

THE FRENCH PARLIAMENT AND EUROPEAN INTEGRATION

Arthur Dyevre
Investigador Garcia Pelayo Research Fellow,
Centro de Estudios
Políticos y Constitucionales

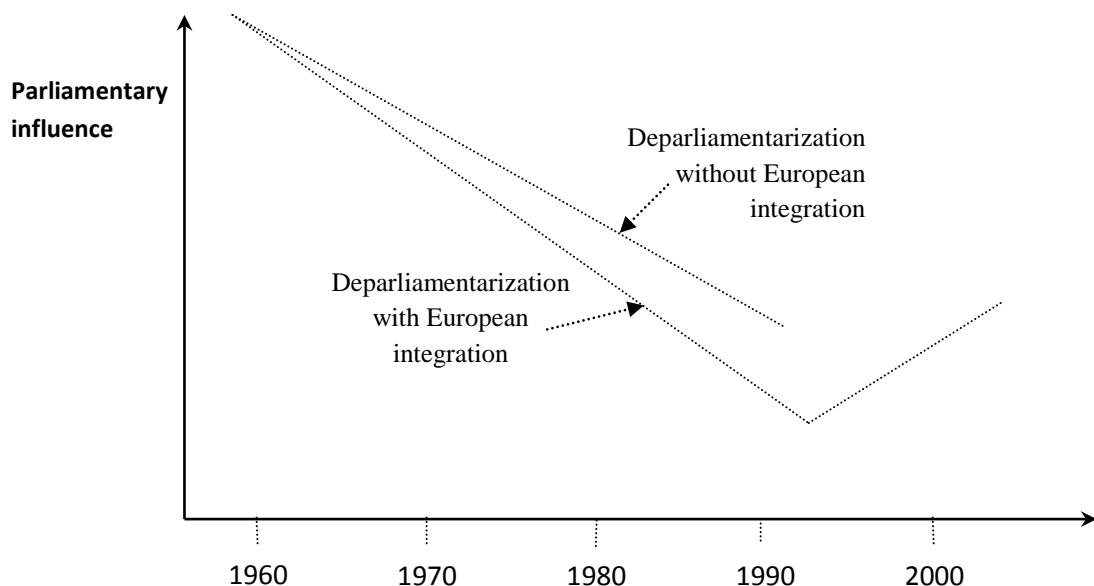
INTRODUCTION

European integration affects national institutions in asymmetrical fashion. It has benefited some while undermining others as competences were shifted to the supranational level and governance and policy-making processes were rearranged at the domestic level. Clearly on the winning side of European integration are national governments and ordinary courts. Ministers and heads of government may like to blame the EU technocrats for all the unpopular constraints and regulations brought by European integration. But the reality is that, through the European Council and the Council of Ministers, they are often the ones who call the shots in Brussels (Moravcsik 1994). Meanwhile, thanks to the twin doctrines of supremacy and direct effect of EU law, ordinary courts have gained the power to challenge domestic legislation. On the losing side of integration, the situation of national parliaments and constitutional courts is almost the mirror image of that of governments and ordinary courts. Forced to relinquish their monopoly of judicial review, constitutional courts have lost the unchallenged authority they used to hold over ordinary judges. The Court of Justice's transformation of the Rome Treaty into something akin to a supranational Constitution has also occurred at their expense. Yet national legislatures have undoubtedly been the most conspicuous losers of European integration. Not only have many of their competencies been transferred to the supranational level. Integration has also upset executive-legislative relations and accelerated the growing deparliamentarization experienced by Western European democracies since the Second World War. Left with less say over the

content of legislation and little ability to control the executive as ministers make policies behind closed doors in the Council, backbenchers, it would seem, are deservedly seen as the main political victims of integration (Raunio and O'Brennan 2007).

Power and prestige, however, are not prerogatives that political actors renounce cheerfully. So, as one would expect, parliamentarians have tried to fight back. Parallel to constitutional judges – some of which have attempted to reassert authority over what they regard as their home turf in the face of a strongly activist Court of Justice – MPs have put their act together and sought to regain a measure of control over the conduct of European affairs.

Figure 1: Deparliamentarization and European Integration



Inasmuch as we can speak of a resurgence of national parliaments on the European stage, it seems to coincide with the 1990s when new European Affairs Committees were instituted or existing ones were revamped and had their status and powers upgraded (Figure 1). Some scholars have even suggested that this resurgence may have helped national legislatures reverse

the deparliamentarization trend that national political systems have been undergoing since the beginning of the post-war period. While European integration initially aggravated deparliamentarization, concerns over the EU democratic deficit may now give MPs the chance to reclaim some of the influence lost to the executive branch (Raunio and Hix 2000).

The continuous expansion of parliaments' formal powers to monitor and scrutinize the executive in the conduct of European affairs observed in the Member States since the Maastricht Treaty seems to lend support to the reparliamentarization thesis. But the two protocols attached to the Lisbon Treaty, the Protocol on the Role of National Parliaments in the European Union and the Protocol on the Application of the Principles of Subsidiarity and Proportionality, appear to provide even stronger evidence of the resurgence of national legislatures. In addition to the much touted "Early Warning Mechanism", which promises to give parliaments a formal say in the application of the subsidiarity principle, the protocols guarantee the right of MPs to be informed about the EU lawmaking process and to oppose the application of the so-called passerelle clauses.

Nevertheless, the example of the French Parliament shows there are two major obstacles to the reparliamentarization of EU politics and policies. The first is the MPs' lack of incentive to grapple with the nitty-gritty of EU legislative proposals. Citizens tend to regard European issues as tediously technical and their representatives do not find very Europe sexy either. The policies that attract the attention of citizens – taxation, welfare, law and order – are still largely in the hands of national parliaments. So MPs primarily concerned with gaining re-election or simply desirous to address the actual concerns of their constituencies have little incentive to use their time and resources monitoring law-making at EU level. What is more, the logic of modern partisan organizations means that MPs belonging to the party in power will tend to be reluctant to hold their ministers to account. Ministers are often simultaneously party leaders. From a constitutional viewpoint they are supposed to be accountable to the legislature. But they stand above those who are supposed to hold them in check in the party hierarchy. Hence, no matter how many formal

powers they are granted, parliamentarians in the ruling coalition are unlikely to show much appetite to use them against their government.

Second, even if MPs were really interested in EU affairs, powerful reasons speak against giving national MPs the power to issue mandating instructions to the ministers and government permanent representatives in Brussels. EU legislation typically involves complex package deals. Directives and regulations are the result of extensive horse-trading and back-scratching: “If you give me your vote on the working directive, you’ll get the commissioner for the internal market and he’ll give you his vote on the battery directive, etc.” For better or worse, this is how the European sausage factory works. That no government can hope to wield any influence in policy-bargaining at EU level if it comes to the negotiation table with its hands tie is part of the game. A government cannot hope to get anything if it has nothing to offer. So there seems to be a point beyond which expanding the prerogatives of MPs may become counterproductive.

