Democracy and Accountability in the Enlarged European Union

The performance of national parliaments in the European Union
democratic legitimacy and European decision-making

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1. Introduction

A transfer of powers

The European integration, which began in the fifties as an economic story about coal and steel, has become a political project in the course of the past fifty years. Radical treaty modifications, which resulted in the Single European Act, the Treaty of Maastricht and (to a lesser degree) the Treaty of Amsterdam, have considerably extended the radius of action of what in the meantime has become the European Union (EU).

From the mid eighties onwards, when completion of the internal market became top priority, the regulating performance of the European institutions increased considerably: in the period 1985-1992 alone, the European Commission launched some three hundred proposals with an eye to the realisation of this internal market. In spite of the European 'feeling of depression' since Maastricht, this dynamic has not come to a stop, at least not in the daily EU policy. On the contrary, the number of policy areas in which the EU acts in a regulating way has only increased. European regulations are directly applicable in every member state and directives indeed leave some space for national authorities to emphasise the things they want, but they are binding in regard to the result that has to be reached. (art. 249 EG). Also through new methods, such as 'open co-ordination', Europe sets margins which the member states are supposed to take into account.

De facto and *de jure* the member states have lost sovereignty and they are losing control over policy instruments they could apply more or less autonomously in the past[i]. Trade policy,

environmental policy, transport policy, industrial policy and many other policy areas were transferred to Europe during the past decades. And the twelve member states that nowadays form *Euroland*, have even parted with their currency policy for once and for all. National ministers still play an (important!) part concerning decision-making, but abolition of the veto right in most policy areas that belong to the so-called 'first pillar'[ii], makes that member states are sometimes confronted with decisions they are overtly against, but which have to be implemented[iii]. It is very difficult to exactly determine how many percent of the legislation voted within the member states only (totally or partially) is a translation of what previously had been decided on European level, but estimations of members of parliament run to 70 percent (Müller 2000: 210). By the way, it is striking that parliaments themselves do little research into this matter, or that little response is given to this. Maybe there is a fear introspection might lead to relativisation of the own activities.

The influence of parliaments on European decision-making…

It has to be said that parliaments in general are only marginally involved in European decision-making (Norton 1996: 27). In the Western vision on democracy parliaments nevertheless form crucial links: they are traditionally considered as the *locus* of democratic decision-making. The concrete interpretation differs from state to state, but basically it is a fact that in parliamentary democracies laws are made and amended by a parliament that also controls the government in its exertion of the executive power.

For a long time nobody worried about the democratic standard of the European construction: there was a 'permissive consensus' (Katz 1999: 23). This changed gradually when it became clear that the European regulations – how technical they might look at first sight – involve political choices: about the relation between ecology and economy, about the importance of cultural diversity, about the range of social topics and of liberalisation, about agriculture and development etc. All directives and regulations reflect in a certain way political choices and priorities and especially a vision of how European society has to look like. Today most (national and regional) parliaments have determined that their traditional power has seriously eroded. (Rideau 1996: 161, 169; Kassim 2000b: 257): they are as it were 'obliged' to vote certain laws and a considerable number of European directives is converted into national law by the executive power. Sometimes the impression is created that parliaments nowadays only interfere with trivial things, with fiddling in the margin, while real decisions escape control. Moreover, in the European treaties there is no room for national and regional parliaments[iv].

Research shows that members of parliaments are everything but happy with the democratic character of European decision-making (Wessels 1999b: 213). The loss of parliamentary influence on national level was not compensated by the foundation of similar structures on European level. There is indeed a European Parliament that has got considerably more power than before and its influence is often underestimated, but this European Parliament did not take over the traditional functions of national parliaments. In the best case the European Parliament is co-legislator (together with the Council of Ministers), but it does not dispose of the right of initiative and the control over the executive power is more limited, among others because there is no European 'government' (in the classical meaning of the word) (Thomassen, Schmitt 1999: 131). The question rises whether it is realistic and useful to give the European Parliament on European level a similar role as national parliaments. Realistic, because this would turn the EU into a federal construction, what for a lot of member states is not a policy option (at the moment) (Andersen, Eliassen 1996: 3). Useful, because the EU is quite a special construction: maybe other recipes are needed to increase democratic legitimacy than a classic parliamentary approach. In other words, how useful is it to consider traditional

parliamentary democracy as a blueprint of the model the EU has to evolve to if it wants to be considered legitimate. We will come back to this later.

… and the search for a new position in the EU

The influence of national and regional parliaments on European decision-making seems very limited today. At the same time, a need is experienced to hype up the EU legitimacy. Especially in the nineties the term democratic deficit was used a lot. Referenda about the Maastricht Treaty were in general not a huge success, opinion polls show that the average European does not really feel involved in the European project, the turnout at the European elections in 1999 went below 50 percent, in June 2001 the Irish rejected the Treaty of Nice and in September 2000 the Euro was rejected by the Danes. Slogans during demonstrations at European top meetings were clear.

It is often said that parliaments will have to contribute to the legitimisation of the European project. In the Convention, founded in December 2000 during the Laeken European Council, this topic is an important subject of conversation. This Convention thinks about the future of Europe, in preparation for a treaty modification (which will probably be negotiated about in the second half of 2003 or in 2004). Two representatives of each (national) parliament participate in the talks. The Laeken Declaration, in which more or less an agenda was set up for the convention debates, mentions the matter explicitly and formulates a diversity of questions:

> *"The national parliaments also contribute towards the legitimacy of the European project. The declaration on the future of the Union, annexed to the Treaty of Nice, stressed the need to examine their role in the European integration.*
> *[…]*
> *A […] question, which also relates to democratic legitimacy, involves the role of national parliaments. Should they be represented in a new institution, alongside the Council and the European Parliament? Should they have a role in areas of European action in which the European Parliament has no competence? Should they focus on the division of competence between Union and member states, for example through preliminary checking of compliance with the principle of subsidiarity?"*

A lot of thought is put into the position parliaments will take in the EU of tomorrow. The questions from the Laeken Declaration, but also many others, create a framework for the debate. That parliaments still have a role to play seems to be the starting point of the European heads of state and government who drew up the Laeken Declaration. (Vos, Baillieul 2002: 24-25). It is in this vein that 'Convention Working Group IV on the role of national parliaments' was set up (Final Report: CONV 353/02).

The further structure of this contribution

When parliaments are concerned, we are talking about democracy. In the first part we take a look at what democracy means in the EU. The next part deals with European decision-making: we work out for various types of European decisions and various phases in decision-making the role parliaments (could) play today. From this survey we will be able to deduct concrete suggestions about how reinforcement of the influence of parliaments could hype up the democratic standard of the EU.

2. Democracy in the European Union

Sometimes 'democracy' is wrongly reduced to 'governance by the people'. This rather formalistic interpretation deals with the *modus operandi* and is an important aspect of democracy, but it can never be isolated. In scientific literature one talks of both formalistic democracy and of a result oriented aspect: a democratic policy is an effective policy (Gustavsson 1996: 104, 111; Andersen, Eliassen 1996: 9). Some authors talk in this respect about input and output democracy: democracy from input side means that as many voices as possible should be heard concerning the realisation of policy, while democracy on output side means that the policy should be 'good' for as many people as possible (Peterson, Shackleton 2002: 356). Two of the most often quoted researchers on this topic, say it as follows:

> *"Democratic legitimation rests both on the effectiveness of policy achievements and on popular representation and participation. Democracy as an ideal combines these two criteria of governance and representation that are often seen being in tension. […] There is an inevitable trade-off between output legitimacy and input legitimacy, between an emphasis on government* for *the people and an emphasis on government* by *the people […]"* (Wessels, Katz 1999: 5)

Below we first talk about the importance of the EU in a pursuit of an output democracy (or substantial democracy). Then we discuss the involvement of the European population in the Union policy (or formal democracy). Afterwards we round up the news.

European unification as democratic project

We have just said that an *effective* policy is an important aspect of democratic governance: present problems have to be dealt with. A lot of present-day problems have an international dimension. Environmental problems are a good example: water and air pollution do not stop at borders, global warming does not only affect those people who are responsible for it and the hole in the ozone layer is not situated right above those who use CFCs. But also terrorism is an example of a problem that is impossible to deal with within each state separately. Because of inherent international aspects of present-day problems an international approach is necessary. Effective answers to these challenges ask for an integrated policy.

