

## THE ROLE OF THE SPECIALIZED COMMITTEES ON EUROPEAN COMMUNITIES AFFAIRS OF THE BRITISH PARLIAMENT

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*This article takes as an example the relationship between the EP and the UK Parliaments in order to illustrate the problems arising in the issue of effective supervision mechanism of the Council and the Commission within the EU decision-making process. It does not involve wider comparison with the specialized committees of other national parliaments in the EU. Thus, it is limited to the example of UK Parliamentary scrutiny committees. The researcher accepts the fact that this approach may have resulted in a somewhat narrower interpretation and conclusions. The researcher, nevertheless, maintains that wider comparison falls outside the scope of the research undertaking at present.*

### 1. INTRODUCTION

In terms of traditional principles of parliamentary democracy, the national parliaments exercise important functions and roles as sources of political legitimacy for governments of the Member States. It is imperative to take account of the effect of membership of the EU on the national parliaments, since accession entails the reduction of their powers and makes it more difficult for them to have influence over and to control the respective governments of the Member States in the Community decision-making process. In other words, the main concern of the national parliaments is the loss of decisive competences over the executive bodies of the Member States as a result of membership of the European Union. Therefore, the national parliaments are to a great extent limited in exercising their competences by the very nature of the Community decision-making process. The national parliaments also accept certain restrictions on their roles and powers, both at the Community level and at the Member State level. The Member States have widely recognised the loss of significant roles of national parliaments. Here we should not disregard the role and function of both the EP and the national parliaments, as the legitimate representatives of all the European citizens, in the process of constructing the Community constitutional and institutional mechanism, in accordance with the principle of parliamentary democracy.<sup>1</sup> The need to enhance links between the EP and the national parliaments in the context of Community policy areas has been felt to a considerable degree. With a view to curing this issue, the 1997 Treaty of Amsterdam includes Protocol on the role of national parliaments in the EU. The Amsterdam Treaty encourages the national parliaments to play a greater part in EU affairs. In order to give them a more chance to hold debates with the Community institutions and their respective governments from the beginning of the EC legislative procedure, Commission proposals for legislation to the EP and the Council will not be placed on the Council agenda for decision until six weeks for the national parliaments' consideration have passed.<sup>2</sup>

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<sup>1</sup>OJ No.C 69, 20.3.1989, Doc. A2-332/88 of 16 February 1989, pp.147-8.

<sup>2</sup>Arts.1-3 of Protocol on the role of national parliaments in the European Union, the 1997 Treaty

Participation in the EU weakens the constitutional and institutional competence of the national parliaments in the following ways: (i) it deprives them of part of their legislative and budgetary powers by conferring supremacy on the Community's founding treaties and institutions; (ii) participation obliges the national parliaments to readjust their relationship with their own executive entities, since the founding treaties and their subsequent amendments have empowered the Council of Ministers, the collective meeting representing individual national governments' interests in the Community decision-making process.

According to the existing constitutional structure of the EC, major decisions are enacted through the Council of Ministers, or the intergovernmental conference by means of the European summit conference outside the framework of the Community treaties either by resolutions or declarations of the Council, or summit conferences amongst the Heads of State or Government of the Member States. On the basis of this decision-making process, the decisions of European summit conferences do not take the form of amendments to the foundation treaties, as laid down under Article N TEU, and thus do not require prior approval according to each state's constitutional requirements. As Coombes observes, the more pragmatic the mechanism of making decisions concerning Community policy areas beyond the framework of the founding treaties, the more limited will be the national parliaments' participation in the policy-making process (Christoph Sasse, Edouard Poulet, David Coombes and Gerard Depres 1977: 314). In view of the considerable limitations on their intervention in the Community decision-making process, the national parliaments may as a last resort obstruct the position of their governments at the Member State level, through a vote of no confidence. Even though the motion of no-confidence is unlikely to be used frequently, no Member State government can make decisions against the strong wishes of Parliament. A member of the Council of Ministers must sometimes change its position in the Council meeting in pursuance of domestic parliamentary criticism on certain policy issues. If the role of the national parliaments is acknowledged by the governments of the Member States, with a view to the reinforcement of democratic legitimacy at Union level, it is possible to improve the accountability and openness of the Council of Ministers in the EC's decision-making process.

The reason why the close relationship between the EP and national parliaments must be reinforced will be studied in this article. A model for the relationship between them will be proposed as follows. Each parliament should assist the other, for the purpose of overcoming the limitations in the Community decision-making process; that is, the EP should control the Council and the Commission at Community level; and, the national parliaments should control their respective governments in relation to Community affairs. At EU level, the European institutions have to observe the principle of parliamentary democracy through the enlargement and strengthening of the EP's competences in order to improve the accountability, openness and transparency of the EC decision-making process; and at the Member State level, the supervisory functions of the national parliaments over the Council, especially their respective ministers in the Council, must be intensified. At the same time, defending their legislative prerogatives and strengthening democratic control of the executive power, the EP and the national parliaments must implement complementary functions in their respective areas of influence within the EU arena, and must act jointly with one another. Both parliaments have supported the principle of enhanced collaboration through

regular meetings of specialized committees, discussing significant EC policies and exchanging useful information on EC affairs.<sup>3</sup>

