The Role of National Parliaments in the EU

Rudolf Hrbek

1 Introduction

Since the 1980s the role of national parliaments related to issues of European integration and politics in the European Community/European Union (EC/EU) has been given greater attention.[1] First, there were efforts within national parliaments of EC/EU Member States to introduce provisions for new institutional and procedural rules designed to give (and strengthen) the respective parliament a role in EC/EU-related decision-making, focusing on the national level. As a consequence, one could observe concrete activities of national parliaments in dealing with EC/EU matters. Second, there were statements made at the European level – in the context of treaty revisions starting with the Treaty of Maastricht – not only mentioning the role of national parliaments in the institutional architecture of the EU, but demanding that their role be strengthened. These efforts culminated in considerations within the European Convention on the role of national parliaments and, as a result, in new provisions included into the Constitutional Treaty. Following the failure of this treaty project, the respective provisions are now included in the Treaty of Lisbon.

For the first time national parliaments are mentioned in the main text of the Treaty and not only in Protocols and Declarations attached to previous treaties:

- Article 10.2 TEU reads: “Citizens are directly represented at Union level in the European Parliament. Member States are represented in the European Council by their Heads of State or Government and in the Council by their governments,

[1] It was, however, not before the early/mid-1990s that larger academic analyses were published: Weber-Panariello (1995); and Norton (1996b).

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themselves democratically accountable either to their national Parliaments or to their citizens."

- Article 12 TEU reads: "National Parliaments contribute actively to the good functioning of the Union", followed by a list of six points – (a) to (f) – with more detailed provisions referring to two Protocols annexed to the treaty (Protocol No. 1 on the role of national parliaments, Protocol No. 2 on the application of the principles of subsidiarity and proportionality) and to articles in this treaty and in the Treaty on the Functioning of the EU.
- Article 5.3 (2) TEU stipulates: "The institutions of the Union shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality. National Parliaments ensure compliance with the principle of subsidiarity in accordance with the procedure set out in that Protocol." This procedure, called "early warning system", has been perceived as the main novelty of the new treaty related to the role of national parliaments.

Thus the Treaty of Lisbon, which entered into force on 1 December 2009, confirmed that national parliaments are an integral part of the institutional architecture of the EU, attributing to them a role in its decision-making system. There are expectations linked to these new provisions as to a more active role of national parliaments in the future. At the beginning of 2010, however, it is an open question how national parliaments will use the new treaty provisions, in how far they will meet the expectations and become an important institutional actor in the decision-making system of the EU. Considering this question, one should take into account previous experiences with activities of national parliaments in EU matters and be aware of problems which have arisen and been identified.[2]

This article[3] will, therefore, be structured as follows: the first section will give an overview on the functions which are attributed to national parliaments in democracies with a system of parliamentary government and make brief remarks on the basic organisational structures of parliamentary assemblies (2). The article will then remind us of the role of national parliaments in the early years of European integration and give a brief overview on later developments, namely initiatives taken by national parliaments in Member States of the EC/EU and those taken in connection with subsequent treaty reforms (3). The next section will explain the provisions laid down in the Treaty of Lisbon (4). The article will then deal with various aspects and problems which have arisen in the past and which should be taken into account related to the future role of national parliaments in the EU; this

[2]Very good and concise overviews have recently been given by Raunio (2009) and Benz and Broschek (2010). Much more detailed contributions are, amongst others, the following volumes: Maurer and Wessels (2001); Maurer (2002); Janowski (2005); O'Brennan and Raunio (2007).

[3]This article is based on and will follow in parts a contribution by the author, see Hrbek (2010).

will include drawing the attention to changes in the framework conditions of the EU system and of governance in this system (5). Finally, the article will have a look at parliaments at regional ("sub-national") level, since there are Member States with a federal or regionalised structure that have regional parliaments with legislative powers, which means that provisions on the role of national parliaments may apply to them as well (6).

2 Functions and Organisational Features of Parliaments in Democratic Political Systems

Reflections on the role of national parliaments have to be related to specific functions which are attributed to parliaments. There is wide consensus on the following list of functions[4]:

- Representing the citizens (with their beliefs, interests and demands) of the respective polity and performing particular tasks and functions on their behalf. Closely connected with representation are the functions of interest aggregation and interest articulation and, not to forget, the communication function vis-à-vis the citizens/the electorate.
- Legislation in various policy fields, which implies taking initiatives and submitting draft legislative acts, discussing them publicly and finally deciding on them according to the formal rules given in the respective Constitution.
- Electing the executive/government (in most cases: the head of government).
- Controlling the executive and making it accountable to the citizens. This may include a vote of censure against the government forcing it to resign or removing it from office.
- Generating democratic legitimacy or rather contributing to legitimacy of the political system and the decision-making process by fulfilling the above-mentioned tasks and functions properly.

National parliaments are assemblies composed of deputies belonging to political parties competing with each other; they form party groups in the parliament. The party-political division within a parliament is the major factor for the dynamics of the intra-parliamentary political process; the relations between the party groups oscillate between cooperation and competition. The intensity of competition depends primarily on the political-ideological distance of the party groups.

[4] As early as in 1867 Walter Bagehot published his book "The English Constitution", listing five functions of the House of Commons on pp. 115–120 (edition of 1958 by Oxford University Press, London). Various authors have drawn on this list, sometimes using different terms.

All EU Member States have a parliamentary system of government, which means that in general the government is supported by the majority in the parliament; in most cases this majority is formed by a coalition of party groups. The minority in the parliament is the opposition. The behaviour of these two groupings will vary with respect to the performance of parliamentary functions. This applies particularly to the control function, which is the major domain of the opposition, whereas the parliamentary majority will refrain from (publicly) criticising the government and instead will give support to the government and its legislative projects.

Party groups form one major component of the parliament's organisational structure; the others are specialised committees for the whole range of policy fields. Committee meetings – most of them held behind closed doors – are, first, the framework for intense discussions on legislative business; the participants are deputies and members of the executive (ministers or higher civil servants from the ministries); the division between parliamentary majority – which includes the government – and opposition will determine the pattern of communication. Second, committees are the framework for exercising parliamentary scrutiny vis-à-vis the executive: their representatives usually attend these meetings and they are obliged to attend on demand (of a qualified minority) of the committee.

Plenary sessions, held publicly, are the framework for primarily exercising the functions of representation, interest articulation and communication. As far as legislation is concerned, legislative acts require formal ratification by a majority in the plenary; plenary sessions serve primarily the purpose of publicly explaining the respective project and the (in many cases: competing and adverse) attitudes of the majority and the opposition. The latter will, in this context, use plenary sessions as another occasion for exercising political control.

In the next sections we shall repeatedly come back to these general remarks on functions of parliaments and major aspects of their organisational structure, with a focus on committees and party groups, related to the performance of functions.

This article will not deal with Second Chambers, since these differ in composition, organisational structure and functions from national parliaments in the sense of First Chambers, always elected directly by the citizens and equipped with a list of functions which have developed in the course of emerging systems of parliamentary government. Second Chambers have primarily developed in the framework of federal structures of a polity, such as in Austria, Belgium and Germany, but also in regionalising/regionalised countries such as Italy and Spain. Their role related to decision-making in EU matters has generally been dealt with in consideration of the effects of the European integration process on sub-national entities ("regions") and their attempts to respond to this challenge via adapting institutions and procedures, and via developing new activities and strategies.[5]

[5]For the German case see Hrbek (1999).