The reforms introduced in France over the past two decades have given French parliamentarians new rights and instruments to monitor policy-making at EU level and exert tighter scrutiny on the executive branch. But, as we shall see, the reforms have fallen short of overcoming these two obstacles. They have failed to deliver the Europeanization of parliamentary debates some had hoped for. Although some progress has been made – MPs have better access to information and expertise on EU legislative proposals – Parliament’s overall influence in EU matters remains low and the innovations brought by the Lisbon Treaty are unlikely to make any significant change to this state of affairs.

To assess the role of French legislature in EU matters as well as the goal and impact of the recent institutional reforms, we need first to replace them within the broader context of the Fifth Republic, whose advent and history have come to be associated with the systematic marginalisation of Parliament. Under the Fifth Republic, the French legislature is a structurally weak institution (Section 1). Yet, despite this lingering structural weakness, the rules and procedures governing parliamentary scrutiny of European issues have gradually been

brought into line with those of more powerful European legislatures. An evolution spurred as much by the desire to adapt to the reality of European integration as by a perception that parliamentary prerogatives had to be reinforced to counter-balance the dominance of an all-powerful and ubiquitous president (Section 2). However, constitutional reforms are more symbolic than real when do not affect the prevailing political equilibria. This seems to apply for some of the reforms introduced by the French constituent power but perhaps even more for the Lisbon Treaty. It establishes new mechanisms and guaranties that look nice on paper, but that are unlikely to achieve much in practice (Section 3).

THE STRUCTURAL WEAKNESS OF PARLIAMENT UNDER THE FIFTH REPUBLIC

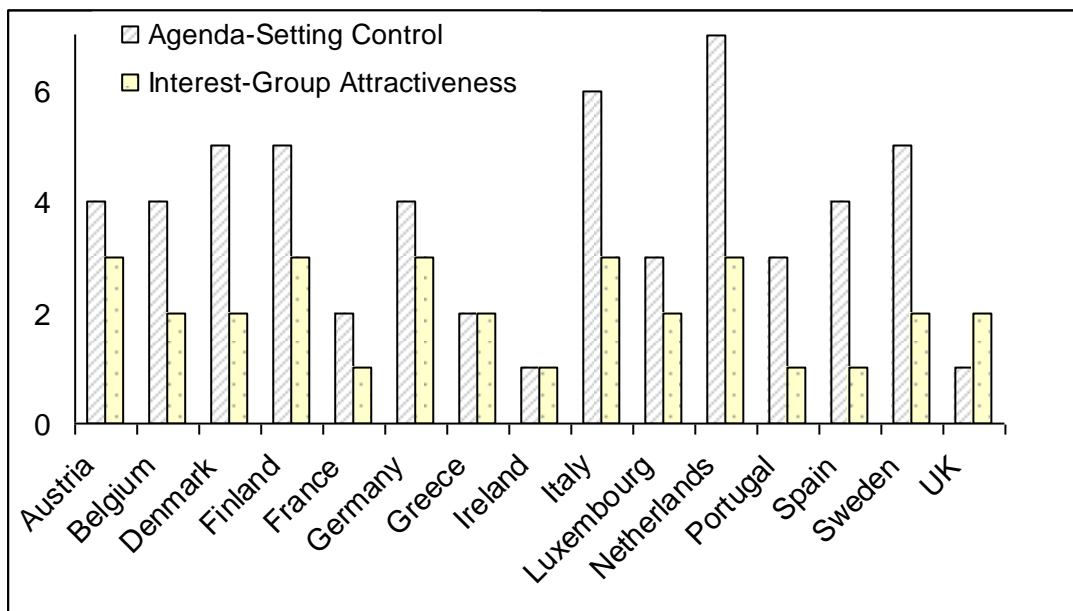
The literature on national parliaments emphasizes three factors as critical in determining the capacity of MPs to scrutinize and influence the executive branch in the conduct of negotiations at EU level:

- (1) One is the overall weight of the legislative branch in the political system. Weak legislatures tend to be equally weak on Europe. Conversely, when a parliament is strong, its strength tends to spill over to EU issues (Raunio 2005; Raunio and Wright 2000; Bergman 1997; Raunio and Hix 2000).
- (2) The second factor is the public's attitude towards European integration: a more widespread Eurosceptic attitude, the argument goes, creates demand for scrutiny and incentives for MPs to exert more control on the executive (Raunio 2005; Saalfeld 2005).
- (3) The third factor is the nature of the governing coalition: coalition and minority cabinets produce more scrutiny than majority governments (Saalfeld 2005; Pahre 1997).

As to the second factor, the Eurobarometer survey shows that French voters are close to the EU average in their attitude towards Europe integration. But the first and third factors clearly suggest that parliamentary influence in EU affairs

should be especially low in France. Whereas coalition governments are the norm in most of Europe, they are the exception in France. More importantly though, most cross-national studies rank the French Parliament as one of Western Europe’s weakest legislatures (Norton 1998; Döring 1995; Liebert 1995). Norton’s comparative study ranks the French Parliament, together with the Irish, as the weakest in terms of general “policy effect” (Norton 1998).

Figure 2: Agenda-Setting Control and Interest-Group Attractiveness of National Parliament in EU-15



On two common measures of parliamentary influence, agenda-setting control and attractiveness to lobbyists, the French Parliament also consistently trails other legislatures from Northern and even Southern Europe. Figure 2 depicts the results of two cross-national studies, by Döring (1995) on agenda-setting power and Liebert (1995) on interest-group attractiveness. The French Parliament does poorly on both indicators. Together with the Irish and British legislatures, it ranks among the least attractive to interest-groups and the least independent in terms of agenda-setting.

