standing Committee itself. The government is obliged to provide a reply within at most two months.

As a general rule, the positions adopted by one House or the other are not binding on the government which must, however, report regularly on the positions it has adopted and, if necessary, explain why it has not followed the recommendations of one of the two Houses.

1.2.3 The German system: taking federalism into account

The two Chambers do not have the same role in scrutinizing European policy because of Germany's federal structure.

The role of the Bundestag may be compared with that of the Commons. The government must take account of its positions on draft European acts, but is not bound by them. Article 23 of the Basic Law says "Before participating in legislative acts of the European Union, the Federal Government shall provide the Bundestag with an opportunity to state its position. The Federal Government shall

take the position of the Bundestag into account during the negotiations".

The Bundestag may determine its position either in plenary session or through its European Affairs Committee. The Basic Law, Article 45 states: "The Bundestag shall appoint a Committee on European Union Affairs. It may authorize the Committee to exercise the rights of the Bundestag under Article 23 vis-à-vis the Federal Government".

The Bundesrat role is linked to the competences of the Länder. The law on cooperation with the Länder states that "the federal government will inform the Bundesrat, in an in-depth manner and as rapidly as possible, of all the projects concerning the EU that might be of interest to the Länder." The EU questions Committee is responsible for preparing the Bundesrat's deliberations, on the basis, if it sees fit, of the opinions of the Standing Select Committees in those cases where a draft European act has been submitted to them.

According to the Basic Law (Article 23), the authority of the opinions issued by the Bundesrat depends on the area involved. When the draft act concerns matters affecting the Länder' interests but within the competences of the federal State, the government must take account of the Bundesrat opinion but is not bound by it. On the other hand, when the draft European act concerns matters within the Länder' competence, the Bundesrat opinion is binding on the government.

This distinction crops up again in the way the Bundesrat is associated in Germany's representation in the European Council. When the Council examines proposals affecting the Länder' interests, but within the competence of the federal State, the Bundesrat delegates representatives to the Council's working parties. When a proposal is within the competence of the Länder, the Bundesrat sends a representative to the meetings of the Council itself, as the representative of Germany.

1.2.4 The French system: a slight reduction in the preponderance of the executive

French institutions are characterized by a great preponderance of the executive, with Parliament very much the poor relation. This trend is even more marked in foreign affairs.

The establishment of parliamentary scrutiny of the government's European policy thus made it necessary to vote a law setting up specific bodies within each of the two Chambers: the Delegation for the European Union. And the French Constitution had to be revised to enable the two Chambers to vote resolutions about draft European acts.

In each Chamber, the delegation for the European Union systematically examines draft European acts including "legislative" provisions in the sense that the French Constitution gives to the term (Article 34). For the texts that it considers the most important, the delegation tables a draft resolution, which will serve as a basis for the adoption of a resolution either by the full Assembly or by the relevant Standing Committee acting in the name of the Assembly. For the texts it considers less important, but that nonetheless raise certain problems, the delegation may address its observations directly to the government.

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As in the British system, the Chambers can invoke "pending parliamentary scrutiny" which the government must, if necessary, put before the Council, so as to be able to take account of the positions adopted by the Chambers. These positions, however, are not binding on the government.

There are procedures for raising European issues in plenary sessions in both Chambers. In the Senate, "European questions with debate" allow the various political groups to express their views on a specific question. In the National Assembly, "topical questions" sessions are devoted to Europe. In addition, a debate is now organised in each Chamber in advance of the meetings of the European Council.

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The few examples that have just been presented show the significant differences that exist in both the methods of scrutiny and its intensity. They also show, however, a similar effort to adapt the working methods of national Parliaments to the specific nature of European issues.

There is an institutional aspect to this adaptation: in all the examples cited –but this is true in practically all the Parliaments in the Member States- bodies specializing in European affairs have been created, for unless there is a parliamentary body invested with the mission of monitoring European issues, they will never, in practice, be dealt with, except if national problems leave the time for them. Similarly, but at the administrative level, nearly all the national Parliaments have set up an administrative office in Brussels to look after relations with European institutions, above all with the European Parliament.

Time management is another essential aspect. Of course, the protocol on national Parliaments appended to the Amsterdam treaty guarantees a minimum of six weeks between the transmission to the Council of a draft legislative act in all the EU languages and its being put on the Council's agenda for decision. But, although the European decision-making process takes a long time to reach a conclusion, it gets under way fast. The Council's working parties begin examining texts very early and the informal "three way" conversations between the Parliament, the Commission and the Council pre-figure the results of the discussions, so much so that in very many cases, decisions are in fact practically made on many points at a fairly early stage. If national Parliaments are to have any influence, they have to act quickly. And they need to be able to start dialogue with their governments very early, which supposes that they should quickly receive memoranda containing a preliminary analysis from their governments. In addition, governments will have to be persuaded to report regularly to their Parliaments so as to put them in a real position to wield influence.

1.3 Interparliamentary cooperation

In theory, there is little argument about the special legislative role of national Parliaments and their mission to scrutinize government: these principles meet with general approval. This

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is not the case of organised interparliamentary cooperation. That the national Parliaments should meet, consult together and express their views collectively at the level of the EU has always raised hackles at the European Parliament[10] and in some governments. In spite of this, the trend has rather been for interparliamentary cooperation to get stronger over the past few years.

1.3.1 A persistent controversy

Reservations about the development of interparliamentary cooperation have long been based on the principle: "let each cobbler stick to his own last". The national Parliaments have their role to play at the level of each country. It is for the European Parliament, legitimized for this purpose by its being elected by direct universal suffrage, and for the European Parliament alone, to take on all the parliamentary functions at the level of the EU. Exchanges of information between Parliaments are only acceptable if the European Parliament takes place in them or, better still, organises them. The ideal, in fact, is for the national Parliaments to receive drafts from the European Parliament and then make their reactions known to it. The European Parliament then means to draw on these consultations to present itself, facing the Council, as the spokesman of all the Parliaments in the Union.

There are, however, several arguments in favour of a more ambitious conception of interparliamentary cooperation.

First of all, as has just been seen, the national Parliaments have important responsibilities in the European field: primary legislation, transposition of directives and framework-decisions, scrutiny of the action of governments in the Council. Now, in order to carry out their responsibilities properly, national Parliaments themselves need experience of the European dimension and a means of access to it. How can national Parliaments acting in isolation from each other properly scrutinize governments which, for their part, work together? The national Parliaments must be able to exchange their experiences and confront their viewpoints, so as to be able to identify best practice in terms of scrutiny. And they must be able to express their views collectively so as to formulate, if necessary, their common preoccupations in this area with a better chance of exercising influence.

