

Democracy and Accountability in the Enlarged European Union

Parliamentary participation in EU affairs in Austria, Finland and Sweden: Newcomers with different approaches

Christine Neuhold¹

Abstract

The national parliaments in Austria, Finland, and Sweden faced similar challenges as regards to parliamentary participation in EU affairs when their countries became EU members in 1995. They chose different institutional frameworks, where in Austria the respective legal provisions were comparatively rather strong. However, the Austrian parliament rarely makes use of its extensive formal powers but finds it difficult to select the relevant EU issues to exercise its controlling powers. Finland and Sweden, on the other hand, did not provide for such extensive room of manoeuvre for their parliaments but have been more successful in selecting important EU matters to exercise parliamentary control. Especially the Finnish solution, where the parliament focuses on issues that should have been decided by the parliament if Finland had not been a member of the EU, has proven to be particularly successful.

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¹ With Hans Hegeland

Introduction

As is well known, three countries joined the European Union (EU) in the last round of enlargement: Austria, Finland, and Sweden. These three new Member States were seen as “green” members with high environmental and social standards.

This article will, however, not attempt to evaluate the effects of EU membership on the new Member States as a whole, but will more specifically focus on the respective parliamentary involvement of the national parliaments in EU affairs.² On a first glance the three new Member States have strong policy-making parliaments in EU affairs when compared to other EU Member States (Maurer and Wessels 2001). This article will set out to compare the mechanisms of dealing with EU matters in the three parliaments in more detail. Not only will the formal rules for parliamentary control be examined, but their implementation in the practical political process will also be under scrutiny. As the flow of information to each parliament and the mechanisms for scrutiny are crucial for any attempt to influence EU matters, these issues are subject to analysis in part one of the article. Furthermore, the practical and political influence and implications of the parliaments’ dealing with EU matters are discussed. Finally, the threads are drawn together and the necessity of implementation of formal rules is discussed. The relevance of the findings to the debate on the future of Europe and the democratic deficit are also touched upon.

I. Formal rules: The institutional framework of European decision-making

Since the Single Act and the Maastricht Treaty national parliaments of the EU Member States have obtained various prerogatives as regards to European affairs: the right to be informed of EU draft legislation and the right to give a more or less constraining opinion. Comparative analysts have pointed to the institutional convergence in the adaptation of national parliaments to the European integration process. Most parliaments have established a European affairs committee devoted to the sifting or/and the scrutiny of EU draft legislation. However, the level of activity of national parliaments regarding European affairs still differs greatly (Rozenberg 2002, Wessels and Maurer 2001). The objective of this paper is to question the observed variations on a comparative basis within the three “new” Member States.

When turning to our country studies we find that the role of the parliament within EU affairs is (or will be) mentioned in the constitutions of all three countries under scrutiny. The Austrian constitution was modified in 1995, giving the parliament extremely far-reaching controlling powers. In Finland a new constitution came into force on March 1st 2000, stipulating that the Parliament is to participate in the national preparation of decisions taken at EU-level. All political parties in Sweden agree that the right of the parliament to receive information and deliberate with the government on EU matters

² For an analysis on the effects of EU-membership on Austria, see: Falkner (2000). For Finland, see Raunio and Wiberg (2000), for Sweden see Hegeland and Mattson (2000) and Miles (ed) (2000).

should be enshrined in the Swedish constitution. These rules will most likely come in to force by January 1st 2003. The fact that the role of parliament as regards to EU affairs is enshrined in the constitution of all three countries highlights the importance that is attached to these matters, at least at a symbolical level.³

Austria⁴

A.I.1. Background: State of affairs prior to EU-membership

In Austria the debate on Austrian membership in the EU has a long tradition, but it took forty years until concrete negotiations for EU-membership eventually began at the end of the 1980s. Within the debate immediately prior to EU-membership, questions of democracy and loss of competencies *inter alia* played a major role. Thus, in the quest of keeping popular opposition at a minimum, the main political actors introduced compensatory measures. Great efforts were undertaken to preserve national traditions (also) as regards to parliamentary control, which will be described in detail below.

One also has to add that the perceived democratic deficit of the European Union and the fear of being a "toothless tiger" as regards to EU affairs were also important driving forces behind the quest of the Nationalrat and the Bundesrat to secure a rather strong role for themselves. Furthermore the (then) Federal Government did not have the two thirds majority in parliament, which was the precondition to pass the Constitutional Acts on Austria's accession to the EU. Two opposition parties – the Greens and the Liberal Forum – had to be convinced to vote in favour of the changes, and the provisions to strengthen the parliament's position with regard to EU matters were part of the compromise, not to say trade off (Fitzmaurice 1996, Wohnout 1999).

A.I.2. (Controlling-) powers of the Austrian parliament

Prior to describing the institutional framework in European decision-making it has to be pointed out that the Austrian parliament consists of two chambers: the directly elected first chamber (Nationalrat) and the indirectly elected second chamber (Bundesrat), which is made up of representatives of the Länder.