The French Parliament’s structural weakness is in large part the product of deliberate constitutional design. The Fifth Republic’s founding fathers sought to remedy what they viewed as the Fourth Republic major flaws, namely

governmental instability and executive weakness. So in a bid to rationalize parliament – “*parlementarisme rationalisé*” became the mantra of the day – and to streamline the legislative process, they introduced a string of new rules and restrictions. The number of standing committees in each chamber was limited to six. The domain of statutory legislation was narrowed down. Legislators were barred from proposing bills increasing spending or decreasing revenues. Also the executive was given the power to control the items on the legislative agenda, to block unwanted amendments (package vote) and to force the adoption of unpopular policies in the lower house, the National Assembly, through the confidence vote procedure (see Huber 1996). Two additional factors, the electoral system and the emergence of the imperial presidency, further contributed to lower the status and influence of Parliament. The two-round system used for legislative elections spurred a reorganization of the partisan landscape with more cohesive and better disciplined parties competing in an increasingly bipolarized setting. Starting with General de Gaulle, the successive presidents were able to use the legitimacy flowing from direct election to act as party leaders and present legislative elections as a referendum on the president or as a way of supplying him with a majority to implement his campaign manifesto (Parodi 1985; Sauger 2007; Kerrouche 2007). Thus, consistent with the original intent of the regime’s founding fathers, the institutions of the Fifth Republic have given French politics a strongly majoritarian outlook. Presidents (and prime ministers in cohabitation periods) have enjoyed the support of more stable, docile and, in some cases (as centre-right governments in 1993-1997 and since 2002), large parliamentary majorities. When elections failed to deliver an absolute majority, minority governments could not only survive but also preserve executive dominance thanks to the battery of procedural weapons made available by the *parlementarisme rationalisé* (Huber 1996).

Executive dominance has in effect robbed the function of MP of much of its prestige and significance. With Parliament increasingly looking like a rubber-stamp legislature and members of the governing coalition derided as puppets of the executive branch (“*députés godillots*”), French MPs, who often hold multiple

political offices simultaneously at national and local level, have often elected to focus on their local mandate – in effect deserting parliamentary sessions.

Nevertheless, with the Fourth Republic receding into memory, the French public has become less sympathetic to the idea of unfettered executive dominance. Scholars and politicians with an interest in institutional issues had long insisted on the necessity to revalue the role and function of Parliament in the French political system (Giquel 2008). Soon presidential candidates began to pay attention as well. In 1995, the Constitution was revised to grant MPs a measure of agenda-setting autonomy to fulfil President Chirac's campaign pledge to restore Parliament to its strength and power. Reinforcing the rights and prerogatives of legislators also featured in good place in Nicolas Sarkozy's campaign manifesto in the 2007 election. It translated into the constitutional reform of July 2008, which constitutes the most far-reaching attempt to overhaul parliamentary institutions and procedures so far under the Fifth Republic. MPs now share with the executive (albeit not yet on a fully footing) control over the legislative agenda. Besides limiting the circumstances in which the government may resort to the confidence vote procedure, the reform extended the number of permanent committees from six to eight and the power of Parliament to issue resolutions. In the meantime, scholars have observed some signs that MPs are responding to these reforms and may be willing to play a more proactive role in the political process (Kerrouche 2007: 69).

The dynamic characterising parliamentary involvement in EU matters is in part endogenous to these developments. As we shall see, these successive reforms have benefited those who seek to reparliamentarize the conduct of EU affairs. Yet the changes brought to Parliament's scrutiny arrangements and procedures have also been inspired by a felt necessity to adapt the constitution to the context of European integration which seems independent from the broader discussion over the role of Parliament in French politics. In this sense, European integration has been a factor on its own in loosening the constitutional straitjacket in which the Fifth Republic's founding fathers had placed the legislature (Rizzuto 1999).

COMING TO GRIPS WITH EUROPEAN ISSUES: THE TREATMENT OF EU AFFAIRS WITHIN THE FRENCH PARLIAMENT

The influence of a parliamentary assembly over EU matters can be analysed along three dimensions: access to information, *ex ante* control and *ex post* control. Effectiveness here does not turn solely on the range and extent of the formal powers available to MPs. Crucial too is the extent to which procedural arrangements and organisational structures create incentives for MPs to get involved in processing European issues.

European Affairs Committees, Permanent Committees and Plenary

As in other European legislatures (Raunio 2009), EU matters are rarely discussed in the plenary (Rozenberg 2009). So the main actors within Parliament are the specialized committees and, above all, the European Affairs Committees (EACs).

As seen above, under the 1958 Constitution, the number of permanent committees in the two chambers of the French legislature, the National Assembly and the Senate, had been initially limited to six. For this reason, the parliamentary bodies set up in 1979 in the two chambers to scrutinize EU affairs were not committees but mere “delegations”. It was not until the July 2008 constitutional reform that the delegations were granted the status of committee in full standing. As the constitutional revision raised the maximum number of permanent committees in each chamber from six to eight, there are now eight permanent committees in the National Assembly in addition to the *Commission des affaires européennes*. The Senate has its own EAC, though it has yet to make use of its constitutional right to create new permanent committees. The National Assembly’s EAC has 48 members while the Senate has 36. Both apply the principle of double membership. Members of the EAC are all simultaneously member of a permanent committee and all permanent committees are represented in the EAC. Double membership is meant to foster the Europeanization of Parliament. Cross-national comparisons do suggest that parliamentary influence on EU matters is higher where MPs and MPs with relevant expertise over the specific policy areas under consideration are more

involved in the scrutiny process (Raunio 2005: 321; Hix and Raunio 2000: 150). The Finnish experience, however, demonstrates that making it mandatory for specialised committees to report to the EAC on European issues, as the Finnish Constitution does, is a far more efficient way to bolster Europeanization (Hegeland 2007: 104; Raunio and Wiberg 2010: 78; Raunio 2001).

Information

The policy-making process at EU level is complex and often opaque to outsiders. The risk is always that governments exploit asymmetrical information to escape scrutiny at the domestic level. It is why access to EU documents is crucial for national legislatures. Both the timing and scope of information are important. The timing matters because the window during which parliamentarians may hope to influence the decision-making process is very short. EU institutions negotiate in informal dialogues and in the overwhelming majority of cases the Council's position is in fact decided in the Working Groups or in *Comité des Représentants Permanents* (COREPER). In general, policy deals are already locked in by the time there are officially put on the agenda of a Council meeting. To make their voice heard and respond to the position of the various actors in the negotiation process, MPs also need comprehensive access to EU documents. This means not only legislative proposals but also Green and White papers, memoranda, consultation documents from the Commission, etc.