Next, there is still an important intergovernmental dimension to European integration. This is the case in foreign and defence policy, in the operational aspects of legal and police cooperation. It is also the case, in a different form, in areas relating to policy coordination, whether it be economic, budgetary or employment policies. Now, the national Parliaments are the normal partners in intergovernmental policies. Scrutinizing national governments is no part of the European Parliament's task.

Finally, a closer association of national Parliaments in the EU's activities might strengthen the links between the various public opinions and European institutions. This link can hardly be made by the European Parliament alone, for its mode of election tends to cut it off from its voters[11] and, in any case, it is supposed to represent the peoples of Europe collectively, in what they have in

[10] See the reports presented successively by Mrs Neyts-Uyttebroek (22nd May 1997) and Mr. Napolitano (23rd January 2002) on behalf of the European Parliament Constitutional Affairs Committee.

[11] Election by the list system and proportional representation in huge constituencies means that, in practice, the most important factor in an MEP's reelection is his rank in the list drawn up by a political party. The possibility of being punished by the voters, which is the properly democratic element in the representative system is therefore of only limited effect.

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common, and not the different peoples as such[12]. In any case, when grassroots voters are unhappy with such and such an action of the European Union, they generally turn to the members of Parliament for their constituency rather than to MEPs whose name they do not know. In practice, it is above all groups that are well enough organised to carry out a lobbying effort at the EU level that manage to make themselves heard at the European Parliament. A collective expression of views from the national Parliaments thus appears to be the way to enable certain preoccupations present in the various public opinions to be passed on to European institutions. For example, the feeling that European regulation is sometimes excessive or barely justified is present in public opinion in many member countries, but it finds little echo in the European Parliament. Isn't it desirable for this kind of preoccupation to be better taken into account, so that European integration can be better understood and better accepted?

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The persistent controversy about interparliamentary cooperation in the Union explains why this cooperation now takes several forms, none of them entirely convincing, and why these forms coexist without being structured according to an overall conception of the place of national Parliaments in the European Union.

1.3.2 Different modalities

1.3.2.1 The Conference of Speakers of the Parliaments of the Member States of the European Union and European Parliament

This Conference, usually called the Conference of EU Parliaments' Speakers, has been meeting regularly since 1981. It has always however been faced with a difficulty arising from the different prerogatives of Speakers of Parliaments. Some consider that their position in their own institutional system does not allow them to talk politics or to take part in decisions in these interparliamentary meetings. Others intend rather to take part in these meetings in their capacity as politicians. They would like substantive debates and are often in favour of extra-meetings when current events in the EU make this desirable.

The recurrent debate between those who would prefer a rather "academic" conference and those who would like a more "political" one has fostered informal conferences, more propitious to exchanges of views on European current events. The principle of annual, formal meetings was, however, adopted in 1999, in a decision that at the same time reaffirmed the principles of deliberations by consensus and "respect for the constitutional position of each Parliament and its Speaker."

The limits inherent in this formula have not prevented some achievements. In 1989, for example, the Conference was able to adopt, by consensus, the conclusions that led to the establishment of COSAC, which now appears, whatever its limitations may be, as the main instrument of interparliamentary cooperation in the European Union.

Similarly, in 1984, the Conference decided to launch the IPEX project, whose objective is "to support interparliamentary cooperation within the EU by providing a platform for the electronic exchange of information related to the EU

[12] The electorate of the European Parliament in each Member State is made up of all EU's citizens resident in that State irrespective of nationality. In the same order of ideas, the European Parliament intervenes with all its members, considered as an individual whole, in the working of "reinforced cooperation" in which, however, by definition, only some Member States take part.

among the EU's Parliaments." The IPEX website will mainly consist of a database making it possible to find out which stage in the examination of draft European legislation has been reached in the national Parliaments and any positions that they may have adopted. The database will contain not only information on the examination of the text in substantive terms but also from the point of view of subsidiarity.

1.3.2.2 The Conference of European Affairs Committees (COSAC)

The idea of holding periodic meetings of the European Affairs Select Committees of the national Parliaments emerged during one of these Speakers' conferences, at Madrid in May 1989. The first COSAC took place in Paris on November 1989. Since then, COSAC has met every six months in the country currently holding the EU presidency. In 1991, it adopted a code of procedure. In 1997, it was integrated into EU primary law by means of a protocol appended to the Amsterdam Treaty.

Protocol 13
Protocol on the role of national Parliaments in the European Union

"The High contracting parties,
Recalling that scrutiny by individual national parliaments of their own government in relation to the activities of the Union is a matter for the particular constitutional organisation and practice of each Member State,
Desiring, however, to encourage greater involvement of national parliaments in the activities of the European Union and to enhance their ability to express their views on matters which may be of particular interest to them,
Have agreed upon the following provisions, which shall be annexed to the Treaty on European Union and the Treaties establishing the European Communities, (…)
II. The conference of European Affairs Committees
4. The Conference of European Affairs Committees, hereinafter referred to as COSAC, established in Paris on 16-17 November 1989, may make any contribution it deems appropriate for the attention of the institutions of the European Union, in particular on the basis of draft legal texts which representatives of governments of the Member States may decide by common accord to forward to it, in view of the nature of their subject matter.
5. COSAC may examine any legislative proposal or initiative in relation to the establishment of an area of freedom, security and justice which might have a direct bearing on the rights and freedoms of individuals. The European Parliament, the Council and the Commission shall be informed of any contribution made by COSAC under this point.
6. COSAC may address to the European Parliament, the Council and the Commission any contribution which it deems appropriate on the legislative activities of the Union, notably in relation to the application of the principle of subsidiarity, the area of freedom, security and justice as well as questions regarding fundamental rights.
7. Contributions made by COSAC shall in no way bind national parliaments or prejudge their position."

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COSAC is made up of six representatives of each national Parliament plus six MEPs. The member countries are thus placed on an equal footing. Three observers from the Parliaments of each candidate country are also invited to meetings.

Little by little, COSAC has managed to become a forum for dialogue between representatives of Parliaments and the current EU Presidency, with the European Commission also taking part in some cases.

It has also contributed to developing exchanges of information between Parliaments concerning the modalities of scrutiny of governments' European action.

On the other hand, it has not yet really allowed a collective expression of the national Parliaments' views, despite the opportunities opened up by the Amsterdam Treaty. Any progress on this point was blocked for a long time by the rule of consensus governing COSAC's decisions.

The changes in attitudes brought about by working together in the Convention on the future of Europe and the perseverance of the Danish Parliament, which managed to federate those Parliaments in favour of making COSAC more efficient, made it possible, in 2003, to reform the code of procedure by putting an end to the rule on consensus voting. Consensus voting remains in force for changes to the code of procedure, but not for COSAC contributions. On this point, the code of procedure now states: "as a general rule, COSAC seeks a wide consensus for the adoption of its contributions. Should this not be possible, contributions will be adopted by a qualified majority of at least three quarters of votes cast, provided that this majority of three quarters of votes cast equals at least half of total votes. Each delegation has two votes. Once adopted, the contribution will be published in the Official Journal of the European Communities".