The competences of the Austrian parliament and here especially those of its Main Committee were strengthened - as regards to foreign policy issues and the participation of the Nationalrat and of the Bundesrat in European affairs (Neisser 1994).⁵ The modus of parliamentary participation concerning EU matters was laid down in the so-called EU-Begleit-Bundesverfassungsgesetz, which was passed by the Nationalrat on 15 December 1994.⁶ By way of this amendment, the Austrian Federal Constitution establishes a system, which allows for participation of the Nationalrat and the Bundesrat in EU affairs. Articles 23e and 23f of the Constitution confer the following main competences to both the Nationalrat and the Bundesrat:

³ The rights of the national parliaments as regards to EU matters are also mentioned in the constitutions in Belgium, France, Germany, Greece, and Portugal.

⁴ This part of the paper draws on: Blümel and Neuhold (2001).

⁵ See Art. 50 to 55 of the Austrian Federal Constitution.

⁶ See FLG No. 1013/1994.

- **information rights**, where the competent member of the federal government has to submit – without any delay - information about all projects within the framework of the European Union to the Nationalrat and the Bundesrat, and
- the possibility to present **binding opinions** to the respective Federal Minister. The legal character of the binding opinions is comparable to that of a resolution – however, an opinion is (in contrast to a resolution) legally and politically binding (Urbantschitsch 1998, p. 46 and Neisser 1998, pp. 336-337). The Nationalrat and the Bundesrat have the right to present binding opinions on issues falling not only into the first, but also the second and the third pillars of EU law (Morass 1996). In case the Federal Minister departs from a binding opinion, this can only be done if there “compelling reasons of foreign or integration policy”⁷ and *after* he/she has consulted the EU Main Committee.

So far this possibility was resorted to merely once in connection with the very first binding opinion. The respective legal provision in the rules of procedure of the Nationalrat was not in force at that time. The government did in fact report back to parliament anyway, but no further action was taken. Now the obligation to report to parliament is actually enshrined in the rules of procedure of the Nationalrat. This report would have to be distributed among all members of the Nationalrat, although it would not be public. Furthermore, the respective report could be put on the agenda of the EU Main Committee, which would then be free to examine it. Up to fall 2000 this procedure was, however, not implemented in the practical political process.

A.I.3. The institutional setting of parliamentary scrutiny

Just like other parliaments in Europe the Austrian parliament has diverse possibilities - i.e. interpellation, urgent question, debate on matters of topical interest - to control the work of the government ex-post. Additionally, the Nationalrat - and to a lesser extent - the Bundesrat have increasingly become fora for far-reaching and even controversial debates on foreign policy (Neisser 1998, p. 339).

However, the Austrian parliament has also secured the possibility to fulfil the exercise of control ex-ante. The rules of procedure of the Nationalrat, as adapted in 1996, provide detailed rules on the parliamentary participation in EU decision-making. Note that European Union affairs are discussed on committee level as the EU Main Committee and a specialised Standing Sub-Committee are in charge of fulfilling this duty on behalf of the Nationalrat.⁸ The Sub-Committee only came into existence in 1999, as in the former legislative period no compromise could be found as to who should be the chairperson to such a committee. Both committees have the possibility to pass a binding opinion. There is no duty of the committees to report separately to the Nationalrat when a binding opinion is passed. The opinion must be transmitted immediately to the Federal Chancellor, the Minister on Foreign Affairs and the competent minister.

Similar rules are in place for the Bundesrat (Körner 1995, p. 522). The relevant reform to the rules of procedure of the Bundesrat was, however, only passed in 1997.⁹ Previously the President’s Conference of the Bundesrat agreed to conduct negotiations on EU affairs only if one parliamentary group or the members of the Bundesrat of one

⁷ Original in German: “zwingende außen- und integrationspolitische Gründe.”

⁸ See sect. 31c, 31d and 31e of the rules of procedure of the Nationalrat.

⁹ See FLG I No. 65/1997.

province put forward a respective demand. To create a relevant forum for discussion, the Bundesrat elected the members of the Committee on European Affairs in February 1995. As this committee did not have the possibility to pass a binding opinion, such matters were referred to the plenary, which then had the possibility to pass a binding opinion on the respective matter. This rather complicated mechanism was based on the fact that Art. 23e of the Federal Constitution of 1994 provided that the respective Committee only had the right to discuss the matter, whereas the plenary of the Bundesrat was given the right to pass an opinion. In 1996 an amendment to the Constitution¹⁰ gave the Committee on European Affairs the possibility to pass a binding opinion similar to the EU Main Committee of the Nationalrat.¹¹ One has to note that the composition of the EU Main Committee can change according to the competence of the members regarding a certain matter (Neisser 1998, p. 352, Parlamentsdirektion 1997, p.11).

Apart from the EU Main Committee and the Standing Sub-Committee, which deal with EU affairs, the rules of procedure of the Nationalrat foresee the possibility to install a further committee. This committee would - according to the current composition of the Nationalrat - have five members: the chairman of the Standing Sub-Committee on matters of the European Union and one representative of each parliamentary group. This committee would be obliged to fulfil the task of a 'fire-brigade': given that the minister negotiating on the European level was bound by a binding opinion this committee would function as a consultative body in parliament with the aim of enabling a compromise at Council level (Neisser 1998, p. 351). Formally this committee must, however, not speak on behalf of the Standing Sub-Committee (Wieser 1998). Up to this point in time, this committee has met very infrequently.