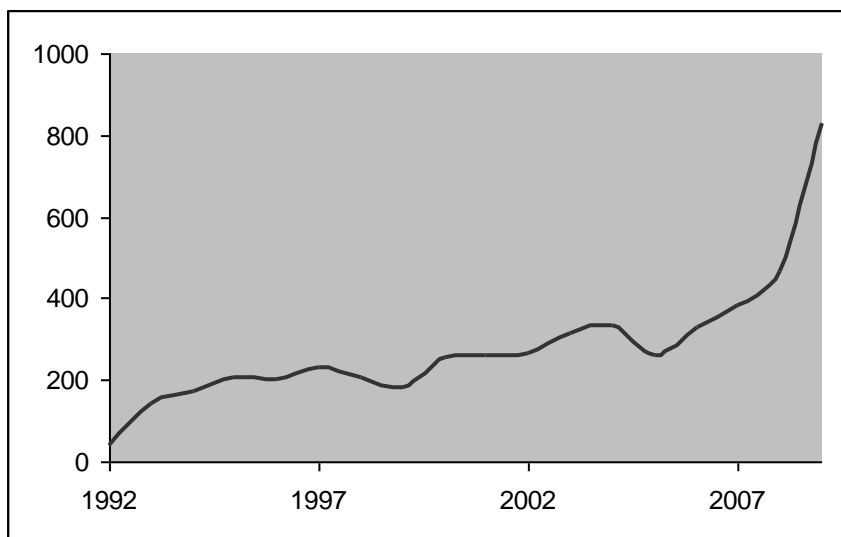
Table 1: Scope of Parliament's Right to Information

SEA Period	Maastricht Period	Amsterdam Period	Lisbon Period
No systematic transfer of Council documents	EC/EU draft acts of legislative nature within the meaning of Articles 88-3 and 34 of the Constitution	All EC/EU documents of legislative nature within the meaning of Articles 88-3 and 34 of the Constitution	All EU draft acts and related documents without restriction

As Table 1 shows, the French Parliament's right to information was initially very limited but has been gradually extended. The 1992 constitutional revision that followed the adoption of the Maastricht Treaty spelled out for the first time a right for Parliament to be informed about EU issues. The new right was narrow

in scope, however. Only draft EU acts of “legislative nature” within the meaning of Article 34 of the French Constitution had to be transmitted. In practical terms, this meant that *énarques* in the Conseil d’Etat would decide which documents MPs were entitled to review. As a result, the volume of documents transmitted to Parliament was significantly lower than in other Member States (Sprungk 2007: 141). But since then, the French Parliament has caught up. The 2008 constitutional reform removed the restriction to acts of “legislative nature”. This had an immediate impact on the number of documents transmitted to the Parliament, which increased sharply in the year following the reform, as we see in Figure 3.

Figure 3: Number of Drafts of EU Acts and Proposals Transmitted to Parliament



Moreover, even before the 2008 revision and the entry into force of the Lisbon Treaty, the government had started to forward Green and White papers and the Commission Annual Work Programme systematically.¹

Article 88-4 of the Constitution requires the government to lay draft and drafts proposals of EU acts before the Senate and the National Assembly as soon as they are transmitted to the Council. Altogether, despite noticeable improvements (one being the elimination of the bureaucratic filter represented

¹ See Prime Minister’s memorandum of 22 November 2005.

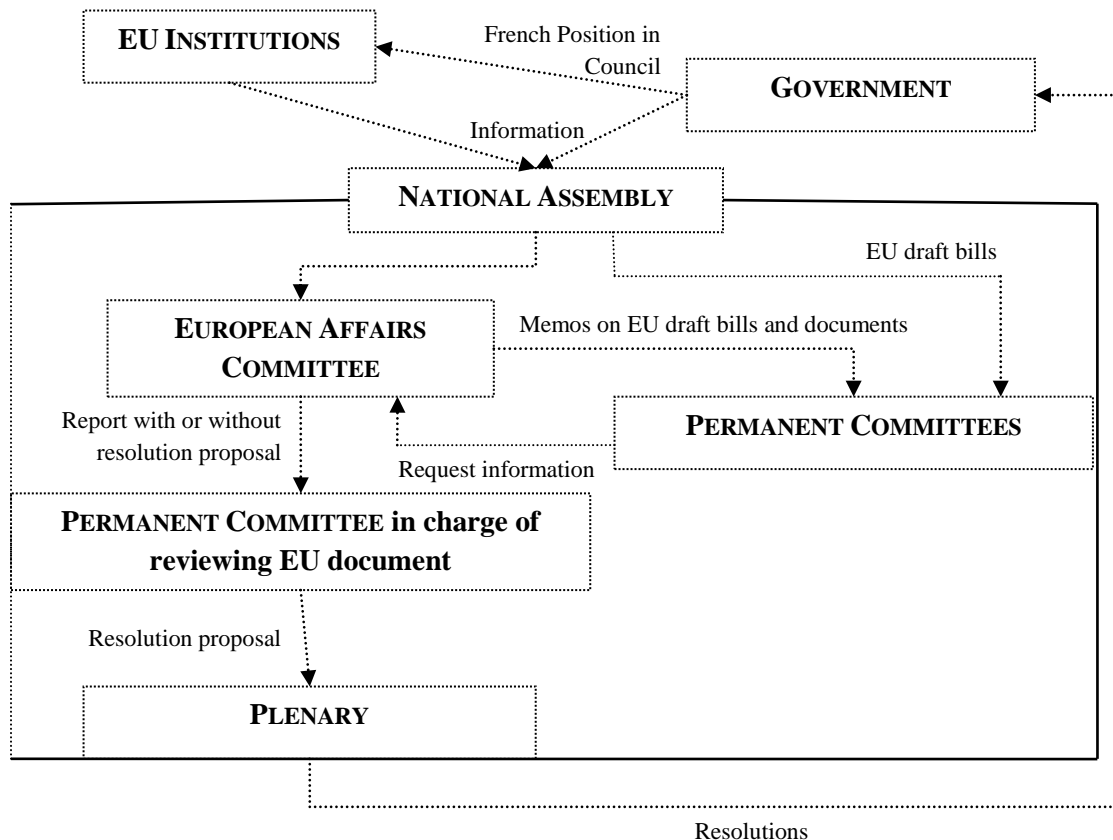
by the Conseil d'Etat), government services still appear less diligent than in other Member States in complying with their information duty. For example, unlike in Nordic countries or Germany, they do not attach explanatory memoranda to the documents they send to the legislature (Raunio 2005: 322; Sprungk 2007: 141).

To get information on the position and negotiation strategy of the government, backbenchers may use their more traditional interpellation rights to direct questions at government members and at the minister for European affairs in particular (Sprungk 2007: 144-5). The EAC in the National Assembly and its counterpart in the Senate may also hear cabinet members as well as experts, MEPs or Commission officials. The annual number of hearings carried by each EAC varies between 15 and 20.

Ex Ante Control

Inside each chamber, the EAC helps MPs and permanent committees sift EU documents by providing explanatory memos and by making available its expertise on EU matters. Figure 4 summarizes the scrutiny procedure in the National Assembly, which more or less parallels the procedure in the Senate.

