

## Democracy and Accountability in the Enlarged European Union

### The Convention, the IGC 2004 and European System development. A Challenge for Parliamentary Democracy

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#### 1. The Reform: A New Method for New Outcomes?

The Laeken European Council of December 2001 agreed on a set of questions with regard to the future design of the EU's institutions and their democratic legitimacy. According to the Laeken declaration on the future of the European Union, "the European Union derives its legitimacy from the democratic values it projects, the aims it pursues and the powers and instruments it possesses [and...] from democratic, transparent and efficient institutions (European Council 2001)". Although this statement suggests a broad normative consensus about the state of democracy and legitimacy in the EU, the heads of state and government mandated the recent Convention to deliberate on some of the most traditional questions to be answered when establishing any political system. Overall, the Laeken mandate mirrors an unequivocal picture of the EU: The Union remains designed as a political system in process. Although it is based on some of the most traditional concepts of representative democracy, the system requires improvement. However, the very nature of the mandate and its context – the failure of the Treaty of Nice, the perspective of an enlarged Union of 25 and more member states, and the effects of a globalised economy and trans-national risk production – show that these concepts are not fully implemented. In other words: The European Union faces serious problems with regard to the relationship between its governing bodies and its citizens. The very question of the Convention therefore is: Does, and if yes, how does the EU provide opportunity structures for establishing a democratic system? Are there any means to reconstruct and to visualise a concept of democracy, which allows the

Union to further build on its differentiated set of institutions, and to gain a positive feedback by its citizens?

## **2. The European Demos: Prerequisite or Outcome of European Integration?**

Many contributions to the debate on the EU's democracy and legitimacy crisis focus on the deficiencies of input-legitimation and the democratic deficit. By democracy, I understand the "institutionalisation of a set of procedures for the control of governance which guarantees the participation of those who are governed in the adoption of collectively binding decisions" (Jachtenfuchs 1998: 47). Of course, this definition does not automatically induce democracy to be synonymous with parliamentary majority vs. minority government. At least theoretically, there are many ways to secure the participation of the citizenry in governing a given polity. But if we turn to the evolution of the EU over the last decades, we observe a trend: The search for establishing some kind of representative governance structures, in which institutions aggregate participation needs and try to fulfil their general function as arenas and rules for making binding decisions, and for structuring the relationship between individuals in various units of the polity and economy. By legitimacy, I understand a generalised degree of trust of the addressees of the EU's institutional and policy outcomes towards the emerging political system. A political system which is entitled to limit national sovereignty and which is enabled to take decisions directly binding the residents of its constituent Members without the prior and individual assent of each national government requires more than the formal approval of founding treaties and their subsequent amendments (Weiler 1993): It necessitates the willingness of minorities to accept the decisions of the majority within the boundaries of the EU's polity. In other words, social legitimacy supposes that decisions have to be based on a broad acceptance of the overall system. Even if the citizenry of the EU polity is not fully aware of or interested in the way binding decisions about their way of life are taken, the system and its institutions must be aware of the risk that the public attitude towards it can shift from some kind of a 'permissive consensus' or 'benevolent indifference' to fundamental scepticism. The legitimacy of governance can be derived from historically and geographically contingent sources. With regards to the analysis of the governance in the European Union, Scharpf's (1970; 1999) distinction of output (government for the people or effective performance) and input legitimisation (government by the people or representativeness) has been widely used, irrespective of some terminological variations. In the context of European governance a third legitimating factor is often highlighted: the requirement for communitarian cohesion or civic identity.

In this regard, the heart of the democratic deficit features the argument of a growing mismatch between the powers exercised in and through EU institutions, fora and procedures, and the channels, structures and sanctions to influence and control the formulation and implementation of policy. The EU's institutional design thus faces a multitude of questions as to how representative this system of multi-level governance is, in which way its quasi-executive branches - the Council and the Commission - are accountable to the citizens and how democratic the decision-making procedures between the Union's authorities are. The presumed lack of linkage and control applies not only to European but also to national actors, most notably governments, which are seen as removed from parliamentary or public scrutiny. In this sense, the lack of control over government-like institutions firstly at the national and secondly at the European level - the Council of the EU - generates a 'double democratic deficit'.

Some even see a triple deficit, arguing that current (or future) levels of integration presuppose the existence of a European 'demos'. True, the evidence for a transnational identity within the Union is weak and the chance of creating one in the near future seem bleak because of the lack of intermediary structures and agents (transnational parties, media, common language etc.). The EU system takes binding decisions, which influence the citizens' ways of living and constrains their individual freedom. The EU system affects national legislatures and their linkage with the citizens. Of course, arguing about parliaments and their potential to provide the European '*Demos*' - functionally, nationally or

ideologically different realms of identity and interest formation, mediation and communication - a set of representative voices in the Union's policy cycle does not mean that parliamentarism is the only way of bridging the gap between the citizens and the Union. One can easily assume that even after the Nice Treaty has come to force, many scholars and practitioners of European integration will continue to argue that focusing on the 'input' structures of the Union is only one of several ways how governance "beyond the state" (Jachtenfuchs/Kohler-Koch 1996) might gain legitimacy. In this respect, one could also imagine a 'renaissance' of the German Constitutional Court's 1993 Maastricht ruling, which led to a general critique of the EU's parliamentary model. The basic assumption of the Court and later on its protagonist commentators was that a polity presupposes a *demos* in ethno-national or ethno-cultural terms (the "Volk" instead of the "Gesellschaft" or "Gemeinschaft"). Thus, without a single European people sharing heritage, language, culture and ethnic background, and without a European public space of communication that could shape the wills and opinion of the population, no European statehood could be founded. For those who adopt this view (Kielmansegg 1996, 47-72; Grimm 1995, 282-302), it is apparent to simply deny the pre-constitutional conditions for further integration and therefore to conclude that in the absence of a single European *demos* there cannot be 'real' democracy at the European level (Weiler 1993, 11-41; Weiler/Halter/Mayer 1995, 24-33). Assume that a socio-political entity, which is willing to produce democratic forms of governance, can not simply dictate structural prerequisites and pre-constitutional elements of the future polity. One could then develop these arguments further to conclude that any attempt of institutional and procedural reform is unreasonable unless the different European *Demoi* are not identifying themselves as part of an emerging European *Demos*.

Against this line of analysis, I argue that the missing '*demos*' is not a prerequisite for the European Union, but an ideal product of successful integration and institutional design. I refer to Habermas' analysis on the relationship between institution building and citizenship formation. He argues that "the ethical-political self-understanding of citizens in a democratic community must not be taken as a historical-cultural *a priori* that makes democratic will-formation possible, but rather as the flowing contents of a circulatory process that is generated through the legal institutionalisation of citizens' communication. This is precisely how national identities were formed in modern Europe. Therefore it is to be expected that the political institutions to be created by a European constitution would have an inducing effect" (Habermas 1995, 306-307). In other terms, the '*demos*' is constructed via democratic 'praxis'. [...] Instead of 'no EU democracy without a European *demos*', we have 'no European *demos* without EU democracy'" (Hix 1998, 38-65). Taking this perspective seriously, I consider the very process of European integration as an ongoing search for opportunity structures, which allow the institutions of the EU's multi-level system to combine several demands for democracy-building beyond, but still with the nation state. Whether this process leads to the self-identification and further stabilisation of various '*demoi*' or of one single European '*demos*' remains an open question.

### 3. Approaches to Democratise the European Union

Comparing the documents produced during the Future of Europe Debate and the ongoing Convention, the proposals made under the headings of "democratisation" can be classified as follows:

1. Democratisation by reforming the decision-making procedures through an extension of the areas covered by the co-decision procedure according to the following four strategies:
  - (a) A systematic conjunction of the different types of decision-making procedures and the institutions to be involved in on the one hand and the nature of the different legal acts at the EC/EU's disposal on the other. This approach would suggest some kind of a hierarchy of norms like it might be derived from the legal definition of the Council acting as legislator (OJ L304/7 of 10th December 1993).<sup>1</sup> The main variable for identifying an area as subject to co-decision would be the legal nature of legislation, its scope and its implications.

- (b) A systematic association of decision-making mechanisms in the Council of Ministers and decision-making procedures between the Council and the European Parliament. Protagonists of this approach suggest the introduction of co-decision in all cases where the Council decides by qualified majority. Consequently, the success of this strategy largely depends on the reform of the Council's own decision-making regime.
  - (c) The simple transfer of the existing co-operation procedures into co-decision procedures.
  - (d) A policy oriented and single (national) interest guided re-ordering of decision-making procedures. Protagonists of such an approach look at the European Parliament as a potential winning coalition partner in order to enforce or to block decision in specific policy areas.
  - (e) Linked to the proposals on widening the scope of application of the co-decision procedure are proposals to reform the EU's budgetary procedures in order to bring the EP at the same level with the Council of Ministers.
2. The second option focuses on the relationship between the EU's executive bodies and their accountability to the European Parliament. Proposals vary between
- (a) the election of the European Commission's President by the European Parliament,
  - (b) the participation of the European Parliament with regard to the appointment of the EU's foreign minister and his or her function as a Vice-President of the European Commission,
  - (c) the involvement of the European Parliament with regard to the appointment the European Court of Justice,
  - (d) the involvement of the European Parliament with regard to the EU's executive agencies, i.e. Euro-pol, Eurojust etc.
  - (e) the introduction of a call-back procedure for the Union's legislator with regard to the Commission's executive functions.
3. The third option for democratisation concern the intergovernmental EU pillars (CFSP and CJHA). Proposals vary between
- (a) the full-scale or partial integration of one or both pillars into the Constitution and its procedural as well as institutional obligations, and
  - (b) the introduction of more legally binding – similar to the EC Treaty – procedures and more participatory as well as control powers for the European Parliament and/or the national parliaments within the remaining EU pillars.
4. A fourth option for democratisation of EC/EU decision-making procedures is discussed with regard to the roles of the national parliaments. Proposals vary – since the Amsterdam IGC - between those who opt for:
- (a) the introduction of direct participatory or control powers for national parliaments within the legal framework of the EC/EU,
  - (b) the introduction of a provision within the Constitution's framework guaranteeing national parliaments some unilateral control mechanisms vis-à-vis their respective governments, and
  - (c) the formal upgrading of existing multilateral scrutiny regimes bringing together members from both the European Parliament and the national parliaments.
5. The fifth option for democratisation of the EU concentrates on the structural prerequisites of the Union, and on how to provide opportunities for democratic and legitimate governance through the introduction or the reinforcement of new or more visible fundamental rights within the EC/EU Treaty set-up, of new information and deliberation rights for the citizenry or through the introduction of certain direct participation rights in the Treaties (Zürn, 1996; Abromeit, 1998).