Overall, one can conclude at this point that the provisions to control the government provide the Austrian parliament with rather extensive competencies as regards EU affairs, at least, on paper. A number of authors consider the Austrian stipulations as some of the most-far reaching when compared to other EU Member States (Morass, 1996, p. 37, Falkner 1998, p. 231).

Finland

F.I.1. Background: State of affairs prior to EU-membership

After the Cold War and an economic depression in the early 1990s Finland began to undertake the first steps on the road to EU-membership. There was a wide spread consensus among the Finnish political elite that Finland should under all circumstances become a member of the EU. Finland has become the most pro-integration country of the Nordic Member States, but voters are not as supportive of EU integration as the political elite (Raunio 2001).

FI.2. (Controlling-) powers of the Finnish parliament

The Finnish Constitution requires the government to furnish parliament with information regarding the preparation of EU-affairs.¹² The government must also hear the views of parliament and explain and justify the policies that it adopts within the EU.

¹⁰ See Art 23e, Para. 6 of the Austrian Constitution.

¹¹ See sect. 13a Para. 2 of the rules of procedure of the Bundesrat.

¹² This part draws mainly on material from the Finnish Eduskunta, most of which can be found at <http://www.eduskunta.fi/>.

The scrutiny of EU affairs in parliament has been entrusted to the parliamentary committees but the view of parliament concerning EU affairs is usually expressed through and by the Grand Committee.

Section 96 of the Finnish constitution explicitly deals with the participation of the parliament in the national preparation of EU matters. An essential stipulation is the following:

“The parliament considers those proposals for acts, agreements and other measures which are to be decided in the European Union and which otherwise, according to the constitution, would fall within the competence of the parliament.”

This sentence forms the basis for a selection mechanism for the Finnish parliament. These matters are referred to as “U Matters” (Jääskinen and Kivisaari 1997). U matters encompass all proposals for EU measures on subjects that would fall within the competence of parliament, were Finland **not** a member of the EU. The government shall provide the appropriate committees with information on the consideration of the matter in the European Union. The Grand Committee or the Foreign Affairs Committee shall also be informed of the position of the government on the respective matter.

F.I.3. The institutional setting of parliamentary scrutiny

The Grand Committee acts as the EU affairs committee of parliament. Its main task is to ensure that parliament has a say in the EU decision-making process, and that parliamentary supervision is carried out. The Grand Committee also continues to take part in certain domestic legislative procedures. The Grand Committee has 25 members and 13 substitute members, of which several are prominent MPs, such as committee chairmen (Raunio 2001).

The Grand Committee considers the so-called U matters and expresses the view of parliament with regard to these. The Foreign Affairs Committee considers proposals pertaining exclusively to foreign and security policy. Where necessary, the Grand Committee or the Foreign Affairs Committee may issue a statement on the proposal to the government. In addition, the Speaker's Council may decide that the matter is taken up for debate in plenary session, during which, however, no decision is made by the parliament.

U matters are brought up before parliament by means of a communication sent by the government to the Speaker of parliament. A proposal for the EU decision in question is annexed to the communication. The speaker sends it to the Grand Committee for deliberation. The communication is also forwarded to one or more specialised committees of parliament, within whose competence the matter falls. The task of the specialised committees is to deliver an opinion on the communication to the Grand Committee. For U matters the specialised committees are **obliged** to present a report to the Grand Committee on issues falling within their competence.

The Grand Committee expresses the view of parliament after discussing the EU proposal, the communication of the government on the proposal and the opinions of the specialised committees. Before doing so, the Grand Committee may also hear the competent Minister together with the civil servants and other experts. The position of

the Grand Committee usually takes the form of an oral conclusion of its deliberations and is submitted by the chairperson. The position of the Grand Committee may also be formulated in a written report.

The view expressed by the Grand Committee on a U matter is politically binding on the government due to the principle of accountability to parliament. The government must notify the Grand Committee immediately of the reasons for its actions if it has been unable to comply with the view of the Grand Committee, for example because of a change of circumstances within the negotiation process on European level. An effort is therefore made to formulate the view of the Grand Committee before the consideration of the U matter begins in the organs that prepare the decisions of the Council. A U matter continues to be pending before the Grand Committee until the Council of the Union taken its final decision on the matter.

Before each meeting of the Council of Ministers, the members of the government who are to participate therein are to communicate, to the Grand Committee, the agenda of the meeting and the position that the Finnish representatives will adopt. These reports are usually submitted at a meeting of the Grand Committee held on the Friday preceding the meeting of the Council. The Grand Committee always receives reports afterwards of the proceedings and the outcome of the Council meeting from the ministry concerned.