Moreover, a lot of present-day problems are linked to what we nowadays call 'globalisation': deterritorialisation of economic, cultural and technological processes. National governments have little grip on these processes that are strongly linked to the functioning of the free market economy. This leads to a democratic deficit. Nevertheless, for ideological or pragmatic reasons, the free market economy is being defended by most states, although it leads to a certain loss of power. During a conference of the chairmen of the national parliaments of the EU in Lisbon (1999) about the challenge of globalisation, one of the speakers talked about the end of the primate of politics[v]. If democracy means that people influenced by the decisions, have to be involved in the realisation of these decisions (input democracy, see further), then a huge problem arises. In reality, investment decisions which are made in the head offices of transnational enterprises affect the lives of many thousands of people: their income, their employment, their health, the environment in their neighbourhood etc. In a free market economy increasing the profit is generally the most important criterion for investment decisions. Governments are being forced to a certain extent to anticipate this:

creating a friendly climate for investment often becomes the leading thread in the policy (to that extent that some wonder whether they are not too enthusiastic about it – this is of course not the subject of this contribution). Anyway, it sometimes seems very difficult for an individual state to pursue an isolated policy and to enforce unilateral rules that are linked with social justice, protection of nature, tax law etc. (Österud 1996: 179). The government has less grip on economy, what does not make it powerless, but what seriously restricts its freedom of action. Nowadays, 'national sovereignty' is in many respects an illusion; a myth that does well in political rhetoric, but results to be quite weak after a test.

Ignolf Pernice, a prominent academic of the Humboldt University in Berlin, sees it like this:

> *"States are no longer able to meet the challenges they stand for. To ensure external and internal security, welfare and the protection of human rights, to govern global markets and the international financial system, to combat climate change, international crime and terrorism, supranational and international systems of governance are needed which go beyond traditional forms of co-operation between sovereign states."* (Pernice 2001: 9)

The only democratic answer to on the one hand (economic) globalisation processes and on the other hand the conclusion that many problems have an international dimension, is political globalisation: determining the rules of the game on a higher level than that of the traditional state. The democratic deficit that appears on the level of the states can (at least partially) be filled by creating strong international and supranational institutions which can 'guide' international processes, where separate states cannot (Wessels, Kielhorn 1999: 176). In an ideal scenario it could concern *global governance*, for example within the framework of the United Nations. In real terms, this is not very simple and a lot of states are not prepared to reconcile to political decisions that are taken on a higher level. Within Europe this does work to some extent. The EU is an interesting 'laboratory' for global governance. For the solution of certain problems a regional (European) approach can be sufficient. Moreover, the EU is – among others because of its economic strength – also capable of speaking with more authority and effect than the member states separately. The EU policy anticipates the globalisation trend and facilitates this process (the creation of an internal market with free trade of capital and goods etc.). In this field Europe has showed itself extremely effective during the last decades. But at the same time rules are being imposed (although very often in a hesitating way[vi]), among others concerning competition, the environment and in the social field. This is in line with a couple of values large parts of the European public opinion consider as important. Recently, Peterson and Shackleton summarised the situation very clearly:

> *"Above all, the problem of governing the global economy, in a political world where most governments believe in the virtues of open commerce, requires global rules and the adjudication of conflicting interests. In this context, the European Union may be seen as an essential, driving force behind the freeing of international trade […]. At the same time, the EU remains a staunch defender of values that are easily trammelled by free trade, such as environmental protection or core labour standards."* (Peterson, Shackleton 2002: 365)

From a democratic point of view it is desirable that there is a strong political Europe that speaks with one voice in the world and that lays down norms in the social, fiscal and environmental field, just because the individual states do not have (full) power to pursue an effective policy. This is the only way to gain more democratic control over extremely

important processes. But the EU lacks something. The EU does act in an energetic way in the free market area, but it does not succeed very well in guaranteeing social and ecological protection, creating employment and dealing with unfair fiscal competition. Some member states are very reluctant against European legislature concerning these domains. Nevertheless, from democratic perspective it is desirable that Europe acts effectively here: not free of obligations, not with half compromises, not with extremely chaotic and complex legislation or with years of delay. To play the ball quickly and to act energetically, we need compelling rules and supranational decision-making (Österud 1996: 179; Smith 1996: 11). This implies that member states have to transfer power to European institutions, such as the Commission (as representative of the 'European interest') and the European Parliament and that decisions are not taken unanimously but with a majority of votes. We learn that decisions are made more easily this way than when the intergovernmental method is being used, where every member state keeps its veto and the role of the Commission is limited.

That the EU is sometimes perceived as non-democratic, does not only have to do with the fact that it does not act powerful enough in some areas, but probably also with conceptualisation: Europe is often depicted as the bogeyman by the media. National or regional politicians have the tendency to blame Europe for everything that goes wrong, but not rarely will they try to put the feathers of European policy in their own caps.

But we are deviating from the subject. Legitimacy of European institutions shall only really increase when it is clear that the policy they pursue is in accordance with what the European population wants and thinks is important. Now we have reached the second aspect of democracy: the policy has to be a reflection of what the majority of the population wants.

The involvement of the European population in the EU policy: new tendencies

That processes occur the population has no grip on via the classic channel of the states (because the states neither have a grip on these processes), cannot be an excuse to ignore every type of participation on the level of the EU. On the contrary, says the Norwegian political scientist Öyvind Österud: "the number one challenge to supranational integration is popular legitimation of institutions and decision-making at this level." (Österud 1996: 179). But there appears to be a problem here: opinion polls, the results of referenda and the turnout at European elections show that a large part of the European population is indifferent (in the best case), but often sceptical and sometimes hostile towards European institutions [vii]. For the most part, the news coverage of European measures (especially in the popular press) is not such that this will change. Nevertheless, the European policy can be influenced effectively through various channels. But it is all not as clear – at least at first sight – as it is in the member states. There parliaments are the corner stones of democracy: in election time the population chooses parties which represent a more or less coherent programme. Then a government is formed that pursues a policy that is supported by a majority in the national or regional parliament. There are no European political parties (yet), the European Parliament is not the only legislator in the EU and does not play the part national or regional parliaments play in the formation of the government. In fact there is no such thing as a European government. But this does not mean that democratic control on European decision-making is impossible.

Some authors say that there is a *"system of dual representation"* in the EU (Hilf, Burmeister 1996: 65). It means that two (parliamentary) channels watch over legitimacy of European decision-making. In the first place national (and sometimes regional) parliaments can exert influence and control on the activities of 'their' ministers in the Council. This gets some researchers to speak of "national parliaments as cornerstones of European integration" (Smith 1996). We will come back to the role of national parliaments later. Secondly, also the European Parliament plays a decisive part in most areas that belong to the so-called first

(originally economic) pillar: parliament disposes in most cases of the power of co-decision. With politically delicate topics such as tax law, parts of the agricultural and employment policy etc. this is not the case, neither as in the second (foreign and security policy) or third (police and judicial co-operation in criminal matters) pillar. In these areas the role of the European Parliament is very limited. But in the 'daily European policy' the European Parliament disposes of a lot of power: it is capable of blocking regulations and often succeeds in seriously amending proposals of the Commission. Moreover, the Commission takes into account the position the European Parliament shall probably take when it concerns the drawing up of proposals. In those areas where the co-decision procedure is used, the European Parliament is more powerful than is often assumed[viii]. It should increase legitimacy of European decision-making considerably if on the one hand the field of application of the co-decision procedure should be extended to fields where Parliament nowadays can only be heard or in the worst case be informed and if on the other hand it is made clear to the European population that this Parliament really is decisive in numerous files.

But we cannot get around it: in the European decision-making process many important steps are taken that escape direct democratic control by national and European parliaments (also in those areas where the European Parliament is co-decision-maker). We can for example think about 'policy conception' (the phase preceding the introduction of a proposal by the Commission into Council or Parliament), setting of the agenda, a part of the policy execution (among others comitology procedures) or the crucial talks in council working groups (mentioned in the treaty or not). The role of the European Parliament in these phases is limited and the exact role of national governments is not always very clear. Moreover, the Commission acts (*de jure*) independently from these governments. Member states are confronted with political activities they cannot directly control (Wessels, Katz 1999: 11). But on which considerations are the decisions of for example the Commission based? And is there not even one link to the 'will' of the European population? The answer is subtle.

Every decision (policy building, policy-making, policy executing) is the result of formal and informal negotiations in which various interests are balanced. When we talk about interests, a difference has to be made between a territorial and a functional dimension (Wessels 1999a: 128): there is the interest of a specific state or region (for example concerning the division of subsidies or the provision for certain social acquisitions), but there are also more specific interests that are often linked to certain groups (interests of farmers, employees in the public sector, car designers, consumers, animal rights activists etc.). There is of course a certain overlap between both dimensions: a national or regional member of parliament is estimated to defend national or regional (territorial) interests, but can often also be associated with specific functional interests, among others via the political party he or she belongs to. Besides, lobby groups will actively try to convince members of parliament (on regional, national or European level) of their interest, to have more power in the decision-making process[ix].