The new majority voting has not yet been used in practice, but it has changed the atmosphere in meetings and the Parliaments wanting COSAC to play a more active role appear to be growing in number. This was not the case in the 1990s.

As a general rule, COSAC meetings have had more significant results over the last few years. A "code of conduct" governing relations between Parliaments and governments in the examination of European questions has been adopted. A permanent Secretariat has been established, intended to improve the preparation of meetings, facilitate the exchange of information between the Parliaments taking part and present a six-month report on "the development of practices and procedures relating to parliamentary scrutiny in the EU". A "pilot scheme" for the simultaneous examination of draft Community acts from the viewpoint of subsidiarity by all the national Parliaments has been launched. Even though the interparliamentary cooperation organised in COSAC remains "embryonic"[13], it has nonetheless emerged from the more or less total paralysis that had previously characterized it. And it is gradually learning to focus on the missions where it can be particularly useful. It should be noted, in this respect, that subsidiarity is a theme that has come to occupy an increasing place in

[13] Mathieu Houser, "La COSAC, une instance européenne à la croisée des chemins", *Revue du droit de l'Union européenne*, 2/2005, pp. 343-361.

its work as meeting has followed meeting in response to the need for interparliamentary consultation in this field. At its latest meeting (London, October 2005) COSAC decided to launch a new process based on the examination of the Commission's programme of work. The Parliaments taking part in this process will select the drafts in the programme that seem likely to them to call for scrutiny in terms of subsidiarity and proportionality. They will pass this information onto the COSAC presidency, which will pick out the most frequently cited drafts and communicate the information to the national Parliaments and the European Parliament. The result of the examination of these texts by the participating Parliaments will be transmitted to the COSAC presidency and directly addressed to the EU institutions.

1.3.2.3 The Assembly of the WEU (European interparliamentary Assembly for security and defence)

The Assembly of the WEU is the oldest trace of the European organisations set up after the Second World War. The Western European Union was established by the Brussels Treaty (17th March 1948) between Belgium, France, Luxemburg, the Netherlands and the United Kingdom. Its vocation was very general at the beginning: above all military and diplomatic, but also economic, social and cultural. In addition, its action was located in the perspective of safeguarding Human Rights and democratic principles. Faced with the competition of other European organisations created immediately after it, it fell into a state of lethargy a year after its birth.

The Paris Agreements of 23rd October 1954, which re-established the sovereignty of the Federal Republic of Germany and its rearmament, reactivated the Brussels Treaty and transformed it into the Western European Union (WEU). The Federal Republic of Germany and Italy joined the five founding countries.

The WEU role remained theoretical until the declaration of Rome (27th October 1984) decided on a relaunch, to which the Maastricht Treaty gave legal recognition by making the WEU the defence component of the EU. The European Council, using a possibility opened up by the Amsterdam Treaty, then decided in 2000 to transfer the tasks and the resources attributed to the WEU to the EU. All that is now left of the WEU is its collective security mechanism (Brussels Treaty, Article 5, modified) and its parliamentary assembly (Article 9).

The EU's Member States do not have the same status in the WEU: ten countries are Members, ten others are "assimilated" Members and five are "permanent observers". In addition, several European countries that do not belong to the EU are associated in the work of the Assembly. With its two meetings per year, this Assembly remains the only European parliamentary arena where members of national Parliaments can follow up security and defence issues. It remains a forum where government Ministers regularly exchange views with the members of the national Parliaments of the member countries.

The Assembly of the WEU, despite the undeniable quality of its debates, is weakened by the ambiguity of its status. It is not directly attached

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to the EU, which has taken over the WEU activities and structures. In addition, the fact that the parliamentary delegations in the WEU Assembly must be identical to those in the Assembly of the Council of Europe, as requested by United Kingdom in the 1954 treaty, is a handicap since these two assemblies now have entirely different vocations.

The WEU Assembly is thus above all a temporary halting place in the absence of a satisfactory formula for interparliamentary scrutiny of the European Security and Defence Policy (ESDP). The European Parliament has no real legitimacy in this field. The ESDP is an intergovernmental policy. National Parliaments vote the defence budget and, if appropriate, authorize the commitment of forces to a conflict. If the WEU Assembly were to disappear in its present form, it would have to be replaced by an interparliamentary body adapted to the characteristics of the ESDP. There can be no hope of developing and deepening European defence without the closer involvement of the national Parliaments.

1.3.2.4 The Conventions

The Convention formula has been used twice: a first time in 1999-2000, to draw up the EU's Charter of Fundamental Rights and a second time to prepare the draft European Constitutional Treaty.

What characterizes it is that it brings together all the legitimate actors: governments, the European Commission, the European Parliament and the national Parliaments.

The national Parliaments welcome the Convention formula, although it was desired above all by the European Parliament, which it provides with a means to intervene in drawing up the EU's basic texts whereas the treaties grant it no power at all to do so. The Convention formula allows national Parliaments to be involved in drawing up texts which, at a later stage, when submitted to them for ratification, they can only accept or reject. The Convention formula gave the representatives of the national Parliaments an important place. For instance, the Convention on the future of Europe was made up of:

- a President and two Vice-Presidents chosen *intuitu personae* by the European Council;

- twenty-eight representatives of the Heads of State or government of the Member States;

- two representatives of the Commission;

- sixteen representatives of the European Parliament;

- fifty-six representatives of national Parliaments, who thus made up more than half of the members.

In practice, however, the representatives of the national Parliaments did not have the influence on the debate that their numbers warranted. Unlike the other categories of member, they were not in the habit of working together and did not have the pooled human and material resources needed for effective consultation and the common expression of certain

preoccupations. The MEPs, although much fewer in number, were in their usual environment and had the members of their staff around them. These staff members were present and active in the Hall, so much so President Giscard d'Estaing was led to express his surprise that the MEPs and the Commissioners should have a "claque" as if they were performing in a theatre.

In addition, the importance of the numerical preponderance enjoyed by members of national Parliaments was restricted by the application of the consensus method – interpreted as a large majority- whose appreciation was left to the praesidium[14], with no vote being taken.

It will also be noted that the numerical preponderance enjoyed by members of national Parliaments in the Convention was not at all reflected in the praesidium, where they had only two representatives. As a result, even when a very clear opinion emerged in the preparatory meetings held by members of national Parliaments, their influence on the final text remained limited. For instance, a majority of the members of national Parliaments were in favour of introducing the eventuality of dissolving the European Parliament in case of conflict with the European Commission. This eventuality -which they are all familiar within their own countries- seemed the logical counterpart to the European Parliament's power to vote the Commission into and out of office. However, this proposal, which corresponds to the spirit of parliamentarianism in Europe, never appeared in the documents proposed for discussion by the praesidium.

