

# WRR

SCIENTIFIC COUNCIL FOR GOVERNMENT POLICY

## EUROPE IN PARLIAMENT

### TOWARDS TARGETED POLITIZATION

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## **SUMMARY IN ENGLISH**

Members of national parliaments can enhance the societal embedding of European policies through *targeted politicization* of European policy questions. Instead of subjecting all EU matters to political debate across the board, they should select appropriate questions for politicization at the right moments. Targeted politicization requires above all (1) a conscious *self-reflection* among parliamentarians leading to the understanding that there are limits to their scope of political action. Debate in one national parliament cannot always by itself translate into European policy outcomes, which can be frustrating; moreover, parliamentary actors, in particular political parties, need to balance their interests, including their internal ideological unity, the relevance of EU policy to their voters and, where applicable, their basic pro-European attitude. Therefore, not all EU issues will be politicized. Once this awareness is established, (2) a *targeting* of appropriate EU policy questions can take place. Substantive party positions on EU proposals will ideally form a logical continuation of domestic manifestos. When the subjects of politicization are targeted, political parties should, e.g. in election campaigns, (3) *commit* themselves to substantive positions on which they wish to be held to account. While doing so, they can appeal to their voters to consider elections to the European Parliament as a logical continuation of the expression of preferences at national level. As soon as parliamentarians have committed themselves to policy positions, they are free, as they (4) *implement* their promises, to use all possibilities that the European constitutional architecture offers. They need not restrict themselves to the calling to account of their cabinet ministers for their actions in Brussels, but can also enter into direct contacts with other EU member states, with members of the European Parliament, the European Commission and other EU institutions. Targeted politicization following these four steps leads to a better societal embedding of European policies than a mere 'advertising' of European integration, or the artificial setting up of new committees and oversight procedures.

## **SAMENVATTING IN HET NEDERLANDS**

Leden van nationale parlementen kunnen de maatschappelijke inbedding van Europees beleid verhogen door middel van *doelgerichte politisering* van Europese vraagstukken. Daarbij moeten niet álle Europese beleidskwesties aan politiek debat worden onderworpen, maar dienen er geschikte onderwerpen op gepaste momenten voor politisering te worden gekozen. Doelgerichte politisering vereist (1) een bewuste *zelfreflectie* onder parlementariërs die leidt tot het besef dat er grenzen zijn aan hun politieke actiemarge. Debat in één nationaal parlement garandeert niet zonder meer Europese beleidsuitkomsten, en kan daarom frustrerend werken; daarenboven moeten parlementaire actoren, met name politieke partijen, afwegingen maken tussen verschillende belangen en factoren, waaronder hun programmatische eenheid, de relevantie van Europese vraagstukken voor hun kiezers en, waar toepasselijk, hun pro-Europese grondhouding. Niet alle EU-onderwerpen zullen derhalve worden gepolitiseerd. Wanneer dit besef eenmaal is gevestigd, kan worden overgegaan tot (2) het *lokaliseren* van geschikte Europese vraagstukken. Inhoudelijke posities op EU-voorstellen zullen idealiter in het verlengde liggen van partijprogramma's op binnenlandse onderwerpen. Wanneer een geschikt onderwerp is gekozen, dienen politieke partijen, bijvoorbeeld tijdens verkiezingscampagnes, (3) zich te *binden* aan inhoudelijke standpunten waarop zij willen worden afgerekend. Zij kunnen hun kiezers daarbij oproepen om Europese verkiezingen als logisch vervolg op de uiting van voorkeuren op nationaal niveau te beschouwen. Zodra parlementariërs zich aan beleidsstandpunten hebben gebonden, zijn zij vrij om (4) ter *implementatie* van hun beloftes alle mogelijkheden van de Europese constitutionele architectuur te gebruiken. Zij hoeven zich niet te beperken tot het ter verantwoording roepen van ministers voor hun optreden in Brussel, maar mogen in aanvulling daarop tevens in direct contact treden met andere lidstaten, met Europarlementariërs, met de Europese Commissie en andere EU-instellingen. Gerichte politisering met inachtneming van deze vier stappen leidt tot een betere maatschappelijke inbedding van Europees beleid dan puur en alleen 'reclame' voor Europese samenwerking of de kunstmatige oprichting van nieuwe Kamercommissies en parlementaire controleprocedures.