Functional defence of interests is very important in Europe. European decision-making includes more and more areas and is often of a technical nature – although basically political-ideological choices lie at the bottom of this. Negotiations about one directive or regulation last for months, often years and are extremely complex. It becomes very difficult for members of (national, regional but also European) parliaments to master all the points of view and ins and outs of the multitude of processes, problems and challenges that are brought to them in one concrete measure. Time and technical knowledge are lacking here. The judgement of Andersen and Burns is hard: "They [parliaments; hv] fail to provide the problem-solving capability for dealing with […] the spectrum of contemporary governance problems." (Andersen, Burns 1996: 243) A consequence of this is that directly interested parties will want to be heard directly. Intermediary organs, which bundle interests, have become very important

in the EU (Greenwood 1997). In the course of the past decades we have determined that a huge flock of lobbyists has invaded the neighbourhood of the *Schumanplein* in Brussels.

Important parts of decision-making are negotiated about in all kinds of functional networks. The European Commission also encouraged the expansion of these networks: in the policy preparing phase it gets a better picture of what 'lives' under the numerous directly interested parties. That way it can come forward with more realistic proposals. Moreover, for elementary information the Commission is often dependent on the actors in that field.

That decisions are largely based on what happens within the networks does not mean that there is no link between the population and European institutions. On the contrary, a European citizen is namely also consumer, member of a union or an ecology group or depends for employment on a company that has a lobby office in Brussels. Its interests are given a chance, but of course they are balanced against the interests of other groups. Some talk in this respect about 'deliberative democracy': as many voices as possible are heard and preferably all interests that are 'affected' by a specific proposal are involved in the design phase of this proposal (Newman 2001: 370-371).

These steps in the policy-making process have become so important that some talk about the end of parliamentary democracy. Functional organisations (such as interest groups) replace territorial representatives (members of parliament)[x]. Basically it still concerns democracy, meaning that the policy is based on what lives in society, but it is filled differently: now it concerns negotiations between various (functionally organised) interests, without (territorial) parliaments playing an important part. In academic literature it is sometimes thought that this evolution will continue: "the most likely future appears to be a decline of parliamentary democracy" (Wessels, Katz 1999: 14). Andersen and Burns talk about post-parliamentary democracy and mean the following:

> "[...] formal parliamentary arrangements and decision-making are replaced to a large extent by the principle that directly affected parties have the right to participate in and influence policy- and law-making. This is the basis for self-representation and specialised representation in particular policy networks or sub-governments." (Andersen, Burns 1996: 234-235)

It is probably a little bit too early to speak of the final end of parliamentary democracy, but it does not alter the fact that there is a shift in decision-making: from parliamentary bodies to groups and networks, in which public and private actors negotiate. When representatives of the governments are involved in policy networks (what mostly is the case), it seems very difficult for parliament to exert control.

A crucial question is whether democracy *per* se has to be organised through parliaments. Are parliaments not rather a means to reach democracy instead of an aim in itself? If it showed that post-parliamentary democracy works perfectly and leads to the fact that the voice of the European population is translated correctly and equally into the European policy, then it is not only very legitimate to acknowledge the surplus value of this type of government with the development and execution of the policy, but also to leave final responsibility for decisions, important ideological choices and the stipulation of general policy lines to post-parliamentary democracy and its methods and institutions. In that case there should be no reason any more to search for a new role for parliaments, only because of the members of parliaments and their livelihood. But we find that on the one hand parliaments still have a role to play or anyway could have a role to play in the European decision-making process (we will come back to this later) and that on the other hand criticism can be passed on the functioning of post-parliamentary democracy. The most fundamental criticism is that some groups

succeed more quickly in taking part in this new type of governance than others. Also Andersen and Burns realise this:

> *"In this type of governance, economically well-endowed groups as well as highly organised groups and impassioned movements with focused interests can concentrate on specialised policy areas of particular concern to them* (Andersen, Burns 1996: 246)

Put differently, some interests are for numerous reasons not organised strongly enough to take part in decision-making[xi]. Via among others subsidy decisions this is somewhat corrected in the EU (various NGOs get for example support from the European Commission), but far from completely. Moreover, it is normal that most interest groups aim for short-term interests. When looking for compromises between these interests a long-term broader perspective seems to go lost. We shall argument that parliaments definitely have a role to play in this field.

Finally we have some remarks. We have to wonder whether the shift in power of parliamentary bodies to informal groups and networks is actually new. Maybe decision-making occurred in the same way in the past, but less openly and maybe an illusion of parliamentary power was maintained. We do not pay much further attention to this matter. The following remark has to do with the position of democracy *within* the member states. If we show up the lack of democracy within the EU, we have to be careful that we do not idealise the situation in the member states. Although it is exaggerated to say that national politics only deals with trivial matters, we have to repeat that many crucial policy decisions are no longer made by the member states. Secondly, informal networks also play an important part on the level of the member states, although it is not always as clear as on the European level. The above mentioned phenomenon of a shift in power does not limit itself to the EU: lobbying or various forms of corporatism can also be found elsewhere (Andersen, Eliassen 1996: 7). When Andersen and Burns (1996) talk about the erosion of parliamentary democracy, they also refer to democracy in the member states. Finally, research shows that national and regional parliaments have lost a lot of power, mostly to the advantage of governments (Norton 1996; Dewachter 1997: 25-42; Wessels, Kielhorn 1999: 190; Andersen, Eliassen 1996: 4). Although the situation differs from country to country, many researchers are very pessimistic when the real power of national and regional parliaments is concerned. We should not conclude too easily that within the member states national parliaments are the centre of power and authority. A number of rituals contribute to this feeling (Andersen, Burns 1996: 244): every few years the population elects a parliament, that parliament seems to make decisions about numerous cases, the government seems to be accountable to parliament and if something goes wrong we start looking for politically responsible persons. But can the real power in the member states be found in the parliaments? Or has this also become a myth?

The complex relationship between effectiveness and legitimacy

The population expects politics to give answers to present-day problems. A lot of these problems have an international dimension and ask for solutions states cannot formulate separately any more. We thus need a strong Europe. A Europe that is energetic, flexible and that can adapt quickly and preferably with full knowledge to challenges. Although ultimate decisions are still made by the Council of Ministers (together with the European Parliament or not) it is in this context that a type of government emerges in which all kinds of involved parties participate in policy-making and policy executing through networks. The power of this type of governance is based on its relative effectiveness. Defence of interests occurs to a large extent on functional basis. If representatives of regions or member states are involved, their mandate is often not strictly fenced off (the way of working does not allow this);

parliamentary debates are mostly non-existing. Although numerous interests that live in Europe find their way to the decision-making process, there is a feeling of 'lack of legitimacy': the notorious democratic deficit.

The legitimacy problem is also in another way under discussion: a powerful European policy is irreconcilable with a decision-making procedure in which the parties involved formally dispose of a veto. If the Council has to vote every measure unanimously, the machine blocks. Who pleads for a European performance in a certain policy area, has to accept that he/she can be confronted with decisions there is no support for in a certain member state or region. This is the logic of the community method and the only way to guarantee progress: if there is unanimity about the aims (as they are mentioned in the treaties), we have to agree to the fact that – for realising these aims – some specific measures have to be taken which are less popular in certain regions or member states. This may cause the problem that the inhabitants of this region or member state do not feel involved, especially if there is a perception of being treated unfairly *systematically*. Here again the legitimacy problem emerges.

So, there is a certain tension between two aspects of democracy: the need for an effective policy leads to a way of decision-making that can be experienced as less legitimate. Andersen and Eliassen explain it very clearly:

> *"The legitimacy of political systems is normally dependent upon an acceptable mixture between representativity and effectiveness. These two dimensions may be mutually supportive, but there are also elements of conflict."* (Andersen, Eliassen 1996: 9-10)

We are thus seeking for ways to improve the relationship between the European policy and the things that live among the population of the member states and regions[xii]. The consequent application of the subsidiarity principle is important in this case (we will come back to this later), but in a world in which national or regional sovereignty has become very relative, we see that a strong European governance is necessary in numerous areas. And exactly then we have to weigh things. Smith talks about the weighing off of costs:

> *"What is a reasonable price to pay when exchanging a higher degree of democracy for possibly less effective fulfilment of the aims for which the supranational decision-making mechanisms within the EU have been adopted?"* (Smith 1996: 15)

The more participation (e.g. concerning parliaments), the more slowly decision-making occurs and the more 'blocking possibilities' there are and summed up in short: the less European policy. Nevertheless, it is not correct to see this as a *zero-sum game* in which participation and effectiveness exclude each other and more participation leads to the fact that there is less effectiveness or vice versa. The relation is much more complex: if the EU policy systematically does not find connection to what lives in the member states and regions, the integration process would suffer a lot from this. You cannot unpunished saddle member states or regions with the execution of decisions they have never been involved in. As we will argue later on, parliaments (not only the European, but also national and regional parliaments) can play a crucial role in increasing legitimacy of the EU policy. How big the surplus value of informal networks might be, the need for political final responsibility stays, the long-term perspective has to be taken into account[xiii], fundamental (maybe ideological) choices have to be made and we have to see to it that also less strongly organised groups are thought about.