Using the Convention formula is linked to a precise project and so cannot be put forward as a general solution for involving national Parliaments. In any case, it could only be fully satisfactory if the representatives of the national Parliaments were able to take part while enjoying the same resources as the other categories of member.

[14] The praesidium for the Convention on the future of Europe was made up of the President of the Convention, its Vice-President and nine members of the Convention, the representatives of each of the governments scheduled to hold the EU presidency during the Convention (Spain, Denmark, Greece), two representatives of national Parliaments, two representatives of the European Parliament and two representatives of the Commission. A representative of the Parliaments of the candidate countries attended the meetings with guest status The two representatives of national Parliaments had, in fact, been selected by the two political parties organised on a Europe wide basis, the European People's Party (EPP) and the Party of European Socialists (PES). The administrative secretariat servicing the praesidium did not include anyone from a national Parliament.

1.3.2.5 The other forms of cooperation

Other types of contact exist within the European Union alongside the institutional form of inter-parliamentary cooperation. These other types result from the initiatives either of the European Parliament or of the State currently holding the presidency.

For example, some European Parliament Committees, when they judge it useful, organise meetings on specific topics which are open to representatives from the relevant Committees of the national Parliaments.

Meetings between representatives of the relevant Committees of national Parliaments can also be organised by the State currently holding the presidency on the themes that it sees as priorities.

Finally, political parties organised at the European level, contribute, in a specific way, to consultations between MEPs and members of national Parliaments.

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The principle of cooperation between the national Parliaments in the EU is still disputed and such cooperation continues to encounter many obs-

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tacles. It is split between different formula and does not have the structures needed to make it effective. The fact that it has, for all that, tended to get stronger over the last few years, suggests that it does indeed meet a need. Isn't it time to recognize that deeper legitimization for the EU supposes closer involvement of the national Parliaments?

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It emerges from what precedes that a satisfactory formula for involving national Parliaments more closely still remains to be found. This is what the European Council noted when it adopted the "declaration on the future of the Union" appended to the Nice Treaty. This declaration made "the role of the national Parliaments in the European architecture" one of the themes to be dealt with by the intergovernmental conference of 2004, and so by the Convention on the future of Europe charged with preparing it.

In fact, the question of the role of national Parliaments took a fairly important place in the Convention debates. The IGC then approved without much modification the results the Convention had reached on this subject.

The Constitutional Treaty opened new prospects for the role of national Parliaments, for it entrusted them with the responsibility for ensuring that the principle of subsidiarity was respected in ways that linked them directly to the European decision-making process. On the other hand, the Constitutional Treaty offered nothing in terms of strengthening the collective involvement of national Parliaments in the EU's activities. And the current breakdown in the ratification process has frozen the situation.

It cannot, however, be concluded today that the process that began with the launch of the Convention on the future of Europe has failed. No alternative to the Constitutional Treaty has been put forward. It remains a reference there is no getting around. And its main institutional provisions-including those concerning the role of national Parliaments- were not really disputed in the referendum debates, either in the Netherlands or in France. In one form or another, they will eventually return to the centre of discussion.

It is therefore necessary to return to the results of the Convention in the IGC concerning the role of national Parliaments since these results still figure among the prospects of European integration.

However, the Constitutional Treaty's innovative provisions are not going to come into force in the near future. In addition, only a part of the problem of the involvement of national Parliaments would be solved if they did. Possible short term changes also need looking at, as does the way the results of the Convention and IGC might be completed.

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2.1 The Convention and the ICG: recapitulation

2.1.1 No solution to the problem of the collective role of national Parliaments

2.1.1.1 The rejection of a "second Chamber"

In a declaration adopted at Laeken along the same lines as its "declaration on the future of the Union" a year earlier, the European Council had stated that the Convention should tackle three questions concerning national Parliaments: should they be represented in a new institution? Should they play a role in the fields in which the European Parliament is not competent? Should they focus on the division of competences between the Union and the Member States, for example by means of prior scrutiny of the respect of the principle of subsidiarity?

These three questions correspond fairly well to the profile of a second European Chamber such as it had just been proposed in the report by the French Senator Daniel Hoeffel[15]: a body without legislative attributes, but competent with regard to the EU's intergovernmental policies and in matters of subsidiarity.

Generally speaking, the establishment of the second Chamber was one of the themes in the institutional debate preceding the launch of the Convention. The Czech President Vaclav Havel, the British Prime Minister Tony Blair and the German Foreign Affairs Minister Joschka Fischer had all come out in its favour, although their conceptions were different. Although the proposals of Tony Blair and Vaclav Havel were along the same lines as the Hoeffel report, Joschka Fischer's were located in the perspective of the complete "parliamentarisation" of the EU, with the second Chamber taking over the legislative role of the Council of Ministers[16].

Be that as it may, the Convention massively rejected the idea of a second Chamber at a very early stage. One argument frequently put forward was that a second Chamber would, in fact, be a third Chamber in addition to the European Parliament and the Council. This was untrue, since no one had suggested setting up an extra legislative Chamber.

At a deeper level, the idea of a second Chamber was incompatible with the institutional conservatism that dominated the Convention. The representatives of the European Parliament and the Commission defended the idea that the "Community method" was tried and tested and that the essential objective of the Convention should be to extend this decision-making method to the second and third "pillars" of the EU. The overwhelming majority of government representatives, while remaining more circumspect as to the complete generalisation of the "Community method", wished to retain the existing institutional framework. This was the case of most of the representatives of the "smaller" countries, who –in the wake of the trauma of the difficult negotiation of the Nice Treaty- felt that any re-examination of the institutional schema might relaunch the controversy surrounding their over-representation in the decision-making process. It was also the case of the

[15] Senate report no. 381 (2000-2001) on behalf on the Délégation pour l'Union européenne. .

[16] A file on the idea of a "second European Chamber" can be found on the internet site of the French Senate at the following address: http://www.senat.fr/europe/dossiers/senat_europeen.html

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representatives of those countries about to join the EU, who had just held referendums on the treaty of membership and wanted to stick as closely as possible to what their citizens had approved. Finally, for the reasons mentioned above[17], the representatives of the national Parliaments only began to develop a certain collective awareness in the latest stages of the Convention.

In this context, anything that might look like a revision of the EU's basic institutional schema was unwelcome: "no new body" was doubtless one of the phrases most frequently heard in the early stages of the institutional debates.