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## 1 INTRODUCTION

The cause to involve national parliaments in the EU policy process more closely is by now firmly established at the top end of the European reform agenda. At the same time, the quest to bring Europe closer to the citizens remains a pressing challenge. However, one does not follow automatically from the other. Enhancing the rights and privileges of national parliaments in the EU does not just by itself mean that, since parliaments are to represent the citizens of the member states, these citizens will experience enhanced European involvement as well. The question is how parliaments or political actors *within* a national parliament can participate in EU decision-making and at the same time connect their activity to the citizenry? In other words, how can parliamentary actors contribute to a societal embedding of European policies through their actions? This is the question that shall be addressed in the present paper.

Societal embedding of policies is understood here as an enhanced connection of the activities of political actors with the perception of the governed, making the attitude and preferences of political actors amenable to public scrutiny, discourse, informed judgment and, in the case of parliaments, voter alignment. To address the issue of societal embedding of EU policies via the national parliament, this paper shall first elaborate three major premises that are instrumental to approaching the subject. The first premise, as already hinted, is that treating a parliament as a political actor of its own right is, in the present context, of very limited value. For parliament is not an actor as such – it rather comprises several categories of sub-actors, including political party groups in both government and opposition, parliamentary committees, as well as individual MPs. It is by studying the incentives of each that we can arrive at a nuanced picture of parliament as a complex multi-member assembly.

The second premise of this discussion shall be that the institutional links between national parliamentary actors, on the one hand, and the government and the EU institutions, on the other hand, are manifold, expanding, and still very much under-used. If coupled with a clearly defined purpose, parliamentary actors could exploit to a far greater, and a far more visible extent, the subtle cross-border and cross-layer channels that emerge in the framework of what is typically referred to as polycentric constitutionalism or multi-level governance.

The third premise picks up on the above qualification: greater European activity could be deployed *if* that activity were to serve a clearly defined purpose. After all, putting pressure on a national cabinet or an EU institution is not a goal by itself; it is but a means to an end. What exactly that end is depends on the parliamentary actor and the circumstances at hand. We may identify as an overarching purpose of parliamentary activity to bring Europe closer to

the citizens through politicization. Politicization is defined as a process whereby contrasting positions on a policy issue are highlighted, whereby political actors in fact take up contrasting positions, and whereby the resulting friction is reflected in actual policy outcomes. Later on, we will have to adapt this definition of politicization to the European context, because, as regards the link between debate and policy outcome, EU policies tend to be compromises between member states or between institutions. Still, politicization in a general sense is understood as a tool to promote societal embedding of policies. At the same time, political actors in parliament have to take into account other incentives as well, so that in the end we arrive at a situation where parliamentary actors face trade-offs as to when, what, and how to politicize European affairs. Based on the above premises, the paper shall finally propose a practical four-step action framework on the politicization of European affairs in a national parliament. Rather than suggesting full politicization across the bench, which can have undesirable effects, the paper shall suggest a *targeted politicization*: an approach that takes due account of the inherent limitations of national parliamentary activity, but that in turn allows for a far more intensive and effective activity in those areas where politicization can truly help embed European policy in society at large.



## 2 ADDRESSING PARLIAMENTARY ACTORS

*Parliament is not an actor, but a multi-actor assembly. Politicization capacity, political incentives and trade-offs, as well as access to EU decision-making, need to be assessed for each individual category of parliamentary sub-actor.*

When it comes to the role of national parliaments in the EU, it would be inaccurate to speak of a parliament as an ‘actor’ of its own right, placed between the citizens and the government. Depending on the context, the term ‘parliament’ can have different implications. Parliamentary rights such as formalized consultation procedures and debates, for example, are particularly relevant to parliamentary minorities, so that they can make their voice heard. Parliamentary prerogatives such as voting so as to confer legitimacy to an act, meanwhile, typically mean that parliament acts by majority.