Figure 4: Procedure for Ex Ante Control in the National Assembly

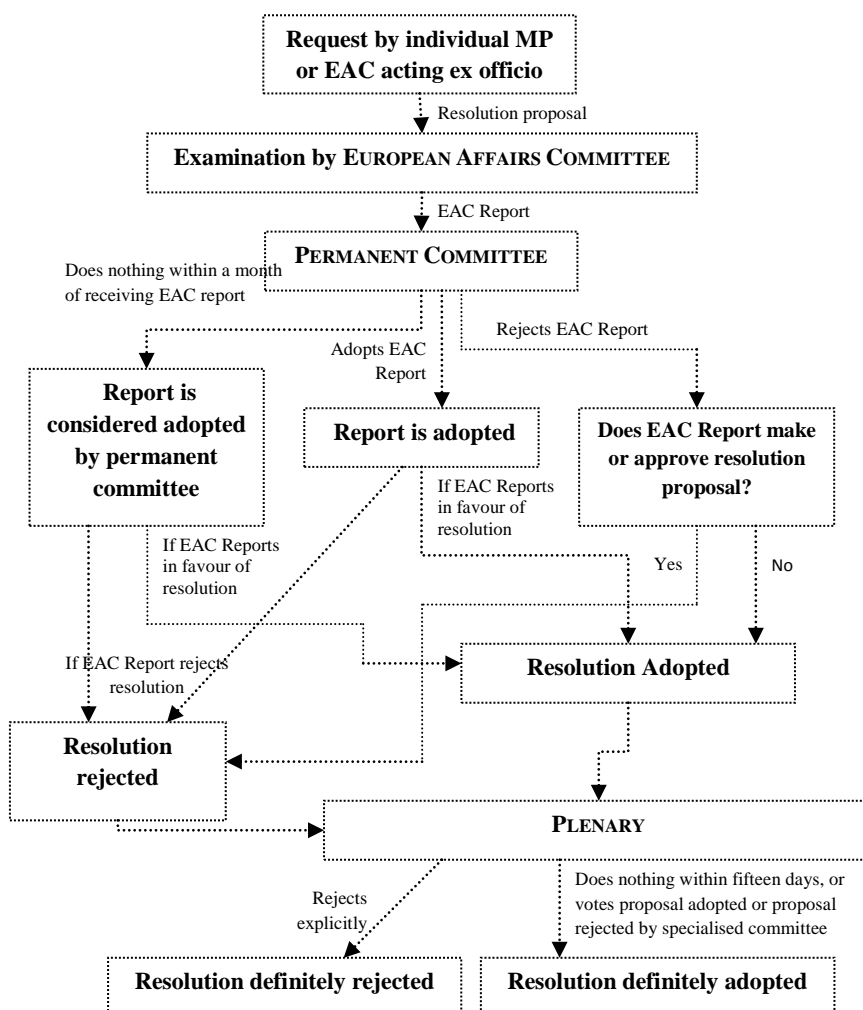


Once they know what is going on in Brussels, parliamentarians may present their views to the government. They may do it informally on the occasion of a committee hearing or through the exercise of their interpellation rights. But they may also do it formally by tabling a proposal for a resolution. Reacting to what was regarded as a pernicious practice under the Fourth Republic, the 1958 Constitution originally precluded Parliament from passing resolutions. Yet a constitutional amendment adopted in the wake of the ratification of the Maastricht Treaty reintroduced this prerogative, precisely with regard to EU matters. (In a remarkable spill-over from EU affairs to the broader parliamentary agenda, the right to issue resolutions was later extended non-EU policies.) Some national parliaments have the authority to issue voting instructions. The most prominent example is certainly the Danish *Folketinget*, although the Austrian *Nationalrat* and the German *Bundesrat* in area falling into the jurisdiction of the *Länder* have acquired the power to “mandate” ministers

before they travel to Brussels. In France, constitutional reformers, presumably held back by the desire to preserve executive flexibility in EU-level negotiations, have so far refused to grant deputies and senators the power to issue mandating instructions. Unlike the voting instructions of the *Folketinget* or the *Nationalrat*, the resolutions of the French Parliament are non-binding. They express a position from which ministers are allowed to deviate.

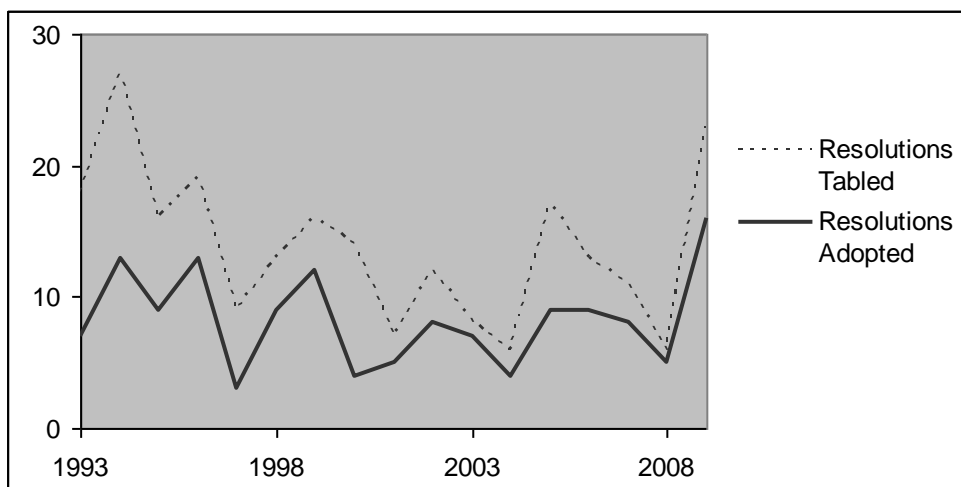
The power to issue resolutions belongs to each chamber as such. Both the EAC and individual MPs may make proposals. Figure 5 depicts the procedure for the passage of resolutions in the National Assembly.

Figure 5.1: Procedure Governing the Passage of Resolutions in the National Assembly



The procedure in the Senate is similar to that followed in the National Assembly, except that resolution proposals are not systematically reviewed by the EAC.² Both chambers make relatively frequent use of their power to issue resolutions. Figure 5.2 shows the number of resolutions presented and adopted in the Senate since the constitutional reform of summer 1992.

