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COSAC, national parliaments and their contribution to a European strong public

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The last three EU Treaty reforms (Maastricht 1993, Amsterdam 1999, Nice 2003) expanded the European Union's area of activity and its common policies important respects. In connection with ratification and the referenda the Treaty on European Union (TEU) initiated what were in some cases major constitutional reforms, which have a significant influence on relations between the national parliaments and their respective governments. Some governments have committed themselves to certain systems for forwarding information to and consulting their parliaments. These reforms prompted many national parliaments to amend their rules of procedure. What all the reforms and the reorganization of internal parliamentary activities have in common is that unilateral machinery for monitoring governments and their activities in the Community decision-making processes has been strengthened. Besides this unilateral control machinery¹, bi- and multilateral, cooperative mechanisms embracing the national parliaments and the European Parliament were developed as an additional and innovative means of democratizing and parliamentarizing the European Union. In this specific regard, the Treaty reforms induced an ongoing debate between the different levels of EU parliamentarism. An interesting feature of this story is the character of different forms of interparliamentary cooperation and the deliberative nature of these models.

What you make out of an interactive locus largely depends on the role perception of all actors involved. I would not share Blichner's positivist assumption about interparliamentary discussion serving "as [...] an intermediary public sphere".² Nor do I agree with his argument that "COSAC is what may be termed a purely deliberative body [in that] it is designed for the articulation and exchange of information and ideas between national delegates and also serves as a forum where it should be possible to identify the climate of opinion in relation to more specific issues".³ My argument is that interparliamentary cooperation can be identified and effectively used as a laboratory for deliberative democracy. However, what actors make out of different forms of inter-actor-fora largely depends on their views about the distribution and optimal allocation of power, of means to give voice to public demands and ideas. COSAC or any other kind of interparliamentary cooperation is not deliberative per se! Hence, it is the European Parliament that tries to establish COSAC and similar forms of interparliamentary debate as an intermediary public sphere. But several national parliaments do not share this view. The challenge the rights and the rather parliamentary exclusivity the EP has gained within the Brussels based network of policy making. They thus also try to model COSAC as a competing 'strong public' – against the European Parliament. As we will see, the 'real debate' between the European Parliament and some national parliaments about the optimal loci of parliamentary democracy, parliamentary discourse and decision-making is and was about the question, whether there should be an "intermediary public sphere, a public sphere which is more institutionalised than public spheres in civil society, but less institutionalised than parliamentary institutions both at the national and the European level".⁴

1. Conceptual problems

Members of the national parliaments and European Parliament do not stop to argue about the incompatibility between the institutional and procedural structure of the TEU and the principles of democracy that apply in the European Union and its Member States⁵. These principles of

1 See European Parliament, DG II, Division for Relations with Parliaments of the Member States, in cooperation with the DG IV (Andreas Maurer), European Community Affairs Committees of the Parliaments of the Member States, May 1995; Assemblée nationale (23 May 1995), Rapport d'information par la mission d'information commune sur les moyens d'information des parlements étrangers en matière économique et sociale (Laurent Dominati); Assemblée nationale (28 June 1994), Rapport d'information déposé par la délégation de l'Assemblée nationale pour l'Union européenne sur le rôle des Parlements nationaux dans la construction européenne: les enseignements de l'exemple danois (Nicole Ameline).

2 Blichner, 2000, p. 152.

3 Blichner, 2000, p. 152.

4 Blichner, 2000, p. 142.

5 Final Declaration of the Conference of Parliaments of the European Community, Rome, 27-30 November 1990, Recitals F and G, in: Parlement européen (1993), p. 208

democracy at least mean that decision-making processes should be public and subject to control and that parliaments and assemblies directly elected by the citizens are responsible for law-making⁶. Both national parliaments and the European Parliament believe that these minimum criteria for ensuring compliance with the principles of democracy are not fully satisfied. National parliaments and the European Parliament face two problems that cast doubt on their institutional position:

- Firstly, they feel they are under constant 'pressure to adapt and adjust'⁷ their means of and approaches to exercising parliamentary control over Community law-making.
- Secondly, they question the transfer of national (parliamentary) powers to the European level, since it is not automatically followed by the transfer of these primary legislative rights to the European Parliament.

Members of the European Parliament and national parliaments address the same ministers, whether in their capacity as representatives of the governments or as representatives of the Council of Ministers. Since the early 1980s, both MEP's and MP's therefore argue to replace the original bilateral relations between parliamentarians and national government representatives with a triangular pattern of relations in which members of all European assemblies enter into a structured cooperative relationship characterized by joint monitoring of the governments at national level and at Council level⁸. The danger then, however, is that the resulting parliamentary activities will be duplicated as a result of the mixing of parliamentary control responsibilities.

In its 13th and 14th declarations the Maastricht TEU version itself provided an essential basis for an approach to a form of graded and non-decisive cooperation that was seen as relevant to the Community/Union and conformed to its principles of democracy, efficiency and transparency.⁹ The two declarations induced intensified debates between national parliaments and the European Parliament on the effectiveness of different parliamentary levels in EU affairs. As graph 1 shows, the declarations clearly steered a momentum for structuring interparliamentary co-operation on the level of committees, individual parliamentarians and parliamentary staff.

6 Parlement européen (1er février 1988), p. 10

7 Groud (1991), p. 1311

8 Lapart (1991), p. 721

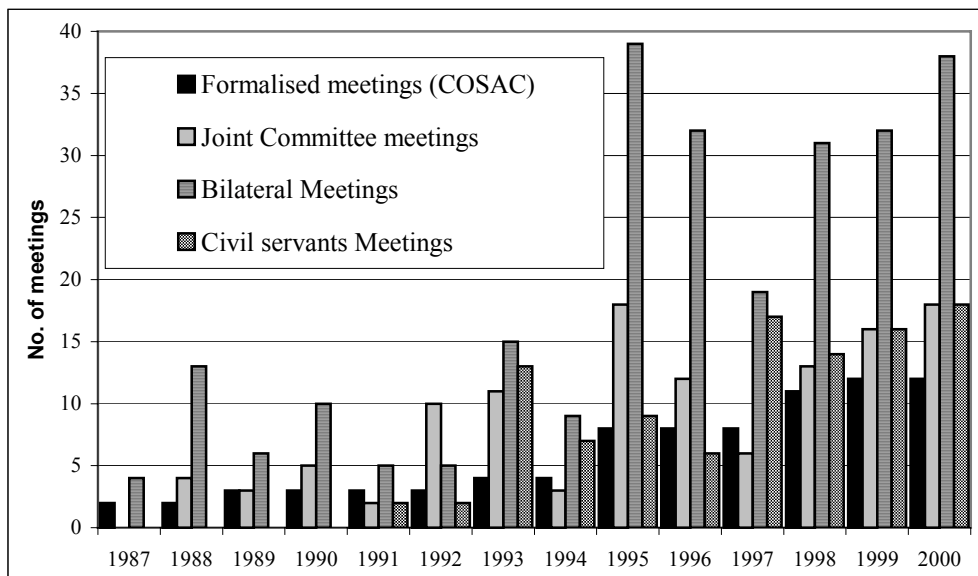
9 The 13th declaration on the role of the national parliaments in the European Union read: *The (Intergovernmental) Conference considers that it is important to encourage greater involvement of national parliaments in the activities of the European Union. To this end, the exchange of information between national parliaments and the European Parliament should be stepped up. In this context, the governments of the Member States will ensure, inter alia, that national parliaments receive Commission proposals for legislation in good time for information or possible examination.*

Similarly, the Conference considers that it is important for contacts between the national parliaments and the European Parliament to be stepped up, in particular through the granting of appropriate reciprocal facilities and regular meetings between members of Parliament interested in the same issues.

The declaration on the Conference of the Parliaments (Assizes) read:

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

Graph 1: Interparliamentary Co-operation 1987-2000



The overriding question posed by this paper is derived from these two declarations: What types of cooperation in interparliamentary deliberation, cooperation and joint control - from 'appropriate reciprocal facilities' to the 'Assizes' – are apt to significantly democratize the European Union's structures and procedures?

In theory, national parliaments might infer from an evaluation of a serious decrease in their legislative powers that cooperation with the European Parliament will increase. Conversely, however, it can also be assumed that national parliaments will demand the return of the rights they have previously relinquished. In association with a concept of democratic legitimization of the European Union, which is effected solely by the governments of the Member States¹⁰ and in which a democratic deficit in the European Union is identified only in the context of relations between national parliaments and governments, national parliaments might reject any further procedural communitarization. As a result, they might reject cooperation with the European Parliament and merely demand a simple increase in their powers vis-à-vis the Member States' governments.

In reality, since the Single European Act of 1987 the European Parliament has developed a concept of the **dual democratic deficit**. To this end, it first defined the dominant concept of the **dual and divided democratic legitimization** of the European Community: democratic legitimization determined at national level is effected by the Council of Ministers, which - through elections to national parliaments - enjoys the confidence of the national parliaments and is controlled by them. On the other hand, there is democratic legitimization determined at Community level, which is effected by the European Parliament as the Community's only directly elected and legitimized body, to which the Commission is directly accountable¹¹.

It follows from both theoretical concepts that the European Union's democratic deficit - a phrase that depends on the definition of the European Union's legitimizing foundations - can be generally overcome by

- strengthening the European Parliament's powers,

10 This idea is to be found in Proposition de loi no 838 déposée le 7 décembre 1978 par Jean Foyer. See Foyer (1979), p. 161, Boudant (1992), p. 1394, and Groud (1991), p. 1314.

11 Parlement européen (1er février 1988), p. 19; see also Maurer (1995), pp. 88-90.

- increasing those of the national parliaments' rights that are relevant to the Community or
- providing for cooperation between national parliaments and the European Parliament.

Before we analyse various types of interparliamentary cooperation, the basic positions having precedence over such cooperation need to be structured. According to the vast majority of members of both the EP and national parliamentary EU affairs committees, interparliamentary cooperation should be based on the following two principles:

- Forms of interparliamentary cooperation should help to gradually eliminate the identified (dual) democratic deficit in the European Union.
- Interparliamentary cooperation should be commensurate with the widely shared strategies of making Community legislative activities more democratic, more efficient and more transparent.
- Finally, interparliamentary cooperation should not interfere into the rights of parliaments with regard to their decision-making powers. Any form of interparliamentary cooperation should be deliberative by nature, non-decisive with regard to the existing EU policy cycles, and characterised by mutual recognition of parliaments and parliamentarians as mirrors of society.

The resulting question is **how far cooperation between national parliaments and the European Parliament is to be formalized, codified or even institutionalized.** The answer depends on the way in which the structuring of interparliamentary cooperation interferes with the European Parliament's rights through the addition of a further level of deliberation, control or codecision. A classification of possible forms of cooperation as a function of general conditions of principle and the possible motives underlying them produces the following categorization and evaluation frame¹²:

A. The level of formalisation

This category comprises organizational aspects of interparliamentary cooperation and can be broken down into the following levels:

- **Informal contacts** without a set basis
- **Conceptualization** of contacts
Conceptualization means ensuring the continuity of contacts through the designation by the parliaments and other bodies of those who are to cooperate, i.e. contact one another, without there being a contractual or legal basis.
- **Formalization** of contacts
Formalization means the establishment of rules on contacts by parliamentary bodies and administrations on the basis of loose agreements which, though not having the force of law, are notified.
- **Codification** of contacts
Codification means appropriate agreements on codified contacts validated by mandates of the authorized parliamentary bodies or others in the various parliaments, with the participation of the parliamentary administrations and through agreement on a common set of procedural rules for the cooperating bodies (rules of procedure).
- **Full Institutionalization** of contacts
Institutionalization means the legal arrangements and recognition of contacts on the basis of an appropriate reference in the TEU and the constitutions of the Member States or on the basis of an agreement between the cooperating bodies which has the force of law.