Sweden

S.I.1. Background: State of affairs prior to EU-membership

Sweden joined the EU after a narrow yes in the referendum,¹³ due to a widespread scepticism towards the EU among the voters. One way to alleviate the fear that the EU would make the political system less democratic was to ensure that the national parliament was given a strong role in EU matters. The EU was also regarded as being based primarily on the modus of intergovernmental co-operation, and not as a supranational organisation. The importance attached to the parliament is reflected in the words of the Speaker of the Swedish parliament, the Riksdag:

“The Member States are the Masters of the Treaties, and within the Member States the parliaments are the Masters. And voters are the Masters of the parliaments.”¹⁴

The rules concerning the conduct of EU business within the Riksdag were enshrined in the Riksdag Act, whose legal status is somewhere between the boundaries of a normal law and the constitution. From 1997 the rules were merged into *one* chapter in the Riksdag Act. The government has proposed, in a bill to the parliament, that the Constitution should mention the basic rights of the parliament regarding EU business¹⁵.

S.I.2. (Controlling-) powers of the Swedish parliament

The Riksdag Act states that the government should keep the Riksdag continuously *informed* of developments in the European Union and account for its actions in the

¹³ 52,3 % voted yes, 46,8 % voted no and 0,9 % blank. 83,3 % participated.

¹⁴ Address at the Seminar "The European Parliament and the National Parliaments Influence in the Legislative Process" at the European Law Conference 2001-06-11. (Published at the website of the Riksdag, www.riksdagen.se.)

¹⁵ Government bill 2000/01:72.

EU.¹⁶ The government should also inform the EU Committee of matters that should be treated in the Council of Ministers. Furthermore, the government should *confer* with the EU Committee regarding the conduct of negotiations in the Council prior to decisions that the government deems as being of "significance", and on other matters that the EU Committee determines.

S.I.3. The institutional setting of parliamentary scrutiny

The Swedish parliament regards its work as regards to EU matters as building on three main pillars: the standing (sectoral) committees, the EU Committee, and the Chamber. Since 1997, the Riksdag Act states that the 16 standing committees should monitor EU activities within their respective areas. The committees should especially focus on the early stages of the EU decision-making process, preferably even *before* the European Commission presents its final proposal for EC legislation. That is to say, the committees could focus on such document as Green Papers and White Papers from the Commission. The committees may submit a report to the chamber and propose that the Riksdag makes a resolution asking the government to pursue a certain policy in the EU. These resolutions are not legally binding, but within the practical process the government must give an account how they have acted with regard to these resolutions. Committees may also make statements in their reports, without asking the chamber to make an explicit resolution. Further, the committees are entitled to send reports in writing to the EU Committee.

The EU Committee focuses primarily, but not exclusively, on decision making within the Council of Ministers. The Committee consists of 17 members and 30 deputies; where in the practical political process there is no difference between members and deputies. The political parties are proportionally represented in the EU Committee (as well as in the sectoral committees). The members of the EU Committee are also members of sectoral committees; 14 of the 16 sectoral committees are represented in the EU committee. The committees on Finance, on Foreign Affairs, and on Environment and Agriculture have representatives from 5 of the 7 political parties in the EU Committee.

Each Friday, the committee meets with the ministers who will attend Council meetings in the following week. The minister commences the meeting by giving an account of the last Council meeting, with the members of the committee being entitled to ask questions. Subsequently the minister reviews the items on the agenda for the forthcoming Council meeting. The members give their view, and the chairman concludes whether there is a majority in favour of the government or not.

The mandate given is politically but not legally binding. If the government finds it necessary to deviate from the position of the EU Committee, the government may seek renewed contact with the committee. If the government still does not act in accordance with the view of the committee, the government should state the reasons for that in the report it submits in writing after each Council meeting. There must be very good reasons if the government should not adhere to the position of the Committee. The normal parliamentary instruments of control, such as interpellations and ultimately a vote of no confidence, can be used by the Riksdag. The Riksdag has also stipulated that it is up to the Riksdag, and not the government, to decide whether the reasons suffice or not.¹⁷

¹⁶ This part draws mainly on Hegeland (2001).

¹⁷ Riksdagskommittén, förs. 2000/01:RS1 p. 137.

II. Information Submitted and its Treatment in Parliament

Austria

A.II.1. Information submitted to the Austrian parliament

According to the constitutional provisions and the respective stipulations of the rules of procedure of the Nationalrat and the Bundesrat **all** documents connected to the EU are submitted to the parliament without any pre-selection or co-ordination by the competent government ministers. No explanatory abstracts are to be included, as there is no duty to submit additional information. The government has agreed, however, to submit cover pages which contain basic information concerning the respective document, but this has not led to a substantial change as these papers are considered not to be very informative. Given the number of documents submitted to parliament, one can easily imagine that this causes severe difficulties to select the material of relevance (Urbantschitsch 1998, p. 47-48, Wohnout, Helmut, 1999, pp. 74, 78). Some even argue, that it is the "idea of the bureaucracy to flood parliament with documents, until it is unable to breathe." (Falkner and Mueller 1998, p. 232).