2.1.1.2 The rejection of the "Congress"

In the first months of the Convention, Valéry Giscard d'Estaing had put forward the idea of a "Congress of the people of Europe" made up of MEPs and of members of the national Parliaments. The Congress would have met once a year to debate the state of the Union. This would have allowed a debate on the general direction of policy and a vote of confidence at the European level. The Congress would also have had to elect the stable President of the Council that Valéry Giscard d'Estaing proposed to put in place.

The Convention showed just as much hostility to this proposal, which, despite the prestige of its author, found supporters only among French representatives[18]. It should be noted, however, that the French MEPs opposed it. The Congress was rejected for the same reasons as the "second Chamber". In addition, setting up the Congress seemed linked to the stable presidency of the Council, which also met strong opposition, for the same reasons[19]. In spite of the perseverance of the Convention's President, the Congress, in its turn, ended up by vanishing from the debates.

2.1.1.3 The rejection of a strengthened COSAC

In the absence of any new formula, one possible solution would have been to strengthen the role of COSAC. This theme was dealt with by the working party on the role of the national Parliaments set up within the Convention. The Chairmanship of this group was entrusted to the British MP, Gisela Stuart, one of the two representatives of the national Parliaments in the praesidium of the Convention.

There was something paradoxical about the functioning of this working party. The representatives of the national Parliaments were in the majority at the Convention and took part in its plenary sessions. On the other hand, those who found themselves far from Brussels often had great difficulty in attending the meetings of the working party in the intervals between plenary sessions. In contrast, the representatives of the European Parliament were omnipresent, since all the meetings took place on the premises of their own Parliament. For this reason, MEPs were more often present, and, sometimes, were in a majority in the working party on national Parliaments. Given that this was the case, it took a strong personal commitment from Gisela Stuart to ensure that the final report contained even modest proposals for improving the role of COSAC.

[17] See p.46

[18] The Congress idea might seem to be a current theme in the French position. The declaration appended to the Maastricht Treaty concerning the "Parliamentary Conference" or "Assises" which was, to some extent, a forerunner of the Congress idea, had been requested by France, in particular. And it may be noted that Lionel Jospin, the French Prime Minister, had proposed, in the debate proposing the launch of the Convention, the establishment of a "Conference of Parliaments" or "Congress" whose mission it would be "*to scrutinize the respect of subsidiarity by Community bodies*" and "*debate the state of the Union each year.*"

[19] The stable Presidency of the Council was finally accepted by the Convention, only in exchange for a very restrictive definition of its attributions.

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Extracts from the report of the working party on national Parliaments

"The members of the working party believe that it would be useful to clarify the mandate of COSAC (…) by strengthening its role as a consultative interparliamentary mechanism and by ensuring that it is more efficient and better focussed (…).

"In addition to its role of encouraging the exchange of best practice and information (…), the working party believes that COSAC can offer a framework for contacts between the sectorial Standing Committees in national Parliaments and the European Parliament, as a complement to the already existing contacts between the European Affairs Committees. COSAC might serve as a forum bringing together mainly members of national Parliaments. This should not, however, prevent them from inviting MEPs to take part in their meetings whenever that is seen to be particularly useful. The working party believes it may be opportune to change the name "COSAC" so as to take account of its wider role. In addition, some members are of the opinion that COSAC could offer a forum for debate at the general level on scrutiny of the application of the principle of subsidiarity (…).

"In accordance with the protocol on the role of the national Parliaments in the EU, appended to the Amsterdam Treaty, COSAC may submit any contribution it sees fit to the attention of EU institutions. The working party believes that, in order to encourage a real dialogue between EU institutions and the national Parliaments, these institutions should also respond to these contributions. These reactions might take different forms. COSAC might, for example, invite a member of the European Commission or a representative of one of the other institutions to a hearing, or else the institution in question might respond in writing."

The report sketched out a wider role for COSAC by making it responsible for establishing relationships not only between European Affairs Committees but also between "sectorial" Standing Committees, for example in fields covered by intergovernmental policies. At the same time, it envisaged giving it a less off-putting name. COSAC's priority vocation of developing links between national Parliaments was clearly affirmed. Finally, the report suggested more interactive relations between COSAC and EU institutions.

Although hardly revolutionary, these suggestions were only partly taken up in the protocol on national Parliaments drawn up by the praesidium of the Convention. And, in the last analysis, the text adopted by the Intergovernmental Conference does not strengthen the role of COSAC.

Not only does the new protocol not change COSAC's name, neither does it provide for any interactivity between it and EU institutions. Likewise, COSAC's activity is not clearly centred on cooperation between national Parliaments. The only suggestion in the report

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to be taken up is the organisation, within the framework of COSAC, of interparliamentary conferences on particular topics, with intergovernmental policies being mentioned as the priority. Apart from this step forward, the protocol looks like a retreat as compared to the text now in force (the Amsterdam Treaty) on some points. For instance, COSAC's role in matters of subsidiarity is no longer mentioned, nor is the opportunity for governments to submit specific legislative texts to it. And the new protocol no longer states that COSAC is entitled to consider draft legislative acts relating to the space of freedom, security and justice. This clearly shows the real weight of the MEPs within the Convention where, however, they were only sixteen in number.

Protocol n° 1 appended to the Constitutional Treaty (extract)

"A conference of Parliamentary Committees for Union Affairs may submit any contribution it deems appropriate for the attention of the European Parliament, the Council and the Commission. That conference shall in addition promote the exchange of information and best practice between national Parliaments and the European Parliament, including their special committees. It may also organise interparliamentary conferences on specific topics, in particular to debate matters of common foreign and security policy, including common security and defence policy. Contributions from the conference shall not bind national Parliaments and shall not prejudge their positions".

2.1.1.4 The consecration of the Convention as a method

In the last analysis, the aspect of the Constitutional Treaty that is most clearly a step towards the collective involvement of the national Parliaments is the confirmation of the Convention formula as a method of revising the treaties.

Article IV-443 of the Constitutional Treaty indeed provides for a Convention to be summoned when the Council has voted, by simple majority, in favour of launching a process of revision.

Of course, this Convention is not compulsory, since the Council, still by simple majority vote, may consider that the scope of the changes envisaged does not warrant it and entrust the examination of them directly to an Intergovernmental Conference.

The change is nonetheless significant since, with the treaties silent on this point, summoning a Convention is an exceptional procedure today, and is subordinated to a consensus in the European Council. In contrast, the Constitutional Treaty makes it into a principle, with the direct recourse to an Intergovernmental Conference becoming the exception.

The text states that, in accordance with the practice of the first two Conventions, any Convention summoned in this way will also decide by consensus. In this field, the MEPs did not oppose this intervention of the Members of the national Parliaments, for it was the condition of their own participation in the process of drawing up the treaties.