12 The evaluation frames were put to the test by the author in a study submitted to the European College in Bruges, taking interparliamentary cooperation between the European Parliament and the French National Assembly as an example. See Maurer (1994).

B. The **systematization of contacts and their content**

This category comprises the requirements regarding the responsibility of parliaments to provide means for efficient policy making. The category can be subdivided as follows:

- **Programming of contacts and their content**

The programming of contacts and their content means a forecast of contacts and the work they involve on which the cooperating parties agree and whose degree of formalization varies depending on how official the contacts are.

- Specifying and establishing a **hierarchy in the structure of relations between controlling and controlled bodies**

This category entails clarification to be agreed among the parliaments of control activities in a way that avoids conflicts between parliaments due to duplication and encroachment on the various parliamentary rights.

- Specifying and establishing a **hierarchy of phases of action – a direct translation of the principle of mutual recognition of parliamentary roles in different but related contexts**

This category signifies clarification to be agreed among the parliaments of the control activities at the various stages of Community law-making prescribed by the TEU, provisions of secondary law and interinstitutional agreements in a way that avoids the coincidence and duplication of control activities.

2. Organizational conditions for interparliamentary cooperation

2.1. *Efficiency of the Community decision-making and legislative processes*

The relationship between the efficiency of the Community decision-making and legislative processes and the general principles of EU democracy is a condition for the functioning of the European Union, because its institutional and procedural design is judged by the public on the basis not only of democratic content of procedures but also of efficiency criteria and with regard to the policy output produced by the EU institutions. One of the main reasons for this is the broad impact of neo-functionalist approaches and strategies to EU integration, which indirectly influenced the European Community's 'design' and relegated democratic aspects to the back of the public mind owing to the initially strict substantive limitation of the policy issues negotiated at Community level. For a relatively long time the European Community therefore remained an organization in which efficiency was almost always equated with speed of decision-making¹³.

The European Parliament report that introduced the term 'democratic deficit' to the debate and literature on European integration referred both to the definition of dual democratic legitimation and to the national parliaments as partners in the fight against the lack of democracy in the European Community. On the criterion of the **efficiency** of Community action the report concluded that 'the concentration of legislative powers in the hands of the members of governments meeting in Council ... (has) created an "institutional imbalance" which is responsible not only for a democratic shortfall but also for a **low level of effectiveness in the Community's work**'¹⁴. The EP rapporteur, Toussaint, felt that the ponderousness of such decision-making in the Council might well undermine the dual legitimacy of the Community's authority. On the national parliaments' view of the Council's ponderousness the rapporteur stated that 'the reduction in the powers of the parliaments over Community affairs seems not always to be fully understood by the national parliaments'. Their attempts to compensate for the loss of their legislative rights by increasing their rights of control were therefore regarded as inefficient because they delayed decision-making. However, the emphasis on **inefficiency essentially concerned the lack of coordination of the control activities** of the national parliaments¹⁵.

13 Boyce (1993), p. 460

14 Parlement européen (1er février 1988), paragraph 15; Parlement européen (11 juillet 1990)

15 See also Scoffoni (1992), p. 26; Boyce (1993), p. 460

The national parliaments' **unilateral** mechanisms for controlling the various executive bodies range (even today) from the restrictive monitoring of mandates by Denmark's Europaudvalget to purely informational ex post monitoring by the Greek parliament¹⁶. Given the inadequacies of unilateral parliamentary control, the EP Toussaint report maintained that 'only close cooperation between the national parliaments and the European Parliament and an increase in parliamentary power over Community affairs can establish a balance of forces between executives and parliaments at Community and national levels'¹⁷.

The efficiency criterion thus formulated during the initial European Parliament's deliberations on post-1979 interparliamentary cooperation became an essential basic principle of the further development of interparliamentary cooperation. The integration of national parliaments into the European Union's interinstitutional negotiating framework thus signifies a gain in efficiency if it can be ensured that:

- the powers of the Community institutions to initiate and adopt legislation and in the budgetary sphere remain untouched,
- in procedures in which the Council decides by (qualified) majority the European Parliament receives the widest possible codecision rights,
- the budgetary implications of a legal act are recognized at an early stage (through interparliamentary cooperation when decisions are taken on own resources and budgets are adopted) and can be recorded in the legislative forecast at Community and Member State level,
- the legal act adopted can be rapidly implemented in the Member States in accordance with the provisions of their constitutions (relating to competence).

2.2. The principle of reciprocal facilities

While the European Parliament initially focused on making the principles of democracy and efficiency compatible, another principle came to the fore with the launching of interparliamentary cooperation at the level of parliamentary presidents: The principle of reciprocal facilities and assistance with the monitoring of the activities of government representatives. This principle first surfaced in the Stavrou report and was defined as the 'further development of continuous reciprocal contacts and consultations between the European Parliament and the national parliaments'¹⁸. The report states that any opening up of the European Parliament, i.e. its committees and delegations, without reciprocal action on the part the national parliaments and their committees would be an unsatisfactory - and, moreover, inefficient - solution to the problem of the dual democratic deficit¹⁹. The report by Cravinho, the then Vice-President of the European Parliament, on the development of relations between the European Parliament and the national parliaments²⁰ confirmed the principle of reciprocity by taking up a proposal put forward by the British delegation at the Maastricht Intergovernmental Conference that 'the chairmen of specialized committees of national parliaments should be given a standing invitation to attend meetings of their counterpart committees in the European Parliament and vice versa'²¹. After the Cravinho report the principle of reciprocity was constantly on the agenda of the enlarged Bureau's working party, which made an on-going study of the report and was entrusted with the development of interparliamentary relations²². The principle of reciprocity was eventually reflected in the 13th declaration on the role of national parliaments in the European Union.

16 For the constitutional provisions and the implementation of unilateral parliamentary control see Parlement européen (Mai 1995).

17 Parlement européen (1er février 1988), section VII

18 Parlement européen (27 avril 1989), point 8, which is based on the draft Single European Act submitted to the European Council held in London on 26/27 November 1981 (EP Bulletin, No 50, 15.12.1981, PE 75.575, p. 40).

19 Ibid., point 8

20 European Parliament (24 September 1991); see also Agence Europe, No 5484, 3 May 1991, and No 5589, 16 October 1991.

21 European Parliament (24 September 1991), p. 5

22 Parlement européen (8 décembre 1992), p. 5; Parlement européen (2 février 1993)

3. The application of principles

3.1. Officialisation and Formalisation

Inspired by a conference of parliamentarians held on 18/19 May 1987 on the initiative of Belgium's Chamber of Representatives and attended by 70 members of the Member States' parliaments²³, the EP Seeler report on relations between the national parliaments and the European Parliament²⁴ concluded that specific interparliamentary bodies should be set up and that it should be possible for bodies in the Member States' parliaments specializing in EC affairs to attend meetings of the European Parliament's committees in a consultative capacity²⁵.

As regards the principle of reciprocity, the rapporteur began by proposing that the national parliaments should place the bodies specializing in EC affairs on an equal legal footing with their other committees. These EC committees should also give a predetermined number of Members of the European Parliament a formal right to speak. Seeler called for harmonization of the number of guest parliamentarians attending committee meetings on both sides. While this concept sought to make interparliamentary contacts official between the conceptualization and formalization categories, the Stavrou report of 27 April 1989 provided for movement towards a mere formalization of interparliamentary contacts at committee level²⁶. Referring to paragraph 5 of the resolution in the Seeler report, the Committee on the Rules of Procedure, Verification of Credentials and Immunities unanimously adopted a new Rule 111a of the Rules of Procedure:

'Rule 111a

Members of national parliaments of the Member States

- 1. Whenever the nature of a subject on the agenda makes it desirable that members of national parliaments should take part in its discussion for the purpose of coordinating action between the European Parliament and national parliaments, members of the latter may take part at the invitation of the committee chairman or if the latter accepts a request from them to attend.*
- 2. The President of the European Parliament shall be informed of such invitations or requests.*
- 3. Members of national parliaments attending committee meetings shall be entitled to speak but not to vote and shall not be counted towards a quorum in the committee.'*

The rapporteur justified his initiative by stating that the formalization of interparliamentary contacts would cause the national parliaments to ensure that 'European affairs' were considered appropriately and horizontally. The explanatory statement accordingly mentioned the principle of reciprocity as a condition for cooperation, although no reference was made to this principle in Rule 111a itself. The related De Gucht motion for a resolution on free access to meetings of the European Parliament's committees for members of national parliaments pursued a similar objective. It called for the doors of the European Parliament's committees to be opened without asking the same of the national parliaments, as the principle of reciprocity would require²⁷.

Unlike Stavrou and De Gucht, the opinion of the Committee on Institutional Affairs, which tabled a separate motion for a resolution on relations between the Member States' parliaments and the European Parliament, therefore urged the national parliaments to take steps to enable Members of the European Parliament to attend the meetings of the committees specializing in EC affairs²⁸.

23 Agence Europe, No 4553, 20 May 1987

24 Parlement européen (6 janvier 1989); Motion for a resolution, 16 February 1989, OJ C 69, 20.3.1989

25 Quinty/Joly (1991), p. 432

26 Parlement européen (27 avril 1989)

27 Parlement européen (27 avril 1989), Annex, B2-0082/85

28 Parlement européen (27 avril 1989), Annex, Opinion of the Committee on Institutional Affairs, A2-0348/88

As the amendment to the Rules of Procedure proposed in the Stavrou report was incompatible with the basic principle of reciprocity, the report was not considered again after the parliamentary term came to an end in the summer of 1989. Nor, given the amendments to the European Parliament's Rules of Procedure in September 1993, did a special arrangement like that proposed in the Stavrou report seem necessary. In fact, the 1993 Rule 151 of the Rules of Procedure authorized members of national parliaments to attend meetings of the European Parliament's committees in their capacity as national experts. Despite this, both the Cravinho report previously mentioned and the working party subsequently set up by the enlarged Bureau continued to refer to the Stavrou report²⁹.

In his first review of the implementation of his report, Cravinho proposed, for example, that the Committee on the Rules of Procedure, the Verification of Credentials and Immunities should discuss the Stavrou report on the participation of national parliamentarians in meetings of the European Parliament's committees and in activities relating to the national parliaments with a view to achieving reciprocity³⁰. However, the review of the implementation of the Cravinho report submitted then placed far greater emphasis on less formalized types of interparliamentary cooperation. No reference has since been made to the Stavrou report³¹.