Before we discuss the role of national and regional parliaments we have some comments on the European Parliament. Who aims for a more democratic EU cannot go round the fact

that a reinforcement of the European Parliament is important[xiv]. This parliament is the only directly elected institution in the EU. In contradiction to other parliaments, the power of this European Parliament has grown over the last few years, but the limited involvement of this parliament in crucial policy decisions in the first, second and third pillar leads to a democratic deficit. More final responsibility can definitely be given to the directly elected members of this parliament, without affecting the effectiveness of decision-making. A generalisation of the co-decision procedure should be a huge step forward. National parliaments sometimes see the European Parliament as a competitor (Cygan 2001: xv). This is in some respects unjust. As it will appear later, when we scrutinise the role of national and regional parliaments, all parliaments have their role in enforcing the legitimacy of European decisions and they are very complementary. It is for example not very realistic to suppose that the European Parliament should get the same role within the European construction as national parliaments in national politics. Moreover, many authors point out the fact that there is no European 'demos': Europeans shall only perceive the European Parliament as 'their' parliament when they really *consider* themselves Europeans. But there are important cultural differences within the Union and interests can differ a lot. This is also the case on national or regional level, but on European level it is seen on a larger scale (and maybe there is also a historic inheritance: only a few decades ago wars divided Europe) (Smith 1996: 13). All in all there are few 'European organisations' the population can connect to and that could contribute to a European citizenship. There are no European political parties yet[xv] and European elections still concern national topics. Possibly the Euro can have an effect on the feeling of being a European citizen. We also have to emphasise that the distance between the elected and his electors on European level is very huge: Wessels calculated that in the national parliaments there is one elected person per 54.844 inhabitants, while one European member of parliament represents 429.729 inhabitants (Wessels 1999a: 106). So for various reasons, the European Parliament cannot immediately take over all functions of the other parliaments. Who wants to enforce democracy in Europe cannot only pay attention to the European Parliament. Also the parliaments of the regions and member states have an important role to play.

3. The position of national and regional parliaments in European decision-making

In this part we take a look at the role national and regional parliaments play or *could* play nowadays in European decision-making. We evaluate these possibilities on the basis of conclusions from the previous part: a strong Europe and strong European institutions are perfectly reconcilable with a striving for democracy, but at the same time attention has to be paid to participation and involvement of the population of the member states.

In this overview we give a rather general image and we do not extensively discuss the various ways participation is dealt with in separate member states and regions. Sometimes there are separate arrangements in different pillars and for specific policy areas, among others concerning transparency, that (could) influence the role of national and regional parliaments. Here we restrict ourselves to generalisations and put emphasis on the first pillar (where most of EU activity takes place), but most conclusions are also valid for the second and third pillar. We do make a difference between various types of decisions: in the first place it concerns treaty modifications and legislative decisions. We also pay attention to the very important prelegislative story and finally we discuss (in short) the execution of the decisions.

Treaty Modifications

The method that is traditionally used to revise treaties, is that of the Intergovernmental Conference (IGC) (art. 48 EU): representatives of the governments of the member states

negotiate during a couple of months in a very private atmosphere about the treaty revision, whereupon heads of state and government cut the final knot at a European Council. The text of the treaty that has come into being that way has to be ratified by all member states. How this occurs exactly, is arranged by every member state separately. But we see that national parliaments deal with the ratification, although in some member states also the population can vote about it in referenda. Generally speaking, members of parliament thus vote about basic treaties and the amendments made to them. In Belgium both the approval of the federal parliament (Chamber and Senate) and of the five regional parliaments is required. In some other federal states regions also are involved in this because the federal Chamber (such as the German *Bundesrat*, in which regional ministers are seated) has to vote about the revision of treaties. Nowhere else the influence of regional parliaments is arranged as directly as in Belgium.

Although the parliaments involved in the ratification in theory dispose of a lot of power (they can prevent even one comma from being shifted, deleted or added to treaties), there is – precisely in the parliaments – a lot of dissatisfaction about the procedure for revising treaties. In practice, an agreement is made between the governments of the member states which is presented to the parliaments as 'take it or leave it'. A refusal of ratification would immerse the EU in a constitutional crisis (Raunio, Hix 2001: 142). *De facto* the power of the parliaments is not that huge, although representatives of the government anticipate the probable reaction of the parliaments during the negotiations: they make sure they do not make decisions that are absolutely unacceptable for the home base (Munro 1996: 92). Sometimes, under impulse of for example the national parliamentary committee that deals with European affairs, a national or regional parliamentary debate is organised, but in real terms we notice that these debates are often superficial and that the same mantras are only repeated. This type of debate can give government negotiators a general sense of direction, but it can hardly guide them with the concrete negotiations.

In Nice it was decided that a new method to prepare treaty revisions is desirable. National parliaments should be more involved in this. As an answer to this the European Council of Laeken set up a Convention. In this Convention representatives of the parliaments play an important part: each national parliament sends two delegates (as opposed to one representative of the government per member state). Moreover, also the European Parliament is represented well by sixteen members. Regional parliaments are not directly involved (although a member state is free to admit a representative of an executive parliament in the two-man parliamentary delegation). But the Committee of the Regions did appoint six observers: representatives of the regions and local governments. It is the task of the Convention to think about the future of the EU (under the terms of enlargement) and to prepare the next IGC (planned for 2003 or 2004). If the Convention comes up with clear points of view, preferably concrete text proposals of a European Constitution, it will be very difficult for the representatives of the government in the IGC to ignore this point of view. A process has been started where an important participation of parliaments is planned. Or better: for the representatives the parliaments have appointed. We have to mention that the convention formula is not new: it has been used earlier for drawing up the European Charter of Fundamental Rights. The delegates of the national parliaments were also represented best here, but in most member states it did not lead to long parliamentary debates. On the contrary, most representatives worked in a way that isolated them from 'their' parliament. So, we cannot speak of a permanent feedback process. The convention formula offers possibilities to get a broader parliamentary debate going about important aspects of European integration, but it is not a guarantee in itself. It is up to the parliaments to organise the debate and give inspiration (maybe even a mandate) to the representatives. It is not very useful if this parliamentary debate restricted itself to repeating the mantras that have been in use for decades. In that case

parliamentary involvement is a rather boring spectacle. Eventually the representatives will end up in a very dynamic negotiation process, where they are confronted with the often very diverse opinions of other participants. From superficial debates little inspiration can be drawn and in concrete *issues* they shall sometimes take points of view that are not necessarily based on the parliamentary debate. If parliaments really want to take up the debate about treaty modifications (and more in general about Europe's future), the whole negotiation process and the dynamic that lives in the Convention, have to be followed strictly and members of parliament shall have to take into account the visions of other regions and member states. An involvement of national and regional parliaments in important and historic European processes has to be encouraged from a democratic point of view. In the end it also concerns the future of national and regional politics. Involvement in these processes and providing a certain guidance (although it will be difficult to fully win the argument in this dynamic process) is probably more important than disposing of an ultimate veto during the ratification procedure.

About the importance of this ultimate veto one can judge in various ways from a democratic point of view. In a certain way it is the ultimate means of control, but it has to be said that it does not mean that much in practice, just because it is 'yes' or 'no'; an intermediate position is not possible. If there were ratification problems, it could have to do with internal political tensions in the member state concerned, and not necessarily with the case in itself. Since the Single European Act we have noticed that treaty modifications occur in a more rapid succession and it becomes a tough job to get the ratification done before the next IGC starts. In their report for the Commission on the institutional consequences of the enlargement, Richard Von Weizsäcker, Jean-Luc Dehaene and David Simon (1999) point out the fact that the continuous treaty modifications are a source of political difficulties in various member states[xvi]. In an extended Union in which every treaty modification should be treated in twenty-five or more parliamentary systems, there is a danger for delays and risks for a complete paralysis. If one pleads for a Europe that can anticipate important new challenges, then the present arrangement is no longer tenable. Nevertheless, it can be expected that a 'basic treaty', let us say a constitution, in which for example the general aims and guidelines, the rights of citizens and the institutional framework are inserted, has to be endorsed by all parliaments. With approving the 'basic treaty' the parliaments of the member states acknowledge the surplus value of the European integration process and they indicate that they acknowledge the general aims. It is important that this acceptation occurs explicitly and the ratification procedure is probably the best guarantee for this. The other parts of present treaties translate the general aims in the various policy areas. Since the mid eighties these parts have to be amended quite regularly to give the EU the chance to effectively anticipate the new challenges. Subjecting all these modifications to an exhausting ratification process in all parliaments hypothecates a swift and vigorous European action. The suggestion from the Von Weizsäcker, Dehaene and Simon report to assimilate these elements in separate texts that can be amended in accordance to a less difficult procedure (unanimously or with a superqualified majority in the (European) Council, and certainly with the involvement of the European Parliament), is very interesting. National (and for Belgium also regional) parliaments lose their veto right and do no longer have to ratify these texts (which are just below the constitution). But on the other hand, the Union (of which the general aims are accepted by each parliament) gains on power and credibility. Moreover, a convention formula (that is possibly institutionalised better) can expressly provide for an involvement of parliaments when changing these texts. And as said before, the involvement in the process and the signals that can be given in an early stadium could become more important and effective than the threat of a veto that can only be declared after the negotiations.