## 2. THE NECESSITY OF CLOSE COOPERATION BETWEEN THE EUROPEAN PARLIAMENT AND NATIONAL PARLIAMENTS

Since the legislative power of any parliamentary institution should be exercised by observing the basic principles of democracy,<sup>4</sup> it is unacceptable that the legislative competence which the national parliaments have transferred to the Community framework continues to be exploited mainly by the Council. That is, since the national parliaments have transferred part of their legislative competences to the Council and the EP has failed to secure adequate legislative and supervisory powers, the concentration of the major competences in the Council only aggravates the democratic deficit, unless appropriate competences are distributed to Members of the EP.<sup>5</sup> Under these circumstances, a broad consensus has been reached between national parliaments and the European Parliament on the need for the Community's constitutional and institutional development on the basis of democratic principles. As the European Parliament stresses, it has an urgent need for close cooperation with the authentic representatives of the Member States, i.e. members of the national parliaments, this being regarded as an essential factor in the EU's constitutional and institutional development.<sup>6</sup> In particular, this was clearly expressed in the Final Declaration, adopted on 30 November 1990, of the Conference of Parliaments of the European Union.<sup>7</sup> As the EP observed in its above-mentioned resolution, the Final Declaration of the Parliamentary Conference set the direction to be taken by the Intergovernmental Conference to achieve the democratization of the Community's institutional mechanism, while supporting the reinforcement of cooperation between the EP and the national parliaments to allow democratic legitimacy at the different levels of decision-making, i.e. the supranational level and the Member State level.

Under the existing institutional mechanism, the Council, which at the Union level is largely exempt from direct democratic parliamentary supervision, simultaneously exercises both legislative and executive powers. In other words, under the existing 'Councilocracy',<sup>8</sup> the Council's legislative activities constantly impose limitations on the legislative power of the national parliaments, while continuing to undermine the principle of parliamentary democracy in the EU. As the European Parliament itself

<sup>3</sup>OJ No.C 280, 28.10.1991, Doc. A3-0220/91, p.145.

<sup>4</sup>The case-law of the Court of Justice also underlines the principle of democracy applicable to the European Community in the Cases 138/79 and 139/79 of 30 October 1980, *Roquette, Maizena v. the Council*, ECR 1980, p.3333, paragraph 33.

<sup>5</sup>OJ No.C 231, 17.9.1990, Doc. A3-163/90 of 12 July 1990, p.164.

<sup>6</sup>OJ No.C 69, 20.3.1989, Doc. A2-348/88 of 11 February 1989, p.150.

<sup>7</sup>OJ No.C 280, 28.10.1991, pp.144-5, Doc. A3-0220/91; OJ No.C 231, 17.9.1990, p.165. The Parliamentary Conference was held in Rome from 27 to 30 November 1990, and the Final Declaration was adopted by 150 votes out of 163 votes cast and 13 attendant against.

<sup>8</sup>It means that most of the major competences have been concentrated in the Council in the EC decision-making process, and therefore the Council exercises overwhelmingly dominant powers over the other Community institutions.

insists, the loss of legislative powers of the national parliaments can only be offset by enlarging and strengthening the EP's powers in the Community decision-making process.<sup>9</sup> The EP has increasingly recognised the importance of the national parliaments in handling highly technical Community affairs, in particular since they must ratify major constitutional amendments, which have considerable influence on their own constitutions. In the same way, the Maastricht Declaration concerning the role of the national parliaments in the EU, annexed to the Treaty on European Union, makes the EP one of the most responsible institutions in that it envisages close institutional relationship with the national parliaments.<sup>10</sup> Although the EU expands its membership through accession and its competences by constitutional amendment, it faces a crisis of legitimacy stemming from the democratic deficiency of its constitutional and institutional mechanisms. The structural incompleteness of the EU can be cured by means of the establishment of authentic parliamentary democracy at EU level. In this context, the increasing transfer of power from the Member States to the Community must eventually be accompanied by parliamentary restraints both at EU level and at Member State level. Even though the EP has had new powers conferred upon it through the far-reaching constitutional modifications of the treaties establishing the European Communities, these powers, which were transferred from the national parliaments to the Council, have not been taken back to its Community counterpart, i.e. the European Parliament. Therefore, the enhancement of cooperation between the EP and the national parliaments is essential for effective supervision of the executive and legislative activities of the Council and the Commission.

### 3. THE SCRUTINY PROCEDURE ON THE PROPOSALS FOR THE EUROPEAN LEGISLATION BY THE SPECIALIZED COMMITTEES ON THE EUROPEAN COMMUNITY AFFAIRS WITHIN THE NATIONAL PARLIAMENTS

Since the European Communities were created, the Community institutions have adopted legislation which has been applied, directly or indirectly, throughout the Member States. As Usher observes, we have observed the undemocratic application of Community law in the Member States: "When these acts emanate from the EC Commission, as will be the case with decisions under the ECSC Treaty, no United Kingdom minister will normally have participated in the legislation process, and when

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<sup>9</sup>OJ No.C 187, 18.7.1988, Doc. A2-276 of 17 June 1988, p. 230.

<sup>10</sup>See Declaration No.13 of the Maastricht Treaty concerning the role of national parliaments in the European Union: The Conference considers that it is important to encourage greater involvement of national parliaments in the activities of the European Union. 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, inter alia, that national parliaments receive Commission proposals for legislation in good time for informational or possible examination. Similarly, the Conference considers 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. The EP's resolution of 18 November 1992, Resolution B3-1514/92 and 1520/92, OJ No C 337, 21.12.1992, p. 117.

they emanate from the EC Council, although a United Kingdom minister will have participated, the normal United Kingdom parliamentary processes will be bypassed” (John Usher, 1994: 3-4). In view of the democratic deficit and confidentiality of the Community legislative procedure, the respective national parliaments of the Member States have sought to exert as much influence as possible over the Community decision-making process and, thus, have taken measures to scrutinise draft legislation and to supervise responsible national ministers in the Council of Ministers.