Under these conditions it seemed inappropriate to codify interparliamentary cooperation through the Rules of Procedure, even with a view to the 1996 Intergovernmental Conference. Particularly where rights of access for members of the national parliaments and the European Parliament were concerned, the European Parliament was and still is at a serious disadvantage. Figure 1 shows what access Members of the European Parliament currently have to the national parliaments.³² The recent trend in some national parliaments to open up their fora for MEP's was strengthened by the more recent set up of 'liaison officers' within the European Parliament (Italian Chamber, French Senate, Danish Folketing, Finnish Eduskunta, Swedish Riksdagen, UK House of Commons). Some parliaments thus developed institutional devices in order to perform as multi-level players between their countries and the EU institutions, although a recent Italian scholar's perception is still valid for most legislatures: "Really effective contacts between parliamentary groups at the two levels have not yet been established. In the administrative bodies of the national parties there is usually someone responsible for relationship with the federations and European political unions, so that the political circuit is closed: European groups-national parties-national parliamentary groups".³³

29 European Parliament (24 September 1991), Article I.17

30 Parlement européen (8 décembre 1992), p. 5. See also: Meeting of the enlarged Bureau's working party on relations with the Member States' parliaments, Brussels, 2 February 1993

31 'Bilan des relations entre le PE et les parlements des Etats membres', in: INFO MEMO, 'Special Elections', No VI: 'Bilan de l'impact du PE sur les politiques communautaires à travers l'activité de ses commissions', 29 March 1994, pp. 22-26

32 See e.g. the contribution by Sven Hölscheidt in Maurer/Wessels, 2001..

33 See the contribution by Federiga Bindi and Stefano Grassi in Maurer/Wessels, 2001.; and Guizzi, Vincenzo: 'Italy', in: Morgan, Roger, Tame, Clare, (eds.): *Parliament and Parties. The European Parliament in the Political Life of Europe*, New York 1996, p. 135 and p.141.

Figure 1: Participation of MEP's in national parliaments' meetings

Specific cases of de-facto 'Joint MP/MEP Committees'	
1.	The EU Committee of the Belgian Parliament is composed by 10 members of the Chamber of Representatives, 10 Senators and 10 Belgian MEP's. The latter's' rights and obligations do not differ from the MP's ones.
2.	The EU Committee of the Greek Parliament is composed by 16 MP's and 15 Greek MEP's. The latter's' rights and obligations do not differ from the MP's ones.
3.	The EU Committee of the German Bundestag is composed by 36 MP's and 14 German MEP's. The latter's' have a right to speak, but not to vote.
Participation of MEP's	
4.	Possibility to attend EU Committee meetings for all MEP's from the respective member state:
-	With a right to speak and consultative voting rights:
	Assemblée nationale (F)
	Sénat (F)
-	With a right to speak:
	Chambre des Députés (LUX)
	Bundesrat (D)
	Senado (E)
	Camera del Deputati (I)
	Senato della Repubblica (I)
	Eerste Kamer (NL)
	Tweede Kamer (NL)
	Nationalrat (A)
	Bundesrat (A)
5.	Possibility for all MEP's having a double mandate in the EP and their respective member state
	Folketing (DK)
	Dail Eireann (IR)
	Seannad Eireann (IR)
	House of Commons (UK)
	House of Lords (UK)
6.	No regular participation of MEP's
	Eduskunta (SF)
	Riksdagen (S)
	Assembleia da Republica (P)

As specific studies on the parliaments of Denmark³⁴, Belgium³⁵ and France³⁶ note, the offer to participate in the work of national parliaments is used to a growing extent. Also within the bodies of European parties, parliamentarians of both levels have not evolved at any set of regular interactions. Yet Finnish³⁷, Dutch³⁸ and Swedish³⁹ case studies observe a growing recognition of intra-party links in order to facilitate informal contacts between members of both sides of parliament.

But overall, only a small minority of national parliaments offer the Members of the European Parliament opportunities to participate in their work that bear comparison with the concept described in the Stavrou report⁴⁰. The main problem remains the requirement laid down by most national parliaments that MEPs have either the nationality of the Member State concerned or even a seat in its parliament. This concept is inconsistent with the denationalized structure of the European Parliament, whose composition is determined by the constituent elections on the basis

34 See the contribution by Finn Laursen in Maurer/Wessels, 2001..

35 See the contribution by Clair Vandevivere in Maurer/Wessels, 2001..

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

37 See the contribution by Tapio Raunio in Maurer/Wessels, 2001..

38 See the contribution by Ben Hoetjes in Maurer/Wessels, 2001..

39 See the contribution by Hans Hegeland in Maurer/Wessels, 2001..

40 See also Pöhl (1992), p. 73.

of criteria relating to nationality, but whose opinions, resolutions and legislative activities are based on membership of political groups, not on the predetermined national quotas. According to the EC treaty, the Members of the European Parliament represent the peoples of the European Union as a whole; any representation of interests along national lines therefore conforms neither to the TEU nor to the European Parliament's self-image.

3.2. Conceptualization of interparliamentary contacts

While the formalization of interparliamentary cooperation in the form hitherto presented appeared to conflict with the principle of reciprocity, the European Parliament put forward other proposals for the further conceptualization of interparliamentary contacts. They were essentially aimed at having a fixed timetable for existing, informal types of cooperation and seek in particular to increase parliamentary control without interfering with the rights of the European Parliament as a and *the only* legislative and controlling body of the European Union. The motion for a resolution tabled in 1989 on the strengthening of relations between the Member States' parliaments and the European Parliament proposed the organization of regular, annual Conferences of Speakers, which until then had been held every two years⁴¹. The contents of this resolution, which was contained in the Seeler report, were confirmed by the Cravinho report⁴². The motion for a resolution in the Seeler report also proposed joint meetings of the national parliaments' EC/EU committees and the European Parliament's committees.

3.2.1. The option of 'synchronized control' by the national parliaments and the European Parliament

The aim of the Seeler motion for a resolution contained on the introduction of a **parallel procedure of parliamentary questions** in the European Parliament and the national parliaments was to synchronize control over the Council of Ministers and the governments of the Member States. Specifically, parliamentary questions were to be tabled at the various decision-making levels after prior agreement among the parliaments. This would not have encumbered the European Community's institutional system. On the contrary, the intended grading of control or scrutiny would have resulted in a more accurate (and selective) delimitation of the areas in which the national parliaments and the European Parliament might act. The aim of maintaining and increasing efficiency would thus have been achieved⁴³. No further action was, however, taken on the motion for a resolution since it would at least have required harmonization of the various procedures for consultations and questions in the national parliaments on the one hand and between the European Parliament and the national parliaments on the other. Although the harmonization of the rights of parliaments to ask questions would seem to be an apt means of exercising more efficient control over the decision-making procedures in the Council and the bodies attached and subordinate to it, it is unlikely to be put into effect.

3.2.2. The systematization of contacts

The motion for a resolution in the Seeler report also recommended the national parliaments to appoint members of their EC/EU affairs committees to liaise continuously with the European Parliament. In addition, and with the similar intention of systematizing interparliamentary contacts, the motion for a resolution proposed the exchange of parliamentary officials. But it was to be the Cravinho report and the first review of 8 December 1992 of its implementation that gave practical shape to the latter suggestion⁴⁴.

41 Parlement européen (6 janvier 1989), Annex, B2-593/87

42 European Parliament (24 September 1991), p. 2

43 Parlement européen (6 janvier 1989), Annex: B2-1317/84/rev.

44 See also Parlement européen (27 avril 1989), A2-348/88, paragraphs 5 and 6.

As regards the appointment of 'liaison **officials**', the European Parliament set up a Division for Relations with Parliaments of the Member States within its Directorate-General II. Besides coordinating the interparliamentary activities of the European Parliament and its committees and dealing with the administration involved, this division maintains constant contact with officials of national parliaments who liaise with other parliaments in their particular area of activity.

The first review of the implementation of the Cravinho report also proposed the exchange of officials for one to three days (for information purposes) or for two months to two years (as exchanges of officials). Exchanges between rapporteurs of national parliaments and the European Parliament were suggested as a further option for systematizing contacts.

Systematizing interparliamentary cooperation was defined as:

- a selective division of labour in parliamentary control in line with the various levels of decision-making,
- the early recognition of possible problems relating to and phases in the implementation of Community legislation in the Member States and
- ensuring coherence in the legislative procedures in which the European Parliament is able to exercise greater influence on the shaping of a legal act.

If during codecision procedures, for example, rapporteurs of national parliaments want to draw up a report on a projected legal act before the European Parliament's second reading, the exchange of rapporteurs was seen as a highly appropriate means of facilitating subsequent procedures for the transposition of the legal act concerned into national law.

3.2.3. The programming of contacts

The programming of contacts and their content meant a forecast of contacts and the work they involve on which the cooperating parties agree and whose degree of formalization varies depending on how official the contacts are. The answers given in the questionnaires used to draw up the first Cravinho report revealed that until 1991 only about half of the European Parliament's committees had regular contacts with their counterpart committees in the national parliaments. None of them received periodic and standard information on the work of the national parliamentary committees. Until 1991 only a minority of the committees had held, had planned or had had a set timetable for round table discussions or other bilateral contacts with counterpart national committees to consider specific subject areas. The few meetings that did take place concerned the implementation of Community law, comparisons of implementation procedures and substantive results, the improvement of the control of the EC budget and cooperation in this sphere and the influence of the EC's legislative programme on the European Parliament's and national parliaments' programmes of work. Given this divergence between the intensity of cooperation and the various, uncoordinated committee activities, it seemed appropriate to programme contacts in a way that respected the autonomy of committees in the Member States' parliaments and the European Parliament in order to improve the content of work and the procedures for cooperation between committees. In 1991, according to Cravinho himself, it was 'exceptional for the European Parliament and its committees to be supplied with any form of table listing all the contacts between our committees and national parliaments. No draft programme of anticipated annual or six-monthly meetings has ever been submitted either to the Bureau or to Parliament's committees as a whole'⁴⁵. The following was therefore proposed:

- For planned cooperation with budgetary implications criteria enabling the Bureau to authorize the expenditure involved should be established. To this end, the committees should submit a

45 European Parliament (24 September 1991), p. 6

six-monthly programme of their initiatives in this respect to give the Bureau a sound basis (in terms of predictability and financial feasibility) on which to discuss these initiatives.

- For planned cooperation without budgetary implications free access to the six-monthly programmes should be ensured so that they might be forwarded to all committee chairmen (to avoid duplication of effort).

The aim was thus to centralize the programming of inter-committee cooperation in the Bureau and the Division for Relations with Parliaments of the Member States. In addition, a horizontal information channel through interparliamentary contacts was to be created.

3.3. Parliamentary geography: A hierarchy in the structure of relations between controlling and controlled bodies

The first steps towards specifying and establishing a hierarchy in the structure of relations between controlling and controlled bodies were taken with an EP resolution⁴⁶ on the granting of a discharge to the Commission. Here the EP classified the harmonization of parliamentary activities of common (interparliamentary) interest as a new priority. Closer coordination among the national parliaments seemed essential in the following areas relating to the implementation of legislation:

- an exchange of information on the position and role of the national administrations and their activities in the transposition of Community legislation into national law,
- an exchange of information on the development, structure and control of national administrative machineries and procedures, and
- an exchange of information on preparatory work (selection and proposal) carried out by national authorities when considering the projects and programmes to be submitted for Community funding (from the Structural and Regional Funds)⁴⁷.