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2.1.2 An important breakthrough on the subsidiarity front

2.1.2.1 An innovative approach

The application of the principle of subsidiarity was one of the themes the European Council had asked the Convention to deal with. The Convention granted it a special importance, since subsidiarity was the subject of the first working party it set up. The Chairman of this working party was a MEP, Inigo Mendez de Vigo.

Although the final report does not clearly say so, the method adopted was based on the realization -which emerged from the discussions- that the principle of subsidiarity was not much taken into account in the EU's decision-making process.

There is no mystery about the cause of this situation: the actors in the European legislative process have no interest in respecting the principle of subsidiarity. The Commission and the European Parliament tend to see this principle as an obstacle to their interventions, whose scope they wish to define themselves. The Council, for other reasons, has finished by adopting the same attitude. The numerous different forms the Council takes make it a framework where departmental Ministers are free from the constraints imposed by interministerial consultations at national level, where Finance Ministers, as is well known, are very much in charge. As there is no regulation of this kind in the Council, Ministers tend to seek to obtain at the European level what they would find it difficult to get at national level. In addition, the Council is a place for negotiations between States. In order to obtain satisfaction on some point, it may be necessary to support a new measure proposed by the other party. The dynamic of negotiation leads to the principle of subsidiarity being put on hold. As the European Commissioner Antonio Vitorino put it during the working party's debates, "subsidiarity is always the victim of political compromises".

The unspoken awareness of this situation led to the adoption of a logic totally different from the one behind the protocol "on the application of the principles of subsidiarity and proportionality" appended to the Amsterdam Treaty. Whereas the protocol ruled out separating the examination of subsidiarity from the substantive examination of the text, the working party, on the other hand, proposed to allow a prior examination of compliance with the principle of subsidiarity. And whereas the Amsterdam protocol relied for the application of this principle of subsidiarity on the self-discipline of community institutions, the working party proposed to call in actors external to the European decision-making process, the national Parliaments and the Committee of Regions. These were implicitly considered as having an interest in the application of the principle of subsidiarity, since it is a question of protecting national and local competencies. The working party chose two methods for their interventions: an "early warning mechanism", available only to national Parliaments and wider powers to refer cases to the Court of Justice, available both to national Parliaments and the Committee of Regions.

These proposals both renewed the approach to

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the scrutiny of subsidiarity and profoundly modified the conception of the roles of national Parliaments in the European Union. They tend to involve national Parliaments directly in the European legislative process by having them intervene independently of governments.

This innovative approach met with some reservations, both in the European Parliament and in certain governments. But it was supported by some influential figures, such as Président Valéry Giscard d'Estaing and the representatives of Germany.

The mechanism proposed by the working party gave rise to vigorous debates in plenary session. The most frequently raised issues were the following:

– Should regional Parliaments have the same powers as national Parliaments? The Convention's response was negative. It considered that regions with legislative competences were usually represented by second Chambers and that the Committee of Regions also allowed them to express their views on matters of subsidiarity;

– Should an Assembly have taken part in the early warning mechanism before being able to refer to the Court of Justice? The response was also negative, so as to avoid encouraging Assemblies to resort systematically to the early warning mechanism for the sole purpose of retaining a right of referral;

– Should MPs be granted a recognized power to block legislation through the compulsory withdrawal of any draft legislation that a majority of national Parliaments had judged contrary to the principle of subsidiarity? Again the answer was negative. The Convention did not wish to introduce a form of veto. It was, however, recognized that it was politically inconceivable that a draft should not be withdrawn in such circumstances;

– Should each Chamber of a national Parliament be expressly and directly authorized to refer to the Court of Justice in matters of subsidiarity? The answer in this case was a compromise. Such referrals should be possible, but Member States are not required to adopt this formula.

The text finally adopted by the Convention was not debated by the IGC which adopted it, subject to formal reservations.

2.1.2.2 The system chosen

In the system chosen by the protocol "on the application of the principle of subsidiarity and proportionality", appended to the Constitutional Treaty, the national Parliaments, now direct recipients of EU draft legislation, may intervene on grounds of subsidiarity (but not proportionality) in two ways:

–Within a period of six weeks starting from the transmission of the draft legislation, each Chamber of a national Parliament may address to EU institutions a "reasoned opinion" setting out the reasons why it believed that the text does not respect the principle of subsidiarity. EU institutions "take note" of the reasoned opinions addressed to them. When a third of the national Parliaments have sent a reasoned opinion,

the draft must be re-examined –for texts relating to police cooperation and legal cooperation in criminal matters, the threshold is lowered to one quarter. Each national Parliament has two votes for the application of this rule. In bicameral systems, each Chamber has one vote;

– Once a text has been adopted, a Member State may lodge an appeal from a national Parliament or one of its Chambers, with the Court of Justice for breach of the principle of subsidiarity. Formally, the appeal is always presented by the government of a Member State, but the protocol opens up the possibility of its being simply "transmitted" by the government with the real appellant being the national Parliament or one of its Chambers.

Finally, at the same time as national Parliaments, the Committee of Regions is granted the right –directly, in its case- to lodge an appeal with the Court of Justice for breach of the principle of subsidiarity. Such appeals, however, can concern only those texts on which it is obligatory to consult the Committee of Regions.

2.1.2.3 Limitations

One important limitation of the system chosen is that it applies only to the principle of subsidiarity and not to the principle of proportionality. Now, it is difficult to separate these two principles in practice: does an excessively detailed directive breach the principle of subsidiarity or the principle of proportionality? The scope of the system depends to some extent on how the distinction between subsidiarity and proportionality is interpreted.

There are, moreover, some uncertainties surrounding the mechanism for referral to the Court of justice. In the system chosen, it is for each country to include or not include, in its own law, the opportunity for the national Parliament or one of its Chambers to appeal to the Court of Justice. The Constitutional Treaty opens up an opportunity but does not establish a right. In addition, the Court of Justice, which it is true, has rarely been called upon in such matters, has until now shown great reluctance to involve itself in the examination of matters of subsidiarity.

Finally, the logic of the system, in which the obligation to re-examine a text depends on the number of reasoned opinions, implies that the national Parliaments develop a common approach, common criteria of appreciation of respect for subsidiarity and that they should keep each other informed of the positions they take up. This being so, is it not paradoxical that nothing has been done to strengthen interparliamentary cooperation in this field and that, on the contrary, the new protocol on the national Parliaments no longer contains, at least explicitly, a special role for COSAC in matters of subsidiarity?

2.1.3 The other aspects

2.1.3.1 Simplified revision procedures

The Constitutional Treaty lays down two simplified procedures for the revision of certain of its provisions. These procedures call on the intervention of the national Parliaments.

• Article IV 444 opens up the opportunity to modify two points of the mechanism for adop-

ting the acts of the EU without recourse to the ordinary revision procedure. The two points that can be modified in this way are the following:

– The move from unanimous to qualified majority voting for Council decisions;

- The move from a special legislative procedure (i.e., a procedure other than codecision between the European Parliament and the Council) to the ordinary legislative procedure (codecision).