At present, around 25 Chambers of the respective national parliaments of the Member States have established specialized bodies on European Union affairs. These entities now meet twice a year within the framework of the Conference of Bodies Specializing in the European Community Affairs (COSAC),<sup>11</sup> along with a delegation, i.e. 6 MEPs, from the Institutional Affairs Committee of the EP. The main aim of the inter-parliamentary conference between the bodies specializing in Community affairs is to analyse the major issues concerning European integration.<sup>12</sup> Some commentators have put the emphasis on the contributive role of COSAC in the Community decision-making process. The Amsterdam Treaty officially introduced the contributive role of COSAC into the EC constitution, encouraging to feed its own views into the EC legislative process, particularly in relation to issues of the application of subsidiarity

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<sup>11</sup>The idea of setting up the COSAC meeting was proposed by the President of the French National Assembly in May 1989 at the Madrid Conference, attended by the Presidents of the EP and the national parliaments of the Member States. See the following internet site for your reference:

<http://www.europarl.eu.int/natparl.COSAC/EN/coms/default.htm> on 6 February 1999.

<sup>12</sup>For detailed information concerning the specialised bodies in the respective national parliaments of the Member States, refer to Directorate-General for Research of the European Parliament, *Bodies Within National Parliaments Specialising in European Community Affairs*, EN-3-1992, (Luxembourg: European Parliament, March 1992), p.III; In terms of chronological order, all the specialised bodies on European affairs had been set up on different founding dates from Deutschland’s Ausschuss Fur Fragen Der Europaischen Gemeinschaften in Bundesrat on 20 December 1957 to Italy’s Commissione Speciale Per Le Politiche Comunitarie in Camera dei Deputati on 10 October 1990.

(1) 20.12.1957: Ausschuss Fur Fragen Der Europaischen Gemeinschaften in Bundesrat (D); (2) 17.07.1968: Giunta Per Gli Affari Delle Comunita Europee in Senato della Repubblica (I); (3) June 1970: Vaste Commisie Voor Europese Samenwerkingsorganisaties in Eerste Kamer (NL); (4) 11.10.1972: Markedsudvalget in Folketing (DK); (5) 03.08.1973: Joint Committee on the Secondary Legislation of the European Communities in Oireachtas (IRL); (6) 10.04.1974: Select Committee on the European Communities in the House of Lords (UK); (7) May 1974: Select Committee on European Legislation in House of Commons (UK); (8) 06.07.1979: Delegation De L’Assemblee Nationale in Du Senat & Pour Les Communautas Europeennes (F); (9) 25.04.1985: Adviescomite Voor Europese Aangelegenheden / Comite D’Avis Charge De Questions Europeennes in Kamer van Volksvertegenwoordigers / Chambre des Representants (B); (10) 27.12.1985: Comision Mixta Para Las Comunidades Europeas in Cortes Generales (E); (11) 09.10.1986: Vaste Commissie Voor Eg-Zaken in Tweede Kamer (NL); (12) 29.10.1987: Comissao De Assuntos Europeus in Assembleia da Republica (P); (13) 10.06.1988: Kammer Fur Vorlagen Der Europaischen Gemeinschaften in Bundesrat (D); (14) 06.12.1989: Commission Des Affaires Etrangeres et Communautaires in Chambre des Deputes; (15) 29.03.1990: Comite D’Avis de Questions Europeennes / Adviescomite Voor Europese Aangelegenheden in Senat / Senaat (B); (16) 13.06.1990: Epitropi Evropaikon Kinotikon Ypothesseon in Vouli ton Ellinon (GR); (17) 10.10.1990: Commissione Speciale Per Le Politiche Comunitarie in Camera dei Deputati (I); and (18) 04.09.1991: EC - Ausschuss in Bundestag (D). Refer to the following internet site:

<http://www.europarl.eu.int/natparl/en/default.htm> on 6 February 1999.

principle, the protection of fundamental rights, and the establishment of freedom, security and justice.<sup>13</sup>

In this study on the scrutiny of Community legislation by the specialized committees, we cannot cover all the national parliaments of the Member States of the EU and thus this work will concentrate on the United Kingdom's two Select Committees. In general, a select committee consists of members of the legislative body appointed by parliament for consideration of or enquiry into matters referred by the plenary body. In practice, the select committees are an attempt to draw up and debate complex and significant matters, and to reconcile the conflicting demands of time and issues to be taken into consideration. On the basis of the principle of the separation of powers allowing more initiative to the legislative organ in the legislative process, the select committees are expected to play a more decisive role in the enactment of legislation and the decision-making process. In April and May 1974 the UK's two Houses of Parliament set up Select Committees to scrutinize proposals for Community legislation and to influence the British Government before agreement is reached in the EC Council,<sup>14</sup> in order to protect UK interests.

#### 4. THE SCRUTINY SYSTEM OF THE TWO HOUSES OF PARLIAMENT IN THE UNITED KINGDOM

##### 4.1. The Select Committee on European Legislation of the House of Commons in the United Kingdom

The House of Commons Select Committee on European Legislation was established on 7 May 1974.<sup>15</sup> It consists of 16 Members of the House of Commons, appointed roughly in proportion to the share of representation of all the party groups, by the House at the beginning of each parliament.<sup>16</sup> In accordance with its terms of reference, the competence of the Committee is as follows: "to consider the European Community documents and give its opinion on the legal and political importance of each document and, where it is considered useful, justify this opinion on all matters of political or legal principle which may arise, to recommend the holding of a debate in the House or in one of the House's Standing Committees on any document which it considers of particular importance, and to take into consideration any development resulting from these documents."<sup>17</sup> Since the Committee's role is mainly to scrutinize proposed

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<sup>13</sup>Arts. 4-6 of Protocol on the role of national parliaments in the European Union, the 1997 Treaty of Amsterdam.

<sup>14</sup>In December 1972, both Houses of Parliament already set up special committees to recommend appropriate measures for the scrutiny procedure of the Community legislation and to establish consultative committees.

<sup>15</sup>The terms of reference of the Select Committee on European Legislation were amended in 1990. Refer to Hansard 24 October 1990, col. 397.