Afterwards, the opinion of the Committee on Institutional Affairs on the Stavrou report recognized the need for the national government representatives in the Council of Ministers to accelerate the transposition of Community legislation into national law and for the national parliaments to monitor compliance with the deadlines for the implementation of Community directives⁴⁸. The EP thus advocated a **clear-cut separation of control levels to prevent any encroachment by the parliaments on the European Parliament's rights and vice versa**.

The establishment of a hierarchy of levels of action thus initiated was identified as a new way to implement the concept of dual legitimacy, which was intended to enable the national parliaments to monitor national EU activities before and after the Community decision-making procedure. This concept gave national parliamentarians an opportunity to influence the government's views before a common position is adopted in the Council and a direct say in the shaping of legal acts adopted by the Community institutions. The direct participation of the national parliaments in the legislative procedures was thus ruled out.

3.4. Time: Specifying and establishing a hierarchy of phases of action

This category signified clarification to be agreed among the parliaments of the control activities at the various stages of Community law-making prescribed by the TEU, provisions of secondary law and interinstitutional agreements in a way that avoids the coincidence and duplication of control activities. As regards specifying and establishing a hierarchy of phases of action (and control) it must first be said that the Mattina motion for a resolution, which was coordinated with the

46 Parlement européen (1989), Resolution embodying the comments which form an integral part of the decision granting a discharge in respect of the implementation of the general budget of the European Communities for the financial year 1988, OJ L 174, 7.7.1990, p. 51, point 89

47 Parlement européen (22 juin 1990), Annex: A2-162/90

48 Parlement européen (6 janvier 1989), Annex: A2-348/88

resolution in the Seeler report, called for the Council Presidency's statements on the EC's legislative programme to be seen as an occasion for special meetings on the subject to be held at the level of the parliamentary presidents⁴⁹. In October 1992 the enlarged Bureau then stated that the legislative programme was a crucial means of improving and strengthening interparliamentary cooperation⁵⁰.

The legislative programme is an important – but until the Seville European Council of 2002 nationally neglected - subject for negotiation between the Commission and the European Parliament. For the European Parliament it was therefore a means of discussing with the national parliaments topics of common interest at an early stage. To bring the parliaments closer together, the following procedure was proposed:

1. Before the legislative programme is adopted, the European Parliament forwards the **Commission's work programme** to the national parliaments and invites them to submit comments informally.
2. Before the end of the year the European Parliament forwards to the national parliaments the **annual legislative programme adopted** jointly by the Commission and Parliament and the **joint declaration by the two institutions on the legislative programme**. This gives the national parliaments the best possible opportunity to undertake legislative and implementation activities relating to Europe before final decisions have been taken.
3. After the legislative programme has been adopted, the European Parliament proposes an annual review - together with the national parliaments - of the joint initiatives that might be taken on the various aspects of the legislative programme. This review might take place during the meeting of the Conference of European Community Affairs Committees of the National Parliaments (COSAC) held in the first half of the year, or in the form of **meetings of the chairmen of the committees concerned**. As far as they are able, the European Parliament's committees inform the corresponding committees of the national parliaments of the names of the rapporteurs they may appoint for each proposal so as to facilitate meetings of rapporteurs; whenever possible, they also obtain the views of the national parliaments on the legislative proposals submitted to them for consideration.
4. The European Parliament forwards to the committees of the national parliaments specializing in EC/EU affairs its monthly **Report on current and forthcoming work** so that they may keep abreast of the progress of its committees' deliberations.
5. To facilitate observation and scheduling, the European Parliament makes available to the national parliaments its OVIDE system, which contains the timetable of the European Parliament's part-sessions, the agendas of committee meetings, the records of their activities (INFO-MEMO), a list of corresponding committees in all the parliaments, a list of the presidents or speakers of the parliaments and the secretaries-general of their administrations and the electoral laws (national and European). In addition, the European Parliament makes available its Legislative Observatory, OEIL, in which the contents of a proposal for Community legislation and its progress (continued consideration) in the legislative procedure can be seen at any time. The national parliaments were also offered the EPOQUE system, which permits systematic research into legislation that has already been adopted but may not yet have been implemented⁵¹.

Besides the progress achieved under interinstitutional agreements in increasing the European Parliament's participation in the establishment and acceleration of the legislative procedures and the transparency of the legislative programme, the MEP's increased their efforts to have the programme made available to the national parliaments at the earliest possible stage. To this end, the European Parliament's 1993 Rules of Procedure included a number of improvements (Rule 49,

49 Parlement européen (6 janvier 1989), Annex: B2-1813/87

50 See also the review on the Cravinho report, Parlement européen (8 décembre 1992).

51 See also European Parliament, DG II, Division for Relations with the Parliaments of the Member States, Facilités mises à la disposition des Parlements nationaux par le Parlement européen, Brussels, 28 April 1994.

Annual legislative programme, and especially Rule 49(7)). The EP thus committed itself to forwarding the programme to the national parliaments. To involve the national parliaments in the decision-making process relating to the legislative programme, it invited the Council to take part (Rule 49(1)). In the Interinstitutional Declaration on democracy, transparency and subsidiarity adopted on 25 October 1993 the Council reacted positively to these efforts and said that it would 'state its position on the programme in a declaration and undertake to implement as soon as possible the provisions to which it attaches priority'. In this context the Commission reaffirmed its willingness to take the following measures:

- 'wider consultations before presenting proposals, in particular publication of Green or White Papers';
- 'flagging in the legislative programme of up-coming proposals which would appear to be suitable for wide-ranging preliminary consultations';
- 'publication of work programmes and legislative programmes to publicize action planned by the Commission'.

To give the national parliaments enough time to consider and respond to the legislative programme, measures were taken to speed up the procedure for its adoption:

- In the Interinstitutional Declaration referred to above the Commission undertook to complete the programme of work by October of the previous year.
- The Council amended Rule 6 of its Rules of Procedure to enable it to decide on this work programme as and when necessary.
- In its Rules of Procedure the European Parliament reaffirmed its intention to complete the examination of the legislative programme before the end of the previous year⁵².

While there was no objection to direct **contacts for information purposes** between the national parliaments and the Commission, the **contacts for de facto consultation purposes** proposed by the Commission represented a serious threat to the European Parliament's rights of deliberation and to the independence of the Commission, which only the European Parliament may censure. It was for these reasons that the original four-stage concept of interparliamentary cooperation in connection with the legislative programme appeared to be a more appropriate means of involving national parliaments in the deliberation process⁵³.

4. Interparliamentary cooperation with a view to the Intergovernmental Conference

In its 1995 resolution on the report on the functioning of the Treaty on European Union the European Parliament argued that 'Democratic control of EU matters would be best achieved by partnership between the European Parliament and the national parliaments. The role of national parliaments should be reinforced in a number of ways, such as through strengthened cooperation between equivalent parliamentary committees of national parliaments and the European Parliament, and providing opportunities for specialist organs of national parliaments to discuss major European proposals with their ministers prior to Council meetings'⁵⁴. The EP thus drew its attention to different informal settings for multilateral cooperation. In adopting the resolution, the EP also amended the second sentence of the paragraph 23 proposed by Martin and Bourlanges, which originally read: 'The role of national parliaments should be reinforced in several ways by means of periodic meetings between their respective committees, through the strengthening of COSAC and through knowledge and prior study of the Commission's legislative programme, always with due respect for the internal constitutional law of each Member State'⁵⁵. Did COSAC thus become less important or too dangerous?

52 For further details on the operational facilities offered by the European Parliament to the national parliaments for systematizing contacts and control see European Parliament, DG for Committees and Delegations, Division for Relations with National Parliaments, Contacts between the European Parliament and national parliaments and administrative facilities provided to national parliaments by the European Parliament, Strasbourg, 3 May 1994, DOC_DE\NT\252\252209, PE 209.307.

53 Laprat (1991), p. 719

54 European Parliament, Minutes of the sitting of 17 May 1995, A4-0102/95: Resolution on the functioning of the Treaty on European Union with a view to the 1996 Intergovernmental Conference - Implementation and development of the Union, OJ C

5. Different forms of multilateral, interparliamentary cooperation

Various forms of multilateral cooperation between national parliaments and the European Parliament are already in use or have been proposed. They are analysed in the following section. Specifically, we consider the Assizes, the Conference of Speakers, COSAC (Conference of European Affairs Committees of the National Parliaments) and the less formalized models of joint committee meetings and conferences of the national parliaments' and European Parliament's liaison officials⁵⁶.

5.1. *The Assizes or Conference of the Parliaments of the EC/EU*

The first, and so far only, Conference of the Parliaments of the EC, which was held in Rome from 27 to 30 November 1990, is an important means of differentiating the motives pursued by national parliaments with more formalized methods of cooperation⁵⁷. At this conference the French and Belgians in particular called for the full institutionalization of the Assizes in the form of a senate of national parliaments⁵⁸. The European Parliament would not be represented, as it is in the Assizes. However, the final Rome declaration adopted by 150 votes to 13 (with 26 abstentions, including 18 French parliamentarians) only recommended a substantial increase in the European Parliament's law-making powers and - in contrast to the idea of a senate - the holding of further conferences of the – informal and non-binding - Assizes type whenever a debate to determine the line to be taken in essential parliamentary questions seemed necessary. The Rome Assizes revealed that some national parliamentarians differed from MEPs in that they wanted greater institutionalization of parliamentary conferences, while the vast majority of MEPs preferred limited involvement of the national parliaments.

On the question of institutionalization the delegates from the French Senate in particular pressed for conferences in the form of Assizes to be held at regular, predetermined intervals. The European Parliament rejected such institutionalized regularity on the following grounds:

- Its experience before its Members were directly elected had revealed the practical procedural and interinstitutional limits to a parliamentary body composed of delegates who were involved in the work of at least two parliaments.
- The EU already has institutions which represent the interests of the Member States (Council, European Council) and the regions (Committee of the Regions, and again the Council in the case of Belgium, Germany and Austria) and whose members are accountable to the national and regional parliaments.
- The EU's decision-making procedures would be complicated and made less transparent by the addition of other bodies whose members represented similar interests in more than one Community body.

The rejection of a second chamber - or senate - was also endorsed by those members of national parliaments who abstained in Rome, since they believed a body of this kind would,

- firstly, delay institutional relations and procedures,
- secondly, increase their complexity and,

151, 19.6.1995, p. 56

55 European Parliament (4 May 1995), Report on the functioning of the Treaty on European Union with a view to the 1996 Intergovernmental Conference - Implementation and development of the Union, rapporteurs: Jean-Louis Bourlanges and David Martin, A4-0102/95/Part I.A

56 Scoffoni (1992), pp. 31 f.; Boudant (1992), p. 1400; Pöhl (1987), pp. 459-461.

57 Parlement européen (27-30 novembre 1990)

58 Agence Europe, No 5382, 1 December 1990, and No 5384, 5 December 1990

- thirdly, possibly develop a momentum of their own, leading to conflicts between national and European parliamentarians to the benefit of the institutional position of the Commission and the representatives of larger member states in the Council⁵⁹.