Thus, parliament is not an actor, but it in fact comprises several categories of sub-actors. The present discussion shall focus on individual political party groups, either in government or in opposition, and each with their own political preferences; parliamentary committees, including the European affairs committee and sectoral standing committees; and individual MPs. Clearly memberships overlap: an MP can be a member of a political party, one or more committees, and the plenary. Still, speaking of the parliament as a multi-actor institution helps capture political dynamics, and the logic of polarization, in a far better way than a treatment of parliament as an actor by itself.

*Figure 1 Parliament as a multi-actor institution*

PLENARY												
GOVERNMENT							OPPOSITION					
COALITION PARTY			COALITION PARTY			OPPOSITION PARTY			OPPOSITION PARTY			
POLITICAL ALIGNMENT, FOR EXAMPLE												
LEFT-OF-CENTRE				CENTRIST				RIGHT-OF-CENTRE				
EU AFFAIRS COMMITTEE			SECTORAL COMMITTEE			SECTORAL COMMITTEE			SECTORAL COMMITTEE			
MP	MP	MP	MP	MP	MP	MP	MP	MP	MP	MP	MP	MP

Conceptualizing parliament as a multi-actor institution, rather than as an actor by itself, has very practical consequences as regards both the available means of EU-level participation and the attached politicizing capacity. For example, a political party should be able to effectively commit itself to an EU-related cause during a national election campaign, thereby stirring politicization. The possible extent of politicization within parliament, however, varies

between intra-parliamentary forums: the plenary is suited for debate between political party groups, while committees in fact exist to reduce such politicization and emphasize the value of technical expertise. This in turn also means, though, that committees can have a greater result-oriented impact, in that they can provide a better informed judgment as regards government policy or the actions of EU institutions. Either way, the effectiveness of the implementation of pre-election commitments, and the scope for such commitments in the first place, will strongly depend on which constituency a party or its MP serves, or where it stands in the political spectrum, and whether it ends up with government responsibility or with the scrutinizing functions of an opposition party.

### **3 PARLIAMENT'S LINKS TO THE EUROPEAN UNION**

*National constitutional law, as well as polycentric (multi-level) governance in the EU, offers a wide range of potential opportunities to national parliamentary actors for EU-level participation. These opportunities can be used far more visibly and effectively than they are now, in as far as they serve the purpose of societal embedding of EU policies.*

Both in the literature and in European treaty-drafting and related exercises, when it comes to the involvement of national parliaments in the European Union, the emphasis is typically put on two sets of relationships. First, national parliamentary participation in the EU is construed from the angle of domestic government-parliament relations. The starting point then is the link of ministerial accountability to parliament, as it exists in parliamentary and semi-parliamentary democracies throughout the EU. Thus, the perceived remoteness between Europe and the citizens is brought down to a domestic gap between, on the one hand, the government and its civil service which conduct European policies away from home, and, on the other hand, parliamentary actors who, for whichever reasons, maintain an insufficient degree of scrutiny and oversight in European matters. Solutions therefore above all aim at improving oversight mechanisms and the internal organization of parliaments to deal more effectively with EU questions (see 3.1 below).

Second, complementing and perhaps surpassing the link of ministerial accountability, approaches are developed to consolidate relations between national parliaments and EU institutions that are not mediated by the national governments. Such approaches, some of which are by now codified in treaties or other instruments and some of which remain informal, seek to activate parliamentary participation in a European polity that is perceived to be of a polycentric or multi-level character. Thus, instead of superimposing a hierarchically superior EU level of government on top of the member states, whereby national parliaments play a marginal role at best, modern conceptualizations seek to show that the member states and their internal bodies interact with EU bodies in a complex and above all non-hierarchical system of interest representation and checks and balances.

Multi-level governance or polycentric constitutionalism can thus offer a European role to domestic parliamentary actors, in that they are no longer limited to enforcing ministerial accountability in a purely national setting, but can also engage in direct EU-wide dialogues (see 3.2 below).