<sup>16</sup>The British Members of the European Parliament who are also Members of the House of Commons can be nominated to the Select Committee on European Legislation.

<sup>17</sup>See Standing Order No.127 of the House of Commons (the Select Committee on European Legislation); Refer to Hansard (Parliamentary Debates in the House of Commons), the 6th Series, Vol.178, Session 1989-90, (London: HMSO, 24 October 1990), col. 397. The Standing Order No. 127

Community legislation, it is important to identify the documents which fall within its competence. Standing Order No.127 defines the sorts of document falling within the competence of the Select Committee on European Legislation.<sup>18</sup>

In practice, the relevant minister of the Crown will present a memorandum presenting the government's position on the Community matter in question, in particular if there are significant political and financial implications. In addition, the Select Committee shall make inquiries and request verbal or written evidence for each document concerning Community legislation. Afterwards, the Committee shall draw up reports on the extent to which the proposal in question may affect the legal sovereignty of the United Kingdom. During the 1990-1991 session, for instance, the Committee drew up 30 reports on Community legislation, which were issued under the title 'House of Commons Papers' (Nos. 29/i - 29/xxx).<sup>19</sup> The Select Committee's influence over the British Government is well reflected in the resolution of the House of Commons of 24 October 1990.<sup>20</sup> That is, Ministers of the Crown must not adopt a legislative proposal, including a common position, 'unless there are special reasons', 'save in well-defined exceptional circumstances', until the Select Committee's scrutiny procedure has been completed.

As far as the position of the House of Commons Select Committee is concerned, the responsible minister should not agree to proposals in the Council of Ministers, without taking account of the Committee's recommendation. In retrospect, the scrutiny procedure of the Select Committee has been quite effective, despite some difficulties. As Professor Usher and Lord Fraser of Tullybelton observe (John Usher 1994: 3-5; and Usher and Lord Fraser of Tullybelton 1983: 31), moreover, the principle of check-and-balance, which was reflected in the 1990 Resolution of the House of Commons, has been respected through cooperation between the Select Committee on European Legislation and Ministers of the Crown. The powers of the Select Committee to influence Ministers were already formulated in the Resolution of 30 October 1980, which was passed by the House of Commons. In practice, such an effect has also been given to the Select Committee of the House of Lords, but it has not been embodied in the form of a resolution. In theory, the practice of check-and-balance between the Government Ministers and the Select Committees, by means of the scrutiny procedure, enables the two Houses of Parliament to exercise a sort of veto on proposals for

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was amended in the Select Committee's meeting of 24 October 1990, with effect from the beginning of the next Session of the House of Commons as follows: "There shall be a select committee, to be called the Select Committee on European Legislation, (a) to examine European Community Documents and (b) to report its opinion on the legal and political importance of each such document and, where it considers appropriate, to report also on the reasons for its opinion and on any matters of principle, policy or law which may be affected; (c) to make recommendations for the further consideration of any such document pursuant to Standing Order No.102 (European Standing Committees); and (d) to consider any issue arising upon any such document or group of documents."

<sup>18</sup>See Hansard (Parliamentary Debates in the House of Commons), the 6th Series, Vol. 178, Session 1989-90, (London: HMSO, 24 October 1990), col. 397.

<sup>19</sup>The Select Committee on European Legislation of the House of Commons also published a special report of House of Commons Paper No.30/1990-91, entitled "The Conference of the Parliaments of the European Community".

<sup>20</sup>Hansard (Parliamentary Debates in the House of Commons), the 6th Series, Vol.178, Session 1989-90, (London: HMSO, 24 October 1990), col. 399.

Community legislation and to express confidence or no confidence in the responsible Ministers.

Such consideration by the Select Committee of the House of Commons is carried out through the three European Standing Committees, set up by the reform of 24 October 1990:<sup>21</sup> respectively specialized in (A) agriculture, fisheries and food; environment; and forestry, (B) trade and industry; transport and (C) other Community affairs, inter alia finance and taxation. Each European Standing Committee (ESC) consists of ten members appointed by the Select Committee for the duration of a session and the quorum of the ESC is two members, excluding the Chairman. The Select Committee appointing such members also has the power to discharge and to re-appoint other members in substitution. Any person, even though not appointed to the ESC, is able to take part in the Committee's debates, but a non-member does not have a vote in the Committee's proceedings. As required for further evidence or information in the Committee's proceedings, the Chairman of a committee may summon the responsible Minister of the Crown and may allow her/him to make a statement explaining the Government's position and to answer questions put by members; but no question shall be permitted by the members after the expiry of a period of one hour from the commencement of the above-mentioned statement. Following the conclusion of the Committee's proceedings, the motion may be made. If the proceedings have not been concluded, the Chairman shall declare the conclusion of consideration of the motion when the relevant Standing Committee shall have discussed for a period of two and a half hours. The Committee shall forthwith report to the House of Commons any resolution it has produced.

#### 4.2. The Select Committee on the European Communities of the House of Lords in the United Kingdom

The House of Lords Select Committee on the European Communities, established on 10 April 1974, is composed of 24 Members of the House of Lords and has co-opted a further 56 Members to serve on the six permanent sub-committees.<sup>22</sup> In addition to the permanent sub-committees' activities, the Select Committee sometimes sets up supplementary 'ad hoc sub-committees' to deal with the complex and cardinal Community affairs, e.g. economic, monetary and political union; fraud against the EC; and links between the two Houses of Parliament and the directly elected EP. The Committee and its sub-committees are appointed at the beginning of each parliamentary session, normally in November. In practice, most of the Committee's members, who have specialized experience, work on one or more of the sub-committees. According to its terms of reference,<sup>23</sup> the Select Committee on the

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<sup>21</sup>Refer to Standing Order No.102 (Standing Committees on European Community Documents); and see Hansard (Parliamentary Debates in the House of Commons), the 6th Series, Vol. 178, Session 1989-90, (London: HMSO, 24 October 1990), cols. 393-5.