3 Development of the Role of National Parliaments in the EC/EU

3.1 The Early Years of European Integration

Until the early 1980s, European integration issues were – as far as the Member States of the three Communities were concerned – a domain of national governments and their administrations: they had negotiated and agreed on the founding treaties; steps towards further development of the Communities (the EC) and going on with the integration process were – in many cases on the initiative of the European Commission – decided via intergovernmental bargaining; and the legislative activities of the EC – very technical in substance and character – were dominated by the Council of Ministers, an institution formed by members of the executive (ministers or civil servants) of the Member States, which had to decide by unanimity without the obligation to share power with the European Parliament (EP), which, at that time, was restricted to a mere advisory role.

In this period the role of national parliaments was marginal and weak.[6]

- They were – according to the constitutional provisions of the respective country – involved in ratifying the founding treaties (and later each treaty amendment). Since the governments which had negotiated the treaties could rely on the support of their respective parliamentary majorities, ratification was – with one exception[7] – a formal act. This was even more the case, since the European integration project could enjoy the support of the vast majority of political forces in the founding countries of the Community.
- National parliaments were not involved in day-to-day decision-making on EC matters directly, but only indirectly in the context of the respective system of parliamentary government which makes the executive accountable to the parliament in general. In practice, the government (with the prime minister as chairperson) has been taking the lead and could rely on the support of "its" majority in parliament. And since in the early years of the EC issues on the legislative agenda were very technical in nature, they did not cause partisan conflicts; criticism was voiced, if at all, by the parliamentary opposition. And since the government did always claim to be concerned about national interests, opposition parties were more than reluctant to challenge the government publicly.
- EC directives, a special form of European legislative acts giving a more or less wide framework, need to be transformed into national legislation, leaving the

[6]See Schweitzer (1978).

[7]In August 1954, a majority in the French Parliament stopped the project of establishing a European Defence Community, as another supranational organisation following the example of the European Coal and Steel Community, by refusing to put the issue on the agenda; parties of the coalition government were divided on this project.

Member States the possibility to fill this framework. Here, national parliaments play a (formal) role, but experience shows that the domestic implementation of such directives has been dominated by the administration of the government with its expert knowledge.

- Until 1979, national parliaments of the EC Member States have sent deputies into the EP; these European deputies, therefore, had a dual mandate. They had to make a choice individually regarding which mandate they should give priority to, because they could not engage efficiently in both parliamentary assemblies. And in practice there was no regular and intense communication and feedback between the two bodies and their members.

3.2 New Developments in Connection with the First Enlargement of the EC

When Denmark became a member of the EC in 1973, a very special coordination system for dealing with EC matters was established which gave the Danish parliament considerable influence over Danish policy in EC matters.[8] This system has been referred to and perceived outside Denmark as a model for the role of national parliaments in the EC/EU. One has, however, to be aware of two basic factors which explain the introduction of that system in Denmark:

- There is a tradition to have minority governments, lacking continuous and stable support of a majority of deputies in parliament. Parties do not give office-seeking (by entering in a coalition government) priority; they follow another logic: to offer the (minority) government support on a case-by-case basis in exchange for gains and rewards in particular cases to which they give political priority. Since the government needs support, it has to communicate regularly with all party groups and try to find consensual decisions.
- Membership in the EC was a controversial issue in the Danish society. There had to be a referendum in 1972 and the carriers in the campaign were not only political parties but a specially established "People's Movement against the EC" with activists and followers from various parties. The referendum resulted in the approval of membership, but the issue did remain on the domestic agenda and continued to divide the society. The People's Movement was not dissolved but continued its anti-membership activities, amongst them the participation of the Movement in European Parliament elections, with remarkable electoral success at the expense especially of the Social Democratic Party, over decades the strongest political force. The saliency of the issue and the divide amongst the citizens explain why (minority) governments had a strong interest to find

[8]See Arter (1996); Laursen (2001).

approval for their policies in the EC. The coordination system, introduced in 1973, was designed to serve this goal.

The key feature of this coordination system is the institutionalisation of parliamentary control over the executive expressed in political mandates prior to Council meetings. The system should "ensure that the Danish government did not agree to decisions in Brussels that could not subsequently be passed in the Danish parliament."[9] A European Affairs Committee was established, consisting of 17 deputies according to party group strength. Article 6(2) of the Danish Law of Accession of 1972 can be regarded as the legal basis, in that it stipulates in a very general way the following: "The government notifies a parliamentary committee about proposals for Council decisions which will have direct effect in Denmark or for the fulfilment of which the participation of the parliament is necessary."[10]

The working of this system has been described as follows[11]: "The Committee meets with the government ministers on a regular basis, normally the Friday before a Tuesday meeting in the Council of Ministers. At these meetings, the minister in question presents the Danish standpoint on the matters on the agenda before the Committee. The Committee members are entitled to pose questions and discuss the cases with the minister. The voting rules in the Committee are such that as long as the government does not have a majority against it, it can proceed to the meetings in Brussels with the consent of the Danish parliament. If there is a majority against the minister, he or she is forced to come up with a new solution to which the Committee can agree."

It was the Committee itself which in special reports did define details of the coordination system. The first report of 1973 "clarified that the objective is to 'secure the Folketing the greatest possible influence in European affairs' and that the government should consult the Committee in European policy questions of 'substantial significance'".

Although this system has been understood as a model for the role of national parliaments in the EC/EU – and new EU Member States from Central and Eastern Europe which joined the EU in 2004 and 2007 respectively are said to have followed this model – there are observations and experiences which cast doubts as to the model quality of the system. These deserve to be taken into account in considerations on the future role of national parliaments in the EU.

- One observation has to do with the information given to the Committee by the government. This "has been continuously improved [. . .] so that it now includes an assessment of the proposal's consequences for Danish legislation [. . .], an evaluation on the keeping of the principle of subsidiarity and, when possible, information about the political standpoints of other countries and the preliminary

[9] Sousa (2008), p. 432.

[10] Quoted in Sousa (2008), p. 433.

[11] The following quotes are from Sousa (2008), pp. 432–435.

views of the Danish government." The growing quantity of information, given on a weekly basis, has had, in the eyes of analysts and observers, a boomerang effect: "the number of documents and cases, together with the limited time between meetings, make the conditions for control and oversight rather difficult."

- Another point has to do with the relationship between this Committee and the standing specialised committees. Whereas the latter dispose of expert knowledge needed for technical and highly specialised matters, the former's concern is primarily about securing "a coherent European policy." But the specialised standing committees have not been involved in European matters properly, with negative results.
- Focusing on government's positions at Council meetings is another point of concern for critical observers and analysts, which will be considered more systematically in another section.