TABLE I: Number of EU-documents submitted to the Austrian Parliament

XIX.	Legislative Period: November 1995-13.1.1996	17.968
XX.	Legislative Period: 14.1.1996-28.10.1999	75.958
XXI.	Legislative Period: since 29.10.1999 (as of 21.9.2000)	17.428

Source: Austrian parliament

One has to note, however, that in some cases the parliament receives the **same** document two or even three times, as for example different language versions are submitted and different ministries dealing with the same issue submit the same document. Around 70 per cent of the incoming documents come from the Council, 20 per cent from the Commission, seven per cent of the Permanent Mission of Austria in Brussels and the Federal Ministries, and one per cent from the European Parliament, the European Court of Justice and the Court of Auditors, respectively. Around 20 per cent of the documents submitted by the Council and the Commission are agendas (Kerle and Müller 1999, p. 4).

All incoming documents are inserted into a data-base, which is accessible via Intranet to the parliamentary groups and employees of the parliamentary administration. A large bulk of the documents is submitted by the Federal Ministries, but also directly by EU institutions or by the Austrian Permanent Representation in Brussels. The Austrian parliament recently created a special e-mail address in order to speed up the submission of EU documents as well as to minimise the bureaucratic burden by not having to scan this substantial number of documents.

A.II.2. Number of EC/EU documents considered by parliament

Between the end of 1995 and the beginning of 1996 92 documents were on the agenda of the EU Main Committee (Kerle and Müller 1999, p. 4). From 1996 to 1999 33 meetings took place and 155 documents were on the agenda. Up to September 2000 five meetings were held during the XXI. legislative period, which started on 29 October

1999 and 15 documents were discussed.¹⁸ Up to September 2000 the Sub-Committee on European Affairs met five times and discussed 13 documents. The topics considered range from environmental issues, health, animal protection, EUROPOL, data protection, Economic and Monetary Union (EMU), Eastern enlargement and employment to general preparatory discussions before Council meetings.

Within the Nationalrat a so-called preparatory group¹⁹ decides by consensus as to which documents should be discussed during the meetings of the EU Main Committee (Parlamentsdirektion 1997, p. 10, Urbantschitsch, 1998, p. 43).

A.II.3. Public access of documents, debates and outcomes

The position of the EU Main Committee - when dealing with EU matters - differs somewhat when compared to other committees. Despite the fact, that the EU Main Committee can vote to bring EU matters before the plenary by drawing up a report, the place to discuss EU matters is normally the Committee itself. This is also the reason why meetings of the EU Main Committee and the Sub-Committee on EU matters are open to the public and written records are published.²⁰ However, these records are only composed of extracts of the debate.²¹

Summary minutes were available for the first time for the sitting of the EU Main Committee on 4 October 1996. Previously the meetings of the EU Main Committee on European projects had been confidential as any other committee meeting. However, even prior to 1996 the text of the binding opinions was often published in the literal sense by the press service of the parliamentary administration (See Kerle and Müller (1999, p. 12; personal communication). The rules of procedure of the Bundesrat contain similar provisions as regards to openness and transparency.²²

It has to be pointed out that there is only little interest by the public to attend committee meetings.²³ Furthermore, it is not possible for the EU Main Committee to transfer EU documents to specialised committees. The EU Main Committee may decide, however, to bring certain matters before the Nationalrat. Generally, there is also the possibility of a so-called general debate²⁴ at the beginning of each specialised committee meeting and EU matters may be part of the discussion.

Finland

F.II.1. Information submitted to the Finnish Parliament

The number of "U matters" is shown in the following table.

¹⁸ Source: Parlamentsdirektion as of 13 June 2000.

¹⁹ „Vorbereitungskomitee“.

²⁰ This is true since the reform of the rules of procedure of the Nationalrat in 1996.

²¹ See sect. 31c Para. 6 of the rules of procedure of the Nationalrat.

²² See sect. 13b Para. 9 of the rules of procedure of the Bundesrat.

²³ See Urbantschitsch, 1998, op.cit., p. 44.

²⁴ „Allgemeine Aussprache“.

TABLE 2: Number of U matters in the Finnish Parliament

Year	Directives	Regulations	EC agreements with third parties	Third Conventions	Pillar	Others	Total
1995	32	20	6	5		2	65
1996	28	25	11	10		6	80
1997	27	21	7	7		4	66
1998	31	47	6	5		7	96
1999	9	25	4	-		11	49
2000	31	34	3	2		12	83

Source: The Finnish Parliament

For each of these matters the government submits an explanatory memoranda. The number of matters varies between 49 and 96 each year. As the table shows, most of the matters concern draft directives and draft regulations. There have been complaints that the memoranda arrive late, and do not contain information on the view of the government.

The Grand Committee usually meets twice a week, on Wednesdays and on Fridays. The meetings are closed to the public and last normally two or two and half hours (Raunio 2001, p. 179).

F.II.2. Number of EC/EU documents considered by parliament

The Committees submit reports concerning both U matters and so called E matters. E matters include Green and White papers and other documents that do not concern formal EU decisions. The number of reports is shown in the following table.