<sup>22</sup>The six permanent sub-committees are classified according to similar policy areas as follows: (A) Finance, Trade and Industry, and External Relations; (B) Energy, Transport and Technology; (D) Agriculture and Food; (E) Law and Institutions; and (F) Environment.

<sup>23</sup>The Select Committee on the European Communities, House of Lords of the United Kingdom,



European Communities was appointed to consider Community proposals, whether in draft or otherwise, to obtain all necessary information about them, and to make reports on those which, in the opinion of the Committee, raise important questions of policy or principle, and on other questions to which the Committee consider that the special attention of the House should be drawn. Amongst the six sub-committees, permanent Sub-committee E - dealing with legal and institutional matters, and customarily chaired by one of the Law Lords - has a pivotal role in the scrutiny of Community legislation as set down in the terms of reference of the Law sub-committee as follows: to consider and report to the [Select] Committee on: (a) any Community proposal which would lead to significant changes in UK Law, or have far-reaching implications for areas of UK law other than those to which it is immediately directed; (b) the merits of such proposals as are referred to it by the Select Committee; (c) whether any important developments have taken place in Community law; and (d) any matters which they consider should be drawn to the attention of the Committee concerning the vires of any proposal.<sup>24</sup> Here, the key point is that, compared with the terms of reference of the Select Committee of the House of Commons, those of the House of Lords Select Committee confer wider competence; that is, as Usher observes (John Usher, 1994: 3-5), the competence of the Select Committee of the House of Lords is not limited to taking account of the relevant documents on the proposals for Community legislation, but includes wider roles such as raising significant questions of policy or principle to which the Committee should pay attention, and enquiring into the merits of Community proposals; a further more important competence is that the House of Lords Select Committee has issued a variety of in-depth reports concerning the Community policy agenda in order to strengthen its own initiative.<sup>25</sup> Because of their specialized nature involving creative suggestions, the reports of the Committees have been widely used by the Government at the negotiation table as part of the Community decision-making process within the Council and the Commission.<sup>26</sup>

In the EC's decision-making procedure, Commission proposals are published when they are forwarded to the Council of Ministers; and at this stage copies of the proposals are distributed by the Government to the two Houses of Parliament. When the Select Committee on European Communities receives the documents on proposals for legislation, its Chairman decides whether or not the proposals are sent for scrutiny to

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House of Lords Scrutiny of the Inter-Governmental Pillars of the European Union, Session 1992-93, 28th Report, (London: HMSO, 2 November 1993), pp. 5 and 8.

<sup>24</sup>Directorate-General for Research of the European Parliament, Bodies Within National Parliaments Specialising in European Community Affairs, EN-3-1992, (Luxembourg: European Parliament, March 1992), p. 57.

<sup>25</sup>For example, Human Rights: the HLSC, the 71st Report, Session 1979-80; the approximation of the Community law: the Select Committee of House of Lords (HLSC), the 22nd Report, session 1977-78, (HL Paper no.131); Policies for Rural Areas in the EC: the HLSC, the 27th Report, Session 1979-80; the competition practice: the HLSC, the 8th Report, session 1981-82, (HL Paper no.91); the Commission's competences of investigation: the HLSC, the 18th Report, session 1983-84, (HL Paper no.220); and the ECJ's judgments: the HLSC, the 10th Report (the Direct Applicability of Directives), session 1974-75, (HL Paper no.85), responding to Case 41/74 Van Duyn v. Home Office [1974] ECR 1337, [1975] 1 CMLR 1.

<sup>26</sup>For example, the report on Enlargement of the future European Community, the HLSC, the 17th Report, Session 1977-78.

the appropriate sub-committee. Since the number of proposals is too large for the Select Committee to carry out detailed scrutiny, the Chairman must decide whether or not to classify a proposal as A-type or B-type.<sup>27</sup> The B-type proposals are forwarded to the responsible sub-committee, and then the appropriate sub-committee decides which proposals should be the subject of a full scrutiny leading to a report for the House of Lords. For instance, from July 1987 to October 1991 the Select Committee took account of 3,745 proposals in its work; 2,646 proposals were sifted as A-type and 1,099 proposals were sifted as B-type for the Committee's scrutiny. Amongst the total draft proposals, 90 were reported to the House of Lords for its information and 43 were recommended for debate.<sup>28</sup> At the same time the competent Department of State will prepare an explanatory statement on the proposals indicating their legal and policy implications and influence on the sovereignty of the United Kingdom, showing the likely timetable for the decision-making process in the Council of Ministers. The explanatory memorandum is supplied to the two Houses of Parliament and their relevant committees. Enquiring into the merits of the proposals for legislation, Members of the Select Committee are able to hear evidence from Government departments or interests groups. In this environment close collaboration has developed between the Select Committees of the two Houses of Parliament and Government departments in the scrutiny of the proposals for Community legislation.

##### 5. THE ESTABLISHMENT OF AN IMPROVED SCRUTINY SYSTEM WITHIN THE EU DECISION-MAKING MECHANISM

The parliamentary scrutiny procedure at the national level has been restricted by the transfer of decision-making competences to the Community, to the extent that part of the national sovereignty has been transferred into supranational territory. In addition, the decision-making mechanism of the EC shows a serious democratic deficit, in particular, because the EP has only limited powers in the Community legislative process. The issue of strengthening national parliamentary control over EC policies stems from the inadequacy of the supervisory function carried out by the EP over the Commission and the Council at Community level. Thus more national parliamentary control over EC legislative procedures is required, *inter alia* by means of scrutiny at Member State level. Respective national parliaments, without doubt, are threatened by the transfer of power to the supranational decision-making framework. Moreover, the introduction of intergovernmental decision-making in new policy areas such as the common foreign and security policy and cooperation in justice and home affairs results in even further remoteness from national parliamentary and EP scrutiny. The Maastricht Treaty made a number of changes to the Community's institutional framework. Amongst these changes, the introduction of the codecision mechanism has implications for the scrutiny of Community legislation at Westminster.