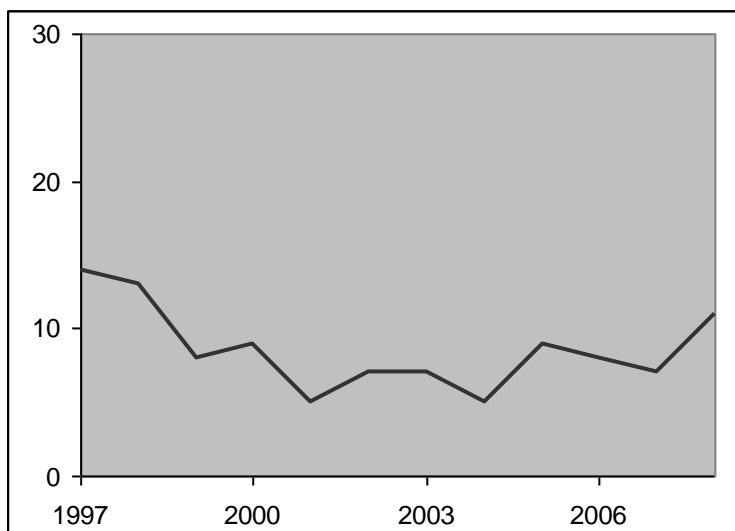
Figure 5.2: Resolutions on EU matters in the Senate, 1993-2009



The number of resolutions issued by the National Assembly over the same period is roughly comparable (Szukala and Rozenberg 2001: 233; Sprungk 2007: 145). Figure 5.3 shows the number of resolutions adopted in each annual parliamentary session from 1997-1998 to 2008-2009.

² See Standing Order of the Senate, Article 73 quinquies,

Figure 5.3: Resolutions on EU matters in the National Assembly, 1997-2008³



One sign of the failure to involve the specialised committees in EU matters is the fact that most resolutions are proposed by the EACs. Of the 117 resolution proposals presented in the Senate from 2000 to 2009, for example, 71 (61%) were made by the Senate's EAC. Another indication of the lack of interest of MPs outside the EACs for EU issues is the rarity with which the plenary debates resolution proposals. In the Senate only 28 out of 143 (20%) were adopted after a debate in the plenary between 1993 and 2009. The participation of the plenary has not improved over time. For the 2000-2009 period, the figures are even worse: only 7 out of 75 resolutions (a mere 9%) were adopted by the Senate in a plenary session. Similarly, out of the 58 resolutions issued by the National Assembly between June 2002 and June 2009 only 6 (10%) were discussed on the floor of the plenary.

Ex Post Control

When parliamentarians do not have the power to bind ministers *ex ante*, ensuring executive accountability will essentially depend on their ability to exert *ex post* control. The only way for backbenchers to influence the government is

³ Figures for parliamentary session starting on October 1 of the indicated year and ending on September 30 of the following year.

to compel ministers to report on the outcome of EU-level negotiations and to appear before parliament when they decided to deviate from a resolution.

Assessing a legislature's effectiveness in *ex post* control is difficult at best. Regarding the French Parliament, the little evidence available would suggest that, if anything, *ex post* control is virtually inexistent (Szukala and Rozenberg 2001: 239-41; Sprungk 2007: 145). In contrast to other Member States where the law mandates that ministers report on the outcome of the EU decision-making process, cabinet members are under no comparable duty in France. The only means parliamentarians have at their disposal to make the government accountable are their interpellation rights and the possibility to grill ministers during committee hearings.

THE LISBON TREATY: A WHIMPER MORE THAN A BANG

As we have seen, the capacity of a legislature to influence its own government when it conducts negotiations at EU level is essentially a matter of domestic politics and domestic constitutional arrangements. Arguably though, parliamentary scrutiny and executive accountability at the domestic level is not the only way through which national MPs may get a say in the EU policy-making process. An alternative avenue is direct participation. This means turning national parliaments into actors in their own right of the EU policy-making process. As a matter of fact, until 1979 when it was directly elected for the first time, the European Parliament was composed of representatives sent by national legislatures. Although the EP had very limited powers then, this arrangement ensured that national parliaments had a voice in the policy process at the supranational level.

No one is seriously contemplating a return to this appointment procedure. However, starting with the Maastricht Treaty, the role of national parliaments at EU level has received more attention as many have increasingly come to regard them as part of the solution to Europe's democratic deficit. The Maastricht Treaty included two declarations "encouraging greater involvement of national Parliaments in the activities of the European Union". The Amsterdam Treaty

went one step further with a first “Protocol on the role of the national parliaments in the European Union”. The Protocol conferred an EU-level right to information on national legislatures. Henceforth “all Commission consultation documents (green and white papers)” had to be forwarded to national parliaments within six weeks, while “Commission proposals for legislation as defined by the Council” were to be made available “in good time so that the Government of each Member State may ensure that its own national parliament receives them as appropriate” (O’ Brennan and Raunio 2007: 13). While extending the right to information introduced by the Amsterdam, the Lisbon Treaty also gives national parliaments new prerogatives such as the power to veto the use of passerelle clauses or the right to compel the Commission to reconsider a legislative proposal viewed as contravening subsidiarity.

Still, despite all the publicity made about the innovations introduced by Lisbon, there are good reasons to think their impact will be marginal.

First, some of the rights created by the new Treaty are already enjoyed, *de iure* or *de facto*, by national MPs. This applies above all for the new Protocol on the Role of National Parliaments in the European Union. In addition to the documents already enumerated in the Protocol annexed to the Amsterdam Treaty, it specifies that all draft European acts – regardless of whether they emanate from a group of Member States, the European Central Bank, the Commission or the European Parliament – must be transmitted to national parliaments at the same time as to the Council and the European Parliament.⁴ Yet such a right means little for a legislature that already enjoys a comprehensive right to information under its own constitution, as does the French Parliament since 2008.

Second, the most widely publicised of all the novelties brought by the Lisbon Treaty, the Early Warning Mechanism, ignores the reality of legislative-executive relations in modern parliamentary regimes and raises collective action problems that appear insuperable. The so-called “yellow card” procedure

⁴ See Article 2 of the Protocol on the Role of National Parliaments.

enunciated in Article 7(2) of the Protocol on the Application of the Principles of Subsidiarity and Proportionality allows one-third of all national parliaments to force a review of a legislative proposal deemed to violate subsidiarity. A one-third threshold (9 out of 27 of the national legislatures) seems reasonable enough. But, from the date of transmission of a legislative proposal, MPs have only eight weeks to vet the proposal for subsidiarity, to put together an opinion and to consult the other parliaments to build the requisite coalition (Bermann: 160). Moreover, even if enough parliaments managed to coordinate their action to trigger a review, the Commission would still have the power to maintain the proposal unchanged. Indeed, its sole obligation under the yellow card procedure is to specify the reasons why it regards the contentious proposal as compatible with the subsidiarity principle. Added to the Protocol at the insistence of the Dutch government, the “orange card” mechanism established by Article 7(3) of the Protocol would seem to have potentially more bite on the policy-making process. It provides that if a simple majority of parliaments consider a proposal incompatible with subsidiarity, the Commission will not be allowed to maintain its proposal if a simple majority of votes cast in the EP or a 55% majority in the Council regard the proposal as incompatible with subsidiarity. However, given the fusion of the executive and legislative branches in today’s parliamentary systems, national parliaments are unlikely to challenge proposals that have the support of their governments (Raunio 2010: 325). Moreover, when the Commission knows that a policy will not be backed by a majority of the Member States’ governments, it is very likely that it will refrain from making a proposal in the first place. So it is hard to see how parliaments might want to use the mechanism, let alone to imagine a situation where they might be able to successfully challenge a Commission proposal.