### *Pragmatism in Normative Debate*

As the possible starting points with respect to the involvement of national parliaments in EU policy are identified, we should note that such enhanced involvement has a certain normative context. This means that reform measures in that regard, depending on how or when they are formulated, reveal their underlying normative approaches to the European Union as a whole. Depending on the actor, they can also reveal competing institutional interests and agendas.

The 'case for national parliaments' can in fact be disaggregated into sub-cases, and exposed not as a coherent case of its own right, but as a 'composite case', a smallest common denominator, and a minimum consensus between competing interests in the EU over the appropriate role for national parliaments.<sup>1</sup> The Constitutional Treaty, and the 'yes' campaigns in favour of its ratification, for example, made a strong point of emphasizing the envisaged involvement of national parliaments in EU decision-making, advertising it as a strong selling point. A closer analysis will however reveal that, from the point of view of the national governments, it is convenient to resort to measures that are of great symbolical weight but that do not challenge the fundamental logic of EU decision-making. A prominent place for national parliaments in a treaty, or in domestic instruments, therefore appears attractive to governments as an inexpensive gesture to appease sceptic constituents and to ensure the support of parliamentarians and, above all, voters in referendums, during a ratification process and beyond. The meaningfulness of such gestures, even if they are backed up by legally binding mechanisms such as veto powers for national parliaments, still depends on the degree to which a cleavage actually exists between the government and the parliamentary rank-and-file. Majority-dominated parliaments can even be mobilized as a proxy for the government, adding a flavour of parliamentary legitimacy to what is in fact executive action. Either way, the prerogatives of the governments and EU institutions in the European policy process remain in place.

Also as regards schools of thought at a more abstract level, a stronger role for national parliaments in the EU dovetails with some normative approaches to the EU while it sits more uncomfortably with others. Politicization of EU issues in a domestic arena, for example, would readily imply a de-technicization of integration issues and an exposure of a member state's national stakes in the game. To what extent such a development is compatible with a neo-functionalist view of the EU, or with support for elite-driven consociational decision-making, is highly questionable. From a Euro-federalist point of view, national parliaments would be worth strengthening only to the extent that their benefits, such as added transparency, societal acceptance and communication with the citizens, are not outweighed by, for example, the national-interest bias of their incentive structure.<sup>2</sup>

For the purposes of the present discussion, it is helpful to acknowledge that national parliaments are not universally endorsed, and that if they are, they are endorsed by different actors for different reasons and to different extents. Pragmatically speaking, however, it suffices here to note that even though normative justifications and premises may differ, there is in fact a minimum convergence of agendas on the point that it is generally desirable to address the role of national parliaments in the EU more prominently.

The focus in the present discussion is the societal embedding of EU policies via politicization in national parliaments, an issue that can be tackled at purely national level via domestic accountability enforcement, or in a more polycentric fashion that allows for direct and non-mediated links between parliamentary actors and the European realm. In either scenario, of course, the emphasis on the *means* of parliamentary participation should not distract from the *purpose* of such participation. Enhancing domestic scrutiny of European affairs is not an end by itself. Nor is public involvement automatically enhanced just because a national parliament is given additional rights and privileges in the EU policy process. It is crucial to identify the degree to which politicization of EU matters is feasible and desirable, from the point of view of different parliamentary actors, so that where politicization does take place, it is targeted and effective (see 3.3 below).