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<sup>27</sup>According to the sifting criteria, while A-type is thought not to require special attention, B-type is seen to require taking into further consideration or providing important information.

<sup>28</sup>For detailed figures, see Directorate-General for Research of the European Parliament, *Bodies Within National Parliaments Specialising in European Community Affairs*, EN-3-1992, (Luxembourg: European Parliament, March 1992), p. 59.

The scrutiny of draft proposals for European legislation is designed to give the two Houses of Parliament opportunities to examine Community documents, to report their opinions on the legal and political importance of such documents, to make recommendations for the future consideration of such documents in accordance with Standing Order No.102 and, ultimately, to influence Ministers participating in the decision-making process of the Council of Ministers before they agree to a proposal for Community legislation. Thus legislative proposals or other related EC documents, set down in Standing Order No. 127(1), are deposited in the two Houses. At the same time, the appropriate Government Department prepares an Explanatory Memorandum - summarizing the proposal and indicating its legal, financial and policy implications, the procedure to be followed in negotiations, the likely timetable of its consideration by the Council of Ministers and its policy towards the proposal - which, after being signed by a responsible Minister, is submitted to Parliament within a fortnight of the deposit of the proposal. If there is any significant change to a proposal - for instance, if the Commission amends its proposal - after it has been deposited, it will require a further round of scrutiny; then the Government Department deposits a Supplementary Explanatory Memorandum in the two Houses, indicating whether or not further action is necessary.

When Commission proposals are forwarded to the Council, copies are supplied by the competent Government Department to both Houses of Parliament; afterwards, the appropriate Department prepares an Explanatory Memorandum. The number of proposals for European legislation is too large for the specialized Committees of both Houses to undertake detailed scrutiny of all proposals. Also, the number of specialized bodies of the two Houses of Parliament is too small to cover all relevant documents. Therefore, the Chairmen of both Committees are responsible for sifting important proposals each week in order to decide whether or not a proposal requires special scrutiny in the appropriate Sub-Committee,<sup>29</sup> on the basis of the Explanatory Memorandum. The Information Sheet of the House of Lords shows a development of the parliamentary scrutiny system by means of the use of letters to competent Ministers to express the SCEC's opinion on a Commission proposal.<sup>30</sup> This procedure is used for several purposes as follows: where the Committee examines fast-moving proposals; where the Committee's view can be expressed briefly; or where reference can be made to a previous report. In any case, the letters and the responsible Ministers' replies are endorsed by the SCEC and published in a Report entitled 'Correspondence with Ministers'. For the most part, policy reports issued by the specialized committees on EC affairs contain a recommendation for debate upon proposals for European legislation in the two Houses of Parliament. As the report of the House of Lords points out, the nature of debates held in each Houses is somewhat different in terms of the degree of binding force as follows: debates in the House of Lords, characterized as 'neutral formula', generally take place on a Motion to take note of the Report in

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<sup>29</sup>In the House of Lords, the Chairman's sift is endorsed by the Select Committee on the European Communities (SCEC) at its next meeting; and a standard form of Progress of Scrutiny Document is then published, enumerating the cumulative list of proposals reported to the House of Lords, which are awaiting or undergoing detailed scrutiny process.

<sup>30</sup>Journal and Information Office of the House of Lords, Information Sheet, No. 4, November 1993, p. 4.

question; whereas, debates in the House of Commons are on the Motion to take note of the document itself, and take place on the amendments intended to bind the competent Ministers to a specific course of action.

The SCEL of the House of Commons made its First Special Report on 8 December 1993, entitled 'Scrutiny After Maastricht', suggesting establishment of an improved scrutiny system with a view to closer linkage between the new codecision-making procedure and the scrutiny procedure; that is, the aims of the report are to ensure that the two Houses of Parliament are kept informed of all relevant documents, and that the scrutiny procedure is used to enable the two Houses to influence the competent Ministers in the Council decision-making process, with respect to any proposal for European legislation. The SCEL proposes the following procedure:

"(a) the Commission's proposal is deposited and an Explanatory Memorandum is provided; (b) the common position is notified to the Clerk of the Committee; (c) if the European Parliament proposes amendments to the common position, the amended text, and the Commission's opinion on the amendments should be deposited. An Explanatory Memorandum should be submitted; (d) if the Council does not approve the European Parliament's amendments, we [the SCEL] should be informed of the position in a Supplementary Explanatory Memorandum; (e) if the Conciliation Committee approves a joint text, that text should be deposited, and an Explanatory Memorandum should be submitted; (f) if the Conciliation Committee fails to approve a joint text, we should be informed of the position in a Supplementary Explanatory Memorandum; [and] (g) if the Council confirms the original common position (with or without amendments proposed by the European Parliament) the text should be notified to the Clerk of the Committee."<sup>31</sup>

In practice the Resolution of the House of Commons on 24 October 1990<sup>32</sup> may constrain the competent Ministers not to agree in the Council to a proposal for Community legislation upon which the scrutiny process has not been completed. As the Maastricht Treaty introduced the codecision-making procedure in certain policy areas,<sup>33</sup> it would be in the interests of democracy to incorporate negotiation stages between the EP and the Council in the codecision-making structure within the scope of the 1990 Resolution.