Similar objections can be levelled at the passerelle clauses. The passerelle clauses give national parliaments the right to veto the decision to replace unanimous voting in the Council with Qualified Majority Voting. In principle, the veto of a single parliament is enough to prevent a move to qualified majority voting. Yet the decision to move to QMV requires a unanimous decision of national governments. Thus a parliament making use of its veto would necessarily go against the position of its own government. An unlikely prospect,

for the reasons mentioned above. Note also that since their introduction by the Amsterdam Treaty the passerelle clauses are still waiting for their first application.

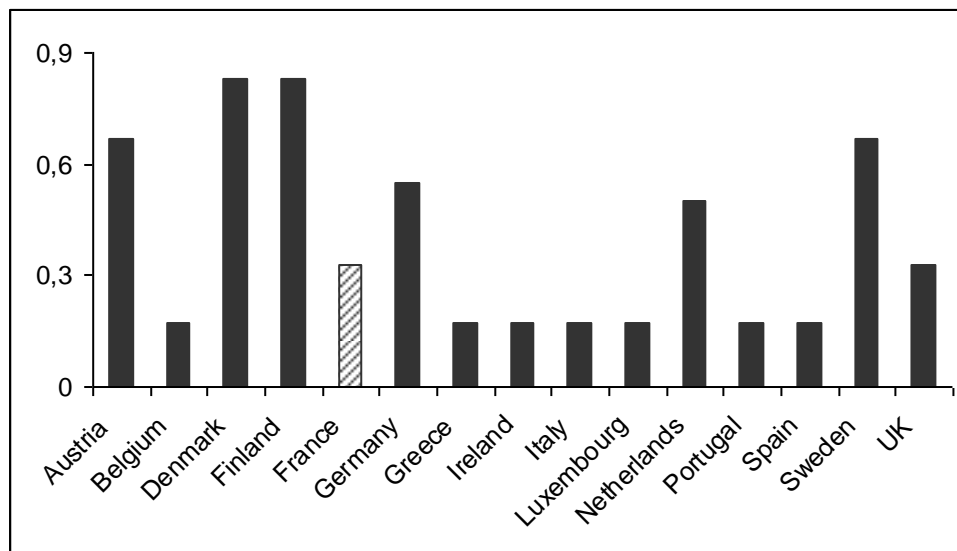
Surprisingly, the most promising of all the new instruments made available to national parliaments is perhaps one that has received less attention. Article 8 of the Protocol on Subsidiarity and Proportionality does not quite require but nonetheless strongly recommend that Member States allow parliaments to bring a case before the ECJ. In some Member States, such as Spain⁵, the law implementing the Protocol on Subsidiarity and Proportionality gives the executive the authority to refuse to transmit a case to the ECJ. By contrast, in Germany and France, the constitution has made it a matter of parliamentary right. Article 23 of the German Basic Law gives this power to MPs comprising ¼ of the Bundestag. The French Constitution is even more generous. Its new Article 88-6 gives the power to initiate proceedings to any group of 60 deputies or 60 senators. Hence the threshold may be low enough to allow Eurosceptic MPs from the ranks of opposition parties to challenge EU legislative acts alleged to violate subsidiarity. The importance of this new power should nevertheless be qualified in light of the ECJ's track record on subsidiarity issues. Thus far the Court has proved very reluctant to invoke it against EU institutions (Sander 2006; Ritzer et al. 2006). Unless the judges in the Duchy of Luxembourg take on a more proactive approach, parliamentarians will quickly come to the conclusion that this new prerogative is as toothless as the others.

⁵ See Article 7(3) of Statute 24/2009 of 22 December 2009 modifying Statute 8/1994 (*Ley por la que se Regula la Comisión Mixta para la Unión Europea, Para su Adaptación al Tratado de Lisboa de 13 de Diciembre de 2007*, BOE No. 308 of 23 December 2009).

CONCLUSION: LIMITS TO THE REPARLIAMENTARIZATION OF EU AFFAIRS

The French Parliament has become more effective and now invests more resources in scrutinizing its government and in monitoring the EU policy-making process. However, its overall influence over European issues remains modest. When compared to other national legislatures, the French Parliament turns out to do better than some parliaments in Southern Europe and the British Isles but still lags behind the legislatures of Northern Europe and particularly Scandinavia. In Bergman (2000) it ranks tenth among legislatures in the EU-15 – a result broadly in line with the conclusions of other studies (see e.g. Maurer and Wessels: 461-3). Figure 6 shows a measure of parliamentary scrutiny in EU matters from Raunio (2005) based on three indicators: the involvement of specialised committees, access to information and the power to issue voting instructions.

Figure 6: Measure of Parliamentary Influence in EU Affairs (Raunio 2005)



These results are not exactly flattering for French parliamentarians. But they should be viewed against the backdrop of legislative subservience towards the executive that has been the lot of French backbenchers under the Fifth Republic. In fact, seen from the broader perspective of executive dominance, which has been the defining characteristic of the French political system since the 1960s, the level of scrutiny achieved by the French Parliament looks almost

remarkable. It surely appears to have done better than what one could predict on the basis of its overall weight in the political system and in light of the strongly majoritarian outlook of its party system.

French MPs have occasionally expressed frustration at their powerlessness in the face of blatant executive drift.⁶ Some seem to approve the position articulated by the German Constitutional Court in its Lisbon ruling, which insists that national parliaments remain the mainstay of the EU's democratic legitimacy. Saying they dream of emulating the Danish model would be exaggerated, but at least they seem to regard the reforms introduced in Germany following the Court's decision as an example of good practice.⁷

The French example is consistent with the view that parliamentary adaptation to European integration is path-dependent upon established institutional and political structures (Benz 2004). Established institutional arrangements induce certain political equilibria which in turn determine the distribution of costs and benefits among the political actors. Thus when the institutional changes required to increase parliamentary influence in EU matters have the potential to bring about a change in the prevailing political equilibrium, those who stand to lose most are likely to resist them. This is perhaps what may be happening in countries like France. Since the 1990s, the successive governments have regularly paid lip service to the idea that Parliament should have more say in EU matters. But in redesigning the rules and conditions of Parliament's participation they have been careful to avoid disrupting the preexisting balance of powers. To a certain extent, the same logic applies at EU level. EU institutions and decision-makers may be willing to make symbolic gestures in the direction of domestic legislatures but not to turn them into real veto-players, let alone agenda-setters, of the policy-making process.