These two "bridging-clauses" are applicable to all the EU acts provided for in Part III of the Constitutional Treaty, except for decisions with military implications or in the defence field. The decision to use a "bridging-clause" is taken unanimously by the Council, and must be approved by the European Parliament. However, each national Parliament has a right of opposition in advance of the decision being taken.

When the Council intends to resort to a "bridging clause", its initiative is transmitted to the national Parliaments. This transmission opens a period of six months during which any national Parliament may oppose the use of the "bridging clause". If no national Parliament has notified its opposition at the end of the six-month period, the European Council may then take its decision.

As in the case of scrutiny of subsidiarity, this is a new mode of intervention for national Parliaments. Article IV-444 accords a specific right to each national Parliament enabling it to intervene directly in the European decision-making process.

• A second simplified revision procedure is laid down in Article IV-445 of the Constitutional Treaty. This procedure is applicable to all the EU's internal policies and interventions, i.e., all the provisions in Title III, Part III. In contrast to the ordinary procedure, there is no requirement as to the preparation of the final decision. This simplified revision procedure, which cannot be used to increase the competencies attributed to the EU, is not subordinated either to the summoning of an Intergovernmental Conference nor *a fortiori*, to the setting up of a Convention. The final decision belongs to a unanimous vote in the Council and its coming into force supposes its "approval by the Member States in accordance with their respective constitutional rules", or in other words, the approval of each national Parliament. The national Parliaments retain, in this simplified revision procedure, the power they already have in the ordinary revision procedure.

2.1.3.2 The specific role in building the space of freedom, security and justice

The Constitutional Treaty mentions the national Parliaments four times in relation to the space of freedom, security and justice:

- Article III 260 states that "the national Parliaments shall be informed of the content and results of the evaluation" made by the authorities in the Member States of EU policies relating to the space of freedom, security and justice;

- Article III 261 states that "national Parliaments shall be kept informed of the proceedings" of the Standing Committee in charge of encouraging coordination between authorities in

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Member States in matters of internal security;

- Article III 273 states that national Parliaments will be involved "in the evaluation of Eurojust's activities";

- Article III 276 states that national Parliaments will be involved "for scrutiny of Europol's activities".

These provisions seem very timid, especially in the cases of Eurojust and Europol, which are not at present subject to any real scrutiny, which both restricts their legitimacy and, as a result, hampers the development of their role.

*

The judgement on the Constitutional Treaty, as far as the role of national Parliaments is concerned, cannot be made in terms of black and white. It is very innovative in giving national Parliaments special responsibility in matters of subsidiarity and in making it possible for them to dialogue directly with the Commission and have access to the Court of Justice. But it does not go the whole way. By dissociating subsidiarity from proportionality and failing to organise the inter-parliamentry cooperation desirable for the early warning system to work properly, the Constitutional Treaty limits the scope of the scrutiny of subsidiarity.

Moreover, the Constitutional Treaty does not offer a satisfactory answer to the problem of the collective involvement of the national Parliaments. But how can the "democratic deficit" of the intergovernmental policies, in their various forms, be reduced without better collective involvement of the national Parliaments?

2.2 Possible short term changes

The common points in all the scenarios envisaged for saving the essentials of the Constitutional Treaty in one way or another is that they all need time. The success of a European re-launch supposes that this time be used to reduce the divide between Europe and its citizens revealed by the no vote of two of European integration's founding peoples. Of course, these no votes had economic, social and cultural causes and so, cannot be explained solely, or even mainly, by the feeling of a "democratic deficit" in Europe. But this point does have its importance, and it is a point that something can be done about. The increased involvement of national Parliaments is one of the ways to contribute to re-establishing the links between European integration and citizens. This path should be taken without waiting for the problem posed by the breakdown of the ratification process of the Constitutional Treaty to be solved. And the point of departure should be citizens' preoccupations.

2.2.1 Applying the principle of subsidiarity

The principle of subsidiarity increasingly appears as a requirement that must be placed at the heart of the European unification.

The difficulties encountered at the beginning of the year, in settling the problem of applying a

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reduced rate of VAT to certain lines of business is an especially revealing example. In 1991, the Finance Ministers reached agreement in the Council on a set of rules concerning the standard rate of VAT and the lines of business benefiting from a reduced rate. These rules were located in the perspective of the elimination of tax frontiers so as to implement the single market in 1993. When drawing up these rules, the Ministers took no account of the principle of subsidiarity. Since they made no difference between the goods and services traded across frontiers and the others, they gave similar treatment to the fields where European intervention was indispensable, and thus legitimate, and the fields that could be left to the appreciation of States without creating any difficulty for the working of the single market, fields where UE intervention was not justified.

Applying the principle of subsidiarity would have led to recognizing that VAT rules regarding services such as the restaurant trade, hairdressing or the rehabilitation of housing stock, which cannot be traded across frontiers, should come under the competence of States and not of the EU. As a result, governments would not have found themselves in the absurd position of having to make a unanimous decision, all twenty-five of them, on a measure whose repercussions were exclusively national. And citizens would not have felt that Europe can intervene at any time, for some incomprehensible reason, to rule some aspect or another of their lives.

Citizens cannot be expected to recognize themselves in a Europe that legislates in fields where its intervention is not justified while at the same time shying away from affirming itself in fields, like foreign policy or the struggle against international crime, where the need for its intervention is obvious. The EU, to win citizens' support, must refocus its interventions.

Applying the principle of subsidiarity is the way to achieve this refocussing and reach a division of responsibilities that citizens can understand and accept[20].

There can be no waiting for the relevant provisions of the Constitutional Treaty to come into force to put in place closer scrutiny of the effective application of the principle of subsidiarity. Immobilism would lead to an obvious difficulty. Citizens would have to regain confidence in Europe if they are ever to approve, in one form or another, the Constitutional Treaty. If they are to regain confidence in Europe, the principle of subsidiarity would have to be respected. But if this respect can only be ensured once the Constitutional Treaty has been approved, then it is a vicious circle.

It is therefore necessary to move forward, pragmatically, on the basis of the texts already in force, along the road to better scrutiny of respect for subsidiarity. In the first place, of course, national Parliaments will have to be more vigilant on the subject when they examine draft European acts. But, in this field, the scrutiny by each Parliament of its own government is obviously inadequate: otherwise, there would be no reason for the whole system laid down in the Constitutional Treaty. In the current state of the treaties, what is needed, above all, is collective pressure from national Parliaments if a

[20] As has been emphasized by the German President Horst Köhler in his recent speech (14th March 2006) before the European Parliament.

significant effect on the European decision-making process is to be achieved.