TABLE 3: Number of committee reports on U matters and E matters in the Finnish Parliament

Year	Number of reports
1995	74
1996	169
1997	138
1998	239
1999	118
2000	141

Between 74 and 239 reports are drafted per year. The Committees on Finance, Communications, and Agriculture and Forestry issue more reports than other Committees.

F.II.3. Public access of documents, debates and outcomes

The memoranda from the government on U and E matters are public and published on the website of the Finnish parliament. The same is true for the reports from the specialised committees to the Grand Committee.

The documents considered at the meetings of the Grand Committee usually become public immediately after the meeting. At the request of the government, however, the Grand Committee may decide that its members will maintain the confidentiality of certain questions. This usually occurs under circumstances in which the government is unable or unwilling to reveal its scope of manoeuvre within the EU-negotiation process. It is also customary not to publish the negotiating positions of other Member States. After each meeting a press release is published.

Sweden

S.II.1. Information submitted to the Swedish Parliament

The government is to keep the Riksdag continuously informed about developments in the EU. The Riksdag receives, by way of the government, approximately 800 documents from the Commission every year, including proposals for EC law as well as Green and White Papers. There have been some difficulties regarding the delivery of these documents. The Riksdag has not received all documents, and there have been cases of competence overlapping between the sectoral committees. The distribution channels have, however, improved since 1995 and the Riksdag now follows the flow of documents more actively.

The government should produce explanatory memoranda for all new important Commission proposals. The memoranda should describe the proposal and its implications for Sweden. The government should also give an account of its own view of the proposal. The memoranda may concern issues in the second and third pillar as well as first-pillar-issues. The Riksdag receives approximately up to 200 explanatory memoranda every year. An internal evaluation showed that not all “important” proposals had been subject to explanatory memoranda and the Riksdag is likely to follow the selection of “important” proposals more closely in the future. Sweden thus lacks the sharp Finnish method of selecting matters since it is much more difficult to define what is to be regarded as being of “importance” than to stipulate that the parliament would have taken the decision prior to EU-membership.

The EU Committee also receives documents regarding each Council meeting. In sum some 10,000 pages are distributed to the members of the committee each year. The government comments the issues at Council agendas and for important issues the government encloses memoranda. Increasingly frequently the original EU documents are also enclosed.

S.II.2. Number of EC/EU documents considered by parliament

Commission proposals and the explanatory memoranda are not formal Riksdag matters, which mean that they are not subject to compulsory scrutiny. The Riksdag has, in an evaluation, drawn the conclusion that the concentration on important issues and the somewhat informal handling of the process is to be regarded as a strength and not a weakness. The character of EU affairs, especially at the early stages of the EU process, implies that a formalised process (where matters would be laid down in writing) would often be meaningless. Important matters run the risk of being drowned in the large bulk of documents if thousands of documents are subject to formal treatment, according to the evaluation.²⁵ The Swedish approach means that it is almost impossible to give a comparable and relevant figure on how many EU documents that are considered. However, in the section below on *Impact* some figures are given.

S.III.1. Public access of documents, debates and outcomes

Openness, not secrecy, is one of the main principles when handling documents within the Swedish government and the Riksdag. Working documents in the government and in the Riksdag are not public, but almost all of the EU documents that the Riksdag receives are public and published on the website of the Riksdag. The explanatory memoranda concerning important EU matters are published, as well as almost all

²⁵ Riksdagskommittén. Förs. 2000/01:RS 1 p. 133.

written comments from the government prior to each Council meeting. The reports from the government after the Council meetings are not published on the Internet, but if anyone in the public or in the media is interested, he may get them from the committee, even if information about the actions of specific Member States could be kept secret.

The meetings in the EU Committee are not open to the public, but stenographic records are taken. After two weeks the records become public even if minor parts of them are secret. The records are published on the Internet. One major reason for keeping verbatim records is the possibility to hold the government accountable for its actions on EU-level. In a few cases the Committee on the Constitution has used these records when the actions of the government have been scrutinised.

Before and after each meeting in the EU Committee a press release is published. Journalists often use the opportunity to ask ministers questions in connection with the meetings.

III. Practical and political implications

Austria

A. III.1. Implementation of provisions into practical political process

As mentioned above, the EU Main Committee of the Nationalrat and the Committee on European Affairs of the Bundesrat may decide on a so-called opinion, which is legally and politically binding. The EU Main Committee has passed 32 such opinions between November 1995 to September 2000.²⁶ The topics of binding opinions varied from issues such as BSE, to animal protection, from employment policy to EMU, from biotechnological inventions, traffic issues to international relations. Security, agriculture, asylum and neutrality were also topics under consideration.