A lesson to be learned from the Danish case is that considerations on the role of national governments should take into account the constitutional and political patterns of the respective EU Member State. This factor can be illustrated by briefly looking at the British case.[12] The European Communities Act of 1972 stipulated that all European legal acts would automatically become part of the British legal order without explicit approval of the British parliament. Since this meant the annulment of the principle of parliamentary sovereignty – a cornerstone of Britain's democratic system – there were demands for introducing new forms of controlling Britain's European policy.

In May 1974 the House of Commons established a "Committee on European Secondary Legislation", which has to be comprehensively informed by the government on all European legislative projects. The Committee, then, has to decide how the parliament as a whole should react: it can recommend merely taking notice of a project; it can submit a report; it can recommend a plenary debate which applies to a very small number of projects of high saliency. The whole clearing process proved to be too time-consuming: the House of Commons, belonging to the category of a "debating" (not: "working") parliament, established in 1980 two "European Standing Committees" which should debate the projects in place of the plenary. Debates, however, are no formal mandates; the scrutinising role of the British parliament in European matters has been, in comparison to the Danish pattern, much weaker.

3.3 Strengthening the Role of National Parliaments Since the 1980s (1): Initiatives of National Parliaments

The early 1980s marked a turning point for the role of national parliaments in EC decision-making in all Member States. At that time, national parliaments identified

[12]See Norton (1996a, b); Carter (2001); Janowski (2005), pp. 133–139.

an interest and a need to get better involved and participate more effectively in decision-making on EC matters. There were two main reasons for this new situation:

- First, the EC had entered into the phase of "positive" (or policy) integration. In other words, the functional scope of the EC had started to extend considerably and this trend was going to continue and intensify. A large variety of issues appeared on the European agenda which were of supreme interest and concern for national political actors, such as political parties and interest associations, and therefore for national parliaments as well. The latter found themselves marginalised as institutional actors, since European policy was almost exclusively in the hands of the executive (government and the bureaucracy); national parliaments were concerned that they might become "losers".[13]
- Second, and closely connected to the first point, the legitimacy of the EC (its political system, its decision-making process and its policies) became an issue; the slogan of a "democracy deficit"[14] appeared on the political (and the academic) agenda and was discussed.[15] One strategy to respond to this challenge focused on the EP which had been strengthened by direct elections in 1979. A second strategy was to give national parliaments a more influential role in EC decision-making. Such efforts were launched by national parliaments themselves, resulting in institutional and procedural adaptations and arrangements. There can be no doubt that the Danish "model" was taken as incentive and encouragement.

The German example shall illustrate the arduous task of giving national parliaments a (stronger) role in EC decision-making.[16] In October 1983 the German Bundestag established the *Europa-Kommission*,[17] not as an ordinary parliamentary committee, but as an institution according to the rules for special committees for enquiry. The new body, therefore, was not entitled to take decisions, but could only produce reports and submit recommendations. The reason for this reduced legal status was widespread resistance within the Bundestag to set up another ordinary committee as a rival to specialised committees which have been dealing with EC matters falling in their respective portfolio. The major feature of the new institution was its composition, with the same number of members coming from the Bundestag and from the EP; the new body should primarily serve as an institution for inter-parliamentary cooperation.

[13] See title of the volume by Maurer and Wessels (2001).

[14] One of the first comprehensive contributions to this topic was Naßmacher (1972).

[15] See Hrbek (1980, 1995).

[16] The following is based on and taken from Hrbek (2010), pp. 141–144.

[17] The monograph of Peter Mehl: Die Europa-Kommission des Deutschen Bundestages. Eine neue Einrichtung interparlamentarischer Zusammenarbeit, Kehl and Strasbourg, 1987, informs on all aspects of this new institution.

The spectrum of functions of the new body included: support for the EP in its efforts to widen and strengthen its competences; input for debates on EC matters in the Bundestag and a step towards giving the Bundestag a more influential role in participating in debates and decisions on EC matters at national level; and, finally, to strengthen the links between the two parliamentary assemblies. The new body met twice a month and 35 times within four years (election period 1983–1987). It produced 13 reports which were discussed in the Bundestag plenary. Performance and efficiency of the new body, however, were poor. Its impact on the role of the Bundestag in dealing with EC matters was modest; its reports and recommendations were not given much attention. This was primarily due to the resistance of the other specialised committees, amongst them the Foreign Affairs Committee, to sharing competences. And concerning the function of the new body as crystal point for linking the two parliamentary assemblies, the members of the EP gave preference to the already existing forms of cooperation on party group level: German EP members used to attend party group meetings in the Bundestag. The new institution, therefore, was not re-established in the following election period of the Bundestag.

The next step was the establishment of another type of institution: in June 1987 the Bundestag decided to set up a Sub-Committee of the Foreign Affairs Committee for EC matters, consisting only of Bundestag members. The efficiency of this new body was, again, poor. Since EC matters go far beyond the functional scope of the Foreign Affairs Committee, the Sub-Committee, obliged to observe this limit, was not entitled to deal with specialised EC policies and played only a very marginal role.

In June 1991 the Bundestag took a next step and established an "EC Committee". This, however, was not yet the breakthrough for the institutionalisation of parliamentary (the Bundestag's) participation in EC matters; once more, there was a dispute on functional scope and competences of the new body. The result was that it was not authorised to deal with the Treaty of Maastricht, at that time on the political agenda. Instead, the Bundestag in October 1992 set up an additional specialised committee ("European Union"), which should prepare, as lead committee (and with only a minor role for the EC Committee), the ratification of the Maastricht Treaty.

This treaty, which has been perceived as a landmark in the integration process and in deepening the EC – giving it a new name ("European Union") and structure (with three "pillars" under the roof of the EU), extending the functional scope of the EU substantially and introducing far-going institutional and procedural reforms – was at the same time a catalyst for giving the Bundestag, and national parliaments in general, a strengthened permanent role in the decision-making system of the EU. In connection with the discussion on the new treaty, an amendment to the German constitution was decided. Two new articles dealt with the role of the national parliament:

- Article 23 GG (on the participation in developing the EU) introduced provisions on the participation of the Bundestag (and, through the Bundesrat, the Länder) in matters concerning the EU. Paragraph 2 stipulates: "The Federal Government

shall keep the Bundestag and Bundesrat informed, comprehensively and at the earliest possible time." Paragraph 3 stipulates: "Before participating in legislative acts of the EU, the Federal Government shall provide the Bundestag with an opportunity to state its position. The Federal Government shall take the position of the Bundestag into account during the negotiations. Details shall be regulated by a law."[18]

- Article 45 GG introduced provisions on a special Committee on EU matters: the Bundestag shall appoint this committee and "may authorize it to exercise the rights of Bundestag under Art. 23 vis-à-vis the Federal Government."[19]

With these constitutional provisions the Bundestag has acquired, under a legal point of view, a strong position in the decision-making process on EU matters at domestic level.

3.4 Strengthening the Role of National Parliaments Since the 1980s (2): Incentives in the Context of Treaty Reforms[20]

Not only were efforts taken by national parliaments themselves to strengthen their role in the EC/EU, but beginning with the Treaty of Maastricht, there were initiatives and incentives in connection with the series of treaty reforms, as well. This shows that from a European point of view and in the perception of actors at Community/Union level national parliaments should become an integral part of the decision-making system of the EC/EU. The respective initiatives have been based on concerns about democratic legitimacy of the integration project.