Further measures should be taken to develop the parliamentary scrutiny process at both EU and Member State level. In her written evidence to the SCEC of the House of Lords, Professor Wallace stated that the following measures, 'rather modest technical steps', should be taken immediately,:

- (i) the responsible Ministers should make a six-monthly statement to the two Houses of Parliament on the forecast of Council business;
- (ii) the competent Ministers should provide Parliament with agenda of Council meetings; and

<sup>31</sup>Select Committee on European Legislation of the House of Commons, First Special Report: Scrutiny After Maastricht, HC 99, Session 1993-94, (London: HMSO, 8 December 1993), p. vi.

<sup>32</sup>The Resolution of 24 October 1990 of the House of Commons. Where the cooperation procedure applies within the scope of the parliamentary scrutiny procedure, the responsible Ministers are constrained just in reaching a common position.

<sup>33</sup>The following Articles involving new Community policy areas apply the codecision-making procedure: Articles 49, 54(2), 56(2), 57(1), 66, 100a(1), 100b(1), 126(4), 128(5), 129(4), 129a(2), 129d, 130i(1) and 130s(3) of the EC Treaty.

(iii) the relevant Ministers should commit themselves to reporting regularly to both Houses of Parliament and to the related parliamentary committees. In the long term, additional, more fundamental measures should be taken. In terms of long-term policy, she suggests the following steps:

“(i) establishing the means for ministers dealing with these delicate areas of public policy regularly to have confidential sessions with relevant parliamentary committees and consulting relevant committee chairs on whether particular subjects were likely to provoke parliamentary concern; this would provide opportunities for enhanced parliamentary scrutiny, though not necessarily lead to wider public debate;

(ii) arrangements for national parliaments to be consulted on the texts of conventions being drafted ... before they are put in final form ... ; and

(iii) finding a mechanism for national parliamentarians to examine arrangements ... (e.g. the rules governing shared data-bases etc.) ... (Helen Wallace, 2 November 1993: 79).”

She states that these steps can be introduced unilaterally in the UK parliamentary scrutiny process; and that, if they are effective in facilitating parliamentary supervision of Ministers participating in the Council decision-making process, they may be implemented throughout all Member States of the EU.

In theory, the two Houses of Parliament have the opportunity to influence the competent Minister in the Council. In practice, however, they cannot mandate the responsible Minister not to agree to any proposal in the Council of Ministers which differs from their viewpoint;<sup>34</sup> so all the Houses can do is to maintain the negotiation process with the relevant Minister, seeking to delay agreement to any proposal for Community legislation in the Council until it has been cleared by the specialized committees on EC affairs. In the face of practical limitations in the parliamentary scrutiny system, we should recognize the importance of close collaboration in the decision-making process at both levels, i.e. at the EU level and at the Member State level. In the same context, Mr Glyn Ford MEP has emphasized the importance of scrutiny at both EC and Member State level: “ ... no matter how effective national parliamentary scrutiny is, it remains separate scrutiny by different parliaments each over one single member over the Council. This must be completed by scrutiny over Council’s collective decisions, and over Council as an institution, by the EP, as provided for in the Treaty itself. The two forms of scrutiny are not only compatible, but are mutually beneficial and reflect the common interest shared by all parliaments in ensuring adequate scrutiny of these important [policy] areas [of the European Union] (Glyn Ford, 2 November 1993: 58).”

## 6. CONCLUSION: A STRENGTHENING OF THE LINKS BETWEEN THE NATIONAL PARLIAMENTS AND THE EUROPEAN PARLIAMENT

As mentioned above, the Rome Conference’s Declaration highlights the improvement of democratic legitimacy both at supranational and Member State level,

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<sup>34</sup>Dr F. P. Tudor, Clerk to Sub-Committee B (Energy, Industry and Transport) of the Select Committee on the European Communities of the House of Lords, also points out the fact in the reply of 17 November 1994 to written enquiries.

by means of enhancing the roles of national parliaments and the EP in the EC decision-making process as well as by reinforcing inter-parliamentary cooperation.<sup>35</sup> First, the Declaration places emphasis on procedural democracy as follows:

“ ... the time is right to transform the entire complex of relation between the Member States into a European union on the basis of a proposal for a constitution drawn up with the aid of procedures in which the European Parliament and the national parliaments will take part. ... in order to carry out the new tasks facing it at the monetary level and in external relations, the Community must transform itself into a European [U]nion in order to meet the requirements of democracy, ... the process of amending the Treaties [founding the European Communities] must involve the assent of the European Parliament before ratification by the national parliaments ... .”<sup>36</sup>

Along with emphasis on the role of the EP as a democratic supervisor exercising competence as codecision-maker in the legislative and budgetary contexts, the Conference takes the view that national parliaments must play an important role in the whole process of democratic control: “ ... each national parliament must be able to bring its influence to bear on the shaping of its government’s policy stances on the Community; ... as contributions to reducing the democratic deficit, the need to take measures systematically that give wide publicity to their citizens of the proposals for legislation put forward by Community institutions, as well as the need for their parliaments to ensure that their national governments and [responsible] ministers remain fully accountable for their policies and actions within the European Community... .”<sup>37</sup> Similarly, MEPs also favour cooperation between national parliaments and the EP in order to establish democratic legitimacy, both at supranational level and in relations between the EC and the Member States. Thus, the EP has proposed measures to improve inter-parliamentary links:

“(i) ... [the European Parliament] calls on its standing parliamentary committees to strengthen their ties with national parliamentary committees working in the same areas, to build up lasting cooperation with them, in full conformity with the principles stated in the Final Declaration of the Conference of Parliaments;

(ii) ... the parliaments of the Community countries must make heard their demand that greater consideration be given to their respective roles at national and Community level;

(iii) ... only better distribution of information to the national parliaments both during the preparation stage and implementation stages of European legislation will allow the national parliaments to strengthen their parliamentary supervision over their executives in the course of the Community decision-making process; and

(iv) ... a strengthening of the links between the national and European parliamentary groups belonging to each political tendency would be a particularly effective means of

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<sup>35</sup>Refer to provisions 12-22 of the text of the Final Declaration adopted in the Conference of the Parliaments of the European Community held in Rome from 27 to 30 November 1990; see Bulletin of the EC 11 - 1990, pp. 142-3.