⁶ See for instance the remonstrance of Senator Muguet Dini to the Secretary of State for European Affairs Bruno Lemaire on the government's follow-up of a Senate resolution regarding a proposal for a new anti-discrimination directive, Plenary Debates 30 April 2009, *J.O.* 1 May 2009, p.4020.

⁷ Rapport sur l'arrêt rendu le 30 juin 2009 par la Cour constitutionnelle fédérale d'Allemagne au sujet de la loi d'approbation du Traité de Lisbonne, <http://www.senat.fr/rap/r09-119/r09-119.html>

This suggests a rather cynical way of looking at these attempts to strengthen the position of national parliaments (Kiiver 2006). Breeding a class of discontent MPs grumbling about European integration is neither in the interest of EU institutions nor of national governments. So making some symbolic changes at the margin may in fact be no more than a strategy to defuse criticism. This would explain why reforms in this area, whether at the domestic level or at the supranational level (Early Warning Mechanism), tend to be oversold. On the cynic view, the whole buzz about reinforcing the power of national parliaments appears to be little more than sugar-coating intended to make MPs swallow the pill of integration.

REFERENCES

- BERGMAN, Törbjorn (1997), “National Parliaments and EU Affairs Committee: Notes on Empirical Variations and Competing Explanations”, *Journal of European Public Policy* 4: 373-87.
- ——— (2000), “The European Union as the Next of Delegation and Accountability,” *European Journal of Political Research* 37: 415-29.
- BERMAN, George A. (2009), “National Parliaments and Subsidiarity: An Outsider’s View,” in I. Pernice/Evgeny Tanchev, *Ceci n’est pas une constitution – Constitution Without Constitutionalism*, Baden-Baden: Nomos Verlagsgesellschaft, pp. 155-61.
- BENZ, Arthur (2004), “Path-Dependent Institutions and Strategic Veto-Players: National Parliaments in the European Union”, *West European Politics* 27: 875-900.
- DÖRING, Herbert (1995), *Parliament and Majority Rule in Western Europe*, Frankfurt a. Main: Campus Verlag.
- GICQUEL, Jean (2008), “La reparlamentarisation: une perspective d’évolution,” *Pouvoirs* 126 : 47-60.
- HEGELAND, Hans (2007), “The European Union in National Parliaments. Domestic or Foreign Policy? A Study of Nordic Parliamentary Systems,” in J. O’ Brennan and T. Raunio (2007), *National*

- Parliaments Within the Enlarged European Union*, Oxford: Routledge, pp. 96-115.
- KERROUCHE, Eric (2007), “Gone with the Wind? The National Assembly under the Fifth Republic,” in S. Brouard, A. Appleton and A. Mazur (eds.), *The French Fifth Republic at Fifty*, Basingstoke: Palgrave Macmillan, pp. 59-78.
 - KIIVER, Philipp (2006), *The National Parliaments in the European Union: A Critical View on EU Constitution-Building*, The Hague: Kluwer Law International.
 - ____ (2006), *National and Regional Parliaments in the European Constitutional Order*, Groningen: Europa Law Publishing.
 - LIEBERT, U. (1995), “Parliamentary Lobby Regimes,” in H. Döring (ed.), *Parliaments and Majority Rule in Western Europe*, Frankfurt a. Main: Campus Verlag, pp. 429-33.
 - MORAVCSIK, Andrew (1994), “Why the European Union Strengthens the State: Domestic Politics and International Cooperation,” Working Paper Series No. 52, Center for European Studies, Harvard University.
 - O'BRENNAN, John and RAUNIO, Tapio (2007), *National Parliaments Within the Enlarged European Union*, Oxford: Routledge.
 - PAHRE, Robert (1997), “Endogenous Domestic Institutions in Two-Level Games and Parliamentary Oversight of the European Union,” *Journal of Conflict Resolution* 41: 147-74.
 - PARODI, Jean-Luc (1985), “Imprévisible ou inéluctable, l'évolution de la Cinquième République ?, » in O. Duhamel and J.L. Parodi (eds.), *L'évolution de la Cinquième République*, Paris : Presse FNSP, pp. 24-43.
 - RAUNIO, Tapio (2005), “Holding Governments Accountable in European Affairs: Explaining Cross-National Variation”, *The Journal of Legislative Studies*: 319-342.
 - ____ (2001), “The Parliament of Finland: A Model Case for Effective Scrutiny?,” in A. Maurer and W. Wessels (eds.), *National Parliaments on*

- their Way to Europe: Losers or Latecomers?*, Baden-Baden: Nomos Verlagsgesellschaft, pp. 173-98.
- RAUNIO, Tapio and HIX, Simon (2000), “Backbenchers Learn to Fight Back: European Integration and Parliamentary Government”, *West European Politics*: 142-168.
 - RAUNIO, Tapio and WIBERG, Matti (2010), “How to Measure the Europeanization of a National Legislature?,” *Scandinavian Political Studies* 33: 74-98.
 - RITZER, Christoph and RUTTLOFF, Marc and LINHART, Karin (2006), “How to Sharpen a Dull Sword – The Principle of Subsidiarity and its Control,” *German Law Journal* 7: 733-60.
 - RIZZUTO, Francesco (2004), “European Integration and the French Parliament: From Ineffectual Watchdog to Constitutional and Enhanced Political Role,” *The Journal of Political Studies* 10: 123-49.
 - ROZENBERG, Olivier (2009), “Présider par plaisir,” *Revue française de science politique* 59 : 401-427
 - SAALFELD, Thomas (2005), “Deliberate Delegation or Abdication? Government Backbenchers, Ministers and European Union Legislation,” *The Journal of Legislative Studies* 11: 343-71.
 - SANDER, Florian (2006), “Subsidiarity Infringements Before the European Court of Justice: Futile Interference with Politics or Substantial Step Towards EU Federalism,” *Columbia Journal of European Law* 12: 517-71.
 - SPRUNGK, Carina (2007), “The French Assemblée Nationale and the German Bundestag in the European Union: Towards Convergence in the ‘Old’ Europe?,” in J. O’ Brennan and T. Raunio (2007), *National Parliaments Within the Enlarged European Union*, Oxford: Routledge, pp. 132-62.
 - SZUKALA, Andrea and ROZENBERG, Olivier (2001), “The French Parliament and the EU: Progressive Adaptation and Strategic Involvement,” in A. Maurer and W. Wessels (eds.), *National Parliaments*

on their Way to Europe: Losers or Latecomers?, Baden-Baden: Nomos Verlagsgesellschaft,, pp. 223-250.

- MAURER, Andreas and WESSELS, Wolfgang (2001), *National Parliaments on their Way to Europe: Losers or Latecomers?*, Baden-Baden: Nomos Verlagsgesellschaft,