The small number of opinions and the fact that mandates became increasingly less detailed over time, have made some see the Austrian parliament as somewhat of an “institutional loser“ (Falkner 2000). These developments are to a certain extent based on the experience encountered when submitting the first opinion concerning the directive on the conditions for the transport of animals. This led to a sub-optimal result (both concerning the issue as such and concerning Austria’s stance within the Council) as the Nationalrat gave no room for manoeuvre to the Federal Minister. The Federal Minister for Agriculture had to comply with a binding opinion, which stated that he had to block any Community legislation that would lead to a lowering of Austrian standards. At the end of the day, the directive was not only adopted against the Austrian vote, but contained provisions, which were even less stringent than a proposed compromise solution. Although the Federal Minister tried during the Council meeting in February 1995 to re-consult the EU Main Committee in the quest to get it to review its opinion, he reportedly could only get in touch with the night-watch of the Parliament (Urbantschitsch 1998).

²⁶ 18 such opinions were passed during the XIX. legislative period; 13 during the XX. and until September 2000 one during the XXI. period.

After this incident rather soft formulations like "the minister shall work towards" or "make a strong effort" are used. There are also positive examples however, for instance the unanimous vote on a binding opinion concerning the Council Regulation No. 2092/91 on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs. This time a compromise was reached to clarify the Austrian position and to leave enough room of manoeuvre for the Federal Minister (Schäffer p. 62, Parlamentskorrespondenz, 7.3.1995 and 16.5.1995).

It became clear that the Austrian parliament must not exercise its right to binding opinions in such a way that government ministers are 'handcuffed'. Some lawyers even argue that a rigid mechanism used by the Parliament to bind the Austrian representative in the Council could be seen as conflicting with EU regulations (Öhlinger 1996). As Heinz Fischer, President of the Nationalrat, observed:

"The system works, if the positions formulated by the different countries indicate trends and priorities but do not lay down the negotiating positions until the last full-stop and comma." (Fischer 1996, p. 177-178).

There is a general recognition that a balance must be found between the need for ensuring a 'parliamentary imprint' and securing a reasonable degree of negotiating flexibility for ministers (Fitzmaurice 1996, p. 92). Furthermore, it has to be noted that the participation of the parliament can also be considered as strengthening the Austrian representative in the Council as he or she has the opinion of the parliament to fall back on.²⁷

Until the beginning of 1999 the Committee on European Affairs of the Bundesrat met eleven times and discussed 24 EU documents. The Bundesrat has passed one opinion so far.²⁸ The Bundesrat Committee on European Affairs also passed a resolution concerning the Intergovernmental Conference²⁹ and the Agenda 2000 (Kerle and Müller 1999, p. 21).

Finland

F. III.1. Implementation of provisions into practical political process

In a majority of the cases the sectoral committee follows the views of the government, but not always. A study of 42 reports from sectoral committees to the Grand Committee in 1998 showed that in 27 cases the sectoral committee agreed to the government's view. In 9 cases the committee shared the view of the government, but the committee wanted to be clearer and stress certain aspects. In 6 cases the committee could be considered to have another view than the government. The Grand Committee normally follows the position of the sectoral committees. The Grand Committee deviated from the sectoral committee in only 2 cases of the 42.³⁰

The Finnish system forces the sectoral committees to write reports on U matters. This means that all matters which the parliament should have decided had Finland not been a member of the EU are subject to compulsory deliberations in the relevant committee. This is considered to be a great strength of the system.

²⁷ Personal communication, February 1999.

²⁸ Concerning EUROPOL, 10 December 1996. See Parlamentskorrespondenz, 10.12.1996, No. 738.

²⁹ On 29 February 1996 and 17 November 1997 respectively.

³⁰ Riksdagskommittén, EU Memoranda, p. 230-231 (from the Swedish Parliament).

An empirical study of 46 U matters reflected that the parliament received sufficient information and the documents stipulated in the Riksdag Act. But there were some problems with the quality of the information and the limited capacity of the parliament to handle the issues. Officials of the Finnish Government Office said that the parliament had had an important impact on the Finnish position in 9 out of the 46 cases (Boedeker and Uusikylä 1999).

Sweden

S. III.1. Implementation of provisions into practical political process

The Riksdag may adopt resolutions when it considers formal Riksdag matters, and approximately 100 resolutions a year are adopted. These resolutions are politically binding. Between 5 and 10 a year concern EU matters. Most of these resolutions have concerned the implications of EU-affairs on the national level, such as the distribution of regional funds. There is a tendency that, once the Riksdag draws up a resolution on EU-affairs, the resolution will deal with a matter on which there is widespread national consensus, such as transparency in the EU or the combat against drugs and child pornography.

Two of the Riksdag resolutions, which urged the government to act in a certain way within the EU concerned matters on which the government eventually did not achieve the benefits sought for. The Riksdag demanded more support from the EU for some Swedish farmers and wanted “global consumption” to be the general rule concerning copyrights. The Swedish government acted as the Riksdag demanded, but in both cases the eventual EU decision was not in line with the position of the Riksdag. These cases touch on an interesting aspect of the democratic deficit: although the national parliament has the power to lay down clear rules for the negotiating position of the government as regards EU-affairs, the government may be out-voted in the Council.