Looking ahead to the Amsterdam Intergovernmental Conference, some parliaments supported the revival of the Assizes in the form of the conference held in 1990. On several occasions the then EP President Hänsch called on the national parliaments to prepare and hold further Assizes⁶⁰. However, only the Belgian Parliament welcomed these proposals⁶¹.

5.1.1. A revival of the Assizes model as a Conference of National Parliaments (Rome model)

Proposals for reviving the Assizes on the Rome model were guided by the rejection of this type of cooperation by the majority of the national parliaments. This rejection was mainly due to the impression gained by the public from the final declaration of the Rome Assizes that the national parliaments would freely relinquish further substantial powers without demanding additional rights of control over the governments⁶². Assizes according to the Rome model were proposed to be jointly convened by the European Parliament and the national parliaments when

- the subject matter to be discussed is clearly defined. Assizes focusing on specific subjects should take account of the role of joint committee meetings and not result in any duplication of deliberations; the specialized committees and the parliamentary bodies proposing the Assizes should therefore coordinate their activities and join in defining the subjects to be considered at the Assizes;
- Community legal acts require ratification and the approval of the national parliaments is needed. The Assizes should be held for the purposes of deliberation before the ratification procedures begin in the national parliaments and - if required by the Treaty - the European Parliament takes its decisions.

The resolutions adopted by the Assizes should take the form of advice and recommendations. The planning of Assizes held to discuss specific subjects should not have the effect of delaying the legal act to be ratified.

5.1.2. Institutionalization of the Assizes model as a Senate of National Parliaments?

The Amsterdam Intergovernmental Conference prompted a debate on the question of institutionalizing the Assizes model. The former President of the French National Assembly, Séguin, proposed the establishment of a *second chamber*.⁶³ In this body, national parliaments would play the role of a lower chamber and the European Parliament that of an upper chamber. Sir Leon Brittan's proposal for the establishment of a *Council of National Parliaments* was similarly designed to directly involve national parliaments in the Community decision-making process. This Council of National Parliaments was supposed to discuss the Commission's draft legislative program and directives at first reading stage.⁶⁴ In a report submitted by the French Senator Guèna (RPR), the Senate's Delegation for European Union Affairs also proposed the creation of a *Second chamber of national parliaments* for the European Union's CFSP and justice and home affairs policies. The report moreover advocated that this chamber should have an overall competence in the areas of the own resources system in the Community budget, the

59 Assemblée nationale (4 octobre 1990), pp. 27 f.

60 See the inaugural address by the President of the European Parliament, Dr Klaus Hänsch, on 20 July 1994. See also his statement at the meeting of the Committee on Institutional Affairs of 5/6 September 1994 and the speech of the former President of the European Parliament, Dr Egon Klepsch, to the European Council in Birmingham on 16 October 1992.

61 Assemblée nationale (30 mars 1995), pp. 289-298

62 See also David Judge, *The Failure of National Parliaments?*, Paper prepared for the Conference on the 1994 Elections and the Crisis of Representation in Europe, St Antony's College, Oxford, 7-8 October 1994.

63 See *Le Figaro*, 7 December 1994.

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

enlargement of the Union, the association agreements and the monitoring of compliance with the subsidiarity principle.⁶⁵ In its report adopted on 7 February 1995, the French National Assembly's Delegation for the European Union advocated a stronger role for national parliaments by involving them collectively in the EC's decision-making process prior to any final decision by the Council.⁶⁶ Therefore, the report proposed to set up an *Interparliamentary committee* comprising a small but equal number of representatives of each national parliament. The committee should hold monthly meetings to vote for or against given texts, without having the power to amend them. Its sphere of competence was proposed to cover major decisions facing the European Union - revision of the Treaties, international agreements, enlargement, budgetary affairs as well as home and legal affairs - together with monetary and defense matters. In addition, the interparliamentary committee should scrutinize EC draft legislation with regard to the subsidiarity principle.

The position of the French Parliament changed slightly after the Madrid COSAC meeting of 7 and 8 November 1995. Dropping the idea of a *Second chamber* and amending that of an *Interparliamentary committee*, the Parliament now proposed to institutionalize COSAC by giving it, in particular, the possibility of stating a position, in a consultative capacity, on EC projects that are the subject of an exception from subsidiarity raised either by a national parliament or by the Committee of the Regions. Finally, the constitutional reform adopted by the French Congress (Assembly and Senate) in July 1995 does not include any of the proposals which had been put forward to strengthen parliamentary scrutiny of EC/EU legislation. However, the report of the French National Assembly's Delegation for European Union Affairs also called for the direct participation of the national parliaments in the decision-making process before the Council takes its decisions. The setting up of an interparliamentary committee composed of a limited, equal number of representatives of each Member State was aimed to ensure this direct involvement of national parliaments within the institutional realm of the Union. According to the report, this committee was designed to approve or oppose certain texts at monthly meetings of limited duration without being able to amend them.⁶⁷

The other national parliaments were at least critical if not overtly negative in their attitude towards the creation of a separate body for national parliaments. Their argument held that the introduction alongside the EC/EU bodies of an institution representing - in theory and by derivation from Community law - the same, or broadly the same, interests as the Council would threaten not only the European Parliament's institutional position but also the institutional balance required by the EC Treaty and the whole institutional structure of the Community.⁶⁸ Given the strong reluctance of the majority of the member states' parliaments and governments as well as of the EU institutions, the concept of institutionalizing COSAC seemed unlikely to perpetuate interparliamentary co-operation. The mainstream argument against such an increased role held that the further institutionalization of COSAC would have had the contradictory effect of distorting the democratic foundations for the legitimization of parliamentary control and law-making activities in the Community.

In turn, proposals to strengthen unilateral supervisory powers of national parliaments vis-à-vis their governments flourished in all EU member states. The Danish Folketing advocated an increase in influence of the national parliaments' European affairs committees: In concrete terms, the Folketing suggested to appoint an official to represent each parliament in Brussels,

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

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

67 Ibid., pp. 98-100.

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

and to establish closer but informal co-operation within COSAC as well as closer multilateral co-operation between equivalent parliamentary committees in all the parliaments of the Union.⁶⁹ The Danish Government put forward further proposals: the incorporation of a specific reference to the role of national parliaments in the TEU, and the provision of an opportunity for national parliaments to deliver an opinion during the preliminary legislative phase on Commission proposals before they are officially submitted to the other EU institutions. The German Bundestag called for a stronger role of the European Parliament and the national parliaments in intergovernmental activities, but strongly opposed any kind of formalization of COSAC. The Finnish Parliament pointed out that national parliaments should have access to Commission proposals and to the documents of Commission preparatory working parties. The Finnish Government underlined the necessity of making co-operation between the European Parliament and national parliaments more efficient within the existing framework of declaration No. 13 of the TEU. For the Luxembourg Government, MEP Charles Goerens wrote an extensive report on strengthening the unilateral control functions of national parliaments. He believed that with respect to parliamentary scrutiny of Community affairs a kind of 'charter' should be considered to guarantee "minimum obligations which all governments would be likely to accept vis-à-vis their parliaments".⁷⁰ In his view, the best method would be to incorporate the "minimum obligations of governments vis-à-vis the national parliaments" in the EU Treaty's corpus and "to strengthen the Community institutions' obligations - already set out in the Treaty - vis-à-vis the European Parliament."⁷¹ He therefore proposed more extensive powers of scrutiny, specified in the Treaties, for the national parliaments in respect of their government's action. The United Kingdom took a view similar to that of Denmark. The White Paper on the Government's approach to the IGC of 12 March 1995, stressed that the Maastricht Declaration No. 13 should become legally binding through integrating it into the Treaty. In addition, a minimum period for national parliaments should be introduced in order to scrutinize Community documents and draft legislation.

The European Parliament's Neyts-Uyttebroeck report on the relations between the European Parliament and the national parliaments synthesized a broad range of activities of the EP in order to voice the demands of both national parliaments and of the EP vis-à-vis the IGC. Hence, during the course of 1995-1996, the two EP observers at the IGC, Elisabeth Guigou and Elmar Brok, as well as the EP's President, Klaus Hänsch, held several bilateral meetings with delegations of each national parliament. Moreover, the EP's Committee on Institutional affairs organized two specific hearings with all EU affairs committees. The Neyts-Uyttebroeck draft report was debated at 17 occasions in the Committee, which invited all national parliaments to participate actively in these meetings. The EP's report needs to be considered as its direct reaction to the Dublin COSAC meeting of 16 October 1996, which for the first time adopted conclusions on the reinforcement of Declaration No. 13 of the TEU. Hence, the COSAC delegations unanimously agreed to propose a minimum period of at least four weeks for the examination of EC and EU documents before the Council's meetings.⁷² The EP tried to cope with this initiative by formulating a comprehensive contribution on the subject matter for the Amsterdam IGC. By adopting the report on 12 June 1997, the EP identified general problems of parliamentary scrutiny in a number of specific areas: CFSP, CJHA, EMU, agricultural policy, international trade agreements and amendments to the Treaties. It also considered that the advent of "enhanced co-operation" between certain member states would create new problems with regard to an effective parliamentary oversight. Given the COSAC's own demands for a strengthened role of national parliaments, the EP considered that minimum time limits should

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

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

71 Ibid.

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

be imposed for the examination of EU legislative documents. It also suggested to resolve various practical problems such as the proposed four-week notice for legislative and non-legislative documents, the definition of what should be qualified as 'legislative', the conditions governing urgent demands and the assurance of maximum openness in relation to conciliation undertaken under the co-decision procedure. Finally, the EP called for an increased co-operation between the parliaments of the European Union and the European Parliament at various levels, especially within the framework of joint meetings of national parliamentary committees and the committees of the European Parliament with responsibilities in the same area, bilateral committee meetings and meetings between rapporteurs and representatives of the corresponding political groups.

The negotiations on these proposals lead to the insertion of the "Protocol on the role of National Parliaments in the European Union" (PNP) into the Amsterdam Treaty.⁷³ The PNP addresses both the issues of the scope of information for parliaments, the timing of parliamentary scrutiny, and the institutional provisions for locking interparliamentary co-operation into the inter-institutional framework of the EU. Besides the provisions on the improvement of unilateral parliamentary scrutiny mechanisms, the PNP recognized COSAC as a contribution to a more effective and direct participation of national parliaments in EC and EU Affairs. The PNP specified three areas for open and non-decisive deliberation within the COSAC framework: COSAC should examine "any legislative proposal or initiative in relation to the establishment of an area of freedom, security and justice", "legislative activities of the Union, notably in relation to the application of the principle of subsidiarity" and "questions regarding fundamental rights". Thus, the PNP directly lead to the question whether COSAC would become the appropriate body for these issues. The fact that the PNP's Chapter II focuses on the area of freedom, security and justice and on the fundamental rights policies reflects the political and legal sensibility of these issues in the EU member states. If we add this specification to the consultative role of the EP in the relevant policy area, we observe the introduction of a certain kind of '**three-level-scrutiny-mechanism**': Firstly, the EP to monitor the European level of decision-making in the First and the Third Pillar. Secondly, the national parliaments to monitor their governments on matters falling under this policy area. And thirdly, COSAC to deliberate these issues between the EP and the national parliaments.