#### **4. The Participation of the European Parliament at IGC's and the slow inclusion of national parliaments**

The EU faces a permanent process of institutional change. The very system is structured by process – an ongoing oscillation between para-constitutional Treaty amendments and Treaty implementation. This kind of system change relates to the “extension to specific or general obligations that are beyond the boundaries of the original treaty commitments, either geographically or functionally” (Laursen 1992, 242). At IGC's, “it typically entails a major change in the scope of the Community or in its institutions, that often requires *an entirely new constitutive bargaining process* among the Member States, entailing substantial goal redefinition among national political actors” (Laursen 1992, 242; see also: Genco 1980, 55-80). How is the EP able to inject impetus into the process of system change? Does the EP's relative peripherality at IGC's correspond to the empirical reality of the very process of system and para-constitutional change, which we observe when exploring the development of the Union during the last 50 years? Of course, if we concentrate our view on the shorter phases of IGCs as “big bargain decisions” (Moravcsik 1993, 473-524; Hurrell & Menon 1996, 386-402; Moravcsik & Nicolaidis 1999, 59-85), we could easily preclude that the direct impact of parliaments and citizens on the final outcome is symbolic and indirect or at best entirely dependent on Member State behaviour. The European Parliament would be identified as an actor able to steer political debates, to create tension on some parts of the agenda, to make issues public, but that it would never perform as a decisive player. Adopting this view, the influence of the EP appears at first sight to be rather restricted, although the EP has constantly been one of the most demanding actors for institutional changes and constitutional proposals. The puzzle emerges, that despite the modest role of the EP, three Intergovernmental Conferences – 1985, 1991, 1996 and 2000 – have shown a constant image of the system-development role of the European Parliament and the EP being granted with more and more powers transforming the EU's bilateral set up – Commission vs. Council and Member States – into a trilateral one.

During the negotiations of the Intergovernmental Conference 1985, the involvement of the EP was limited. Although it monitored negotiations intensely and its then president Pierre Pflimlin and MEP Altiero Spinelli were invited to some ministerial meetings, their involvement in the end was only restricted which meant that the EP accepted the Single European Act with limited institutional proceedings for the Parliament. However, it was also the Parliament which pushed the governments to initiate a treaty revision. In the 1991/1992 IGC, the EP served as a supporting element to those governments and institutions pledging for substantial reforms. Neither the new policy areas, for example consumer protection, education and culture, nor the co-decision procedure would have come into force without the permanent pressure of the EP. The preparation of the 1996 and 2000 IGC's revealed considerable progresses for the European Parliament. In order to gain support and to succeed in system developing, the EP benefited from a partnership with national parliaments which evolved since 1989 under different formats (COSAC, Joint Committee Meetings, Joint Parliamentary Hearings etc.). Second, it profited from alliances with certain national governments. Due to pressure from their national parliaments the Belgian as well as the Italian government connected their signature of the Treaty amendments to the vote of the EP. Both governments proclaimed that they would not accept the results of the IGC until the European Parliament had approved it. This proclamation put considerable pressure on the other European governments to take the view of the EP into account.

#### **5. National parliaments and the EU's system development**

Under Article 48 TEU, any amendment to the treaties on which the European Union is based shall only enter into force “after being ratified by all the member states in accordance with their respective Constitutional requirements”. This also applies if a Treaty amendment is required for the conclusion of

an international agreement (Article 300.5 ECT). Article 49 TEU stipulates that a European state's admission to the EU requires such ratification as well. Moreover, the member states must also adopt a Council decision on police and judicial co-operation in accordance with their respective constitutional requirements (Article 42 TEU). The same is envisaged for the uniform electoral procedure (Article 190.4 ECT). Article 269 ECT states that without prejudice to other revenue, the budget of the European Community shall be financed wholly from own resources. Under Article 269 ECT, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, shall lay down provisions relating to the system of own resources of the Community, which it shall recommend to the member states for adoption in accordance with their respective constitutional requirements. All these norms identify the member states, and there the national parliaments, as the "masters" of the treaties. The concrete modalities by which national parliaments are involved into the ratification of treaty amendments and revisions, in transforming EC directives or in dealing with other constraints like fiscal discipline are a matter of national constitutions and specific arrangements of member states. This 'blindness' of the EU treaties in view of national parliaments is the same for other constitutional bodies like regional states or second chambers and constitutional courts. It reflects the original approach of the EC founding fathers that the EC/EU treaties are agreements between states. Consequently, they leave the internal arrangements for coping with EC/EU politics to the sovereign decisions of member states. In other words, the treaties manifest some kind of a 'constitutional subsidiarity principle'. This principle had - at least for some decades - its domestic equivalent: EC policy was considered to be part of 'external' affairs and as such an indisputable prerogative of the 'executive' - outside the legitimate claim for parliamentary participation.

However right from the beginning there was one exemption to this strict demarcation between these two games: a small group of national parliamentarians were delegated with a dual mandate to the European Parliament. Its powers were however minimal and its impact on national politics and policies marginal (Fitzmaurice 1978; Herman/Lodge 1978, 226-251; Herman/Van Schendelen 1979; Wallace 1979, 433-443). National parliamentarians were offered opportunity structures to get access to the EC/EU institutions. The end of the 'delegated parliament' in 1979 - the abolishment of a permanent structure of national MP's placed between two legislatures - did not result in a direct adaptation of interparliamentary contacts. Still after the Amsterdam Treaty, the overall record of their participation patterns within the Brussels/Strasbourg arena is bleak. Though several and different procedures were tested over the last 40 years, none of them has led to a sufficiently intensive and efficient working relationship. The 1990's Conference of parliaments (Assizes) in Rome remained a one event institution. Instead, the Convention to draft the Charter for fundamental rights was generally assessed as a more successful link between parliamentarians of several levels (Stechele 2001; Pernice 2001, 194-198). Other activities of national parliaments and the European Parliament - like COSAC, the regular meetings of their Speakers and joint sessions of specialised committees - now seem to attract greater interest (Maurer/Wessels 2001, Maurer 2002).

## **6. Interparliamentary Democracy Building**

### **6.1. The Convention on the Charter on Fundamental Rights**

The idea of a European Union Bill of Rights has been discussed since the middle of 1970, mostly supported by the European Parliament. But it was not until 1999, on a German initiative, that the Charter process was launched with a decision of the European Council in Cologne (European Council 1999). The purpose was to strengthen the protection of fundamental rights in the EU by making the already existing ones more visible to the EU citizens. Meetings of the Convention took place from December 1999 until the autumn of 2000. After agreement of a final text of the Charter, the Presidents of the European Parliament, the Council of the European Union and the European Commission proclaimed the Charter on the 7th December 2000 on the fringes of the Nice European Council (OJEC 364/8, 18 December 2000).

The composition of the Convention and the working methods, as laid out in an annex to the Conclusions of the European Council in Tampere, in October 1999, were rather unique. The Convention was composed of 62 Members representing the Heads of State and Government (15), the President of the European Commission, the European Parliament (16) and the national parliaments (30). The European Court of Justice and the Council of Europe, including the European Court of Human Rights, participated as observers. The Convention and its Presidium, comprising Members from each of the four categories of representatives, was assisted by a Secretariat staffed by the Legal Service of the Council.

The drafting process of the Charter was a compromise taken without a formal vote. Compared with IGC's, it was open and participative in nature. It "brilliantly combined representative democracy with more participatory forms of democracy and unparalleled access to the process of European decision-making" (Mc Crudden 2001, 10). However, this nature of the Charter's Convention was also due to the fact, that the drafting of the Charter constituted a relatively narrow set of interests and arguments. Moreover, the Secretariat clearly dominated the drafting process and facilitated the early drafting of the Charter. As de Búrca concludes, "this was not to be a genuinely participative process but one which, albeit deliberative in nature, was to be composed only of institutional representatives from the national and European level" (De Búrca 2001, 131). Moreover, "the secretariat to the convention body, which was drawn mainly from the General secretariat of the Council [...] was one of the less obvious but nonetheless significant influences on the drafting of the Charter" (De Búrca 2001, 134). Members of the Convention submitted 205 written contributions and a total of 1406 amendments to the Charter's draft of the Presidium. As regards initial contributions, the most active group was the governments' representatives followed by the EP and the national parliaments. MEP's and MP's arranged to submit two contributions jointly, whereas government representatives were able to agree three times on joint texts.

The initial dominance of the government representatives is not confirmed when considering the relative proportion of amendments. Here, MEP's produced an overall of 405 documents against 400 by national parliamentarians and 356 by government representatives. Within these two last groups, the most active were MP's from Germany, Italy and Spain, and government representatives from the Netherlands, the United Kingdom, Italy and Spain. As regards the European Parliament, the PES delegation proved to be the most active. The larger PPE delegation did produce 'only' 78 amendments, whereas the smaller groups of the ELDR, the Greens, UEN and the GUE submitted between 26 and 45 amendments.

#### Charter Amendments submitted Dec. 99 – Nov. 2000

Governments	D	I	E	F	NL	A	LUX	P	UK	SF	B	DK	GR	IRE	S
	2	40	40	21	59	28	2	0	51	11	33	30	2	5	34
Parliaments	D	I	E	F	NL	A	LUX	P	UK	SF	B	DK	GR	IRE	S
	71	67	52	37	37	36	28	27	27	13	13	0	0	0	0
Sum: GOV and NP	73	107	92	58	96	64	30	27	78	24	46	30	2	5	34
EP Contributions	EPP		PES		ELDR		Greens	UEN	EDD		GUE	Others			
	78		147		45		41	36	8		26	24			

Compared with the MP's, the MEP's had some clear advantages in steering the Convention's process. They already work together in one single parliament and they were accustomed to a degree of parlia-

mentary working and party discipline. Outside the Convention, they had many opportunities to meet – either within the framework of their delegation meetings or within their preparatory meeting of the political groups. Finally, they could act on their home ground, work on the basis of input given by a joint administration and their own legal service. The situation of the MP's differed largely: Firstly, they were not put on an equal footing with the EP, the Council and the Commission, since the Cologne European Council conclusions only called the EU's institutions to proclaim the charter. Moreover, MP's had to choose between their ongoing national obligations and their potential participation in the Convention. But most importantly, the MP's were not accustomed to working together, they did not had any feeling of acting on home ground and they could not rely on a joint secretariat.

Overall thus, the Convention featured some disparities both with regard to the 'standing' and the activity of its members. However, the Convention managed to agree on a final text without some kind of voting, but through a complex sequence of open debate and secretive steering. Hence, the Presidium and Secretariat played the key role in preparing the draft Charter. The European Council conclusions of Tampere mandated the Presidium to "elaborate a preliminary Draft Charter, taking account of drafting proposals submitted by any member of the Body." Indeed, the Presidium produced a series of papers which not only reflected the ongoing discussions and incoming proposals, but which also steered them by an authoritative process of anticipating large and convincing majorities. The absence of real voting clearly facilitated the deliberative method of the Convention, but it also hindered the transparency of the Charter's drafting process. The price of consensus-seeking had been fixed outside the Convention's plenary, where some kind of bargaining took place outside the debating chamber.