### **3.1 Improving Domestic Scrutiny**

*It is possible to improve national parliamentary oversight mechanisms in EU matters, even without an amendment of the national constitution or any statutory instruments. A legally binding framework can help underpin a political commitment to targeted politicization of European affairs, but 'token reforms' without such politicization should be avoided.*

Our discussion of the practical inhibitions to parliamentary oversight in European affairs may start with the information gap between parliamentary actors and the executive. There are several actual or potential factors contributing to this information gap, the first of which is the difficulty to obtain relevant and timely EU-related information in the first place. In order to form an opinion on a draft EU act beforehand, parliamentary actors require (at the very least) access to the relevant initiative documentation, such as Commission proposals. However, the mere distribution of Commission documents will not ensure improved oversight by itself. First, by the time the Commission publishes a formal proposal, it will be too late for domestic parliamentarians to have an impact on the content: if influence is desired, the scrutiny process should start at an earlier stage, such as at the Green Paper stage or at the level of the annual work programme. Second, information is of limited use if it remains undigested: explanatory memoranda (by the Commission, the government, or both) are vital to improve the accessibility of draft acts to national MPs. Third, if parliamentarians

desire to uphold a critical and independent view on their government, they should not make themselves dependent on a Commission or government monopoly on information and explanation, and instead consult additional sources. Fourth, a point that qualifies the above, too strong an emphasis on volume can easily lead to inhibited scrutiny as MPs experience an overload of information.

### 3.1.1 European Information Facilities

Timely information as a prerequisite to effective scrutiny has been addressed with priority at EU level throughout the 1990s. Thus, in Maastricht Final Act Declaration No. 13, the governments announced their willingness to ensure 'that national parliaments receive Commission proposals for legislation in good time for information or possible examination.' Article 2 of the Amsterdam Protocol on the role of national parliaments in the European Union, which is applicable and binding to date, laid down an obligation for each government to 'ensure that its own national parliament receives [EU proposals] as appropriate.' The EU Constitutional Treaty, as adopted by the Convention and the IGC, broadened the scope of information, and switched to a new approach of document distribution, whereby the Commission would not only distribute its consultation documents and its annual legislative programme directly to the national parliaments, but also all the 'draft legislative acts' that it introduces. Thus, instead of obliging the governments to forward documentation, the new Protocol would oblige the Commission to send its documents to the parliaments itself. In addition to Commission proposals, the national parliaments would be entitled to receive, under the heading of 'draft legislative acts', initiatives from a group of member states, initiatives from the European Parliament, requests from the ECJ, recommendations from the European Central Bank and requests from the European Investment Bank for the adoption of a European legislative act. The European Parliament and the Council would also forward their legislative resolutions, respectively their common positions, to the national parliaments. Furthermore, the Commission would draw the national parliaments' attention to proposals to apply the flexibility clause of Article I-18 of the Constitutional Treaty, the successor of Article 308 EC; the national parliaments would have to be kept informed about the activities of Europol and Eurojust for evaluation and scrutiny subject to a European Law; the national parliaments would be notified of incoming EU membership applications from foreign states under Article I-58; they would be notified of any proposed treaty amendments under Article IV-443; they would be consulted under Article IV-444 about any initiative to unanimously move to qualified majority voting or to co-decision, and the objection from any national parliament within six months from notification would suffice to prevent the adoption of the move.<sup>3</sup>

### 3.1.2 Domestic Information Facilities

Even in the absence of EU-level instruments, however, a national government remains accountable to its parliament under the heading of parliamentary confidence. That is, a cabinet may remain in office so long as it enjoys the confidence, or the tolerance, of a parliamentary majority, and it has to justify its policies so as to ensure acceptance among MPs. With a motion of censure as an ultimate sanction, parliamentarians can insist on the disclosure of information as part of an *ex ante* or *ex post* accountability process. The Dutch Constitution provides for a general confidence rule in Article 42 (2). In addition, it contains an explicit obligation for the government to disclose information to parliamentarians:

Article 68. The ministers and state secretaries provide the chambers, separately and in joint session, orally or in writing the information demanded by one or more members, where such provision is not in conflict with the interest of the state.

An even more specific legal basis for information facilities, which applies to EU matters under the Third Pillar, has been inserted into the statute of ratification of the Treaty of Maastricht, and reinserted into the statutes approving the Treaties of Amsterdam and Nice. Statute obliges the government to notify both chambers of the Dutch parliament about all new proposals adopted under Title VI of the EU Treaty. The currently applicable legal basis from the Nice ratification statute provides:

Article 3 (1). A draft of a decision that intends to bind the Kingdom shall, before any decision-making in that matter takes place in the Council in accordance with Title VI of the Treaty on European Union as amended by the [Treaty of Nice], promptly after the text of that draft has been adopted, be made public and be submitted to the States-General.