Decisions and legislative measures

If decisions are taken in the line of the second or third pillar (art. 22, 34 EU) or directives, regulations or decisions are concluded (art. 249 EG), the Council always plays a key role (together with the European Parliament or not, cf. infra). In the Council, ministers of fifteen member states meet. They are not directly elected and negotiate in a rather closed atmosphere[xvii]. The meetings are prepared by a Permanent Representatives Committee (coreper) that bases itself on discussions in numerous working groups, in which the member states are represented. The members of these working groups are often experts from the administration or diplomats connected to the Permanent Representation to the EU (let us say the embassy of an EU member state). A direct parliamentary control on what happens in the council working groups and the coreper is lacking. For the ministers, who eventually cut the knot, this can be different: each minister has a responsibility for his deeds to 'his' national parliament. In this field there was a kind of 'permissive consensus' for a long time (Katz, Wessels 1999: 245): most parliaments did not interfere with European affairs and ministers could do what they wanted in the European meetings. When parliaments realised that European politics had an impact on their powers, this changed. In all member states and in some regions parliaments have already founded committees concerning European affairs (Raunio, Hix 2000: 156). The exact powers and the impact differ from state to state (Smith, Eivind 1996; Kassim 2000b: 240). Some of these committees concentrate on almost every measure that has to be discussed by the Council, while other committees only follow the general guidelines of Europolitics and can in the best case discuss points that are dealt with on European meetings of heads of state and government. The most extreme model consists of a minister asking a mandate for every session of the Council, in which can be found how far the minister can go in the negotiations and when he has to vote for or against. For various reasons, which we will discuss later, this extreme system is not applied anywhere. In Denmark it is probably approached best.

If parliaments want to keep an eye on things and want to follow the activities of their minister in the Council, it is of course important that they dispose of enough information. A protocol (no.9), annexed to the Treaty of Amsterdam, determines that all discussion documents and proposals of the Commission have to be delivered to the (national) parliaments. Regional parliaments are not mentioned in this protocol, but in practice the proposals of the Commission are also admissible via the internet, so members of regional parliaments can easily get them. Moreover, a period of at least six weeks is foreseen between the introduction of a proposal and the decision of the Council, exactly to give parliaments the time to think about it and maybe give their ministers some instructions.

Observers have noticed that the switchover to more polls by (qualified) majority leads to the fact that the impact of national parliaments on European decision-making weakens[xviii]. Clear instructions can be given to a national minister, but it is possible that he has to taste defeat during a poll. Nevertheless, the resolution that is voted that way is also applicable in the member state where parliament was against it. The question posed by Smith is a very important one: "[W]ho should you charge in an instance where your own minister, in a case submitted to decisions by qualified majorities, actually voted against a controversial decision by which you are bound anyhow?" (Smith 1996: 15). Before we argued that from a democratic point of view it is justifiable, even desirable that majority ballots occur. The democratic deficit that threatens to arise that way can only be filled by giving the European Parliament the power of co-decision. For most areas that fall under the qualified majority ballot, this already is the case.

But another problem arises. Many parliaments are looking for ways to enforce their grip on the activities of their ministers in the Council and think about refining the system of the

'instructed minister' and especially enforce it: parliament has to exert more supervision on how a minister behaves[xix]. Suppose that in every member state parliaments gave their ministers precise instructions. If the ministers want to exceed their mandate, they first have to give feedback to their parliament or they can be sanctioned by the home base. Obviously this would make the meetings more rigorous, looking for compromises will be more difficult and it would slow down the process. Decision-making, especially in the EU, where visions of various cultures and interests have to be reconciled, asks for compromises. Often *package deals* are necessary to overcome the deadlock and make headway. For this form of decision-making confidential meetings are required, with a limited number of participants who dispose of a relatively ample mandate (Sejersted 1996: 126; Smith 1996: 15). If fifteen or more parliaments mingled in the concrete negotiations and strictly defined the negotiation margins of the ministers and the members of the working groups, the dynamic of the negotiations would suffer from this. It would for example be crazy to formulate in an open parliamentary debate a relapse position; this would seriously weaken the negotiation position of the minister and the parliamentary influence would have the contrary effect (see Gustavsson 1996: 116). Kassim, Peters and Wright point out another element: "Even if there are not partisan differences over policy there may be sufficient institutional jealousy to create difficulties if the parliament is an active player in the co-ordination exercise." (Kassim, Peters, Wright 2000: 17). Put differently, there is a risk that parliaments will feel obliged to make it clear once in a while that they can block a measure. If each parliament does it in turns, there is danger of a deadlock in numerous dossiers. The conclusion of Hilf and Burmeister is probably correct:

> *"Any voting on EC secondary legislation by national parliaments would not lead to 'more' democracy but to a rather inefficient, if not chaotic, situation and thus finally to a demise in democratic legitimacy"* (Hilf, Burmeister 1996: 74)

The idea of giving national ministers of parliaments an exact and well-defined mandate, seems very tempting and is easy to implement (treaty modifications are not required for this), but it has a perverse effect. At first sight this measure seems very sound from a democratic point of view, but doing this would endanger the integration dynamics.

Does this mean that parliaments should have no role to play and that all debates have to occur in an atmosphere of secrecy? Absolutely not. To guarantee legitimacy of the decisions, a democratic control is required and directly elected persons should be able to have a substantial involvement in the decision-making process. As was suggested earlier, the European Parliament has an important role to play in this. In many policy areas, this Parliament is already quite powerful and recent research shows that the points of view of the Parliament are taken seriously: many by the Parliament voted amendments survived the decision-making procedure and can be found in the final texts of law, often against the original point of view of the Council. Michael Shackleton, a top civil servant in Parliament and a prominent observer, says the following: "legislation is not simply a product of agreement in the Council […] the EP can alter policy outcomes in significant ways." (Shackleton 2002: 107). That does not alter the fact that there still are numerous areas (among others the second and third pillar) where the European Parliament has little influence, while national and regional parliaments neither have much to say. Here we can speak of a real democratic deficit.

And what about these national and regional parliaments? Do they have to stand by and watch when it comes to European decision-making? Absolutely not. It is not because it is not realistic to mingle in the concrete negotiation process by taking away every room for manoeuvre from the national ministers that parliaments have to turn away from Brussels.

Parliamentary debates about various measures that are under discussion, can without a doubt embellish the vision of a minister and influence his/her point of view. The debate can contribute to the fact that the minister gets a clear view on national and regional importance and parliaments can give their ministers a clear direction or even recommendations, which could impossibly be ignored completely (Hilf, Burmeister 1996: 74). From that point of view it could be useful to let (both regional and national) members of parliament participate in the co-ordination committees where the 'national standpoint' is being formulated. But this is something totally different than giving a minister a specific and well-defined mandate that can absolutely not be exceeded. If a final decision seriously deviates from the position parliament has taken, a minister can later be asked to give an explanation. Then a minister could justify why he/she had to accept a compromised point of view to prevent the realisation of a final text that was even further away from desiderata of parliament. If decision-making processes are followed closely by national and regional parliaments, they will be confronted with the points of view of other member states and interest groups, what allows them to situate the end result in a better way.

Good contacts and a smooth interaction between on the one hand national and regional parliaments and on the other hand the European Parliament (informal or formalised in committees) can contribute to a better defence of specific national and regional interests. Concrete problems or concerns can be brought under the attention of members of the European Parliament from for example the same electoral district or the same political family. That can translate itself in proposals for amendments from the European Parliament.

But it is not only because of the direct promotion of interests that it is useful for national or regional parliaments to go deeply into the pending European measures. After all, the directives or regulations that are being made nowadays contain elements that have to be transferred into national or regional rules in a couple of months or years. Or they form the framework in which the following years national and regional transport and environmental and development policies etc. will be pursued. It is not an unnecessary luxury to keep an eye on negotiations and to analyse proposals. Keeping informed about what is going on is a minimum option.