In this context, the European Parliament delegation was much more efficient than the MP's. The latter were more heterogeneous, and they needed to build larger alliances with either the EP or some government representatives in order to put their views across. The PES delegation of the European Parliament organised meetings in which MP's of the PES family did participate. Other national MPs, especially those from France and the United Kingdom, turned to their respective governments for support. The Charter was adopted without voting, thanks to the "iterative consensus-seeking" process (Deloche-Gaudez 2001, 23). Consensus-building instead of unanimity thus constitutes the fundamental difference between the Convention and the last IGC's. If the IGC's possibility to veto a position enables each delegation to threaten deadlock, the Convention's process of an ongoing deliberation among rather open-minded actors facilitated the agreement and – perhaps more important – the evolution of a system of mutual recognition of views and ideals. The Charter process thus constituted a challenge to the elite-oriented and secretive mode of fashioning system change through IGC's. The process was deemed so successful that the Laeken European Summit in December 2001 decided to use the Charter mode as the basis for subsequent treaty changes, through establishing a Convention.

However, there were some considerable limitations on the liberty of the actors and the deliberative nature of the Charter process. Firstly, the European Council fixed a deadline; the Charter had to be drafted in order to be pronounced at the Nice Summit, in December 2000. Secondly, the mandate was formulated by the Heads of State and Government. And even if the Charter process was open, the drafting history of individual provisions (Stechele 2001) and the purpose of the incremental changes from draft to draft were far from transparent. "In some ways, tracking provisions of human rights conventions drawn up at diplomatic conferences under the auspices of the United Nations is easier" (Liisberg 2001, 18). Insofar, the Charter process was probably not better suited than traditional diplomacy to bring about legal certainty of the end-result – especially when the work takes place under the kind of time pressure the Convention was subject to. In sum, the Charter's process can be seen as an early trial-and-error-sequence for testing the method of consensus-seeking with some elements, which are highlighted by the theoretical concept of deliberative democracy. However, the method was successful because the heads of state and government, the Presidium and the Secretariat acted as core catalysts and key aggregators of the actors involved.

## 6.2. The 2002/2003 Convention on the Future of the Union

Given the main reasoning behind the Convention on the future of the EU – the relative failure of the Nice summit, the non-answered questions regarding institutional reform and the ‘EU-XXL’-perspective -, its success will be measured by three criteria. First and foremost, the Convention must present innovative proposals to effectively overcome the deadlock on EU reform. It must prove to be more effective than IGC’s. Secondly, the Convention’s process and its substantial results need to incorporate broad societal support and to secure political legitimacy for some kind of a constitutional treaty. Thirdly, and consequently, the Convention needs to adopt its result by consensus. Otherwise, the 2004 IGC will by-pass the Convention’s result.

The 2002 Convention is composed of 15 representatives of the governments of the EU, plus 13 of the accession candidate countries governments, 30 national parliamentarians (2 per Member State) plus similarly 26 of the candidate countries, 16 members of the European Parliament, and 2 members of the European Commission. Moreover the European Ombudsman, social partners, the Committee of the Regions and the Economic and Social Committee have official observers with speaking rights. On top of the 102 members and 13 observers, the Laeken European Council appointed former French president Giscard d’Estaing as the Chairman, and former prime ministers of Italy (Amato) and Belgium (Dehaene) as vice-chairmen to lead the Convention. These three form the Presidium of the Convention, together with the two Commissioners (Barnier and Vitorino), with two representatives of the European and two of the national parliaments, and with the three government representatives of the member states that hold the presidency during the Convention (Spain, Denmark and Greece). Like during the Charter’s Convention, the Presidium plays an important and rather dominant role in the proceedings. Unlike the Charter’s Convention, the substitute members of the 2002 Convention are real alternates. They may only actively participate if their full member has apologised in advance.

The principle of consensus-building that was developed during the first Convention was written in the Convention’s draft rules of procedure which state that representatives of the candidate states can not prevent such consensus. On the other hand, the draft rules give room for indicative votes. Compared to the Charter’s Convention, the number and strength of the EP delegation shrunk considerably. Hence, the EP still provides for 16 MEP’s, whereas the total number of ‘Conventionels’ has almost doubled. As MEP Ieke van den Burg notes, that “added to that the restricted role of substitutes is another loss of influence. In the Charter convention the EP substitutes were more actively and independently involved than other substitutes that acted more often only as alternates if the full member was not present. It’s to be seen whether the greater cohesion inside the EP section [...], will outweigh this numerical decline” (Van den Burg 2002, 2). The biggest difference with the Charter’s Convention is the addition of the members of the candidate countries. They do not have a single observer per country, but a government representative and two parliamentarians, at an equal footing with the present member states. Given the common disadvantages of MP’s and representatives from the non-EU-members, the latter may ally with the national parliamentarians. Consequently, national MP’s may now choose between allying with MEP’s, governments and/or with the large group of non-EU-members. The tensions between the different groups might thus be more visible than during the Charter’s Convention. During the Charter Convention the MEP’s brought together MP’s along the lines of the political families. Given the positive outcome of this kind of alliance-building, both the PES and the PPE groups of the EP started to steer political family discourse right from the start of the Convention. Both EP group delegations organised joint preparatory meetings before each Convention’s plenary. Moreover, both the EPP and the PES organised summer seminars in 2002 bringing together their Convention delegates to discuss and draft some kind of constitutional draft text. Co-operation between MEP’s and MP’s along the lines of the political families demonstrate the importance attached to the Convention from national parties. However, it also entails the risk that national party leaders of parties in government attempt to control the interparliamentary process, and try to make the MP’s in the Convention work along their national government lines.

**6.3. The Convention and Interparliamentary Co-operation**

The participation of national parliaments and of the European Parliament in the body responsible for drawing up the Charter of Fundamental Rights of the Union was an original experience, which opened the way for a true innovation with regard to the role of parliaments in the development of the EU. Hence, the Charter exercise symbolised the recognition of shared responsibility in the exercise of some kind of ‘para-constituent power’, which had hitherto been reserved for governments alone. The European Parliament and the COSAC Stockholm meeting in May 2001 thus proposed the activation of the Convention process. The idea was not only to parliamentarise the classical way of Treaty reform through IGC’s, but also to find an essential and visible forum for discussing the future roles of parliamentary democracy in the enlarged Union. Remember that already during the Amsterdam IGC negotiations, the national delegations of France, the United Kingdom and Denmark tabled concrete proposals calling for a strengthened role of national parliaments in the EC/EU decision-making process. Given the strong reluctance of the majority of the member states’ parliaments and governments as well as of the EU institutions, the idea of institutionalising COSAC seemed unlikely to perpetuate interparliamentary co-operation. The mainstream argument against such an increased role held that the further institutionalisation of COSAC would have had the contradictory effect of distorting the democratic foundations for the legitimisation of parliamentary control and law-making activities in the Community. The Amsterdam IGC then lead to the insertion of the “Protocol on the role of National Parliaments in the European Union” (PNP) into Treaty. Besides the provisions on the improvement of unilateral parliamentary scrutiny mechanisms, the PNP also recognised COSAC as the main contribution for a more effective participation of national parliaments in EC and EU Affairs. Given these early experiences of parliaments in creating their own fora for interparliamentary debate, the 2002 Convention can be seen as a move towards assigning to the national parliaments and the European Parliament a specific kind of joint ‘para-constituent power’, i.e. a power to be shared with the national governments. This development would mark a new chapter in the role of parliaments in European integration. Of course, to build on the Convention and to give national parliaments access to the policy process of the European Union level makes the process dependent on the veto of the single unit. However, the first six months of the Convention clearly mirror a rather co-operative working style of both the EP and the national parliament’s delegates.

Contributions to the Convention on the Future of the European Union (until 31 July 2002)  
 Numbers in brackets include contributions produced for working groups

	Secretariat	Presidium	EP	COM	Government	National Parliament	NGO’s and others
Unilateral	52 (75)	45	15 (29)	1 (8)	13 (41)	31 (66)	142 (155)
In Percent	16,9 (15,7)	14,7	4,9 (6,0)	0,3 (1,6)	4,2 (8,6)	10,1 (13,8)	46,4 (32,5)
Bilateral			5		2	5	
In Percent			1,6		0,6	1,6	

	1		1
			4

Compared with the Charter’s Convention, the national parliament’s group is by far the most active delegation among the four institutional ‘core groups’. Moreover, MEP’s and MP’s produce more multilateral contributions than during the first exercise. Whereas the government representatives are most active in the two working groups which consider substantial issues on the EU’s future competencies, national parliamentarians focus on two themes: the principle of subsidiarity and the definition of an early-warning mechanism in order to ensure the respect of the principle, and the future role of national

parliaments in the EU's institutional set-up. It might be too early to evaluate the deliberative sequences within these working groups. But according to the vast majority of working group members, both the subsidiarity and the national parliaments themes attract the two levels of parliamentary democracy to an original extent: Hence, both groups consider themselves as open fora with an original chance, that of clarifying and visualising the relationship between parliaments on the national and the European level. The idea of self-governance is thus emerging within the two working groups as well as within the parallel sequences of the COSAC working group on the future of the EU and the institutionalised contacts on the level of party families.

Hence, the very task of the Convention is the intensive debate about the right attribution of roles and functions of parliaments in the EU's multi-level set-up. The realisation of a multi-dimensional net of interparliamentary contacts might thus help to effectively reduce the democratic deficit in institutional - parliamentary - terms. However, the Convention members should bear in mind that the new institutional mechanics are not self-evident for the end-users of public policy outcomes: To date, the Convention is not reflecting whether the improvements made to new forms of parliamentary participation will provide new ground for enhancing the legitimacy and proximity of European governance towards the citizens of the Union. However, it remains in the hands of the actors involved to offer appropriate means for the involvement of the Union's Demoi in shaping the conditions for their way of living. More precisely, the national parliaments are facing the difficult task to prove that they are able and willing to provide channels for communication across the boundaries of the EU's member states. Any greater i.e. de-facto-institutionalised involvement of national parliaments in the EU's policy cycles may help to render governments more accountable for what they decide in the Council of Ministers and its subordinated working mechanisms. However, the simple formalisation of COSAC, the creation of a congress or any other joint body incorporating MEP's and MP's within the realm of a new Treaty or constitution also renders the EU more complex and less understandable.

## **7. The post-Convention's European Parliament: Towards Real Co-Legislative Powers**

The role of the European Parliament (EP) in the EU's policy-making process has long been a matter of controversy (Corbett, 2000; Hix, 2001; Hubschmid and Moser, 1997; Kreppel, 2000; Maurer, 1999; Scully, 1997; Shackleton, 2000). When the Maastricht Treaty came into force, some suggested that the EP 'was perhaps the largest net beneficiary of the institutional changes in the Treaty' (Wallace, 1996, p. 63) and that 'Maastricht marks the point in the Community's development at which the Parliament became the first chamber of a real legislature; and the Council is obliged to act from time to time like a second legislative chamber rather than a ministerial directorate' (Duff, 1995, pp. 253-254). Through the introduction of the co-decision procedure, the EP appeared to gain more control over the legislative process (the final legislative act requires Parliament's explicit approval). However, there has been much debate on the impact of the then Article 189b EC Treaty (ECT) on the EU's legislative efficiency, with several authors noting that the procedure for shuttling draft acts between the institutions is (too) complex, lengthy, cumbersome and protracted (Duff, 1995; Gosalbo Bono, 1995; Westlake, 1994; Corbett *et al.*, 2000; Nugent, 1998). Indeed, the original procedure could well be interpreted as symptomatic of a 'general trade-off' between the efficiency of EU decision-making on the one hand and parliamentary involvement on the other (Scharpf, 1994). Apart from this kind of criticism of the Union's and Parliament's incapability to act efficiently, other authors considered the material scope for co-decision rather limited (Gosalbo Bono, 1995; Tsinisizelis and Chrysochoou, 1996). More specifically, it could be argued, that 'the granting of co-decision rights regarding internal market legislation is only of limited significance, given that such legislation should have been adopted by 1992 and that Articles 95 and 100b [ECT] would no longer serve a purpose after that date' (Corbett, 1994, p. 209).