<sup>36</sup>Refer to provisions 12 & 16 of the text of the Final Declaration adopted in the Conference of the Parliaments of the European Community held in Rome from 27 to 30 November 1990; see Bulletin of the EC 11 - 1990, p. 142.

<sup>37</sup>Refer to provisions 14 & 22 of the text of the Final Declaration adopted in the Conference of the Parliaments of the European Community held in Rome from 27 to 30 November 1990; see Bulletin of the EC 11 - 1990, pp. 142-3.

developing relations between the national parliaments and the European Parliament ...<sup>38</sup>

John Major, Former Prime Minister of the United Kingdom, placed particular emphasis on the building-up of the relationship between national parliaments and the EP, as an effective way of developing the EC's democratic credentials.

"The European Parliament sees itself as the future democratic focus for the Union. But this is a flawed ambition, because the European Union is an association of States, deriving its basic democratic legitimacy through national parliaments. ... People will continue to see national parliaments as their democratic focus. It is a national parliamentary democracy that confers legitimacy on the European Council [and the Council of Ministers]. ... In parallel, I believe that much more should be done to build links between national parliaments and the European Parliament. Westminster, as I suspect is the case with most national parliaments, is partly at fault here. We all need to develop a more co-operative effort with the European Parliament and we must examine how this can be done. In my own country, I see a case for Joint Committees (both by inviting MEPs to contribute to national scrutiny committees, and vice versa) and we will examine this in the months ahead."<sup>39</sup>

In Bonn, on 12 September 1994, Rita Süssmuth, President of the Bundestag, announced that the national parliaments of the Member States of the EU had been invited to participate in the preparation for the 1996 IGC, with a view to enlarging membership and deepening European integration on the basis of democratic principles. At the Bonn Meeting to which Mrs Süssmuth invited the Presidents of all national parliaments of the Member States, the Parliamentary leaders decided to launch a consultation process to determine to what extent and how best the national parliaments should become involved in the Treaty amendment process. Furthermore, they expressed a firm desire to draw a clearer demarcation of competences between the various authorities at Member State and EC level, so as to correct the democratic deficit at EC level. Philippe Seguin, President of the Assemblée Nationale, also emphasized the significance of national parliaments' active participation in preparations for the 1996 IGC, adding that the national parliaments provide the accountable and transparent means of remedying the deficiencies of the democratic legitimacy in European integration process.<sup>40</sup>

One of the major issues for the EP's Committee on Institutional Affairs has been to prepare for the 1996 IGC. In Brussels on 5 and 6 September 1994, it held a meeting to exchange opinions with Klaus Hansch, the new President of the EP, with regard to the EC's main priorities. These priorities involved the implementation of the provisions of the Maastricht Treaty, the nomination of the European Commissioners and their president, and constitutional and institutional changes. Mr Hansch has identified two main stages with regard to the 1996 IGC agenda, as follows:

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<sup>38</sup>See provisions 4-7 of the EP's resolution of 10.10.1991 on relation between the European Parliament and the national parliaments after the Conference of Parliaments of the European Community (Doc.A3-0220/91), OJ No.C 280, 28.10.1991, p. 145.

<sup>39</sup>The Rt. Hon. John Major, the British Prime Minister, Special Feature: European Union - Which Way Forward?, Europe: A Future That Works, European Access, No.5, October 1994, pp. 8-9. See the text of the William and Mary Lecture delivered by the Rt. Hon. John Major at the University of Leiden in the Netherlands, on 7 September 1994.

<sup>40</sup>See European Report, No.1975, 14 September 1994, (Bruxelles, Belgium: European Information Service, 1994), p. 1.

“(i) In June 1995, the ad hoc experts’ committee is due to be empanelled, on which two European Parliament representatives will sit. Before this date, i.e. May 1995 at the latest, [the European] Parliament will need to adopt a report setting out the main guidelines on the basis of which the two representatives will negotiate, particularly Parliament’s demands for reform of the EU institutions. An interim report on this towards the end of 1994 is not to be ruled out; and

(ii) In December 1995, the European Council, under Spanish Presidency, is due to convene the Inter-governmental Conference. Before then, Parliament will need to vote its official position on the findings of the experts’ committee.”<sup>41</sup>

In this context, according to the same report, the EP’s President called for a major conference as well as various working-party meetings between national parliaments and the EP; the purpose being to consider constitutional and institutional matters with a view to establishing parliamentary democracy at the European level, along with the European Parliamentary forum. The EP has also several times reaffirmed its commitment to take into account a draft European constitution in the process of collaboration with national parliaments,<sup>42</sup> discussing its proposals adopted by democratic means through mobilizing European public opinion. Since the ECSC Treaty came into force, considerable powers have been bestowed upon the Council of Ministers. Therefore, it is extremely difficult for the European Parliament and national parliaments to influence the amendment of the Community’s constitutional and institutional mechanism. Here we should not disregard the crucial role of the EP and of national parliaments in the process of establishing the EU constitutional and institutional framework, on the basis of parliamentary democracy. As aforementioned, therefore, the ideal type of cooperation between the national parliaments and the EP would involve complementary roles in their respective areas of influence, acting jointly in consultation with one another and strengthening democratic supervision of the executive within the EU decision-making structure.

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<sup>41</sup>European Report, No.1974, 10 September 1994, (Bruxelles, Belgium: European Information Service), p. 2.

<sup>42</sup>See the EP’s resolution on the Intergovernmental Conference in the context of Parliament’s strategy for European Union (Doc.A3-47/90), OJ No. C 96, 17.4.1990, p. 118.



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