On the other hand, the PNP failed to improve the lack of parliamentary control with regard to the CFSP/ESDP pillar. The European Union's Foreign and Security policy remained conceived as a 'domaine réservé' of the Council and its administrative substructure. Democratic control of these policy fields was and still is completely excluded. Secondly, neither the EP nor the national parliaments or COSAC were empowered to deliberate on and to monitor the process of transferring the 'Schengen acquis' into the EC/EU area.

As regards the more recent developments in the EU Constitutional Convention, the most radical proposals for new forms of involvement of national parliaments in the EU policy process had been the creation of a 'second' or 'third chamber', the former being a chamber within the EP⁷⁴ and the latter being a new independent chamber.⁷⁵ The first proposal implied that the present EP would become the lower chamber, the upper chamber would be comprised of representatives of the national parliaments either with the same number of representatives per state or with the number of representatives varying accordingly to the population of the state. In theory, this would "duplicate national representation at the European level unless the Council was

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

74 This idea was for example presented by Vaclav Havel in March 1999 in the French Senate, See French Senate, « Une deuxième chambre européenne », Report 381 (2001 –2002) by D. Hoeffel, http://www.senat.fr/rap/r00-381/r00-381_mono.html and also by Joschka Fischer, „Vom Staatenverbund zur Föderation - Gedanken über die Finalität der europäischen Integration“, Speech at the Humboldt-University, 12th of May 2000

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

substituted by such a second chamber.”⁷⁶ Since this is very unlikely, there would be the danger that the functions of the institutions would overlap. This might not necessarily be the case with a third chamber, which would not have legislative competences but perhaps some role in the second and the third pillar.⁷⁷ Nevertheless, these proposals would rather render the institutional system more complex than more transparent. A dual mandate for national parliamentarians seems also hardly practicable today.⁷⁸ The ideas of giving NPs a role in subsidiarity or the second and the third pillar could also be exercised by a less formal assembly or mechanisms or even by making use of the existing structures.

Other proposals referred to a ‘permanent conference’ or a ‘congress’⁷⁹ or a “Parliamentary Subsidiarity Committee” (PSC).⁸⁰ These would be more flexible arrangements. There could be regular meetings or they could take place on an ad-hoc basis.⁸¹ Nevertheless, these ideas ignored already existing mechanisms such as COSAC. Independently of the precise role that one would attribute to a new body, there were various possibilities of reforming COSAC. If “heavy mechanisms” were to be avoided,⁸² because of their potential negative consequences for the European institutions and the decision-making process, a reformed COSAC was seen as becoming a more appropriate solution. Although this might imply that COSAC changed its name and composition,⁸³ it was projected to play a new role in safeguarding subsidiarity, in some appointment procedures, in debating the legislative programme of the Commission and the multi-annual programme of the European Council and it could even play a role in CSFP.⁸⁴

5.2. Multilateral cooperation below the level of the Assizes model

Aside from the 14th declaration on the Conference of the Parliaments, the 13th declaration in the Maastricht TEU version provided for an interparliamentary cooperation option, whereby closer contacts between the national parliaments' EC/EU committees and the European Parliament were seen as appropriate: ‘... the [intergovernmental] conference considers that it is important for contacts between the national parliaments and the European Parliament to be stepped up, in particular through the granting of appropriate reciprocal facilities **and regular meetings between members of Parliament interested in the same issues.**’ Some of the existing options of such forms of interparliamentary dialogue, cooperation and EU scrutiny is therefore analysed in the following.

6. The traditional model: The Conference of Speakers of Parliaments of the European Union

This form of interparliamentary cooperation at the level of the presidents or speakers of the parliaments is due to an initiative by Gaetano Martino, a former President of the European

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

77 See proposal made by Tony Blair.

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

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

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

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

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

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

84 See also proposals for a “Parliamentary Conference on ESDP” on a regular basis by the Committee on foreign affairs, human rights, common security and defence policy “; European Parliament, Committee on Constitutional Affairs: Report on relations between the European Parliament and the national parliaments in European integration, Rapporteur: Giorgio Napolitano, 23 January 2002, p.22; See also reference made to the Chevalier/ Mahoux-Report by De Gucht, Karel, „Another role for national parliaments in the EU“, CONTRIB 63, CONV 183/02, Brussels, 11 July 2002

Parliament. The first such conference took place in January 1963. Because of the differences in the powers of its members⁸⁵ and their divergent interests and preferences the Conference of Speakers was and still is hardly a suitable vehicle for an efficient assertion of the joint interests of the Member States' parliaments and the European Parliament.

7. The Conference of European Affairs Committees of the National Parliaments -COSAC

The Conference of EC/EU Committees stems from an initiative by the then President of the French National Assembly, Fabius, during the Madrid Conference of Speakers (18/20 May 1989)⁸⁶. COSAC was created to permit regular meetings of the parliamentary bodies that consider general EC/EU affairs⁸⁷. COSAC's main task was defined at its first meeting in Paris on 16/17 November 1989 as follows: *'1. The bodies concerned with European affairs hereby decide to improve reciprocal exchanges of information by systematically exchanging the texts they adopt, notifying each other about their activities and developing mutual relations. 2. In the same spirit they shall meet, on principle once every six months, in the Member State exercising the presidency of the Council of the European Communities, jointly to discuss issues of Community interest and to take decisions in accordance with their respective terms of reference'*⁸⁸.

7.1. First steps towards the programming of contacts

As regards the programming of interparliamentary cooperation at the level of multilateral meetings, COSAC decided in Cork (10/11 May 1990⁸⁹) that the participating delegations would forward their views on the proposed agenda to an organizing committee in writing before each COSAC meeting. In this way the contents of COSAC meetings are planned and the views of all participants become transparent⁹⁰.

7.1.1. Programming and formalisation

At COSAC's meeting in Luxembourg (6/7 May 1991) its rules of procedure were drawn up and discussed. The documents available in this connection form the main basis for the evaluation of this type of cooperation in terms of programming and how official it is made. A questionnaire, which proposed the various rules of procedure in the form of options, essentially concerned the following: COSAC's composition (total number of delegates, number of delegates per country, ratio of delegates from Member States to Members of the European Parliament), the voting methods (weighting of votes, ratio of votes of delegates from Member States to votes of Members of the European Parliament, procedure for initiating a vote), the procedures for drawing up and adopting the agenda (role of a 'presidency', Troika formula, enlarged Troika formula). The questionnaire was forwarded to all presidents and speakers of the Member States' parliaments and the European Parliament. The answers, which were forwarded to the President of the Luxembourg Assembly, were summarized and discussed at a conference of the chairmen of the EC/EU committees on 22 March 1991⁹¹.

The European Parliament expressed general reservations about establishing rules of procedure⁹². Hence, Rules of procedure serve to formalize a body by creating legal relationships between it, its administrator and its various members. This formalization serves to demonstrate the body's identity to the outside world and to improve efficiency, coherence and continuity within⁹³. What is

85 Bieber (1992), p. 209

86 Sénat (13 mai 1993), p. 14

87 Agence Europe, No 5019, 22/23 May 1989

88 België-Belgique, Sénat-Chambre des Représentants (1993), p. 12

89 Agence Europe, No 5248, 5 May 1990

90 België-Belgique, Sénat-Chambre des Représentants (1993), p. 19

91 Assemblée nationale (5 juin 1991), p. 9

92 Ibid.

93 Bieber (1992); pp. 38 f. and pp. 105 f.

fundamental in this context is that rules of procedure result in a body being seen from outside (i.e. by non-members) as an entity assigned quasi-institutional qualities within the surrounding (Community) system. Legally, COSAC is placed on a par with the joint parliamentary committees of the European Parliament and the parliaments of the countries associated with the EU under Europe Agreements. Here too, rules of procedure have so far been adopted for the Joint Parliamentary Committees. In contrast to COSAC, however, these committees' rules of procedure are legitimized by the requirement in the association agreements that such committees be set up. The 13th declaration in the TEU does not represent a clause of this kind.

7.1.2. COSAC's composition, chairmanship and voting methods

The delegates from the national parliaments unanimously advocated a maximum of six representatives of each Member State and six Members of the European Parliament. The proposed number of delegates made no distinction between unicameral and bicameral parliaments. This enabled unicameral parliaments to be more generous in sharing places on delegations among parliamentary groups than bicameral parliaments⁹⁴. As a result of this sharing of seats the European Parliament was formally equated with unicameral national parliaments. As regards the composition of the body drawing up proposed conclusions for adoption by COSAC, several variants were put forward for discussion. None of these options provided for the European Parliament's involvement in the submission of a final report (Option I) or of conclusions (Option II). The European Parliament was also to be excluded from the drafting of final documents. Variant A provided for them to be drafted by the presidency (of the parliament of the country whose government held the presidency of the Council), variant B for a Troika corresponding to the then 'EPC' Troika in respect of Member State representation.

Where voting methods were concerned, eight delegations opted for the unanimity requirement, while seven favoured voting by a simple majority. The European Parliament received 6.6% (6 of 90) of the votes. This small proportion, which remained unchanged after the EU's 'EFTA enlargement', put the European Parliament at a numerical disadvantage, even by comparison with the Conference of the Parliaments in Rome, at which it had 33.3% of the votes. The European Parliament's numerical representation at the Conference of the Parliaments in Rome was intended to ensure that a conference held to consider Treaty reforms had a high political profile and carried considerable political weight. To achieve this objective, the only directly legitimized body in the Community was to be represented by an appropriately large number of delegates. Accordingly, compared with the political importance of the Conference of the Parliaments, COSAC was not to play a crucial, decisive role in the EU's system development.

The question of voting methods was cited by the MEP Duverger as a decisive criterion for the recognition of COSAC by the EP. He interpreted the option of the unanimity requirement as being 'la condition même de la participation des parlementaires européens'⁹⁵. The compromise proposal put forward by the French Senator Genton that voting should be by a qualified majority of three votes for the national parliaments and six for the European Parliament rather than by a simple majority was strongly rejected⁹⁶. At the COSAC meeting in Luxembourg, which was to take a final decision on the rules of procedure, MP Bachy of the French National Assembly, endorsed the European Parliament's reservations by emphasizing that:

'la question du vote du texte concluant les travaux risque de transformer la nature des conférences en les faisant passer dans un processus de décision politique ou juridique'.

94 Ibid., p. 11

95 Assemblée nationale (5 juin 1991), p. 12.

96 Ibid., p. 11.

He also pointed out that a decision in favour of majority decisions would have implications for the delegates' status and - as has been shown - was already limiting the role played by the Conference of Speakers:

'Ou bien le communiqué final reflète l'état des discussions et fait apparaître les points d'accord et les divergences; ou bien il a une portée juridique et s'impose aux institutions que nous représentons; le processus serait alors différent, car il y aurait vote sur un texte formel sans mandat de nos parlements respectifs.'⁹⁷

A similar conflict about the level of institutionalisation emerged on the issue of the composition of the body drawing up COSAC's agenda. The national delegates advocated a procedure whereby the COSAC Presidency would submit the agenda after consulting the Troika and then the chairmen of the EC/EU committees. The European Parliament felt the debate should centre on the following requirements to be met by COSAC's rules of procedure:

- The European Parliament must be involved in drawing up the agenda.
- The European Parliament must occupy a key position within COSAC's Troika.