The Amsterdam Treaty considerably altered the institutional balance between the Union's main actors and increased the EP's powers in several different ways (Duff, 1997; Hix, 2002; Laurssen, 2002; Maurer, 1997, 2002): extending the areas where the co-decision and assent procedure apply, simplifying

the co-decision procedure, recognising Parliament's involvement within the field of home and judicial affairs, and changing the procedures for the nomination of the Commission President and the other Commissioners. Table 1 summarises the situation with regard to the different legislative procedures laid out in the Treaties after Amsterdam.

The Amsterdam Treaty revealed a tendency towards a multi-level polity where competencies are not only shared between the members of the Council but also between the Council and the EP. To put the Amsterdam provisions on the Parliament in an historical context, Figures 1a and b show that Parliament's access to decision-making has been a slow but unrelenting process of Treaty reforms. The relative proportion of Parliament's exclusion from the EU policy process has diminished considerably. However, if we focus on the absolute rates of the treaty-based decision-making procedures (Figure 1b), we see that a growth in consultation, co-operation and co-decision procedures has been offset by an increase in Parliament's 'non-participation'.

Both the co-operation and co-decision procedures had a considerable impact on the EP's involvement in the production of binding legislation. We observe a clear trend towards more use of the co-decision procedure at the expense of the co-operation procedure (see Table 2). The main reason for the shift from co-operation to co-decision is the procedural change applied to one legal basis – namely Article 95 ECT, the general basis for harmonisation measures in the framework of the internal market. With Maastricht, the procedure to be applied for Article 95 shifted from co-operation to co-decision, and 45.9% of co-decision procedures concluded between November 1993 and December 2001 fell under this article.

Until July 2002 a total of 602 legislative proposals had been transmitted to the EP under the co-decision procedure, of which 417 have been concluded. In 348 cases the Commission's initiatives have resulted in binding legislation decided jointly by the EP and the Council. To date, there have been 69 cases in which the proposal of the Commission has failed. In 65 of these, the procedure lapsed because the Council was unable to adopt a common position. Only five cases failed due to unsuccessful conciliation (three times) or after the EP voted against the agreement reached in the conciliation committee (twice).

Of the 348 approved acts under co-decision,

- in 236 cases agreement was reached without convening the conciliation committee – 157 cases were approved by Parliament without amending the common position of the Council, and in the remaining 79 cases the Council accepted all of the second reading amendments proposed by the EP; and
- in 112 cases agreement was reached in conciliation.

As for the proposals that failed after conciliation, two cases could not reach an agreement on the type of committees that would assist the Commission in implementing the directives. One proposal reached the stage of a joint legislative text (directive on the legal protection of bio-technological inventions) but the agreement from conciliation was rejected by a majority of the EP. Besides co-decision, the EP and the Council were confronted with a further 7,054 legal acts of the Council, out of which the institutions closed 448 co-operation procedures (19 failed or withdrawn), 163 assent procedures and 2,566 consultation procedures.

Since 1996 nearly one quarter of EU legislation considered by the EP was adopted under the co-decision procedure. In this regard, the Maastricht Treaty strengthened the position and legislative role of Parliament regarding the internal market, including the areas of environment, research and education policy. Moreover, taking into account the total legislation passed since 1986/87, by adding together the percentages of both co-operation and co-decision, the scope of application of these procedures within the Parliament has been significantly extended (from 11.3% in 1987 to nearly 34% in 2001). However, if we consider the overall output of binding legislation adopted either by the Council or by the EP and the Council together, we should qualify this assessment. Legislative acts concluded in 2001 under both the

co-operation and co-decision procedures represented only 21.3% of all legislation adopted by the Council. However, before jumping to conclusions highlighting the relative failure of Parliament as a legislative chamber, we should take a closer look into the proportion between Council's legislation and Parliament's involvement therein.

Most legislative output of the EU is in three fields: agriculture and fisheries, trade policy, and customs policy. Note also the high percentage of Commission legislation in agriculture policy, either authorised by the Treaty or by the Council pursuant to its right to delegate executive competencies to the Commission. In turn, the socio-economic policy fields represent only 15 to 20 percent of the EU's legislative production. In these fields – which include the internal market, industry, economic policy, environment and consumer protection, telecommunication, and transport policy – the EP is much more significant. In these fields, 65% of legislation requires either the co-operation or co-decision procedure. Also, a high proportion of the Council's output concerns non-legislative acts, i.e. executive or administrative acts, especially in the fields of agriculture, competition, trade and customs policy. Neither the EP nor any of its component political groups has asked to participate in consultation or any other procedural rule when the Council deals as a price-fixing agency or when the Council confirms member state nominations for one of its standing committees.

### **8. Efficiency: the EP as a Complicating or a Facilitating factor?**

Contrary to perceptions commonly espoused in academic and political debates about a strengthened role for the EP, the co-decision procedure does not appear to lead to serious delays in the final adoption of EC legislation. Of course, the original procedure introduced by the Maastricht Treaty appeared cumbersome, and in practice was expected to be complex, lengthy and protracted (Earnshaw and Judge, 1996; Westlake, 1994; Nugent, 1998). The procedure was depicted as symptomatic of the 'general trade-off' between the 'problem-solving capacity' of EU decision-making and parliamentary involvement on the other. As Fritz Scharpf puts it: 'Expanding the legislative [...] powers of the EP could render European decision processes, already too complicated and time-consuming, even more cumbersome' (Scharpf, 1994).

However, in practice, co-decision did not significantly delay the final adoption of EU legislation. Both the co-operation and the co-decision procedures differentiate between a first phase, where Parliament and Council can act without any constraints on the time needed for adopting a first reading position on the Commission's proposal, and a second phase, where a set of fixed time limits applies. Under the Maastricht rules, co-operation could last nine months from the Council's common position to the final adoption of the act. In contrast, the co-decision procedure could potentially last sixteen months from the date of the transmission of the Council's common position to Parliament. The Amsterdam Treaty abbreviated the procedure to fourteen months. Once the Council has adopted its common position, the longest case scenario involves two Council and two parliamentary readings, plus one conciliation procedure, and then final adoption by the Council and EP.

However, Figure 4 shows that since 10 November 1993 the duration of co-decision procedures has diminished. On this date the Commission presented 34 modified proposals originally founded on the co-operation procedure (Article 149 ECT, SEA version) that then became (due to the entry into force of the TEU on 1 November 1993) subject to the co-decision procedure. These modified 'co-operation proposals' lasted on average 838 days, whereas the original 'co-decision proposals' of 1993 needed 200 days less! A more detailed analysis indicates that the average duration of co-decision fell from 769 days (for the period of November 1993 to December 1994) to 409 days for proposals made between July 1999 and July 2002.

How is one to explain these trends? One explanation, based on nothing more than institutional self-interest, is that to produce some output – and thereby perhaps attain enhanced public attention and

legitimacy –either Parliament or Council prefer the adoption of second-best solutions instead of exhausting the negotiation arenas and battling for a long time for a joint agreement. If this argument holds we would expect a decrease of conciliation meetings in relation to the adoption of joint legislation over time. However, the empirical reality shows an increasing number of conciliation meetings in relation to legislative acts from 1994 to 2002. Thus, the time-efficiency of co-decision appears based more in the ‘socialisation’ of MEPs, COREPER and Commission. The most important delays in co-decision occur because of lengthy procedures before the adoption of Parliament’s first reading and Council’s common position, where no deadlines are applicable (See Figure 5). Delegates of the member states and private industry meet within a highly elaborate network of working groups, where the substance of the Commission’s drafts is fine-tuned by a wide range of civil servants and lobbyists. Also, MEPs meet with Council representatives, Commissioners, Commission Cabinet members and other officials to indicate their potential amendments and ideas on the draft. Once the Commission officially publishes and submits its proposal to Parliament and the Council, again informal meetings take place where EP *rapporteurs*, COREPER and member state representatives, and interest groups deliberate on the draft. Hence the first reading of Parliament and the subsequent adoption of the Council’s common position are subject to informal deals between the institutions on matters such as the legal basis, the financial resources necessary, the possibility of implementing acts, and some of the substantive issues. Both the Parliament and the Council became acquainted with the new decision making procedure during 1994, after the newly elected EP voted its first reading resolutions on matters relevant to the co-decision procedure. As noted above, Article 95 is the most prominent legal basis for co-decision. If we concentrate on the procedures based on this article, we note that both the Council and EP have undergone a considerable ‘learning process’ in adopting binding legislation in this area. The average duration for procedures proposed in 1991 was 882 days. Between 1991 and 1997 then, the average duration reduced by a factor of three to 257 days (for 1997 proposals)! This is particularly interesting since procedures based on Article 95 covered nearly half of all legislative acts where conciliation between the Council and the became necessary.

## **9. Issues for Reform of the European Parliament**

The development of both the EU and the EP is organic and evolutionary. Using this dynamic perspective in analysing the EP’s role with regard to its contribution in the production of binding legislation, one observes an increasingly important component of the EU political system. The EP’s performance clearly indicates that by building on precedents – conditional vetoes in co-decision, linking policy-making with institutional, financial and procedural aims and inter-institutional agreements – Parliament has been able to steer the geometry of institutional relations from a two-sided into a triangular form. The EP has considerably grown in importance. It cannot be denied, that it has considerably developed from a rather ‘decorative’ (Wallace, 1996, p. 63) to a truly legislative institution. Co-decision is as cumbersome as the joint decision-making procedures between the German Bundestag and the Bundesrat, or between the French National Assembly and the Senate, and MEPs have become acquainted with it despite its shortcomings. The rather small proportion of failed procedures does not indicate a massive defeat of this new legislative instrument. Much analysis has suggested that co-decision will not work effectively. On the contrary, we observe a procedure that is, with regard to efficiency, shorter than co-operation was, and which, with regard to the substance of European legislation, enables Parliament to set the EU policy agenda on an equal footing with the Council.

What are the options for further institutional developments of the EP? The Convention on the Future of Europe offers a chance for accelerating, rationalising and simplifying the EC’s legislative process. Given new legal bases where co-decision will apply after the entry into force of the Nice Treaty, and given the potential extension of the scope of application of the procedure due to the Convention, the possibility of conclusion after the first reading may lead to saving time for a higher number of legislative proposals. In this context, Parliament will probably improve both the process of adopting

the relevant amendments and their quality.