- Declaration No. 13 of the Treaty of Maastricht (1993) "on the role of the national parliaments in the EU", obviously taking up what has already been introduced and experienced in several Member States, stressed "that it is important to encourage greater involvement of national parliaments in the activities of the European Union." It then specified that "[to] this end, the exchange of information between national parliaments and the European Parliament should be stepped up. In this context, the governments of the Member States will ensure that national parliaments receive Commission proposals for legislation in good

[18]Law on the Cooperation of the Federal Government and the German Bundestag in European Union Affairs of 12 March 1993 (BGBl I 1993, p. 311). The law was amended on 17 November 2005 (BGBl I, p. 3178); in addition to and related to the law, Bundestag and Federal Government concluded on 28 September 2006 an Agreement on the Cooperation in EU Affairs (BGBl I 2006, pp. 2177–2180), dealing with all details of their cooperation. The Law was, as a consequence of the decision of the Federal Constitutional Court on the Treaty of Lisbon of 30 June 2009, again amended (draft of 21 August 2009, Deutscher Bundestag Drucksache 16/13925).

[19]This latter clause has in practice been used only rarely.

[20]The following is based on and taken from Hrbek (2010), pp. 144–147.

time for information or possible examination" and "that it is important for contacts between the national parliaments and the European Parliament to be stepped up, in particular through the granting of appropriate reciprocal facilities and regular meetings between members of Parliament interested in the same issues."

- Declaration No. 14 of the same treaty "on the Conference of the Parliaments (Assizes)" recommended meetings of such a new institution and specified: "The Conference of the Parliaments will be consulted on the main features of the European Union, without prejudice to the powers of the European Parliament and the rights of the national parliaments. The President of the European Council and the President of the Commission will report to each session of the Conference of the Parliaments on the state of the Union." The background for this proposal was a reunion in June 1990 in Rome, bringing together 173 members of national parliaments and 85 members of the EP. This conference, expected to give an input to the preparation of treaty reforms, had adopted a resolution on the two intergovernmental conferences (on the Economic and Monetary Union and on the Political Union). "But since the overall majority of national parliaments did not want to repeat the 'Rome exercise', Declaration No. 14 has never been activated."[21]
- The Treaty of Amsterdam (1999) went on with a "Protocol on the role of the national parliaments in the EU". The aim was to enhance the ability of national parliaments "to express their views on matters which may be of particular interest to them." The Protocol did focus on two points. First, on the improvement of information flow for national parliaments by stipulating that "all Commission consultation documents (green and white papers and communications) shall be promptly forwarded to national parliaments"; furthermore, "Commission proposals for legislation [. . .] shall be made available in good time" and that a six-week period shall elapse before the respective issue is put on the agenda of the Council. Second, on institutionalised links between national parliaments and the EP, by referring to the Conference of European Affairs Committees (COSAC), which was established in November 1989. It meets twice a year in the EU Member State which holds the EU's six-month Presidency. Each national parliament sends six members,[22] and the EP is represented by six members of its Institutional Committee. COSAC has its own secretariat in the EP. The Protocol has tried to specify the functions of COSAC, by stipulating that it "may address to the European Parliament, the Council and the Commission any contribution which it deems appropriate on the legislative activities of the Union, notably in relation to the application of the principle of subsidiarity, the area of freedom, security and justice as well as questions regarding fundamental rights." The Protocol, however, underlines that COSAC contributions "shall in no way bind

[21]Krekelberg (2001), p. 477.

[22]Parliaments of applicant countries were invited to send six members each as observers.

national parliaments or prejudge their position." COSAC has given itself Rules of Procedure, adopted in November 1989 in Paris; they have been amended several times: in October 1999 in Helsinki, in May 2003 in Athens.[23]

- Although the Treaty of Nice (2001) was disappointing since the member governments could not reach agreement on substantial treaty reforms, the member governments committed themselves to continue the reform process towards deepening the EU. In the "Declaration on the Future of the EU", attached as Declaration No. 23 to the Treaty, they listed four issues which should primarily be given attention in the next Governmental Conference (scheduled for 2004) on treaty reforms, amongst them "the role of national parliaments in the European architecture." The governments were obviously determined to formally institutionalise national parliaments in the decision-making system of the EU.
- In order to realise the goal formulated in the above-mentioned declaration, the Member States' governments went further than only amending the Treaties. They convened a "Convention" which from February 2002 to July 2003 elaborated a Constitutional Treaty that included provisions on the role of national parliaments. Ratification of this Treaty, however, failed: following two negative referendums in France and the Netherlands in May/June 2005, the ratification process was stopped. The Member States agreed on a comprehensive treaty reform as an alternative approach: in December 2007 they signed the Treaty of Lisbon, which is in large parts identical with the Constitutional Treaty. This applies also to provisions on the role of national parliaments.

4 Provisions on the Role of National Parliaments in the Treaty of Lisbon

As already mentioned in the introductory section of this article, the Treaty of Lisbon makes national parliaments an integral part of the institutional architecture of the EU. For the first time, there are provisions on the role of national parliaments in the main text of the treaty. Article 12 TEU stipulates generally that "national parliaments contribute actively to the good functioning of the Union"; it gives more detailed provisions in a list of six points – (a) to (f) – some of them explicitly referring to two Protocols annexed to the Treaty. Article 5.3 TEU attributes national parliaments a special role in ensuring compliance with the principle of subsidiarity, again referring to the respective Protocol.

[23]European Parliament, *Rules of Procedure of the Conference of Community and European Affairs Committees of Parliaments of the European Union*, O.J. C 27/6 (2008).

4.1 Protocol (No. 1) on the Role of National Parliaments in the European Union

The Protocol starts by "recalling that the way in which national Parliaments scrutinise their governments in relation to the activities of the Union is a matter for the particular constitutional organisation and practice of each Member State". This statement considers that national parliaments have already been engaged in performing a control function according to the rules given and developed in the respective Member State. It will be up to each Member State to decide on how to amend such rules in the light of the Treaty of Lisbon provisions. The Protocol continues with a second statement which, in accordance with statements and provisions in previous treaties, explains its major goal and intention, namely "to encourage greater involvement of national Parliaments in the activities of the European Union and to enhance their ability to express their views on draft legislative acts of the Union as well as on other matters which may be of particular interest to them." The provisions of the Protocol appear under two titles: "Information for national Parliaments" (with eight articles) and "Interparliamentary Cooperation" (with two articles).

Under the first title ("Information for national Parliaments") the Protocol stipulates the following:

- The Commission shall forward to national parliaments (at the same time as to the EP and the Council) its consultation documents, its annual legislative programme "as well as any other instrument of legislative planning or policy"; and to the Court of Auditors, its annual report.
- Draft legislative acts, originating from whatever institution or a group of Member States, shall be forwarded to national parliaments directly from the respective institution or the Council.
- "National Parliaments may send [...] a reasoned opinion on whether a draft legislative act complies with the principle of subsidiarity" (referring to the procedure laid down in Protocol No. 2) to the institution or body concerned.
- "An eight-week period shall elapse between a draft legislative act being made available to national Parliaments in the official languages of the Union and the date when it is placed on a provisional agenda for the Council for its adoption or for adoption of a position under a legislative procedure", with exceptions "in cases of urgency".
- The Council is obliged to forward directly to national parliaments the agendas for and the outcome of its meetings, "including the minutes of meetings where the Council is deliberating on draft legislative acts."
- In cases of treaty amendments via the "simplified revision procedure" as laid down in Art. 48.7 TEU, "national Parliaments shall be informed of the initiative of the European Council at least six months before any decision is adopted."