With this in mind, information sharing between national Parliaments regarding their positions on matters of subsidiarity should be developed as quickly as possible. Above all, the Parliaments should confront their viewpoints so as to draw up common "guidelines" spelling out how the principle of subsidiarity should be put into practice. COSAC seems to be the appropriate framework for this, since the Amsterdam Treaty provides the basis for it to play this role. Guidelines jointly drawn up by the national Parliaments and illustrated with precise examples could not fail to have an influence on the work of EU institutions.

2.2.2 The legitimy and effectiveness of intergovernmental policies

Although citizens find it difficult, in some fields, to put up with excessive or unjustified interventionism from the EU, they expect it to act effectively in other fields, some of which belong mainly to intergovernmental cooperation. This is the case in foreign policy, defence and operational aspects of legal and police cooperation. It is also the case in those economic and budgetary fields where European intervention takes the form of policy coordination.

Strengthening the effectiveness and legitimacy of EU intervention in these fields is necessary to help restore citizens' confidence in the EU.

The collective involvement of national Parliaments in these intergovernmental policies is a way of strengthening their legitimacy – how could it be acceptable for intergovernmental policies in such sensitive areas to be carried on without being accountable in some way to interparliamentary bodies- but it is also a question of effectiveness. How can a fully effective coordination of budgetary policies be imagined without the close involvement of the national Parliaments that vote the budgets? How can it be possible to hope for any mobilization around the Lisbon strategy without the strong involvement of the national Parliaments who are among those responsible for implementing it.

It is therefore necessary to identify, within the existing framework, ways of developing and strengthening interparliamentary scrutiny in the fields covered by the various forms of intergovernmental mechanism.

Making interparliamentary consultation in the EU more effective first supposes making it more coherent. There are many initiatives in favour of interparliamentary meetings on specific topics. Some come from the European Parliament, some from the parliament of the country currently holding the presidency, others from one or several parliaments particularly interested in some topic. This profusion is not propitious to the requirements of continuity, coherence and representativeness that are, however, necessary if influence is to be wielded. One possible solution would be to give a coordinating role to the Conference of Speakers of the EU Parliaments, which might be equipped with a permanent Secretariat[21] for this purpose. More effective cooperation also means continuing to strengthen COSAC, the only interparliamentary body recognized in the treaties. COSAC is

[21] See Morgan Larhant : "La coopération interparlementaire dans l'UE : l'heure d'un nouveau départ ?" *Notre Europe*, études et recherches, Policy paper n° 16, p. 42.

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based on the equal representation of all the member countries and so is in a good position to become the framework for collective monitoring of the major intergovernmental policies. The possibility, mentioned in the protocol appended to the Constitutional Treaty, of debating questions of foreign policy and common security, including the common defence and security policy, within the COSAC framework, indicates a direction that can be followed immediately. A tie-up with the Western European Union assembly, or even a merger of the two bodies, would be the logical outcome of this approach.

2.2.3 Raising the profile of the European debate

Europe is not sufficiently present in public debate. Citizens often have the feeling of being placed before *faits accomplis*: the decision of principle to enlarge the EU to the countries of Central and Eastern Europe was taken by the Council in 1993, without the wide debate that was necessary for a decision of such importance. And this deficiency played its part in the unease that spread throughout public opinion with respect to enlargement.

During the referendum debate, it could likewise be seen that the most controversial provisions in the Constitutional Treaty were, in fact, rules that had been in force for a long time, but had never been really presented and explained to public opinion.

The inadequacy of public debate weakens the legitimacy of European unification. Citizens have the right not only to be informed, but to have their preoccupations passed up to the appropriate level. This implies that the great debates concerning the European Union should be carried on at every level, and, especially, within an interparliamentary framework, where all the viewpoints can be compared given that political and national diversity is represented. With regard to topics such as the EU's definitive frontiers, the degree of fiscal and social harmonization that is desirable and the European identity in the globalization process, many citizens feel that their questions and their doubts are not taken into account, that decisions are taken behind their backs and then presented to them as constraints to which they have to adapt. Moving forward by stealth is no longer an acceptable method for a unification process whose political content is growing steadily stronger. Open and public debate is indispensable.

But if great debates, at the interparliamentary level, are to give citizens the feeling that their preoccupations are being expressed, then they need to be sufficiently "visible". They need to be organised over time, in an identified arena, and not dispersed in a multitude of one-off meetings. Would not it be possible, for instance, to use the model of the Convention formula to tackle some essential topics?

Conclusion

A few months ago, I was being questioned by a student preparing a research dissertation. This was one of the questions: "Would you rather see a strengthening of European competencies and so a reduction in the role of national Parliaments or, on the contrary, better protection for national competencies so as to reinforce the role of national Parliaments?" I astonished her by replying that I supported both the development of European competencies and the strengthening of the role of national Parliaments. This proves that, in this affair, stereotypes die hard. Surely the time has come, however, to recognize that there are not "good Europeans" in Brussels on the one hand and "bad Europeans" in the national capitals, on the other. Remember the Convention on the future of Europe: the representatives of the national Parliaments were kept on the sidelines for a long time, and yet they were, in the end, decisive in surmounting the obstacles to the final compromise.

Wanting to involve national Parliaments more closely does not mean wanting to slow down European unification, but, on the contrary, wanting to confer on it the extra-legitimacy it needs to become deeper. How can any decisive advances be hoped for in fields like foreign policy, defence, training, culture, unless Europe becomes more deeply rooted in its peoples? And can those roots be put down unless national Parliaments are brought into play as a link between public opinion and EU institutions? The success of the EU depends on combining all its sources of legitimacy; like a pyramid, it needs, to keep standing, to rest on its base and not on its apex.

Nor is it desirable to shut this original and complex process too quickly into pre-determined patterns. In his famous speech to young people, Jean Jaurès stressed the need: "to move toward the ideal while understanding the real". With the European Parliament having sometimes too much of a tendency to favour the first term at the expense of the second, it is up to the national Parliaments to give this second term the place it deserves.

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The crisis caused by the rejection of the European Constitution by France and the Netherlands revealed that the democratisation of the community institutions was vital

Until now the growing role played by the European Parliament was believed to be the obvious solution to remedy any "democratic deficit". But this crucial solution, in constant progress over the last 27 years must also go hand in hand with the enhancement of the role played by the national parliaments which are also a vital source of political impetus and of the democratic legitimisation within the Member States of the European Union.

The democratisation of the Union also necessarily lies in the enhanced role of national parliaments, a condition for the efficient and legitimate representation of European citizens within the community institutions. This study undertakes a comparative examination of the various facets and modalities of the democratic reform process of the European project.

Hubert Haenel, Senator for the Haut Rhin, is president of the Delegation for the European Union at the Senate.

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