To enhance the visibility of Parliament in co-decision, it should seek, with the Council and the Commission, to provide access for the media before and after conciliation takes place. Parliament might also reflect on the location of conciliation meetings: what if Parliament and Council organised key conciliation meetings during Strasbourg plenary sessions, where media attention is almost exclusively given to MEPs? Finally, efforts should be made to assist *rapporteurs* to become more visible as parliamentary experts on major policy questions. If Parliament is to develop further the 'linkage between institutions and constituencies within the polity' (Hix and Lord, 1997, pp. 7-10), MEPs must carefully choose between the different political and institutional capabilities at hand.

## **10. National Parliaments: From Latecomers to Active Players?**

When discussing the role of national parliaments in the EU, it belongs to the conventional wisdom that national parliaments have increasingly lost in overall importance due to the evolution of this political system.<sup>2</sup> The partial or complete transfer of national competencies towards the EC/EU implies an immediate loss of the national parliaments' legislative powers towards the Council of Ministers, the European Commission and - to a lower degree and at a later stage -, towards the European Parliament. Only after the introduction of the so-called co-operation procedure and the co-decision procedure, the European Parliament gained important rights in the field of EC legislation. But still after Maastricht, Amsterdam and Nice, the transfer of national parliamentary powers to the European level has not entailed a complete and direct transfer of these originally legislative powers to the European Parliament.

As regards the national level of policy-making in EC/EU politics, this loss of legislative powers in the upstream process of policy-making may be compensated by an increase in the national parliament's control function vis-à-vis their governments.<sup>3</sup> Hence, since the German Bundesrat's decision of 1957 to create a special EC affairs committee, national parliaments established institutions, general norms and procedures in order to scrutinise their governments in the EC decision-making process more effectively. Nevertheless, the degree of parliamentary scrutiny might vary a lot. Given different concepts and meanings of 'control', 'participation', and 'scrutiny', it ranges from simple ex-post information rules to mandatory procedures.<sup>4</sup> Although some parliaments are provided with a high and comprehensive amount of EC documents, they do not necessarily influence their governments' stance in the Council of Ministers: Their effective impact on the formation of national views did not only depend on the amount and type of documents, but also on the timing, institutional capacities and personal resources available to deliberate efficiently and effectively on a given document.

### **10.1. Shaping the National Level of the EU's Policy-Cycle**

Any reform of the national parliament's roles in EU business should address the following parameters:<sup>5</sup>

- The institutionalisation of parliamentary structures, instruments and procedures for dealing with EU policy-making at the national level,
- The substantial scope of parliamentary control resulting from the extent of documents forwarded to parliaments by their governments,
- The basic orientation and methods of national parliaments with regard to the organisation of filtering documents within the parliamentary bodies,
- The timing and management of parliamentary scrutiny, and
- The potential and real impact of parliamentary scrutiny on the Government's room of manoeuvre within the EU Council of Ministers.

Evidence on the 'real use' of the national parliament's powers point at a considerable legal constitutionalisation<sup>6</sup> and institutional adaptation, and at a modest impact with regard to the real patterns of

participation. Parliamentarians wish to get involved in the EU policy cycle. To facilitate the digestion of incoming draft acts, they have created specific bodies, which are entitled to sift documents, to elaborate reports and to prepare resolutions for the plenary. The activity of EU Committees varies not only according to the amount of documents to be dealt with, but also depending on the general orientation of their work and the intra-parliamentary focus on committee and plenary meetings.

Hence, whereas EU Committees in Denmark, Finland, Austria, Ireland and the UK House of Commons deal with incoming EC/EU documentation as *the* Committee-in-charge of the whole scrutiny process, other EU Committees (D, NL, S, I) are simply regarded as the first - sifting - institution within parliament in order to facilitate the further consideration of the relevant documents within specialised Standing Committees. EU Committees in these countries specialise themselves on some European issues like IGC's, Enlargement and other - horizontal - themes of the EU's long-term agenda, whereas the first group of EU Committees-in-charge need to digest each incoming EU dossier on behalf of their parliament. These EU Committees need much more time to deliberate EU issues. Necessarily, they meet more frequently than EU Committees of the second group.

### 10.2. The Orientation of Parliaments: What you get depends on your performance

The basic orientation of parliaments in EU affairs also differs with regard to the - ideally constructed - nature of the scrutiny process. Hence, the parliaments of Denmark, Austria, Sweden, and France focus their EU-related activity on the formulation and issuing of voting instructions for their respective government members in the Council of Ministers. These parliaments build on an ideal bipolar legislature-government scenario. The other parliaments follow a more open and consensual (NL, D, SF), or supportive (IR, I, B, LUX, P, E, GR) approach vis-à-vis their governments. Their main rationale is to ensure that interested parliamentarians can track the EU policy cycles according to the constitutional rules. Finally, the consideration of the different steps in the EU policy cycle also generates different time constraints for parliamentarians and their EU Committees. If parliaments anticipate EC/EU legislation, their scrutiny process starts earlier and the involved committees meet more frequently. If parliaments adopt a more reactive stand by focusing on already adopted EU legislation, their timing and management of EU scrutiny processes is less intensive and frequent.

**Table 1: Basic Orientation of Parliamentary Scrutiny EC/EU affairs**

(1) Parliament's Working style	(2) Nature of Scrutiny processes			(3) Consideration of phases in EU policy cycles		
	Orientation towards supportive Scrutiny	Orientation towards formulating and/or voting instructions		Anticipative, ex-ante examination of EC/EU draft legislation	Reactive, ex-post consideration of EC/EU legislation	
Main Focus on EU Committee	SF, IR	F, UK	DK, A	DK, SF, A, UK	IR	
Strong involvement of Specialised Standing Committees	D, NL, SF, I		S	D, F, NL, S		I
Focus on Plenary sessions	B, GR, LUX, P, E			B, LUX	P, E	GR

Authors' own classification. Sources: Country studies in Maurer/Wessels, 2001.; Maurer 2001; Raunio/Wiberg 1999.

Given the self-made multitude of portfolios, EU Committees face the problem of remaining locked in the national organisation of parliamentary business. The 'one-level-only'-problem becomes visible in the fact that the handling of EU affairs does certainly not influence the rolling agenda of national par-

liaments. Compared to the governments' ministerial administrations, parliamentarians need to allot their capacities for several agendas. Members of EU committees get not re-elected by focusing their campaign towards the handling of EU affairs. In addition - and partly of the same reason -, the parliaments' agendas remain oriented towards national debates. With few exceptions<sup>7</sup>, the EU committees stay 'outsiders' in their parliaments, perceived as 'EU-ised Trojan horses', which challenge the competencies and - more important - the reputation of other committees.

In sum, the Danish case remains a unique archetype of a parliament, which is apt to formulate its own political assumptions about the daily EU business effectively. The parliaments of Finland, Austria and Sweden followed this line, although their scrutiny systems are less binding for their governments. As to the scheme for measuring parliamentary participation in EC/EU affairs, these parliaments certainly fulfil the criteria of strong policy-making, and thus 'national players'. Their performance is based on a certain veto power, the possibility of making modifications and of steering compromises in the course of the national policy process. The EC/EU-related policy-making strength of the parliaments of Germany and the Netherlands is similar to the first group. However, the consensual policy-making style and the - still existing - pro-European consensus among the political parties in these countries prevents parliamentarians from a systematic confrontation with their governments. They thus perform as potential or latent 'national players'. The French and the UK Parliament are both cases of modest policy-making legislatures, who wish to act the games of the 'national players'. Both parliaments are able to comment on incoming EC/EU information and to voice their opinions by reports, resolutions and the so-called parliamentary scrutiny reserves. But they are not able to effectively change a governmental draft reaction to EC/EU input. The remaining parliaments (IR, B, LUX, I, E, P, GR) should be categorised as 'slow adapting' parliaments, which are not willing or able to affect their government's stance in EU negotiations. If we turn our view to the real performance of parliaments in interparliamentary co-operation, we can identify an emerging group of multi-level players in the Nordic countries as well as in Germany, the UK and France. Parliamentarians of these countries use the informal networking arenas for joint consultation through committees, committee chairs, parliamentary staff and, to a limited extent, through rapporteurs.

**Figure 1: Real Types for actors in a two-level game**

		Participation in the National Arena	
		Strong	Weak
Participation in the Brussels / Strasbourg Arena	Strong	Multi-level players <b>DK, SF</b>	European players <b>EP</b>
	↑	<b>S, D, B, UK, F</b>	
	↑	National players <b>A, NL</b>	Slow adapters <b>IR, LUX, I, E, P, GR</b>
	Weak		

In some limited cases, the role of the 'national players' was strengthened to a certain degree. At the same time the EP developed into a more efficient European player - with a strong trend to become a 'real' second chamber in the EU's institutional set-up. This record also highlights that the majority of MP's have not become strong multi-level players. In comparison with national governments and ad-

ministrations, with intermediary bodies as lobbies and NGO's parliamentarians are less competitive especially in cases where the participation in the EC/EU policy cycle on both levels is of a major importance. In this sense the national parliaments of the last two categories are still 'losers' in the evolution of the EU system. Their late efforts of the 1990's did not lead to a fundamental upgrade of their relative role vis-à-vis their governments.

## **11. National Parliaments' Options for the Convention**

The 2000 Nice European Council, in the Declaration No. 23 on the future of the Union annexed to the Treaty<sup>8</sup>, stated that it was one of the four topics to be placed at the centre of a rather vast and ambiguous debate, destined to result in a new Intergovernmental Conference being held in 2004. The European Council's declaration can be read in different ways: Hence it mirrors a set of views which were not clearly defined by the Heads of State and Government among themselves and which diverge as regards the institutional architecture and overall development of the larger Union which is about to come into being. The declaration raises the general question how democratic the integration process is, and whether the European Union could be democratised by modified institutional and/or para-constitutional rules. It would be a mistake to imagine that the EU's citizenry is not aware of the problem. The Irish 'No' to the Nice Treaty might have several reasons, which are not directly linked to 'knowledge' about and an objective 'evaluation' of the Treaty's text.

### **11.1. Ways of Improving National Scrutiny Systems**

The debate about how to strengthen national parliaments concentrates very much on how to involve them more directly at the European level. Nevertheless, since scrutiny of their own government will continue to be one of their most important 'European functions', it is important to analyse what kind of improvement can be made at the national level. Improving the national scrutiny mechanisms is a task for the member states and their parliaments - and in particular for those parliaments with a relatively low impact. In order to encourage parliaments to analyse and improve their systems, "best practice" studies have been proposed. This would be a rather informal way. A further idea would be to equip NPs with certain "rights" in the European Treaties. This could be either through extending the scope of "rights" included in the PNP or by making specific references into certain Treaty articles.<sup>9</sup>

### **11.2. Minimum Rights for NPs: Extending the Scope of the Amsterdam Protocol**

More successful could be a more formal way, as for example granting further rights to national parliaments as it was done in the PNP. These would have to be formulated as "obligations" for the governments and the European institutions. Extending the scope of rights for example within the PNP would at least in theory provide them with a better position vis-à-vis their governments. A different and less formal approach would be a "Charter for National Parliaments" as proposed by the House of Commons, which would include the "broad principles and objectives to guide national parliaments in relation to their role in the European Union and to which national parliaments would subscribe."<sup>10</sup> This would be binding on the NPs but not the European institutions or the governments as European actors in the Council. It is contentious if *Treaty changes* relating to the national scrutiny mechanisms would be legally possible and useful in practice.<sup>11</sup> But it could be a further step towards equalising the standard of participation.