### 3.1.3 Scrutiny facilities: The Committee System

Once all the desired information has been made available, parliamentary actors can enter into the scrutiny process with respect to the received documentation and the government's position on them. Here the question arises as to which parliamentary actor, more specifically which parliamentary committee should be in charge of the scrutiny process. This question is answered in different manners in the national parliaments across the European Union.

In most reviews and analyses, it is the European affairs committees which attract most attention. By now all national parliaments in the EU have established such a committee, or have assigned a pre-existing committee such a function, namely to specialize in questions of

European integration. At the same time, the role of the sectoral committees (e.g. agriculture, health, economic affairs), as well as the plenary as a whole, is increasingly addressed in the literature and in parliamentary practice.

Typically, larger European integration issues with a horizontal and cross-departmental scope fall within the immediate ambit of European affairs committees. That may include European Councils and IGCs, institutional reform of the EU or the enlargement process, in other words matters that would otherwise be covered by classic high politics in the area of pure foreign affairs. As regards the European Union's day-to-day activity, the allocation of competences as between European affairs and sectoral committees depends on the model chosen by the respective parliament.<sup>4</sup>

In a centralized system of scrutiny, all or most EU-related matters would fall within the competence of a European affairs committee. The prototype of such a model is Denmark, where the parliament's Europe committee receives extensive EU-related documentation and explanatory memorandums from the government and controls Brussels-bound ministers by tying them to negotiation mandates for subsequent Council meetings.<sup>5</sup> Usually on the Friday before a Council meeting, the competent minister or state secretary appears before the committee, and orally outlines a draft mandate on the basis of which the government is intending to negotiate. The mandate is passed by tacit approval, and the absence of a majority against it is noted without formal voting by the committee's chairman at the end of each round of discussion. The mandate is binding upon the minister politically, but is in practice so authoritative that it entails a quasi-legally binding instruction. If in the Council a compromise would require deviations from a given mandate, the minister seeks to obtain a new mandate, and the committee may hold a special meeting for that purpose. After the Council meeting the minister re-appears before the committee and reports back on the matter decided, as well as on his or her own line of negotiation. The Danish model of centralization of European scrutiny has inspired several other parliaments, including those of Sweden, Austria, Latvia, Hungary and Slovakia.

The advantage of centralization of scrutiny in one European affairs committee is the efficiency of the deliberation process. In addition, it makes sure that European matters are in fact scrutinized at all. Mere dissipation of EU questions to the sectoral committees under the slogan 'Europe is everywhere' tends to lead to a situation where sectoral committees prioritize domestic bills over EU projects, and thus to fragmented or absent scrutiny. Still, the disadvantage of centralization in a European affairs committee remains the lack of institutionalized input from sectoral specialists. The European affairs committees tend to be generalist, and to miss out on technical expertise. To tackle this shortcoming, centralized



parliaments increasingly rely on parallel information systems, as well as on overlapping committee membership for involved MPs so as to import sectoral expertise to the European scrutiny process.

#### 3.1.4 Coordination of Scrutiny and the Finnish Model

One middle way between centralization and fragmentation of European scrutiny is the model of co-ordination. Thus, while the treatment of European affairs is left in principle to the sectoral committees, the respective European affairs committee can assist them and co-ordinate their efforts. The approach taken by the lower chamber of the Dutch parliament is particularly telling. Its first European affairs committee, established in the form of a cross-departmental general committee that required re-establishment after new elections, was to raise the awareness of European integration matters among MPs on the sectoral committees. The committee's function was intended to fade out with time.<sup>6</sup> In reality, the Dutch European affairs committee remained to permanently draw attention to particularly important Commission proposals, to hold joint meetings with sectoral committees, or to question ministers on its own. A similar approach is taken by the two chambers of the French parliament, as well as the German *Bundestag*, where the respective European affairs committees work together with a sectoral committee-in-charge.