By adopting all the European Parliament's amendments, COSAC rejected the prospect of its increased institutionalization at its meeting of 6/7 May 1991. The option of majority decisions was again vehemently contested by MEP Baron Crespo before the COSAC meeting: As the Conference of the Presidents, being an interparliamentary cooperation body (theoretically) capable of taking decisions, took all its decisions unanimously, majority voting in COSAC would encroach on the rights of the parliamentary presidents and speakers in relation to the national parliamentary committees. The European Parliament would have disputed any decision of principle in favour of majority voting by boycotting COSAC meetings⁹⁸.

The final rules of procedure were adopted at COSAC's meeting in The Hague (4/5 November 1991). The following procedure for the substantive preparation and organization of COSAC meetings has since been applied:

- 1a. Enlarged Troika (heads of delegations of current, preceding and subsequent holders of Presidency + head of European Parliament's delegation)
- 1b. Troika chooses subject to be discussed by COSAC (Rule 7 of COSAC's Rules of Procedure)
2. Preparation and dispatch by chairman of basic documentation and questionnaire on 1b
3. Acceptance and analysis of contributions/answers submitted (Rule 8(1) of COSAC's Rules of Procedure)
4. Preparation of report on basis of contributions/answers
5. Forwarding of report
6. Possibly: Troika telephone conference to consider/add to subject to be discussed
7. Discussion of report in national parliaments by appropriate procedures
8. COSAC meeting
9. Analytical report/minutes of COSAC meeting

7.2. COSAC as a means of specifying and establishing a hierarchy in the structure of relations between controlling and controlled bodies

A further, contentious issue in the context of the adoption of COSAC's Rules of Procedure was the question of the attendance of observers from embassies (COREPER level of the Council), the Commission and the governments of the Member States (working party level of the Council).

⁹⁷ Ibid., p. 12.

⁹⁸ Assemblée nationale (5 juin 1991), pp. 9 f.

From the perspective of the European Parliament, there was a general danger in this context of direct participation by representatives of other Community bodies in COSAC restricting the powers of the European Parliament in the Community's interinstitutional structure and making it a rival of COSAC. The European Parliament was therefore at pains to specify and establish a hierarchy in the structure of relations between controlling and controlled bodies. The Luxembourg COSAC presidency set a precedent at the COSAC meeting itself by inviting Council President Poos to speak at the conference.

As regards the specification and establishment of a hierarchy in the structure of relations between controlling and controlled bodies, the Danish COSAC presidency stated in its conclusions at the Copenhagen COSAC (3/4 May 1993⁹⁹) that

'il y a eu un accord pour estimer que la pratique actuelle selon laquelle le Président du Conseil européen et le Président du Conseil conduisent un débat sur des thèmes d'actualité devrait devenir la règle'. Une majorité des délégués s'est prononcée ensuite en faveur d'une intervention régulière d'un 'ministre (technique) et du commissaire européen en charge du même secteur' à la COSAC.¹⁰⁰

At the Brussels COSAC (22/23 November 1993) a member of the Commission, Pinheiro, spoke for the first time, presenting the **draft** Commission White Paper on growth, competitiveness and employment and then discussing it with the delegates¹⁰¹. The COSAC meetings in Athens (8/10 May 1994), Bonn (24/25 October 1994) and Paris (27/28 February 1995) revealed the tendency for COSAC to be regarded as a privileged 'place' for contacts between national parliamentarians and senior representatives of the Commission, Council Presidency and Council. This practice enabled national parliaments to be informed at an early stage about proposals, major framework programmes and about the priorities of the Council Presidencies and the Council. Moreover, both parliamentarians and representatives of the other Community institutions could thus be made aware of problems that may occur during the implementation of Community acts.

However, the practice posed a problem for the position of the national parliaments' specialized committees since they were and are not institutionally involved in COSAC. In this context it has to be asked how significant are the EC/EU committees, whose activities are as a rule horizontal, compared with the specialized committees and whether their significance is increased by the presence of senior representatives of the Community institutions at COSAC meetings. It also poses a problem for the European Parliament. The national parliaments play a central role in the Community's decision-making process because they participate in the implementation of legal acts that have been adopted and they monitor the Member States' governments, which are accountable to them. The European Parliament's task here is to monitor the Council as a collective legislative and executive body and to directly participate in and to co-authorise Community legal acts.

As regards the **specification and establishment of a hierarchy of phases of action** the European Parliament's Cravinho report was strongly endorsed at the COSAC meeting in The Hague¹⁰². The Luxembourg delegation's proposal that directives should be forwarded directly to the national parliaments by the Council was not taken up by the Dutch chairman. On the other hand, the delegations from the German Bundestag and the European Parliament reaffirmed the need for national parliaments to urge their governments to forward documents received from the Council (including legal acts that had been adopted) at an early stage¹⁰³. The Lisbon COSAC (4/5 May 1992) then sought to clarify the principle of mutual respect for **spheres and phases of action**. The

99 Agence Europe, No 5975, 7 May 1993

100 Assemblée nationale (5 mai 1993), p. 15: Conclusions de la Présidence danoise

101 België-Belgique, Chambre des Représentants-Sénat (1993a), pp. 2-6

102 Parlement européen (Novembre 1991)

103 Ibid., p. 3

national parliaments and the European Parliament agreed that the monitoring of the Commission's activities should be recognized in line with the powers conferred on the European Parliament by the EC Treaty¹⁰⁴. A further substantial clarification of **phases of action** was achieved at the London COSAC (10/11 November 1992), when the national parliamentary delegations agreed with the European Parliament that the subsidiarity principle should be so applied as to ensure mutual respect for the parliaments' exclusive powers¹⁰⁵. Referring to the subsidiarity principle, the parliaments also agreed to mutual respect for control powers in the sphere of the common foreign and security policy and justice and home affairs. The final communiqué noted that

'les compétences du Parlement européen doivent être renforcées dans le domaine des politiques communautaires ... (et les) ... compétences des parlements nationaux dans les domaines des politiques intergouvernementales'¹⁰⁶.

However, as the European Parliament, given its overall strategy for the communitarization of these two policy areas, was seeking an interinstitutional agreement between itself, the Commission and the Council on both intergovernmental policies, the Copenhagen COSAC (3/4 May 1993) saw the beginning of conflicts between the national parliaments and the European Parliament¹⁰⁷.

Taking an overall view, it can be seen that the European Parliament and the national parliaments were able to agree on a strategy which,

- on the one hand, provided for the national parliaments to be informed more fully and at an early stage of the EU's projects, proposals, etc.;
- on the other hand, made the forwarding of any additional information on Community projects conditional on the strict observance of the European Parliament's legislative, budgetary and institutional powers in relation to the other Community institutions.¹⁰⁸

The main problem for the national parliaments continued to be the absence or belated forwarding of information on Community legal acts. Where the solution of this problem is concerned, the measures initiated by the EP enlarged Bureau in October 1992 to involve the national parliaments through the legislative programme represented a decisive means of improving and strengthening interparliamentary cooperation¹⁰⁹. On the other hand, COSAC itself remained unable to compensate for the national parliaments' lack of information.

7.3. Overall Evaluation

Since the first COSAC was held in Paris, the meetings have been timed to coincide with those of the European Council. This prompted Christian Lequesne to say that 'par ce biais, (ils) ont tenu à établir une parallèle entre l'agenda des relations interparlementaires et celui des Conseils européens'.¹¹⁰ This hypothesis was confirmed in a proposal by MP Ligo, a member of the French National Assembly, that COSAC meetings should always be held at the beginning of a Council presidency, the better **to influence it**¹¹¹. Empirically both hypotheses have to be confirmed by COSAC's agendas. In the organization of COSAC meetings since the mid-1990's, however, the emphasis shifted to general political topics and hearings of Council presidencies. **However, COSAC continues to face major problems with the exchange of practical information on specific areas of policy in addition to discussing general issues** because

104 België-Belgique, Sénat-Chambre des Représentants 81993), p. 20

105 Agence Europe, No 5851, 5 November 1992; Assemblée nationale (24 November 1992), p. 8

106 België-Belgique, Sénat-Chambre des Représentants (1993), p. 20

107 Assemblée nationale (5 mai 1993), p. 11

108 Parlement européen (1993), wdoc/note/gil.2911

109 For a review of the application of the Cravinho report see Parlement européen (8 décembre 1992).

110 Lequesne (1993), p. 255

111 Assemblée nationale (5 May 1993), p. 10; confirmed by Sénat (13 May 1993), p. 14

- the MP are members of the 'horizontal' EC/EU affairs committees, i.e. committees that consider general policy matters,
- the EC/EU affairs committees differ significantly as regards their importance and function in the overall work process in the various parliaments, as do their powers compared with those of the specialized committees,
- the composition of COSAC is not representative; COSAC delegates do not systematically speak in the name of their parliaments, and
- within the national parliaments, the COSAC delegates are not identified as legitimate 'norm mirrors' of the parliament. In the vast majority of parliaments, COSAC deliberations are no subject for further parliamentary debate.¹¹²

A cautious attitude needed to be taken towards the substantive form of COSAC. Since 1991 the European Parliament's participation in the preparation and holding of COSAC meetings extended beyond the involvement of the Committee on Institutional Affairs. Since the last 1994 elections to the European Parliament its delegation has usually consisted of the two Vice-Presidents responsible for relations with the national parliaments, interested members of the specialized committees who are responsible for the specific policies considered by COSAC and further members of the Committee on Institutional Affairs. This composition of the EP delegation also makes it clear that it was in the European Parliament's interests to discuss matters which relate to specific policies and therefore fall within the terms of reference of specialized committees rather than general issues. With the reform of its Rules of Procedure in 1993 the European Parliament increased the responsibilities of its Conference of Presidents to include 'matters relating to relations with ... the national parliaments of Member States'. This wording of the then Rule 24(3) of the EP's Rules of Procedure made the President of the European Parliament and the group chairmen responsible for deciding on measures connected with COSAC¹¹³. The coordination and planning of the procedural **and substantive aspects** of interparliamentary cooperation by the EP Conference of Presidents since the adoption of the new Rule 24(3) was seen as a crucial provision to be stepped up primarily if:

- COSAC would continue to develop into 'une Conférence dans laquelle des Parlements dialoguent uniquement avec les Ministres du gouvernement exerçant la présidence du Conseil, après avoir écouté les déclarations'¹¹⁴,
- the preparatory COSAC Troika, which included the European Parliament, would be de facto replaced with other, informal ways of drawing up the COSAC agenda (with the European Parliament excluded),
- COSAC would continue to discuss and adopt resolutions on proposals not yet adopted by the Commission (draft White and Green Papers) and
- COSAC also would step up its discussion of matters relating to specific areas of policy.

COSAC as the only interparliamentary body mentioned in the Amsterdam treaty's Protocol on the role of national parliaments in the EU (PNP) has not developed into a real institution for 'multi-level-scrutiny'.¹¹⁵ The emphasis of COSAC concentrates on general political topics and some kind of an introspection with regard to the roles of national parliaments in the EC/EU system.