New Treaty articles that would specifically define the role of the NPs may be a quite effective way - also to raise the awareness of the 'European functions' of NPs. But a quite simple reform of the PNP may also spur changes. So far the PNP has concentrated on counteracting the information deficit of NPs. The first part of the Amsterdam Protocol ("Information for National Parliaments of Member States") stipulates that a period of six weeks shall elapse between a proposal being made available in

all languages to the EP and the Council by the Commission and the date when it is first placed on a Council agenda for decision.<sup>12</sup> The government of each member state is responsible for forwarding proposals for *measures under Title VI* (Police and judicial co-operation in criminal matters) and *legislative proposals* to their parliaments in time.<sup>13</sup> The PNP also refers to “consultation documents” (green and white papers and communications), without specifying who is responsible for this task (first paragraph). Consultation documents are available on the Internet and are therefore easy accessible anyhow.<sup>14</sup> However, the distribution of legislative proposals is rather problematic. With regard to article 207.3 of the TEC *the Council* decides upon what falls under the category of “legislative proposals” and what does not. Therefore not all relevant proposals may be forwarded. Furthermore, the current scope of the PNP (third pillar measure and legislative proposals only) is unsatisfactory. Meeting in Versailles the COSAC proposed that the six week period should apply also to title V (CSFP).<sup>15</sup> One could also examine if it would be possible to make reference to some of the other “deficit areas”, such as for example the OMC.

A further relatively simple but controversial change could define the Commission and not the member states’ governments as being responsible for forwarding legislative proposals.<sup>16</sup> According to a COSAC resolution proposals could be forwarded “as soon as they are adopted by the college of Commissioners” – preferably “by electronic means.”<sup>17</sup> The Commission “would have no difficulty in sending proposals directly (to NPs) if Member States are content that this is consistent with each country’s constitutional relationship between governments and national parliaments.”<sup>18</sup> Certainly, this would apply to first pillar matters only, but it could be an improvement for the slow adapting parliaments.

Doubts whether a majority of member states and parliaments would support changes of the PNP that could partly interfere in the “constitutional organisation and practice of each Member State”<sup>19</sup> are justified. After all “parliaments, as sovereign bodies, will want to decide how best to exercise their own scrutiny role according to their own traditions and norms.”<sup>20</sup> Most proposals that have been made in particular in the Convention thus refer rather to possibilities of involving NPs directly at the European level, either by establishing new mechanisms or even by establishing a new institution comprised of national parliamentarians.

## **12. When and How to Involve NPs at the European Level?**

Several proposals for new roles and new bodies comprised of national parliamentarians have been made throughout the debate on the future of Europe prior to the negotiations of the Nice Treaty.<sup>21</sup> By drawing attention to the subject, these different visions that included new roles for the “national parliaments in the European architecture” also helped the issues to be included in the priority list of the Nice agenda. The proposals for a ‘*second chamber*’ comprised of national parliamentarians within or independently of the EP, a (permanent) ‘*congress*,’ or a ‘*subsidiarity committee*’ were not new.<sup>22</sup> For the first time, however, they were part of an EU-wide debate. The fact that NPs have become a central issue in the debate about the future of the EU, may have positive effects on their role in the EU. It is however questionable, if focus should be on the question in what way NPs may be involved better ( a congress, a committee, a chamber). More essential seems to be the question where and when to involve NPs. This is why the following section will firstly examine *at what stages* of the European constitution-making and legislative processes, national parliaments could participate. The following possibilities to involve NPs at the European level shall be discussed: the involvement in the making of primary law through the Convention, participation in the legislative process and in the appointment procedures – if they were to be remodelled.

### **12.1. Involvement in the Making of Primary Law: the Convention**

Given that the “constitutional character of the European treaties is, indeed, becoming more and more apparent and their modifying impact on the normative reality of the national constitutions is undeniable,

a more direct involvement of citizens and their democratic representatives in the process [of Treaty revisions] needs to be organised.<sup>23</sup> So far, NPs have only been indirectly involved in the making of primary law. An institutionalisation of the European Convention would alter the modes of Treaty revisions fundamentally and this would be -as most observers acknowledge- a step in the right direction. The European Convention is already celebrated as “a vital innovation.”<sup>24</sup> The overall advantages of institutionalising the Convention would be the public debates prior to an IGC. Furthermore, there are little “side effects” for NPs or the European institutions, because this “additional” method of Treaty revisions may only be applied temporarily and could thus also be combined with other new mechanisms for NPs. Moreover, the Convention has “no formal” powers and is officially only preparing the next IGC. This is why neither the European institution would be weakened nor the decision-making process hampered because of the Convention.<sup>25</sup>

National parliamentarians would be directly involved at the European level (at least the few representatives of each parliament) and they would learn of the different points of view of other MPs and MEPs and government representatives. They would gain “first-hand experience of EU affairs” and could thus no longer claim, that they are not involved in shaping the future of Europe.<sup>26</sup> There are different ways of how the Convention could possibly be institutionalised. Amendments could be made to article 48 of the TEC. The Convention could be either obligatory before an IGC, but it could also be optional to be called upon by the heads of states of government to prepare an IGC.

## **12.2. Direct Involvement in the Legislative Process: a Role in Subsidiarity?**

The legislative function of national parliaments has been affected through the transfer of competencies. NPs now implement a large amount of European legislation without having a real say in the decision-making processes and sometimes the directives contain such precise provisions, that national parliaments only “rubber stamp” what has been decided in Brussels.<sup>27</sup> Given the large differences in effectiveness of the national scrutiny procedures it could be feasible to involve national parliaments directly in the legislative process at the EU level. This could guarantee an “equal standard” of participation for NPs and NPs could also be given a role in guarding compliance with the principle of subsidiarity. Within the Conventions subsidiarity is increasingly regarded as a political question and not a purely judicial one.<sup>28</sup> There have been proposals that identify different stages for national parliaments to be involved in the legislative process: there could be a new roles in shaping the broad political agenda (the pre-legislative phase), the legislative and the post-legislative phase.

### **12.2.1. A New Role in Shaping the Broad Political Agenda?**

In regard to giving NPs a new role in the long-term monitoring there have been proposals to involve them in the preparations of the Commission's annual work and legislative programme.<sup>29</sup> This might be controlling compliance with the principle of subsidiarity at the earliest stage possible. At present NPs receive the legislative programme from the EP, the institution that is jointly responsible for the programme together with the Commission.<sup>30</sup> This way, NPs are able to plan when and what to scrutinise or implement, since the legislative programme “establishes the priorities in the legislative field and fixes a timetable for the submission by the Commission of all the proposals and documents contained in the programme and for their examination by Parliament and the Council.”<sup>31</sup> So far, national parliaments have the opportunity to question their ministers “to ascertain what their governments think of the legislative programme as proposed, and to find out the priorities their ministers have set.”<sup>32</sup> It might, however, be of advantage, if there were rather European (than national) debates. This could be achieved in co-operation with the Commission and the EP. Thus, there could be regular hearings of Commissioners within the national parliaments after they have received the programme.<sup>33</sup> The presence of Commissioners in the national parliaments would ensure that all deputies could participate (and not only a minority as with the COSAC or joint parliamentary meetings). Nevertheless, these hearings could also take place together with the EP.<sup>34</sup> These hearings could be followed by debates

taking place simultaneously in all parliaments.<sup>35</sup> Real improvement of the parliamentary influence would mean that parliaments could make their voice heard. This could at first be done individually<sup>36</sup> and then collectively – for example by using the already established mechanisms such as COSAC meetings but also the specialised committee meetings. Those concerns that are listed by NPs could firstly be presented to the EP, which would take them into account in the legislative process.<sup>37</sup> Furthermore, reports could also be sent to the *Commission* and in particular to *General Affairs Council* which prepares decisions on the following years programme.<sup>38</sup>

Nonetheless, given the recent developments, scrutiny should not only be restricted to the annual legislative programme of the Commission but also apply to the programmes of the Council and the European Council. Therefore the “*multi-annual programme*” of the European Council and the “*annual operating programme of Council Activities*” as envisaged by Sevilla EC<sup>39</sup> should also be scrutinised by national parliaments.<sup>40</sup>

### **12.2.2. A New Warning Mechanism in the Legislative Phase?**

Apart from involving national parliaments better in the pre-legislative phases through scrutiny of the annual strategies and legislative programmes of the European institutions, their position should also be strengthened within the legislative phase. Currently, NPs can make their positions known to their national governments and the EP, but they do not have a ‘real say’ in these process - not at the European level. This is why it is often proposed to give them a say in guarding the application of the principle of subsidiarity. Proposals are ranging from general vetoes on legislative proposals<sup>41</sup> via pledges for a new “political body”<sup>42</sup> or simple mechanisms assuring that NPs are at least consulted.

When analysing the discussion in WG IV and I of the Convention, there seems to be a majority for a new “early warning mechanism” for NPs in order to prevent breaches of the principle of subsidiarity and to ensure that concerns by NPs are taken more fully into account by the legislators.<sup>43</sup> If there were to be such a mechanism, it should not only enable parliaments to react to Commission documents but also to interfere at later stages of the legislative process, since Commission proposals are significantly altered by the EP and the Council.<sup>44</sup> An interesting proposals has been made by Andrew Duff with regard to the co-decision procedure: a “complaint procedure” could be triggered by a significant majority of NP, by issuing “a reasoned amendment” this majority could demand a third reading within the Conciliation Committee. If the Council and the EP want to retain their original positions, they would have to achieve a higher threshold (a “super QMV” in the Council and absolute majority in the EP) during the voting procedure. NP should have four weeks to register a complaint and submit a reasoned amendment.<sup>45</sup>

But with the variety of decision procedures – which hopefully will be simplified and be made more transparent, already this would also facilitate scrutiny for NPs – it will be problematic to decide, when and where new mechanisms should be applied. Should it be restricted to first pillar matters or should NPs scrutinise in particular CSFP/ESDP matters?

### **12.2.3. Involvement in the Post-legislative Phase: A new Complaint Procedure?**

So far, the principle of subsidiarity is applied by the Commission, the European Parliament and the Council of Ministers and there is also judicial control by the European Court of Justice. Whereas some observers in the Convention have stressed that the question of subsidiarity is first of all a political question and that its application therefore requires the setting up of a new “political mechanism”, others think that it is primarily a judicial question and that control should remain with the European Court of Justice - any thoughts of reform should evolve around that institution. However, there have also been specific proposals with regard to involvement of NPs in the post-legislative phase.