Additionally Art. 48.7 TEU gives each single national parliament the right to veto such European Council initiatives.[24]

- Finally, Art. 8 of the Protocol specifies that "[w]here the national Parliamentary system is not unicameral, Arts. 1 to 7 shall apply to the component chambers."

On the basis of these provisions, national parliaments shall posses a comprehensive set of information, enabling them to get better and deeper involved in decision-making on EU matters: vis-à-vis their respective national governments when decisions are prepared and taken at domestic level, and vis-à-vis the institutions of the EU in Brussels.

Under the second title ("Interparliamentary Cooperation") the Protocol stipulates that "the European Parliament and national Parliaments shall together determine the organisation and promotion of effective and regular interparliamentary cooperation within the Union." It mentions COSAC explicitly and specifies that this institution "shall promote the exchange of information and best practice between national Parliaments and the European Parliament, including their specialised committees and that it may also organise interparliamentary conferences on specific topics, in particular to debate matters of common foreign and security policy, including common security and defence policy." It is remarkable that these latter issues – sensitive in character and traditionally reserved more or less exclusively for the executive – are now included as matters for discussion at parliamentary level. In accordance with statements in previous treaties, the Protocol underlines that "contributions from the conference shall not bind national Parliaments and shall not prejudge their positions."

4.2 Protocol (No. 2) on the Application of the Principles of Subsidiarity and Proportionality

Since the entry into force of the Treaty of Maastricht with a new article on the principles of subsidiarity and proportionality, there have continuously been disputes on the proper application of these two principles.[25] As a response, the Protocol has been designed "to ensure that decisions are taken as closely as possible to the citizens of the Union" and "to establish the conditions for the application of the principles of subsidiarity and proportionality [. . .] and to establish a system for monitoring the application of those principles". The focus of the Protocol (with nine articles) is on procedural aspects of how to ensure compliance with the principles.

[24]This is the so-called Passerelle Clause.

[25]Hrbek (2000).

- All draft legislative acts and amended drafts, originating from whatever institution or a group of Member States, shall be forwarded to national parliaments; the same applies to legislative resolutions of the EP and positions of the Council in the course of the legislative process.
- The introduction of a so-called early-warning system represents a genuine innovation in that it gives national parliaments specific rights in the monitoring of the principles' application: "Any national Parliament or any chamber of a national Parliament may, within eight weeks from the date of transmission of a draft legislative act, in the official languages of the Union, send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why it considers that the draft in question does not comply with the principle of subsidiarity." In addition, Art. 6 of the Protocol stipulates: "It will be for each national Parliament or each chamber of a national Parliament to consult, where appropriate, regional parliaments with legislative powers." This clause, thus, increases the number of actors involved in the monitoring process; there are Member States having regional parliaments with legislative powers.[26]
- The institutions "shall take account of the reasoned opinions." In case that these represent at least one third of all the votes allocated to the national Parliaments (Art. 7 rules: "Each national Parliament shall have two votes, shared out on the basis of the national Parliamentary system. In the case of a bicameral Parliamentary system, each of the two chambers shall have one vote"), "the draft must be reviewed." In special cases – "a draft legislative act submitted on the basis of Article 76 [TFEU] on the area of freedom, security and justice" – the threshold will be even lower, namely one quarter. As a result of such a review, the institutions "may decide to maintain, amend or withdraw the draft" and they must give reasons for their decision.
- In addition, the Protocol adds for cases "under the ordinary legislative procedure" the following rule: "where reasoned opinions on the non-compliance of a proposal for a legislative act with the principle of subsidiarity represent at least a simple majority of the votes allocated to the national Parliaments [...], the proposal must be reviewed." If the Commission would, having reviewed the proposal, decide to maintain it, the whole issue would have to be submitted to the Union legislator (EP and Council) for final decision. For such cases the Protocol stipulates: "If, by a majority of 55 % of the members of the Council or a majority of the votes cast in the European Parliament, the legislator is of the opinion that the proposal is not compatible with the principle of subsidiarity, the legislative proposal shall not be given further consideration."
- Once a legislative act had passed the legislative process and a national parliament continued to argue that the act does not comply with the principle of subsidiarity, this national parliament or a chamber thereof could bring the

[26]See point 6 below, dealing with Regional Parliaments.

issue before the European Court of Justice, via notification by the respective Member State's government.

- Last but not least, the Commission is obliged to submit a report on the application of Art. 5 TEU not only to the other institutions, but also to national parliaments.

This set of provisions laid down in the two Protocols aims towards strengthening considerably the role of national parliaments in the EU. They have become upgraded as institutional actors in the decision-making system of the EU, which comprises, as a multi-level system, the national, the regional and the supranational levels. Strengthening the role of national parliaments has been expected to improve and strengthen the democratic legitimacy of the EU which shall be provided by two sources: EP and national parliaments.

4.3 The Special Case of Germany Pursuant to the Ruling of the Federal Constitutional Court on the Treaty of Lisbon[27]

In its ruling, the German Federal Constitutional Court "rejected every objection that had challenged the compatibility of the Treaty of Lisbon with the Basic Law. [. . .] The Court's only criticism was directed at the national law of implementation (which defines the participatory powers of the German legislative bodies), and found that these powers had not been sufficiently strengthened."[28] The conclusion, therefore, was "that Germany can continue with the ratification of the treaty only after introducing a new implementation law."[29] In its decision (147 pages long, with 421 paragraphs), based on its decision on the Treaty of Maastricht of 1993,[30] the Court has, now in a very detailed way, given "concrete instructions to the German legislature: whenever the EU institutions wish to apply certain strategic decisions under the Treaty of Lisbon, the German government may agree to them only after the two national legislative chambers [. . .] have given their prior approval. [. . .] The strategic decisions in question mainly concern what the Court considers to be, or at least potentially to be, *de facto* treaty amendment procedures by which EU institutions may dynamically expand their competences or change decision-making rules without having to resort to the regular ratification procedure for new treaties."[31]

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[27]German Federal Constitutional Court, 2BvE 2/08 (30 June 2009) (in: BverfGE 123, 267) – *Lisbon*.

[28]Tomuschat (2009), p. 1259.

[29]Schorkopf (2009), p. 1219.

[30]German Federal Constitutional Court, 2 BvR 2134, 2159/92 (12 October 1993) (in: BVerfGE 89, 155) – *Maastricht*.

[31]Kiiver (2009), p. 1287.