Some authors notice that the monitoring of European measures brings along practical problems. Norton says it this way "[t]he existing workload of some parliaments means that it will be difficult for them to be more involved in EU affairs." (Norton 1996: 32; also Kassim 2000a: 44; Pedersen 2000: 232-233). In fact this is not correct, because sooner or later parliaments will be confronted with European rules. Of course it is important that parliament disposes of (among others personal) support, but this is a matter of internal organisation for the parliaments themselves[xx]. One can wonder whether it is useful to pursue or prepare debates about European measures in the 'Committee for European affairs' of parliament[xxi]. It is absolutely logical that in the various councils of ministers various specialised ministers are seated (not always the minister of Foreign Affairs), and so it should be that the 'functional' or 'technical' committees of the parliaments, each for their own policy area, follow all relevant European initiatives from an early stage. For defining a national or regional interest the various specialised commissions dispose of a lot of expertise and moreover will be confronted most directly with European rules when executing their activities. Also Sejersted sees it like this:

> *"In order to influence European policy a parliament must integrate it into everyday parliamentary life, and look upon it as an extension of national policy, not as an extraneous matter to be treated separately and with care."* (Sejersted 1996: 156)

European politics do not have to be snuggled away; it is a matter for all the members of parliament.

And finally some thoughts about subsidiarity. This is an instrument to determine when the EU has to act in a legislative way. Subsidiarity means that what a smaller unit can do in an adequate way does not have to be done by a larger unit, unless it performs better[xxii]. In a Protocol (no. 30) annexed to the Treaty of Amsterdam, it is said that the Commission has to justify its legislative proposals in the light of subsidiarity. The Council and the European Parliament have to investigate this and take into account the subsidiarity principle throughout the decision-making procedure. In other words, self-discipline of the European institutions is very important. Sometimes it is argued that this cannot be sufficient and an extra 'test' is necessary. Some national and regional parliaments insist on this. Control on the execution of the subsidiarity principle can be political or judicial. Political control is exercised by the European institutions themselves. National parliaments are only involved in this partially (through their minister in the Council). Within the framework of the convention debates various scenarios were formulated to extend political control (the foundation of an ad hoc inspection body, the entry of a representative of the parliaments in the national delegations of the Council etc.). Above we have already mentioned it more than once that – not at the least from a democratic point of view – it would not be very wise to make the decision-making process more difficult. In September 02, the working group on subsidiarity reached broad agreement on setting up an 'early warning system' of a political nature, intended to reinforce the monitoring of compliance with the principle of subsidiarity by national parliaments, without complicating or lengthening the legislative process too much. In the 'Draft Protocol on the application of the principles of subsidiarity and proportionality' (CONV 579/03) the Praesidium of the Convention proposes that if national parliaments think the principle of subsidiarity is being breached, they can sound the alarm. Where at least one third of national parliaments issue reasoned opinions on the Commission proposal's non-compliance with the principle of subsidiarity, the Commission shall review its proposal. After such review, the Commission may decide to maintain, amend or withdraw its proposal. The Commission shall give reasons for its decision (CONV 579/03, Annex 1).

Judicial control on subsidiarity on European level is practised nowadays by the Court of Justice (the creation of a separate 'subsidiarity chamber' that would specialise on testing legislative proposals to a number of criteria can be considered). But at the moment an appeal for annulment because of violation of the subsidiarity principle can only be started by directly and individually involved persons, member states, the Council, the Commission or the European Parliament. National parliaments cannot directly commence a proceeding. Neither can regions (and their parliaments). An entrance for parliaments to the Court of Justice to defend the principle of subsidiarity would be defensible, but the fear could arise that more or less every legislative proposal of the Commission is brought for judging to the Court by a parliament. If one wants to prevent this, one could introduce a barrier, so the subsidiarity test can only be applied for if a significant number of parliaments or members of parliament want it. This should also improve co-operation between the various parliaments. In the aforementioned Draft Protocol the Praesidium of the Convention states that the Court of Justice shall have jurisdiction to hear actions brought by Member States on grounds of infringement of the principle of subsidiarity, where appropriate at the request of their parliaments (CONV 579/03, Annex 1). A direct access for the parliaments to the Court of Justice is not proposed. The question of application and control on the subsidiarity principle stays very complex. It would lead us too far to go into it further.

The prelegislative phase

Practice shows that once the decision-making process formally starts, namely when a proposal for a regulation, directive or other legislative measure is introduced to the Council (and to the European Parliament), there is little space left for fundamental changes. Above it was said that national and regional parliaments have an interest in following the current decision-making in a decent way. If these parliaments *only* concentrate on pending legislative proposals, then they are overtaken by the events.

The *brainstorming phase* is very important in European decision-making. Especially what concerns activities in the framework of the first pillar, the Commission tries to get a more exact picture in this phase of what lives in the member states and among other people involved. It is wasted effort for the Commission if means are invested in drawing up a legislative measure many member states and powerful interest groups are against (Decock 2001: 13). So around certain policy topics the Commission creates temporary or lasting, formal or informal networks. Previously we have talked about this. Functionally organised interests are involved in this and the Commission will regularly (through the Permanent Representation) ask the member states to delegate experts to preparatory meetings.

Because of the informal character of these processes it is not easy for parliaments to stay informed about what 'is going to happen'. Of course it helps if a parliament has good contacts with interest groups and especially if it is informed by 'its' government when this government is invited by the services of the Commission for consultations. Some things are even predictable. What concerns the first pillar, a relatively detailed assessment can be made of the expected Commission initiatives on the basis of (1) the yearly programme of work of the Commission, (2) green papers, white papers and long-term action programmes in the policy areas concerned (e.g. the Environment Action Programme), (3) statements of the Commission in which new plans are announced, (4) requests of the Council of Ministers, the European Council or the European Parliament to launch a proposal in a certain area, (5) agreements on multilateral fora (e.g. in the framework of the Convention on Climate Change or the discussions in the World Trade Organisation). Sometimes the existing regulations contain an 'expiration date' or a date is foreseen on which the rule has to be actualised. Moreover, in December 2003 a long-term strategic program for the next three years will be drawn up for the first time. The yearly programme of work of the Council will be deducted from it[xxiii]. On the basis of this information and what is called *fingerspitzengefühl* for European politics it is thus possible to estimate quite precisely what topics will be discussed on the preparatory level.

So it is not only useful to organise parliamentary debates about European measures that can already be found in an advanced stadium of decision-making (as we said before), but it is also useful to study European green and white papers, the programme of work of the Commission etc. in the relevant functional or technical commissions of national and regional parliaments. A parliament can deduct from this which decisions are planned on medium term and can think about the consequences. If a parliament judges it can add a specific point of view to the discussion, there is no reason not to do it: it can occur by means of a 'written statement', a national or regional expert or agreements with members of the European Parliament that – since a generalisation of the co-decision procedure – are involved more and more in the prelegislative process. If all kinds of lobbies can make clear their points of view, it is absolutely legitimate a parliament does the same by making clear a point supported by a majority in this parliament. The prelegislative phase does not have to be the private hunting ground of experts and functional interest groups. Some authors say it very explicitly:

"It has […] been argued that national parliaments should re-think their way of operating, and start to act more as lobbyists, especially before the Commission […]" (Sejersted 1996: 148)

Or: *"It will become more and more important to see, to what extent candidates for membership of the parliaments […] are able to participate in the European communication and networking systems, to pass the will of the people over to the European level."* (Pernice 2001: 17)

But there is a more fundamental reason why parliamentary systems should try to follow the prelegislative process. In spite of efforts of the Commission to get a correct image of what lives in the Union, it is known that certain interests succeed better in letting their voice be heard on EU level than others.

"As is known from long experience at the national level, representation of interests through pluralist networks does not treat all interests and citizens equally; instead it privileges the well funded over the poorly funded, and it privileges interests that are organised for other reasons over those that must form organisations primarily for the purpose of influencing policy. Thus it intends to privilege business over labour, and both business and labour over consumers. Intermediation by interest groups tends to "disaggregate the citizen," emphasizing only certain varieties of needs." (Katz, Wessels 1999: 244-245)

Do parliaments – as representatives of the people of a certain state or region – not have the duty to make sure that all interest groups are dealt with, also the less organised[xxiv]? Here a parliamentary contribution can be a huge surplus-value – it can give the Commission a better view on what lives in the Union and what it learns from the strongly organised interest groups and experts. In that case parliaments can have a warning function.

But more in general parliaments can also inspire the policy from the bottom of the ladder: starting from regional or national problems and finding out how Europe can deal with them. From regional or national debates, a European agenda setting can be made. Participation in the prelegislative process can only occur when parliaments succeed in anticipating the formal decision-making process. To do this, parliaments have to keep an overview on what is about to happen in the legislative field. This requires a thorough insight of the members of parliament and their staff in the less formal (but not less crucial) side of the European decision-making process and the preparedness to participate in this (what is not really a traditional parliamentary activity). But it is a unique and relatively effective possibility to influence decision-making:

"If in Community affairs it has become more precarious to mandate or influence national ministers, then the lesson for national parliaments is surely that they will have to try harder to influence the Commission or the European Parliament at earlier stages." (Munro 1996: 95)

At first sight this sounds boring and contrary to the 'logic of a member of parliament'. Members of parliament should especially 'score' and thorough work in the commissions rarely is the cause of the fact that they have to be *in the picture*. Members of parliaments are invited more easily for television debates because they want to give away free garbage bags, because they demand the resignation of a minister or because they think *Tom and Jerry* incite violence (as was recently brought up by a Belgian Member of Parliament). The monitoring of European measures is at first sight not a *sexy* activity. For most members of parliaments it is

only useful to undergo further training into this if the media pays attention to European measures and if a broad debate is held about it. However, they can try to fill the bridging function themselves, exactly by making it clear that political choices lie hidden behind technical dossiers and that the impact on the daily lives of the average European is very deep.