### 12.3. Parliamentary Participation in the Procedures of Appointment

By legitimising the decisions made by their national governments, NPs have also a role in controlling “the governments’ European appointment policies.”<sup>46</sup> Despite the changes in Maastricht and Amsterdam which strengthened the EP<sup>47</sup> and the President of the Commission (in choosing the Commissioners), national governments play still a central role in the nomination procedures.<sup>48</sup> This also accounts for the nomination of other leading positions at other European institutions (for example the European Court of Justice and Court of first Instance, the European Central Bank, the Court of Auditors and others).<sup>49</sup> Given that there are hardly any legal provisions at the national level which would provide for parliamentary participation in these appointment procedures,<sup>50</sup> it seems to be essential to examine possible new ways of involving NPs – either at the national<sup>51</sup> or even at the European level.

With regard to the latter proposals have been made to involve NPs in the election or nomination of a “President of the Union.”<sup>52</sup> Executive powers could either be further attributed to the Commission or to the Council. There have been French, Spanish and British proposals for the nomination of a President of the Council<sup>53</sup> as opposed to proposals for electing the President of the Commission.<sup>54</sup> In both cases national parliaments could be involved. If the President of the Commission would be elected, this could be done by some form of *assembly* comprised of European and national parliamentarians.<sup>55</sup> Suggestions along these lines were also made by the current President of the Commission, Romano Prodi. After having been elected by MPs and MEPs, the President of the European Commission may also need the approval of the EU leaders.<sup>56</sup> Different ideas came from the Chairman of the European Convention. He would like to see parliaments equipped with less powers. According to him there could be some role for NPs in “confirming” some nominations of the heads of state of government.<sup>57</sup>

### 12.4. New Institutions or Reforms of the Existing Mechanisms?

The most radical proposals regarding new forms of involvement have been the creation of a ‘second’ or ‘third chamber’, the former being a chamber within the EP<sup>58</sup> and the latter being a new independent chamber.<sup>59</sup> The first proposal implies 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 substituted by such a second chamber.”<sup>60</sup> 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 competencies but perhaps some role in the second and the third pillar.<sup>61</sup> 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.<sup>62</sup> 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 refer to a ‘permanent conference’ or a ‘congress’<sup>63</sup> or a “Parliamentary Subsidiarity Committee” (PSC).<sup>64</sup> These would be more flexible arrangements. There could be regular meetings or they could take place on an ad-hoc basis.<sup>65</sup> Nevertheless, these ideas seem to ignore already existing mechanisms. Why should the experiences made in and with COSAC not be of use? Independently of the precise role that one would attribute to a new body, there are various possibilities of reforming COSAC. Most tasks that one would attribute to a new body could be exercised by a reformed COSAC.

If “heavy mechanisms” are to be avoided,<sup>66</sup> because of their potential negative consequences for the European institutions and the decision-making process, a reformed COSAC would seem to be a more appropriate solution. Although this might imply that COSAC changed its name and composition,<sup>67</sup> it could easily play a role in safeguarding subsidiarity, in some appointment procedures, in debating the

legislative programme of the Commission and the multi-annual programme of the European Council and it could even play a role in CSFP.<sup>68</sup> There could be also “non-routine joint conferences of MPs and MEPs” which would discuss particularly problematic dossiers (such as enlargement or reform of CAP) bringing together the specialists and not the EU generalists of the EC/EU Affairs Committees.<sup>69</sup>

### **13. Towards a New Role or towards a Re-Orientation of National Parliaments?**

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

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

This does not mean that NPs do not exercise essential “European functions”. All NPs have become European actors and this should be acknowledged more - for a start for example in the European Treaties. Their European role consists in legitimising primary and secondary legislation for example by ratifying treaty amendments or giving assent to acts which might have implications for the national constitutions. This may be only a little impact, because NPs are to decide upon matters that have been decided already (in Brussels). The little possibility they have to be involved at an earlier stage is their participation in the national policy formulation process. As we have seen their effectiveness to participate varies largely. And still even this little impact via the national level is again undermined when decisions a taken by a majority.

Still, NPs are important European actors when it comes to the process of implementation. This is a vital and necessary task. For NPs however it may have meant to exchange their former legislative functions for new executive ones. Given this little impact in shaping the European policy process, there should be new roles for NPs.

NPs will have to continue to hold their government accountable, this is why reforms of the national procedures and mechanisms are important. This should be primarily a task for the weaker NPs and their governments. Progress may be reached to a limited extent through best practice studies. Benchmarking may help its effects may be limited as to spurring real changes. Further considerations should be given to the already existing “rights” of NPs in the Protocol on the role of the national parliaments of the Amsterdam Treaty. These could be extended in scope, thereby creating a common standard of minimum rights for NPs. This could be also done in form of (a) new Treaty Article(s).

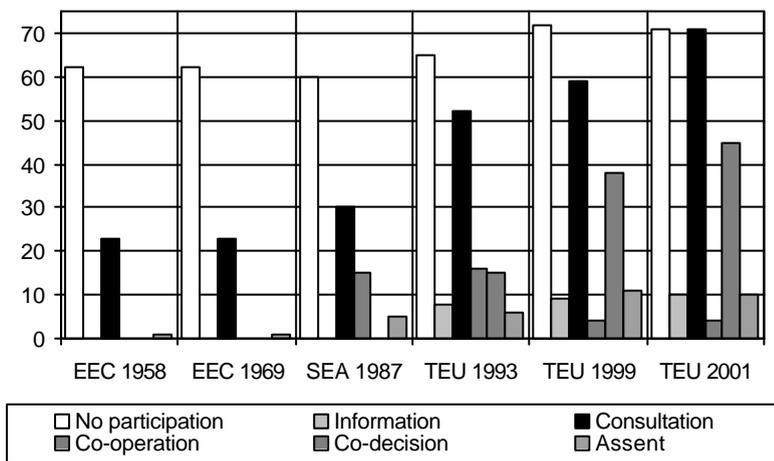
Equal possibility of participation could be reached more easily at the EU level. Nevertheless, it might not necessarily involve the creation of new bodies or mechanisms that might render the decision-making processes more cumbersome. Better forms of involvement are temporarily exercised tasks, such as the participation in the Convention or a role in possible new appointment procedures. However, the existing structures through which NPs have become multi-level actors could also be reformed. In particular COSAC and the joint meetings of specialised committees do provide a good basis for reforms. NPs could exercise a new role in checking compliance of the principle of subsidiarity: at the pre-legislative stage this could be the scrutiny of the legislative programme of the Commission and the (multi-) annual strategies of the Council and the European Council. This task would also help parliaments to plan and time their actions and reactions at the national level. These reforms would not require new bodies. However, if the Convention and the IGC will decide to establish new roles for national parliaments in the European architecture on the basis of the existing structures remains to be seen.

Table 1: European Parliament and Council decision-making powers since the entry into force of the Amsterdam treaty

Participation of the EP	Unanimity in Council		QMV in Council		Simple Majority in Council		Special majorities other than QMV		Total	
	No. of Art's	%	No. of Art's	%	No. of Art's	%	No. of Art's	%	No. of Art's	%
Consultation	33 EC	17.09	23 EC	11.91	1 EC	0.518	2 EC	1.03	59 EC	30.57
	4 EU	13.79	1 EU	3.44	1 EU	3.44	1 EU	3.44	7 EU	24.13
Co-operation	0 EC	0	4 EC	2.07	0 EC	0	0 EC	0	4 EC	2.07
Co-decision	5 EC	2.59	33 EC	17.14	0 EC	0	0 EC	0	38 EC	19.67
Assent	6 EC	3.10	2 EC	1.03	1 EC	0.518	2 EC	1.03	11 EC	5.69
	2 EU	6.89							2 EU	6.89
Information	1 EC	0.518	8 EC	4.14	0 EC	0	0 EC	0	9 EC	4.66
Parliamentary exclusion	31 EC	16.06	31 EC	16.06	4 EC	2.07	6 EC	3.10	72 EC	37.30
	9 EU	31.03	3 EU	10.34	3 EU	10.34	5 EU	17.24	20 EU	68.96
<b>Total</b>	<b>76 EC</b>	<b>39.38</b>	<b>101 EC</b>	<b>52.33</b>	<b>6 EC</b>	<b>3.10</b>	<b>10 EC</b>	<b>5.18</b>	<b>193 EC</b>	<b>100.00</b>
	<b>15 EU</b>	<b>51.72</b>	<b>4 EU</b>	<b>13.79</b>	<b>4 EU</b>	<b>13.79</b>	<b>6 EU</b>	<b>20.68</b>	<b>29 EU</b>	<b>100.00</b>

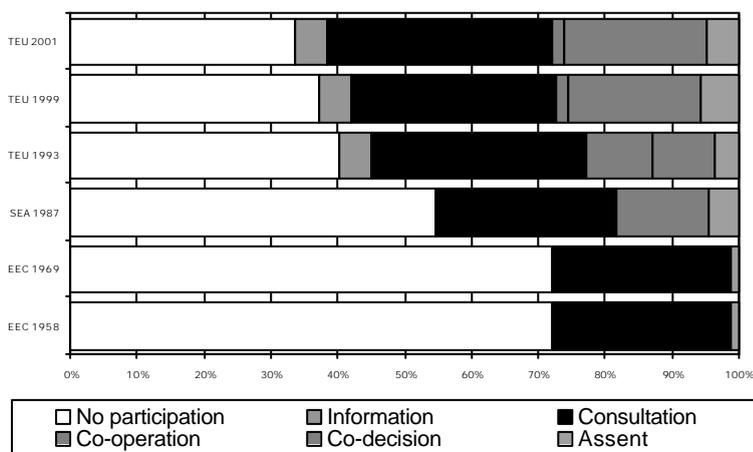
Source: Treaty of Amsterdam, author's calculations.

Figure 1a: Evolution of the EP's legislative powers 1957-2002 (absolute numbers)



Source: Maurer 2001a, calculation based on EC/EU treaties 1952-2001.

Figure 1b: Evolution of the EP's legislative powers 1957-2002 (relative)



Source: Maurer 2001a, calculation based on EC/EU treaties 1952-2001.