These instructions focus on the following points[32]:

- Passerelle (or bridge) clauses, "which allow the Council to move from unanimity to qualified majority voting or from the special to the ordinary legislative procedure" (Art. 48.7 TEU, the general bridge clause, furthermore various specific – subject matter–related – bridge clauses scattered in both the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU)). Whereas the Treaty of Lisbon gives national parliaments six months to veto such a change, the Court goes much further "by holding that Germany's representative in the Council must in no case agree to a change in procedure unless and until the legislature has voted on the matter. 'Silence on the part of the Bundestag and Bundesrat', the Court explains, 'is [. . .] not sufficient for exercising this responsibility.' Moreover, with regard to the general [. . .] bridge clauses; a vote by the legislature is not enough. Here the Court requires the German legislature to make the extra step and pass a law to ratify what the Court describes as a change in primary treaty law within the meaning of Basic Law Article 23(1)."
- The "emergency brake" system which, with respect to legislative proposals in the fields of criminal law (Art. 82.3 and 83.3 TFEU) and social security (Art. 48.2 TFEU), stipulates that "a Council member may raise an objection that suspends consideration of the measure and refers the matter to the European Council." Here, "the Court subjects these emergency brakes [. . .] to an affirmative instruction on the part of the Bundestag and, where appropriate, the Bundesrat."
- The flexibility clause of Art. 352 TFEU (the former Art. 308 EC), reminding us of the "implied powers" doctrine in the USA, or the French doctrine of "effet utile in international treaty law". Here the Court "subjects any Council decision to resort to the general implied powers provision of Article 352 TFEU to a ratification law pursuant to Basic Law Article 23(1)." Whereas the former Art. 308 EC demanded (and justified) that the use of this clause serve the goals of the internal market, Art. 352 TFEU allows "the invocation of implied powers in the service of all 'policies defined in the Treaties'. In the Court's view, this new generality leaves the scope of the flexibility clause ill-defined and, thus, tantamount to an invitation to substantive, fundamental treaty changes." The Court has been concerned about not giving the Union plenary powers or the power to determine its own competences.

The Ruling of the Court has been received in Germany with much criticism from political actors and academics.[33] The major arguments of this criticism are oriented against basic assumptions and premises on which the Court has built its decision.

[32]The following (including quotes) is based on Halberstam and Möllers (2009), pp. 1243–1246.

[33]See, for example, the contributions in the Special Section of German Law Journal, quoted above.

- "The first premise is that of electoral democracy as a classical form of legitimization for the self-determination of citizens under the condition of equality."[34] It is the citizen, equipped with human dignity and personal freedom, "who stands in the centre of things." The state is perceived "as a necessary organizational form of the political community of individuals – a historically grown and identity-forming community."[35] "For the Court, democracy is a concept that is limited to a state with a people and its territory."[36] The EU, with a legal order derived from that of the Member States, is different and of minor quality, which relates to its democratic legitimacy. The EP, since there is no European people, cannot claim democratic representation of a real parliament; moreover, the Court underlines "that the voting mechanisms to the European Parliament do not function according to a strict rule of democratic equality, one (wo)man, one vote."[37] In conclusion, "the main democratic roots of the European Union lie in the democratic processes of the twenty-seven member countries"[38] with their national parliaments as the key institutions.
- The second premise is that of the identity of the constitution, in the German case: the Basic Law. This does relate to principles laid down in Art. 20 in conjunction with Art. 79.3 GG, amongst them the democratic principle. If this principle "is neither amenable to balancing nor violable, then the constituent parliament, maybe not even the *pouvoir constituant*, can dispose of this facet of the identity of the free constitutional order."[39] With this reasoning, the Court guarantees German statehood. In addition, the Court listed the areas – public tasks – to be regulated nationally which belong to this constitutional identity as well. The major importance of the Court's ruling, in this context, lies in the perception of the German constitution, according to which the European integration process must not touch on these essentials of German statehood.[40] "The Court constructs a line of defence against any possible infringement of German sovereignty, stating that certain fields [. . .] must forever remain under German control."[41] These fields are identical with the list of public tasks, forming an integral part of the constitutional identity.

These premises have to be understood as guidelines and criteria in all cases submitted to the Constitutional Court, which claims to be the supreme authority in defining direction and substance of the integration process. It remains, however, an open question, how the Court in the future will perform and fulfil this role. As far as

[34] Schorkopf (2009), p. 1221.
[35] Schorkopf (2009), p. 1222.
[36] Halberstam and Möllers (2009), p. 1247.
[37] Halberstam and Möllers (2009), p. 1247.
[38] Tomuschat (2009), p. 1261.
[39] Schorkopf (2009), p. 1223.
[40] Nettesheim (2009), p. 2868.
[41] Tomuschat (2009), p. 1260.

the Court's ruling in the Lisbon Case is concerned, most observers noted an obvious lack of judicial self-restraint.

The instructions given by the Court on the basis of the above-mentioned premises to the German legislature define the content of what has to be observed carefully by all institutional actors under the Basic Law committed to what has been called "integration responsibility". This applies primarily to the national parliament. The instructions of the Court have been transformed in the *Integrationsverantwortungsgesetz*, the law on integration responsibility, of 22 September 2009,[42] strengthening the competences of the Bundestag and Bundesrat in EU matters, as described above. It remains an open question as to how the legislative bodies will use these competences; moreover, how EU bodies will use the new (bridge and flexibility) clauses.

5 Aspects and Problems Related to the Future Role of National Parliaments in the EU

Reflecting on the future role of national parliaments in the EU requires taking into account, first, functions attributed to parliamentary assemblies in democratic political systems in general, which has been done under point 2 of this article. And it is our premise that the EU has to be conceived as a political system.[43] Position, role and performance of national parliaments, however, vary from Member State to Member State, since they are embedded in the respective system of parliamentary government, in a specific political culture (competitive or cooperative/consensual) and in customs and conventions.[44] Second, the role of national parliaments have to be seen in relation to features of the decision-making system of the EU which have undergone substantial changes and which will most probably continue to change under the new provisions of the Treaty of Lisbon. And, third, experiences with the role of national parliaments during the past decades, especially since the early 1990s with the provisions of the Treaty of Maastricht, should be observed carefully.

[42]IntVG of 22 September 2009, BGBl. 1, pp. 3022 et seqq.

[43]The EU, which is neither a state nor an international organisation, has been conceived as a compound with nation states as component parts. From a political science point of view, the concept of a "political system", applied primarily to nation states, has been applied to the EU as well. See Hix (2005).

[44]Norton (1996a, b), pp. 1–2, distinguishes between different types of legislatures: the "policy-making legislature" (it "can modify or reject policy brought forward by the executive, and can formulate and substitute policy of its own"), which can be found in the Nordic countries and in Austria; the "policy-influencing legislature" ("it can modify policy brought forward by the executive, but cannot formulate and substitute policy of its own"), to be found in France, Germany, the Netherlands and the United Kingdom; and the "legislature with little or no policy effect" (it "can neither modify or reject policy brought forward by the executive, nor formulate and substitute policy of its own"), to be found primarily in Southern Europe.