A committee may also send its views in writing to the EU Committee, which has happened four times until April 2002. The Committee on Agriculture and Environment submitted a report to the EU Committee on the White Paper on food safety in April 2000. The Committee on Constitutional Affairs submitted its view to the EU Committee on the Commission proposal on public access to EU documents in November 2000. In May 2001 the concerned Committee submitted a report on the draft directive concerning family reunification. The Committee on Transports and Communications submitted a report in March 2002 on the White Paper on European transport policy. The EU Committee has delivered these reports to the government.

All matters on the Council's agenda are discussed in the EU Committee. Formal decisions on the Council's agenda are explicitly treated by the chairman of the EU Committee; he says whether there is majority in the committee in favour of the government or not. This means that the matters are scrutinised by the parliamentarians. The mandate of the EU Committee is considered to be politically binding, but it is not legally binding. It has happened only three or four times that a majority in the EU Committee has been formed against the view that the government has presented for the Committee. One case concerned EU co-operation as regards to tourism. A majority within the committee thought that the government should adhere to a sceptical position at the Council meeting, but the committee gave some leeway to the government. However, the government did not show as much scepticism at the Council meeting as the EU

Committee had desired, and in the end the Committee on Constitutional Affairs criticised the minister. Subsequently, this minister has been very eager to respect the views expressed in the committee and to ensure that a majority in the committee supports him.

Most of the time, the government does not meet a majority in the EU Committee against a proposed standpoint. This is in many ways similar to the preparation of bills, where the government gets its way in perhaps 90 % of the cases. However, the government meets less opposition in the EU Committee as it does in national matters (Lindgren 2000) but it should be taken into account that the issues in the EU Committee are seldom clear-cut, and the government may well adjust its views before it comes to the committee. In one case, the committee thought that a Council resolution on education did not state clearly that education should primarily be dealt with at the national level. The minister came back to the committee before the meeting in the Council, and he also had contacts with the political parties outside the formal committee meetings. The committee said that it would be able to accept the resolution if the government succeeded in including a statement in the resolution referring to the relevant Treaty article. The government achieved this objective, and a statement of that kind was included in the resolution.

The government may try to get in touch with the committee in case of an unforeseen event during the EU meeting. For instance, during the European Council in Cannes in 1995, a Minister called the representatives of the political parties to make sure that he had their support as another Member State presented a new, previously unknown, proposal.

Evaluation: Formal rules do not suffice

The parliaments in all three countries have extensive formal rights to obtain information from their governments concerning EU matters. But as we have seen the practical implementation differs. An important conclusion is that a parliament needs good selection mechanisms. Finland and Sweden have better selection mechanisms than Austria. Since the Austrian parliament receives such a plethora and number of EU-documents without any prior selection it is harder for members of the Austrian parliament to notice if an important document is missing. Finland has the most formal selection mechanism and it has proven to work well in the practical political process and serves as a good tool.

The sectoral committees in Finland are obliged to submit reports to the Grand Committee on EU matters. This certainly takes many resources, but it is also efficient in using the broad knowledge in the parliament. Members of the EU Committees in Austria and Sweden are also members of sectoral committees, and contacts between the different committees also go by way of the party groups. This is true for Finland as well, but the more institutionalised use of written reports ensures that all committees really get involved.

When it comes to parliamentary output, the Austrian Main Committee has a stronger legally binding force. However, the better routines for dealing with EU matters in the Finnish and Swedish parliaments imply that they can influence their governments to a greater extent.

The findings imply that national parliaments *may* play an important role in EU-matters. But the EU must function in a way that makes it possible for the national parliaments to exercise influence and deliberate with their own governments. National parliaments could be a link between the citizens and the EU, if EU matters are taken to the parliaments. But this also puts demands on the parliaments. It is not enough to have formal rules; the rules must also be implemented. The future of Europe is well served by a fruitful combination of formal rules and practical implementation. With rules that give the parliaments a strong role, and parliaments that make active use of the rules, this could be seen as one step in reducing the much maligned “democratic deficit”. It therefore comes as no surprise that this issue of the relationship of national parliaments and the European level is on the agenda of the European convention on the future of Europe (<http://european-convention.eu.int>).

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Authors

Hans Hegeland is Deputy Secretary in the Committees on Finance and Constitution in the Swedish Parliament, where he also works with EU matters. He writes his PhD dissertation at the University of Lund, Department of Political Science, on how the Swedish Parliament deals with EU matters.

Postal address:

Hans Hegeland
Finance Committee
Swedish Parliament
S-100 12 STOCKHOLM
SWEDEN
Tel: +46 8 786 42 70
Fax: +46 8 786 61 71
email: hans.hegeland@riksdagen.se

Dr. Christine Neuhold is Assistant Professor at the University of Maastricht, Netherlands and working within the European Studies Programme.

University of Maastricht

Kapoenstraat 2

Room: 2.030

6211 KW Maastricht

Postal address:

Postbus 616

6200 MD Maastricht

Tel: 0031 43 388 25 29

Fax: 0031 43 388 49 17

email: C.Neuhold@PHILOSOPHY.unimaas.nl

Fields of specialisation: Decision making and Institutions in the EU multi-level system of governance, Questions of democratic legitimacy and Treaty reform, EU Policies