112 Laprat, Gérard: 'Parliamentary Scrutiny of Community Legislation: An Evolving Idea', in: Laursen, Finn/Pappas, Spyros A., (eds.): *The Changing Role of Parliaments in the European Union*, Maastricht 1995, pp. 1-19; Maurer, Andreas: *Les implications du Traité de Maastricht sur la coopération interparlementaire - le cas du Parlement européen et du Parlement français*, Brussels 1996; Delmas-Derroze, Sabine: 'Le traité d'Amsterdam et le déficit démocratique de l'Union européenne', in: *Revue du Marché Unique européen*, No. 4/1999, pp. 143-182.

113 Läufer (1994), p. 10

114 European Parliament, DG II, Division for Relations with Parliaments of the Member States, Note sur la Commission institutionnelle: l'échange de vues avec Mme Fontaine et M. Imbeni sur les relations entre le PE et les parlements nationaux, Brussels, 2 February 1995

115 Maurer 2001. See also European Parliament/Andreas Maurer: *Perspectives for co-operation between the European Parliament and the national parliaments*, Working document: Political Series W-19, Brussels/Luxembourg 1996.

Yet, COSAC performs as a 'central' tool of a minority of parliamentarians for communicating institutional issues in relation to the EU. Even if two COSAC sessions per year do not really affect the day-to-day work of national parliaments nor that of the EP,¹¹⁶ the COSAC meetings provide an arena for Members of EU Affairs Committees in national parliaments and MEP's to discuss general developments of the Union. Due to the regularity of the COSAC meetings, the involved MP's have **developed a personal network of like-minded 'equals'**. The size of the delegations at COSAC ensures that different political views from each country are represented. However, the effects of COSAC meetings do not go beyond a rather stable core network of its constituent members. Yet, most of the national parliaments see the Amsterdam Treaty's provisions on COSAC as a pragmatic and limited approach to an exchange of opinions and experience. COSAC facilitates informal exchange, but the overall majority of parliaments strongly opposes any further institutionalisation.¹¹⁷

8. A neglected forum: Joint meetings of the specialized committees

Given the structural shortcomings and risks of the levels of interparliamentary cooperation so far presented - Assizes, Conference of Speakers and COSAC - at which aspects of specific policy areas are discussed to only a limited extent, the involvement of the national parliaments' specialized committees represented a further option for the achievement of interparliamentary cooperation. These committee meetings and bilateral meetings differ in several respects:

- At joint committee meetings national parliamentarians receive information not only on the position of the European Parliament's committee on the items concerned (as a rule, an aspect of current or foreseeable legislation is discussed) but also on the position of other national parliamentary committees and, where appropriate, the – perceived – views of the Member States' governments.
- Joint committee meetings are scrupulously planned by the European Parliament's committees in some cases. EP Rapporteurs are appointed to personally prepare joint committee meetings. They send to the national parliamentary committees questionnaires on specific areas of policy to help them with the drafting of their reports and gear the agenda of joint committee meetings to the lists of questions. As an example, the meetings of the Committee on Civil Liberties and Internal Affairs are fully documented through the publication of the proceedings and the results. The Conferences of the Chairmen of the Committees on Foreign Affairs, Security and Defence are systematically minuted by the European Parliament's committee¹¹⁸. Several sets of unpublished minutes taken by the appropriate group secretaries for the committees concerned reveal the growth in the interest shown by the groups since the mid-1990s in the opinions of the national parliamentary committees and the political trends they represent. This increased group activity had, moreover, a direct impact on discussions within the groups on the role of the national parliaments in the European Union. As a tendency for the parliamentary aspects of European Community policy to be renationalized is inherent in any form of interparliamentary cooperation because of the roles played by the actors involved (as a rule, parliamentarians support the positions adopted by their parliaments rather than their political groups), the political groups - in much the same way as the group meetings held to prepare COSAC meetings - have a growing influence on the formation of structures affecting parliaments as a whole and all their committees.
- On the other hand, this 'politicization strategy' plays only a subordinate role at bilateral meetings of national committee delegations and the corresponding committee of the European Parliament.

¹¹⁶ Maurer, 2001, op.cit, pp. 276-291.

¹¹⁷ See the contribution by Sven Hölscheidt in Maurer/Wessels, 2001..

¹¹⁸ For the most recent minutes see European Parliament, *Compte rendu analytique de la Vème Réunion des Présidents des commissions des Affaires étrangères des Parlements de l'Union européenne*, Paris, National Assembly, 25/26 January 1995, Armand Franjulien/bd. Brussels, 1 March 1995.

- Since 1992 joint committee meetings have often been seen as an opportunity for determining the European Parliament's position during the Community's legislative procedures. They thus implicitly help to fulfil the European Parliament's efficiency criterion in that rapporteurs are informed of possible and foreseeable problems with the implementation of planned Community legal acts and are able to take them into account when drafting their proposed amendments. Conversely, national parliamentarians receive background information on the possible negotiating strategies and positions of the Member States' governments and parliaments in specific areas of Community legislation.
- Since 1992 the European Parliament's committees have been trying to persuade the members of the Commission to attend joint committee meetings. Hence, the Commission was and is still willing to attend a joint committee meeting than a bilateral meeting because of the 'political weight' it gives them.
- Both joint committee meetings and bilateral meetings promote the programming and systematization of interparliamentary contacts. Ideally, joint committee meetings held to discuss specific issues emerging from the legislative programme precede bilateral meetings with the committees of national parliaments which intend to express national concerns about specific legislation. In certain cases such systematization is optimized by the organization of meetings of rapporteurs. Systematized cooperation between rapporteurs is impossible, however, since the institution of rapporteur is unknown in the vast majority of the national parliaments.

The evolution in these forms of cooperation enables conclusions to be drawn about the application of the two basic principles underlying the issue of interparliamentary cooperation – the 'increase in efficiency' and the parliamentary 'democratization' - in the following respects:

- Compared with COSAC and the Conference of Speakers, the three types of more informal cooperation are geared to specific areas of policy rather than institutional questions. They thus represent a practical implementation strategy for reducing the parliamentary side of the democratic deficit and making Community legislation more effective, a task which cannot be performed by COSAC or the Conference of Speakers because of their participant structures.
- Compared with COSAC and the Conference of Speakers, the three types of informal cooperation are more closely geared to the preparation and implementation of the legislative programme.
- Compared with bilateral meetings, joint committee meetings are geared to issues of Community rather than national interest because of their participant structure and the matters they consider.

9. The future of Interparliamentary Cooperation

The last two decades have seen an increasingly intense debate on the **role of national parliaments in the EU legislative process** in regard to their scrutiny power vis-à-vis national governments and monitoring proper compliance with the Subsidiary Principle. The European Convention agreed on a new mechanism of **direct parliamentary participation** in the principle's application. The majority of the Convention delegates identified the direct participation of parliaments as a means to **decrease the Union's democratic deficit** due to the **strongly legitimising nature** of national parliaments as directly elected representatives of EU-citizens. The new early warning mechanism provided for national parliaments could be used to counterbalance this trend, since the parliamentary monitoring of the subsidiarity principle allows for immediate influence and scrutiny on the European legislative process. However, the new form of participation does not necessarily increase the transparency of EU decision making as laid down in the declaration of Laeken. Still, it does in this context force parliaments to **take**

up the challenge of broader, but at the same time efficient, participation of national parliaments in the process of passing European secondary law.

9.1. The 'early warning mechanism'

Under article I-32 of the draft Constitution the Commission would directly send its legislative drafts to all national parliaments of Member States for a '**preliminary reading**'. Within six weeks of the proposal's transmission, parliaments may draft their **position on whether the proposal does comply with the subsidiarity principle or not**. All positions will be weighted and counted: unicameral parliaments have two votes, in bicameral ones each chamber has one vote. If 1/3 (1/4 for proceedings under art. III-160 concerning drafts on judicial cooperation in criminal matters and police cooperation) of all chambers draw up **negative positions**, the Commission has to review its proposal and subsequently either withdraw, amend, or maintain it.

This first round takes place **exclusively between the Commission and the chambers of national parliaments**. It is only after that 'reading' that the Commission submits the possibly revised proposal to the ordinary legislative process. Finally, the parliaments get the **possibility to take legal action** against the Commission at the EJC on the grounds of an **infringement of the subsidiarity principle**.

What will be the procedural and institutional consequences for national parliaments?

It is also conceivable that parliaments submit **positive positions** to the Commission. On the one hand, parliaments could in this way **support government's positions** against the interests of third parties. On the other, parliaments could clarify their own points of view at this early stage and **set limits** for their own **government's negotiations** in the Council of ministers. It is also likely that such positive positions set signals for the European Parliament, as its political group majorities in Brussels or Strasbourg become clear. However, it is also likely that **strong governments** would use the mechanism to **back up their position in Brussels** by simply advising parliaments to submit negative positions. Therefore, the effective use of the mechanism depends not only on institutional arrangements but on the **self-perception of parliaments** regarding their scrutiny role vis-à-vis the executive and the EU institutions. Strongly scrutinizing parliaments concerning EU-business will behave differently from those which rather tend to support their government in international and European affairs.

The parliaments' desire to use the **opportunity for direct, active participation and scrutiny** will necessitate a certain structural re-organisation due to the crucial variables of **cost and time**: An effective scrutiny within the short period of six weeks requires a **central, efficient parliamentary organisation** that is able to collect, filtrate and digest information **independent of governmental expertise**.

9.2. Implementation alternatives

In most parliaments the EACs will become the **central body** to receive, collect, select and forward all EU documents to the special committees. Ideally, assuming a **strong filter and processing function of the EAC** in relation to the other committees, the EAC would be in overall charge in dealing with the Commission's proposals. The special committees would only have consultative status and be asked to give their opinion on the respective draft. The procedure will be different if the EAC and the special committees are of **equal status**. In this case, it is more likely that at an earlier stage an independent body (i.e. the parliamentary presidium) coordinates the forwarding of documents to the committees in charge and those with consultative status. One or more rapporteurs of the respective committees would then draw up a '**subsidiarity monitoring report**' and as a result of this, add a proposal for the parliamentary

position on the Commission's draft. If the special committees or the EAC are not in charge to act on parliaments behalf, the position would then be forwarded to the plenary in form of a resolution proposal. After a formal decision, the position would be passed on to the EU Commission.

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

It is to be expected that the Commission will fall back upon parliaments to raise necessary data. Therefore it is inevitable that parliaments think of a procedure to reply to such requests within the framework of the "early warning system". They must generate their own information or make use of governmental expertise already at the planning stage of a proposal of the Commission. Otherwise parliaments might at a later stage be pressed for time and completely depend on governmental expertise thereby lessening their influence.

An **EP-like rapporteur-system** could serve to prevent an instrumentalisation of the mechanism by governments that try to impose their political objectives through parliamentary majority. The system could allow MPs in the position as a committee's rapporteur and expert in the respective field of knowledge, to distinguish themselves by taking stand, possibly even against the governmental position. If the early warning system will be implemented as laid down in Convention's protocol, the still widely claimed decrease in parliaments' influence due to the European integration process won't bear close examination. The **immediate possibility of objection** by parliaments – outside formal governmental influence and with the direct supply of information - before the actual legislative process strengthens parliaments' autonomy vis-à-vis their governments. The **right to directly give their opinion ex-ante** and to **take legal action** if overruled **ex-post** could – if taken seriously – lead to an **emancipation of parliaments** in the face of their governments.

9.3. Outlook: The future of COSAC: A deliberative forum or another institution?

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