Many of these experiences are linked with organisational and institutional innovations built up with respect to the role of national parliaments in EU decision-making. At present, all national parliaments possess European Affairs Committees (EACs); their legal status and their political quality and performance, however, vary. Furthermore, we can observe that specialised committees – in charge of special policy fields – have become involved, besides the EACs, in dealing with EU matters. And there can be no doubt that members of national parliaments in the meantime pay more attention to EU affairs and perceive the EU system as a framework offering them career perspectives. With treaty articles on the role of political parties (beginning with the Treaty of Maastricht)[45] and especially with a special Statute (2003, already amended in 2007),[46] "parties at European level" have been entering the EU arena as political actors, offering party groups in the EP and in national parliaments a point of political orientation. As far as the collective role of national parliaments is concerned, interparliamentary cooperation and communication have become consolidated and – especially with COSAC – institutionalised. It is worth being aware of the fact that all these aspects apply to the new EU Member States and their parliaments as well.

5.1 Features and Recent Changes in the Decision-Making System of the EU[47]

Especially during the past two decades, the decision-making system of the EU has developed a much more complex structure, with a growing number of actors involved and with a plethora of institutional and procedural innovations. A second major change lies in the emergence of informal means and channels in the decision-making system of the EU, complementing the formalised ones as laid down in legal rules and provisions. Both complexity and informality are a challenge for national parliaments as actors and participants in the decision-making system and require a proper response.

- The introduction of the co-decision procedure and its extension to a larger number of policy issues (with the Treaty of Lisbon adding some more to this

[45]Article 138a EC (Maastricht) = Art. 191 EC (Amsterdam) stipulates: "Political Parties at European level are important as a factor for integration within the Union. They contribute to forming a European awareness and to expressing the political will of the citizens of the Union." The wording of the provision has been slightly modified in the Treaty of Lisbon; Art. 10(4) TEU reads: "Political Parties at European level contribute to forming European political awareness and to expressing the will of citizens of the Union."

[46]European Parliament/Council Regulation No. 2004/2003 *on the regulations governing political parties at European level and the rules regarding their funding*, O.J. L 297/1 (2003); amendment: Regulation No. 1524/2207, O.J. L 343/5 (2007).

[47]See for example Sousa (2008), pp. 435–438; or Benz and Broschek (2010), pp. 2–3.

list) has had two effects: first, since co-decision is linked with qualified majority voting in the Council, the national veto by one single Member State does not any longer exist in these cases. Instead, national governments have to form alliances via negotiations and bargaining, which requires flexibility in the Council or in Council formations. A (narrowly defined) mandate for a national government from its national parliament can, therefore, be counterproductive. Second, the EP – now co-legislator – has been strengthened. National parliaments, eager to influence decision-making in EU matters, cannot continue to focus on the Council via scrutinising national governments; they have to deal with the EP as the "target" of their activities and efforts as well.

- Comitology committees with various categories of civil servants as members play a greater role in issuing (draft) directives on behalf of the Commission, which modifies the traditional pattern of decision-making and, especially, decision preparation. National parliaments are challenged by the need to become involved in decision-making processes as early as possible, since otherwise they would see themselves marginalised.
- A larger number of issues have been dealt with in working groups of the Council; here national civil servants, with the active participation of Commission civil servants, try to reconcile national interests. When they succeed, the respective issues need not become subject to the strictly formalised Community method; again, national parliaments may become marginalised or even excluded.
- Another type of preparatory and informal meetings is the trialogue with civil servants from the Commission and the Council Presidency and members of the EP, introduced with respect to the co-decision procedure. The meetings, held weekly, seem to play an important role in the decision-making process. All these informal arenas (such as trialogues, working groups and committees) shall help to reach decisions earlier. National parliaments have no access to these bargaining processes and when an issue appears on the formal agenda of the Council, it will most probably be too late to intervene. Focusing on the Council, therefore, will not be the appropriate strategy for national parliaments.
- Intergovernmental coordination, as a second mode of governance in the EU, has become especially important in Common Foreign and Security (and Defence) Policy, and for "third pillar" issues and activities towards establishing an Area of Freedom, Security and Justice. And the new Open Method of Coordination (OMC), intergovernmental in character, has been perceived as representing executive federalism without participation of parliaments.[48]

[48]See Duina and Raunio (2007). The authors argue that "with regard to participation . . . OMC risks further marginalizing national parliaments. On the other hand, when we consider its output, the OMC provides national legislators with opportunities that the traditional Community method of legislation cannot offer. First, the OMC gives national legislators access to insights and tools for producing successful laws. Second, the OMC gives those legislators grounds for criticizing the policies of government officials" (p. 489).

If national parliaments intend to really influence EU decision-making, they must be aware of these more recent developments in EU governance, and try to respond to the challenge by adapting their strategies, which requires not to rely on formal channels and instruments only and to improve established strategies.

5.2 Activities of National Parliaments at Domestic Level: Aspects and Problems

National parliaments will continue with these activities, focusing on scrutinising the government which represents the Member State in the Council. There are, as experience shows, aspects affecting the role of national parliaments and its effectiveness, which should be taken into account.

- EACs and specialised committees coexist. The former, besides dealing with "constitutional" questions of the EU, have as primary task the coordination of the Member State's European policy. This requires cooperation with the specialised committees. The pattern of their relation, however, has often been one of rivalry and competition, although they are to a certain extent dependent on each other for the fulfilment of the control function versus the executive.
- Since committees in general meet behind closed doors, debates in the plenary are important with respect to the function to generate democratic legitimacy. In the past, however, there were only few plenary debates on EU matters in national parliaments. This has been due to the often very technical and highly specialised character of EU matters, which do not attract attention either in the public or in the media. It has further been due to the fact that the elites in most EU Member States agree on basics of the integration project and are, in general, more "pro EU" than the citizens; this may explain the reluctance of parliamentarians – at least those of the established mainstream parties – to have public debates. Furthermore, these could be used by populist or extremist political forces for arguing against the EU (e.g. making it the scapegoat for what they criticise as negative and against "national" interests). Opposition parties could hesitate to publicly criticise the government, which could, in return, accuse the opposition of violating national interests. Plenary debates, however, play an essential role in performing the "teaching" function of a parliament.[49]
- In case of a two-chamber system, both chambers have to cooperate and coordinate their EU-related activities at domestic level. This will apply particularly with respect to the early-warning system in the application of the principle of subsidiarity.

[49]This was one of the functions which Walter Bagehot (see fn. 4) in his frequently quoted catalogue of parliamentary functions has listed.

- The informational basis for activities of national parliaments is well developed and has been improved continuously. The growing quantity of information, however, raises the question as to how parliaments (committees and individual deputies) can manage to make a reasonable selection and decide where to focus on. Parliaments have already invested in the respective resources, but with respect to the extending EU agenda, they need to do more and better in this field. National parliaments have started to establish their own representations in Brussels, not incorporated in the Permanent Representation of the respective Member State (its executive) in the EU. Being on the spot within the Brussels arena can only support having access to all kind of information and to informal communication networks.
- As far as the scrutiny system is concerned, one can distinguish between a "document-based" model (here national parliaments process and scrutinise EU documents, with the goal of finding a consensual solution, supporting the government) and a "mandating" model (here national parliaments use to give a direct mandate to their governments before Council meetings).[50] The latter obviously does not fit with new patterns in the decision-making system as mentioned above (5.1), since it does not correspond with the needs of bargaining processes requiring flexibility.