Execution and implementation

Finally we will discuss in short the role of the parliaments when the execution of European decisions is concerned. What concerns the binding power of European 'legislation', the case is described relatively clear in the treaties: regulations are binding in their entirety and directly applicable in every member state, while directives are binding with regard to the result that has to be reached but national authorities are responsible for the choice of form and methods (art. 249 EU). The implementation of European rules in national and regional (and sometimes even local) rules is arranged differently in various member states. Some authors see a tendency in which implementation is passed on more often to governments (Sejersted 1996: 154). Nevertheless, concerning directives there still is a (sometimes wide) margin, in which various policy options can be taken to reach the desired result. More and more people are saying that in the future one will work more with framework legislation and it seems perfectly logical that parliaments decide about the exact implementation in a specific state or region.

Both national and regional parliaments have an important responsibility concerning the execution of European decisions. The success and surplus value of European integration depend on the respect that is shown in the member states and their regions towards the rules of the game of the integration process. A correct and timely implementation of European rules is one of those rules. It is important that this is a permanent point of interest in parliamentary activities; there is no excuse for an incomplete or late implementation.

There are also rules that are determined by the Council (together with the European Parliament or not), but have to be further executed by European institutions. Normally this is the task of the Commission, but the Council can lay down conditions and directly execute certain executive powers itself (art. 202, 211 EC). In real terms, this often leads to the fact that the Commission is assisted (or carefully watched) in its executive powers by various committees, in which representatives (normally on the expert level) of the member states are seated. Think for example about the veterinary committee where one decided about measures to limit the spread of the mad cow disease. Here we speak about comitology. The exact role and power of these committees can differ enormously[xxv]. Although one sees to it that the various member states are represented in the committees, it is striking that parliaments do not have anything to do with it. The comitology process escapes many parliaments completely[xxvi]. In general transparency of this system is very limited (Newman 2001: 370-371). Above all, we have to wonder whether it is useful to leave the execution of decisions not entirely to the Commission. Sometimes necessary decisions are put aside or executed in a bad way because in a certain committee there was no agreement. If parliaments increased their grip on 'their' experts, this would influence the preparedness to compromise in an even more negative way, so important executive decisions cannot be decided upon. If during the execution choices have to be made that go beyond technical nature and where committees are considered useful, democratic control of the European Parliament is probably more appropriate (see Shackleton 2002: 108-109).

4. Conclusion

Parliaments find that their legislative freedom is seriously restricted and that it is not easy to control the European activities of the ministers. This only really became noticeable in the mid eighties, when the European Community started completing the internal market. As a result, national parliaments began establishing specialised commissions in order to follow up European politics. Meanwhile, various regional parliaments have followed this example. Of course, there are considerable differences between member states and regions, but in general it should be noted that parliaments hardly influence the realisation of European rules. This often leads to frustrations. Today there are several member states that want institutional reformations, reserving a stronger role for the parliaments.

On the other hand, research showed that many members of parliament in the member states do not really have an elaborate opinion about Europe. Richard Katz, a political scientist who is attached to the John Hopkins University, speaks about the 'non-attitude' towards European political themes (Katz 1999: 40). In many parliaments, European themes are papered over in one specialised commission and only few members of parliament seem to be interested in following up these commissions. In the best case, a plenary debate will now and then be organised about almost existential questions with regard to Europe's future. However, the daily European politics in several policy areas is hardly the subject of a more elaborate debate. This is incomprehensible, especially because all members of parliament, while exercising their job, are permanently confronted with the European directives or regulations that form the margins in which they can act legislatively. Furthermore, it is remarkable that European politics, also in the national media, hardly gets its position, while every day more important and consequential decisions are made (with a concrete impact on the life of the average European) around the *Schumanplein* than in an average parliament. What exactly causes this disinterest among the media and politicians is difficult to find out and it is not the subject of this contribution.

We have already stated repeatedly that parliaments can play an important European role. They do not need to become frills, such as for example the royal families, who are still there for the symbolics, but in general have no real power. However, this does not mean that parliaments should be capable of blocking every European measure, because therefore the need for a powerful European policy is too great. In this contribution, we have emphasised that current problems often have an international dimension or that they are by-products of economic, cultural and technological globalisation processes. Neither national states, nor regions are capable of regulating these processes. An isolated policy is just not enough. Only a vigorous European attitude can offer answers. However, decision-making cannot be 'cut off' of what is going on in the member states and regions. In the 'formal' part of decision-making, ministers play an important role, whether or not with the European Parliament. In their pursuit of more democracy in the EU this European Parliament is an objective ally of national and regional parliaments. We have proved that the different parliaments ultimately are very complementary and that each almost has its own territory.

However, crucial steps in the decision-making process escape a direct democratic control. This has also to do with the fact that most measures are very technical and that various interests should be reconciled if possible. This leads to a decision-making process whereby networks play a large role and defence of interests highly occurs on functional basis (instead of on territorial basis). As a result, there is a certain tension: the decision-making passes off relatively efficiently, but sometimes there is a lack of legitimacy. There is at least the perception of a democratic deficit. It is not a law of Medes and Persians that this should be filled up by parliaments. Nevertheless, we have argued that parliaments can be crucial links

in the legitimacy of the European project: they still have responsibilities for inspiring, influencing, orientating the policy.

We have already described that parliaments in different phases of the decision-making process (could) have a specific contribution in various ways. The 'European role' regional and national parliaments (could) play, includes a lot more than the defence of some specific national or regional interests and than the correct implementation of what was decided on. Parliaments have a better position than many other participants in the decision-making process in order to keep an eye on the broad outlines of different measures. They can reflect on the consequences of policy choices in long term. They can reflect on the political and sometimes ideological choices which are included in the draft decisions (such as the migration problem or the tension between ecology and economy), and which are not always reflected on by experts and lobbies. They can fulfil a warning function if it seems that certain less organised interests do not succeed in getting through the networks and as such are systematically threatened to be ignored. Furthermore, they can set the agenda by, basing themselves on their knowledge and analysis of regional and national problems, urging the EU to take action.

If parliaments succeed in contributing all this in the debate during the decision-making procedure, they prove their surplus value. The involvement of parliaments can enrich the European output qualitatively. The question is especially which preconditions should be satisfied so that parliaments can also effectively realise this surplus value. Often the lack of institutional reformations is stressed. The Laeken Declaration explicitly put forward this theme and as part of the Convention, a separate working group was established, which should look into the position of national parliaments. It is a pity that, in this context, one only speaks about *national* parliaments and as such forgets about *regional* parliaments. As already said, regional parliaments are confronted with exactly the same experiences and also their contributions to the European decision-making can be a surplus value. The conditions that are nowadays applicable to national parliaments (cf. Protocol no. 9 of the Declaration of Amsterdam) could also be perfectly applicable to most regional parliaments.

Within the framework of current Convention debates, many different proposals are launched in order to enforce the grip of parliaments on European decision-making. The 'Draft Protocol on the role of national parliaments in the European Union' (currently under discussion by the Convention) proposes measures (related to access to information) to be taken by the Union's institutions in order to facilitate scrutiny by the parliaments (CONV 579/03, Annex III). Co-operation between parliaments is encouraged. In this article, we have also stated that some involvement of the (regional and national) parliaments in the application and control on the subsidiarity principle, could seem justified. Also the embedding of the convention methodology (for treaties revisions and history-making decisions) can be considered. Numerous other proposals even go further. In that way some members of the Convention have been pushing for a 'red card' role for parliaments: e.g. if more than two third of parliaments raise the alarm then the Commission should withdraw its legislative proposal. Other members of the Convention plead for the introduction of a (whether or not merely advisory) second chamber at the European Parliament, a kind of senate composed of representatives of the parliaments. There are many versions of the proposal for two chambers (for example that they should be involved only in those policy areas for which the European Parliament has no co-decision power). Many of the suggested ideas are not new (Dubouis 1996: 60-63; Pernice 2001: 12-14). Nevertheless, although the suggestions to give the parliaments an additional say in the formal structure of decision-making seem to be attractive, we have to pay attention not to complicate the European decision-making procedures too much, not to make them less transparent. After all, it is not useful that every measure – before being applicable – finds a parliamentary majority in each of the (now fifteen, later at least

twenty-five) member states and their regions. At first sight, this would be very democratic (member states or regions shall not be confronted any more with European rules, which they do not support), but this would end the European integration process. The Union would not be able any more to take these vigorous decisions, which are necessary to handle the international problems or to lead the globalisation in the good direction. If a member state or region subscribes the objectives of the EU, because of its membership in the EU and if it had a contribution in the formulation of these objectives (i.e. the basic treaty), then a member state or region should also understand that some decisions will be accepted less enthusiastically. Democracy does not mean that one is always right and that all decisions become vague compromises that cannot be opposed to, because they have little substance anymore. Democracy also implies that sometimes you do not get precisely what you want. This does not mean that regional and national parliaments should not be involved in the decision-making. On the contrary, this would lead to alienation, which is very counterproductive. Moreover, as already stated, a parliamentary contribution can be a surplus value. One should find the balance between efficiency and participation in decision-making. The idea to accept a member of parliament in the delegations attending the Council can be, for example, interesting. The Convention has to put forward creative suggestions.