Figure 4: Overall Duration of Co-Decision Procedures

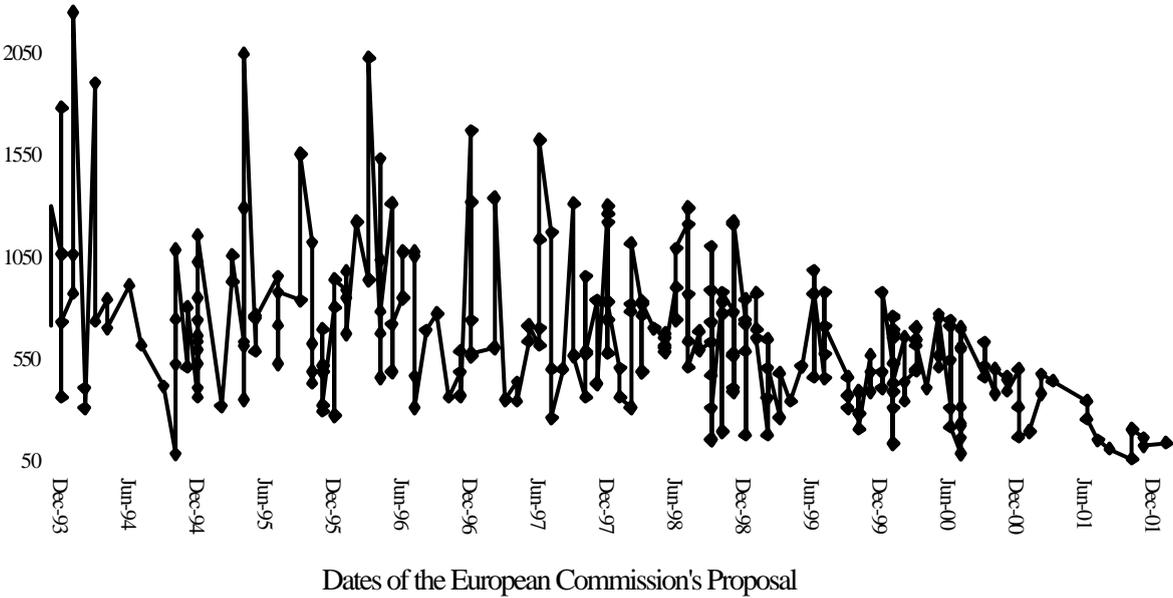
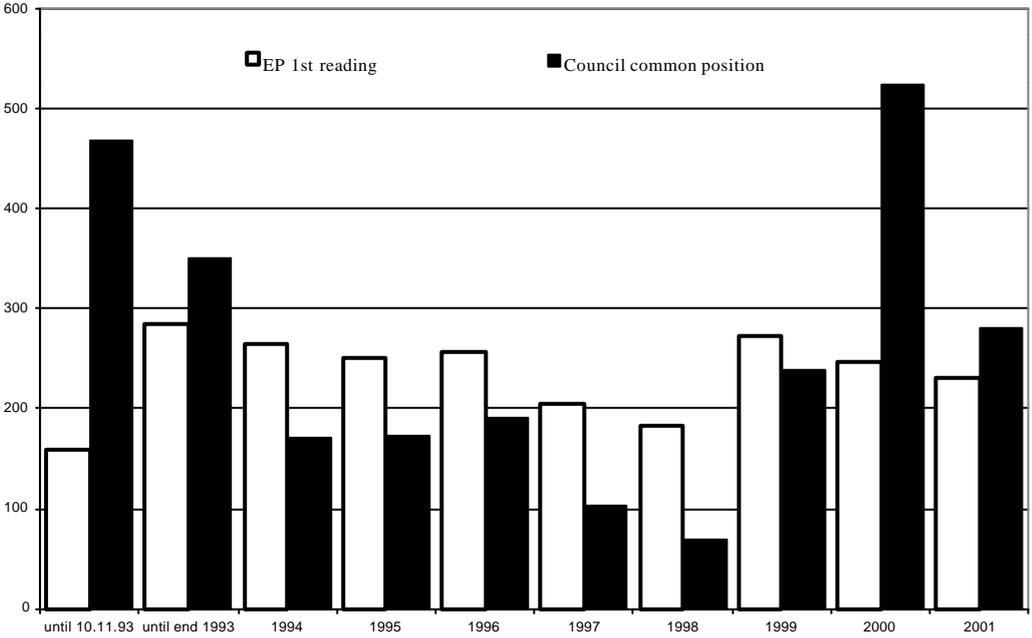


Figure 5: Time Lags for EP 1<sup>st</sup> readings and Council Common Positions



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- 1 See: Rules of Procedure of the Council of Ministers, Annex.
- 2 See for an overview: Maurer, Andreas: *Parlamentarische Demokratie in der Europäischen Union. Der Beitrag des Europäischen Parlaments und der Parlamente der EU-Mitgliedstaaten zur Reduzierung des Demokratiedefizits*, Baden-Baden 2002, pp. 10-29, 196-211; Wessels, Wolfgang: *Die Öffnung des Staates. Modelle und Wirklichkeit grenzüberschreitender Verwaltungspraxis 1960-1995*, Opladen 2000, pp. 337-340.
- 3 Schüttemeyer, Suzanne: 'Funktionsverluste des Bundestages durch die europäische Integration?', in: *Zeitschrift für Parlamentsfragen*, No. 2/1979, p. 261.
- 4 See the contribution by Andreas Maurer and Wolfgang Wessels in Maurer/Wessels, 2001.. For earlier findings, see Laprat, Gérard: 'Parliamentary Scrutiny of Community Legislation: An Evolving Idea', in: Laursen, Finn/Pappas, Spyros (eds.): *The Changing Role of Parliaments in the European Union*, Maastricht: European Institute of Public Administration 1995, pp. 4-10; Norton, Philip (ed.): *National Parliaments and the European Union*, Special Issue of *The Journal of Legislative Studies*, No. 3/1995.
- 5 See the contribution by Andreas Maurer in Maurer/Wessels, 2001..
- 6 See Olsen, Johan P.: *Organising European Institutions of Governance. A Prelude to an Institutional Account of Political Integration*, Arena Working Papers WP 00/2, Oslo 2000.
- 7 See the contributions by Finn Laursen on the Danish Parliament and by Tapio Raunio on the Finnish Parliament.
- 8 See the documentation by Astrid Krekelberg in Maurer/Wessels, 2001., document No. 3.
- 9 See House of Commons, The European Scrutiny Committee, *European Scrutiny in the Commons - Thirtieth Scrutiny Report*, [www.parliament.the-stationery-office.co.uk](http://www.parliament.the-stationery-office.co.uk)
- 10 This charta should include "a pledge by national parliaments to promote the openness and transparency of decision-making in the European Union; a pledge by national parliaments to review their own procedures with a view to increasing the opportunities for holding their own government ministers to account in relation to EU decision-making and a pledge by national parliaments to review their own procedures with a view to promoting the engagement of the citizen in the European Union." See House of Commons, The European Scrutiny Committee, *European Scrutiny in the Commons - Thirtieth Scrutiny Report*, [www.parliament.the-stationery-office.co.uk](http://www.parliament.the-stationery-office.co.uk)
- 11 This question was also raised in the first meeting of WG IV, the need to respect "the national constitutional requirements" were also - as in the current form of the PNP- stressed; See European Convention Secretariat to Working Group IV "National Parliaments", Summary of the meeting held on 26 June 2002, CONV 128/02, WG IV, Brussels, 1 July 2002, p. 3
- 12 Protocol on the role of the national parliaments in the European Union (Treaty of Amsterdam), Protocol No.9, <http://www.cosac.org/eng/basic/index.html#Protocol>
- 13 See the second paragraph of the PNP.
- 14 It is rather a matter of parliaments of having time for scrutiny of these documents.
- 15 See XXIIIrd COSAC, Versailles, October 2000, <http://www.cosac.org>
- 16 The Chairman of WG I also enclosed this proposal on his list of points to be examined. See Mendez de Vigo, Iñigo (Chairman of WG I), "Initial proposals for conclusion", Working Group I on the Principle of Subsidiarity, WG I- WD 09, CONV 210/02, Brussels, 29 July 2002, See also Proinsias de Rossa (Member of the Irish Parliament), "Role of National Parliaments", WD 010 - WG IV, Brussels, 15 July 2002
- 17 See XXIIIrd COSAC, Versailles, October 2000, <http://www.cosac.org>
- 18 See European Commission, Paper from the Commission to WG IV on "Implementation by the Commission of the Amsterdam Protocol on the role of national parliaments in the European Union", WD 009 - WG IV, Brussels, 12 July 2002, p.4
- 19 Protocol on the role of the national parliaments in the European Union (Treaty of Amsterdam), Protocol No.9, <http://www.cosac.org/eng/basic/index.html#Protocol>
- 20 See House of Commons, The European Scrutiny Committee, *European Scrutiny in the Commons - Thirtieth Scrutiny Report*, [www.parliament.the-stationery-office.co.uk](http://www.parliament.the-stationery-office.co.uk)
- 21 As for example in certain speeches by Joschka Fischer, Tony Blair and Lionel Jospin. See introduction for the references to their speeches.
- 22 See Pöhle, Klaus, 1998, op.cit., p.85
- 23 Pernice, Ingolf, 2001, op. cit., p. 4
- 24 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
- 25 If the Convention presents a draft proposal that is backed by a very large majority, this may however have some impact on the decisions made by the heads and state of governments in the subsequent IGC.
- 26 Duff, Andrew, Paper for the Working Group IV – "Role of National Parliaments", Working document 4, Brussels, 5 July 2002, p. 5
- 27 See Praesidium of the European Convention, The role of the national parliaments in the European architecture, Brussels, 29 May 2002, CONV 67/02, p. 5
- 28 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
- 29 See Maurer, Andreas, "Beyond unilateral scrutiny: The scope of options", Paper for Working Group I (Subsidiarity), Working Document 7, Brussels, 16 July 2002; also Secretariat of the European Convention, Working Group IV on "National Parliaments"; See also "Summary of the meeting held on 18 July 2002", CONV 204/02, Brussels, 16 July 2002; Secretariat of the European Convention, Working Groups on Subsidiarity and National Parliaments, "Summary of the joint meeting on Monday 22 July 2002", CONV 210/02, Brussels, 30 July 2002

30 Laprat, Gerard, 1995, op. cit., p. 14

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

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

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

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

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

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

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

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

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

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

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

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

43 This would be from parliamentary view relying on political criteria. See Secretariat of the European Convention, Working Groups on Subsidiarity and National Parliaments, "Summary of the joint meeting on Monday 22 July 2002", CONV 210/02, Brussels, 30 July 2002; See also Mendez de Vigo, 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

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

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

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

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

48 Pernice, Ingolf, 2001, p. 8

49 Ibid, p.8

50 Ibid, p.8

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

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

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

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

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

56 Parker, G., "Prodi changes his mind on electing European president", Financial Times, July 29 2002, p. 5

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

58 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](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

59 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>

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

61 See proposal made by Tony Blair.

62 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](http://www.eiz-niedersachsen.de)

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- 63 Jospin, Lionel, Speech on the 28th of May 2001 in Paris, Maison de la Radio, [www.eiz-niedersachsen.de](http://www.eiz-niedersachsen.de)
- 64 Pernice, Ingolf, The role of National Parliaments in the European Union, Walter Hallstein-Institut, WHI-Paper 5/01, Juli 2001, p. 15
- 65 Kiljunen, Kimmo (representative of the Finnish Parliament), "Oversight of Subsidiarity", WD 007 - WG IV, Brussels, 5 July 2002
- 66 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
- 67 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
- 68 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
- 69 Duff, Andrew, Paper for the Working Group IV – "Role of National Parliaments" , Working document 4, Brussels, 5 July 2002