5.3 Links Between National Parliaments and the European Parliament

Both national parliaments and the EP have been attributed the function of contributing to the emergence of democratic legitimacy for the EU. It seems, therefore, plausible that they cooperate and organise their relations in the sense of structured and institutionalised links. We may observe that various forms and patterns of such links have been established, some of them experimental in character and open to changes and further development.

The most common form of such links is for national parliaments to draw on the knowledge and experience of EP members by inviting them into the national parliament. This can be arranged either in the framework of committees, with considerable emphasis on specialised committees, or of party groups (either as a whole or with working groups for selected policy fields as organisational framework). Party group affiliation as a point of orientation seems to be superior to policy specialisation in committees. Steps towards consolidating and further developing parties at European level may contribute to confirm and further develop this pattern. One should, however, not underestimate time constraints as a factor which will reduce possibilities of the physical presence of members of the EP in committees or

[50]See Raunio (2009), pp. 5–6; and Benz and Broschek (2010), pp. 16–17.

party groups of their respective national parliament to a minimum. Furthermore, one has to take into account, that European parliamentarians in the EP with respect to the European legislative process under the co-decision procedure follow a more cooperative and consensus-seeking logic, which differs from the much more competitive approach of party groups in national parliaments.

5.4 Horizontal Cooperation of National Parliaments

COSAC, established in late 1989, has acquired the role of an institutionalised platform for inter-parliamentary communication. Its main function has been that EACs of national parliaments exchange information. They do not deal with specialised EU policies. COSAC has never had an impact in the field of controlling or participating in EU policy-making. An inter-parliamentary information network ("Inter-parliamentary EU Information Exchange") was established by COSAC in 2002; it has the function to collect information on how national parliaments deal with current legislative projects of the EU.

Provisions on the "early-warning system" related to the application of the principles of subsidiarity and proportionality point to a more demanding function of national parliaments' horizontal cooperation, going far beyond supplying and exchanging information as in the COSAC framework. EU institutions will be obliged to review draft legislative acts if reasoned opinions of national parliaments, stating why they consider that the draft in question does not comply with the principle of subsidiarity, represent at least one third of all the votes allocated to the national parliaments. Making proper use of this provision will require from national parliaments – primarily its specialised committees dealing with draft legislative acts under subsidiarity scrutiny – to develop new forms of communication, coordination and cooperation amongst each other, and to respond to the special challenge of the time factor (time period of only eight weeks available). Especially a group of national parliaments (one third or the majority), as a collective actor, could really have in impact on EU legislation.

Horizontal cooperation of national parliaments could have an additional function related to the "European Citizens' Initiative",[51] as laid down in Art. 11.4 TEU, which stipulates: "Not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European Commission within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties." Mobilising the necessary support – one

[51]See Maurer and Vogel (2009). The European Commission has submitted a *Green Paper on the Citizens' Initiative*, COM (2009) 622 final of 11 November 2009.

million citizens in at least one third of the Member States[52] – is a task requiring organisational efforts. Amongst the actors which could get involved in fulfilling this task could be – besides interest associations, NGOs, Civil Society groupings and political parties – party groups in national parliaments, experienced in the legislative "business" in general and in EU legislation in particular. Performing the task, party groups belonging to the same party family would need to build up and intensify communication relations amongst each other, another aspect of horizontal cooperation of national parliaments.

In their efforts to strengthen their role in EU decision-making, thus contributing to enhance democratic legitimacy in the EU,[53] national parliaments are not only confronted with greater complexity of the decision-making system and of governance structures in the EU, but their involvement would rather add to this complexity.

6 Parliaments at Regional ("Sub-national") Level[54]

Considerations on the role of national parliaments must not ignore parliamentary assemblies at regional level. In a number of EU Member States we can identify territorial entities at sub-national level, possessing an institutional structure with an executive and a parliamentary assembly. Since European integration has been a challenge for sub-national entities,[55] these have responded in trying to get involved in decision-making on EU matters. In these efforts, the respective executives (governments and their administrations) have been, and still are, dominant. But the respective parliaments have tried to get involved as well.[56] This relates to formalised or informal participation in decision-making on EU matters, to controlling the respective regional executives, and, last but not least, to establishing an organised network of regional parliaments in the EU. The provision in Art. 6 of the subsidiarity Protocol, stipulating that national parliaments may consult regional parliaments with legislative powers, may be an incentive for the latter to intensify their EU-related activities.

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[52]The European Commission *proposal for a Regulation of the European Parliament and of the Council on the citizens' initiative*, COM (2010) 119 final of 31 March 2010, has proposed the minimum number at one third.

[53]See the volume Kohler-Koch and Rittberger (2007); especially the following chapters: Auel and Benz (2007), and Rittberger (2007).

[54]The following is based on and taken from Hrbek (2010), pp. 147–149.

[55]See Hrbek (1999).

[56]See Straub and Hrbek (1998); the volume covers the cases of Austria, Belgium, Spain, Italy, France and Germany, and it contains a documentation on practical activities of regional parliaments.

Basic structures already exist, as can be illustrated with the German example.[57] Länder parliaments have established special committees for EU affairs,[58] which have to deal with the same problem mentioned above for the national parliament's EAC: the rivalry with specialised committees and difficulties in acquiring something like a coordination role. Activities of parliaments are oriented towards the respective government. There are provisions ruling the relationship of the two institutions,[59] which include the obligation of the government to inform the parliament on EU matters as early and comprehensively as possible; the right of the parliament to formulate its opinions, which, although not binding, shall be taken into account by the government (especially in the Bundesrat); and the obligation of the government to submit an annual report on how EU policies affect the Land and what the government has done. As far as the informational basis is concerned, parliaments are dependent on the executive. Only recently, some parliaments have started to establish a modest representation (a civil servant of the parliament's administration) of their own in Brussels, placed within the Land Representation. Observers of activities and performance of EU committees conclude that the impact of parliamentary activities has been poor.[60] This is partly due to a lack of sufficient resources. If Land parliaments wish to play a more influential and more efficient role in EU decision-making, they need to overcome these deficiencies.

With regard to interparliamentary cooperation as another strategy of regional parliaments to strengthen their involvement in decision-making on EU matters, a meeting of presidents of regional parliaments with legislative powers in October 1997 in Oviedo (Asturia) agreed to establish CALRE[61] as a political network,[62] which represents 73 regions from eight EU Member States: Austria, Belgium, Germany, Spain, Italy, Portugal (the regions Azores and Madeira), the UK (Scotland and Wales) and Finland (the Aaland Islands). CALRE meetings, held annually, focus on political and "constitutional" questions; two working groups on these issues have been set up in 2006, and a third group deals with e-democracy. The major value of this network seems to lie in the field of internal communication amongst its members; there is, however, potential for strengthening the network to the benefit of this group of regional parliaments which might play a role in scrutinising the application of the principle of subsidiarity.

[57] See the detailed descriptive analysis by Johne (2000).

[58] See Bauer (2005).

[59] In some Länder these have been included in the respective Land constitution.

[60] Bauer (2005).

[61] CALRE = Conférence des Assemblées législatives régionales d'Europe.

[62] See Kiefer (2006).

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