In this article, we have stated that some institutional reformations would be very useful, but that there is especially an important responsibility for the parliaments themselves. The realisation of their potential surplus value is also dependent on the internal organisation and on the way they handle European politics (see also Wessels, Katz 1999: 11, Norris 1999: 86). Even without important institutional modifications parliaments can considerably increase their influence on the European decision-making. And with this, we do not refer to the possibility of parliaments to hold on 'their' ministers in the Council by giving them a strict mandate that cannot be ignored unsanctioned. Using this weapon systematically would be a rather frenetic reflex, of which we have already described the disadvantages. There are still other ways to participate in the incredible dazzling and dynamic process of European decision-making. Parliaments can be involved in the realisation of the (national) point of view which will be defended in the Council, contacts can be made with the European Parliament (whether or not formalised), members of parliament can become part of or make contacts with the networks where the European legislation is being prepared, parliaments can sometimes take up a position together etc.

However, the ultimate condition remains that parliaments should be prepared to integrate the European politics in their daily activities and to communicate this to the people. But if a draft decision is only discussed when it is in a final phase, this will lead to frustration because at that moment it becomes difficult to introduce modifications. Therefore it is important that parliaments especially work proactive and, proceeding from their specialised commissions, follow and judge the developments in the different policy areas. Parliaments can become strong players in the concrete decision-making processes with well-founded arguments and they can certainly influence the 'negotiation sphere'. By means of permanent attention for European developments in different policy areas, parliaments are prevented from being taken by surprise at the moment that European legislation has to be implemented.

For national and regional parliaments this means a whole new challenge: it is about a new domain of interest, about other tasks and new techniques and work methods should be handled in order to 'silver' their potential surplus value. Possibly this is not easy. In this contribution, we have made some suggestions and academics can draw up many strategies about how European politics can be integrated in the activities, but eventually an exchange of experience will be most useful. Perhaps it is especially in this point of view that forums such as COSAC (for national parliaments, cf Rideau 1996; Cygan 2001: 37-48; Millar 1996: 2-3) and CALRE (for regional parliaments) are useful. Moreover, national and regional

parliaments can learn a lot from each other because they are confronted with exactly the same challenges.

In this article, we have argued that it is too early to proclaim the 'decline of parliamentary democracy' (Andersen, Burns 1996). European integration, however, has changed political reality in the member states enormously. Parliaments, both regional and national, do have a European role in this new context. It is not simple to take it up, but there is no alternative. A parliament that ignores this role is made redundant.

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[i] Later on we will discuss the question of what sovereignty *de facto* means in a globalised economy and in a world that is confronted with numerous international problems.

[ii] The lion's share of European regulating action takes place in the first pillar. The unanimity rule is still valid here for (some parts of) agricultural and fishing policy, tax law, asylum and immigration policy, economic and monetary union, trade and competition policy and mostly also for striking international agreements.

[iii] Since Maastricht they get huge fines for doing this, cf. Bradley 2002.

[iv] Protocol no. 9 is annexed to the Treaty of Amsterdam. It concerns the role of national (sic) parliaments in the European Union. In this protocol it is said that all discussion documents and proposals of the commission have to be forwarded to the (national) parliaments. There is also a co-operation between the European affairs committees of the various (national) parliaments. This conference (COSAC: Conférence des organes spécialisés dans les affaires communautaires) was founded in 1989 and gathers twice a year in the member state that fills the European Presidency. It is mainly a discussion forum, without real power and without the ambition to weigh on daily European decision-making. The Committee on Institutional Affairs of the European Parliament takes part in the COSAC-meetings (Rideau 1996, 169; Cygan 2001, 37-48; Dubouis 1996, 57; Millar 1996, 2-3).

[v] This Conference took place in Lisbon from 20 to 22 May 1999. See the report during the extraordinary session of 16 July 1999 in the Belgian Chamber of Deputies (Chamber, 22/1 1999: 5).

[vi] It has to be said that the capacity of the EU to act market correcting (the so-called 'positive integration') is definitely more restricted than the capacity to liberalise markets (the so-called 'negative integration'). We cannot really speak of a positive European environmental policy, social policy, macro economic employment policy and fiscal policy. The capacity of the EU is least developed in those policy areas where national capacity to govern effectively has decreased because of international competition. The European integration has contributed to less freedom of acting of the member states, without a sufficiently compensating increase of the capacity of the Union.

[vii] Eurobarometer 56 (fieldwork: October-November 2001) mentions this: "On average, 53% of Europeans say they tend to trust the Union, 32% say they tend not to trust it and 15% lack an opinion. This is the most positive result since the question was first asked in the autumn of 1997. At that time, only 37% of EU citizens said they trusted the EU." (p. 49)

[viii] It is incomprehensible that in most member states the European election campaigns hardly deal with European topics. Very often, it is all about national issues.

[ix] For an overview of some research data about the contact between members of the European Parliament and lobbyists, see Wessels 1999a: 109

[x] Rainer Schmalz-Bruns talks in this case about 'associative democracy', as an alternative for parliamentary democracy (Wessels, Katz 1999: 13).

[xi] We should not look at this too lightly and we have to assume that economic strong groups (for example the employers) always form a homogeneous group – sometimes the opinions within this group are very different. (Wessels 1999a: 109-111, 115-116).

[xii] Within the framework of the convention debates various proposals circulate, of which most have little or nothing to do with the reinforcement of the role of regional and national parliaments (for example the pleas for direct election of the chairman of the commission, for more transparency in the Council, for a simplification of instruments and procedures etc.) We do not go further into this.

[xiii] This is also the task of the Commission.

[xiv] It is paradoxical that member states, which denounce the lack of democracy in the EU the most, often are the ones that do not really want a reinforcement of power of the European Parliament.

[xv] Art. 191 EU says that political parties play an important role in the integration within the EU: "They contribute to forming a European awareness and to expressing the political will of the citizens of the Union." But until now, there are no real European parties; regional and national parties are a part of rather loosely structured political families on European level.

[xvi] See Verhoeven 1999: 569.

[xvii] See the internal regulations of the Council. It was decided by the European Council in Seville (21 and 22 June 2002) that some debates of the Council would be public, if the Council acts according to the co-decision procedure: the first discussion about the initiative of the Commission and the voting – see: Conclusions of Seville (21 and 22 June 2002), annex 2.

[xviii] See a.o. Rideau 1996: 167

[xix] Research by Katz in national parliaments shows that national members of parliament do answer 'too little' in great numbers to the question 'Does the national parliament exert too much or too little supervision on the position the government of your country takes in the Council? (Katz 1999: 40-41) (the average on a 7-point scale in 10 countries was 5,22). Research among a large number of national (1392) and EU members of parliament (310) shows that a majority is in favour of the system of 'instructed ministers'.

[xx] Sejersted studied the Norwegian Parliament and concludes that there are few parliamentary assistants that keep themselves busy with research concerning European affairs. (Sejersted 1996: 143)

[xxi] See a.o. Gustavsson 1996.

[xxii] See the note of Inigo Mendes de Vigo to the members of the Convention concerning the mandate of the working group on the subsidiarity principle (CONV 71/02 2002: 2).

[xxiii] See the decision of the European Council of Seville (21 and 22 June 2002), annex II, C.

[xxiv] This is probably not easy for parliaments (often thinking in terms of minority/majority), because members of parliament themselves are more or less associated with specific interests (Wessels 1999a: 121). More specifically for regional parliaments it is also important that they can exert a certain control on points of view that are taken by the regional information office (their lobby group in Brussels) that is financially supported by public means from the region.

[xxv] For a brief introduction see a.o. Haibach 1999.

[xxvi] The Committee that deals with European affairs in the Danish parliament does try to exert influence on the points of view the Danish experts take in comitology. See a.o. Kassim 2000: 245; Pedersen 2000: 231.

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