Another hybrid model between centralization and fragmentation is the Finnish model of delegation. While following the basic Danish approach of centralized briefing, mandating and debriefing of ministers, the Finnish grand committee that is competent for European affairs delegates the practical scrutiny work to the sectoral committees. The sectoral committees in turn discuss the matter with priority and then submit a report with their recommendations to the grand committee. The grand committee considers the incoming reports, summarizes and mediates in case reports are submitted by more than one sectoral committee, and on that basis goes on to deliberate with Brussels-bound ministers, imposing politically binding negotiation mandates. The main difference between this Finnish delegation model and the described co-ordination models is that in the former case, the European affairs committee is accepted as a parliamentary spearhead that relies on an echelon of committees; in the latter case, sectoral committees-in-charge retain a greater autonomy with respect to the European affairs committee.

The Finnish system of delegated scrutiny and centralized briefing enjoys an increasingly good reputation, as it seems to outperform not only the more fragmented routines, but also the Danish model, long seen to be an archetype of oversight, in terms of broad parliamentary involvement. The Finnish model has already inspired the parliaments of Estonia, Slovenia and Lithuania to follow similar approaches. Interestingly, also the parliament of the

Netherlands, an 'old' member state and in fact a founding father, has endorsed a completely new approach in anticipation to the early warning system under the Constitutional Treaty. First, it established a joint committee of both chambers, something long practiced in other bicameral parliaments but uncommon in the Dutch case. Second, the joint committee is intended to receive reports from the sectoral committees as regards compliance of Commission proposals with the principle of subsidiarity, so that it can draft reasoned opinions for adoption in the chambers where appropriate.<sup>7</sup>

### 3.1.5 Scrutiny Reserves and Mandates

If parliamentarians wish to maximize their impact on EU decision-making on the domestic scene, they require sufficient time for scrutiny and a means to communicate their conclusions and preferences to the executive. As regards time, not only the absolute amount of time is important, but also the input moment or moments relative to the decision-making process. In this context, scrutiny reserves constitute a well-established tool. First introduced in the parliament of the United Kingdom, a reserve restricts the freedom of ministers to give their consent in the Council to matters which are still awaiting completion of parliamentary scrutiny. The UK reserve, as incorporated and regularly renewed in parliamentary resolutions, provides that ministers may proceed if domestic parliamentary scrutiny is completed, if the competent committee has waived the reserve for urgency reasons or for the sake of protection of the national interest, or if the matter at hand is 'confidential, routine or trivial or is substantially the same as a proposal on which scrutiny has been completed.' Ministers may also proceed in the Council 'for special reasons', in which case they have to explain these reasons 'at the first opportunity' to the plenary or the committee. The French government has committed itself to a scrutiny reserve as well. The Italian parliament operates with a scrutiny reserve system that is coupled with a tacit approval clause. A similar system applies to the Dutch parliament in Third Pillar matters. The reserve is presumed lifted, and the government is free to proceed, if parliament has not made known its views within a fixed time period. In the Dutch case, statute provides for a time period of fifteen days.

As regards the second point, i.e. parliamentary input to the government's position, a range of methods is applied across the European Union. A useful way to categorize them is to distinguish between (a) mandating systems, whereby a minister is routinely bound to instructions prior to Council meetings; (b) systematic scrutiny, whereby parliament sifts through all incoming documentation and reserves the right to pass a resolution; and (c) informal influence, whereby parliamentarians and the executive interact in a more or less informal manner.<sup>8</sup> One should note that this categorization identifies methods, rather than results: a mandate may be broadly worded, or in fact boil down to a tacit parliamentary

approval to a government's draft mandate; informal action is very well capable of producing politically binding instructions, especially if not only opposition parties but also government MPs support it.

### 3.1.6 Towards Stricter Enforcement of Ministerial Accountability?

To give the EU-related scrutiny process in the national parliament on the domestic scene a higher profile, parliamentarians may choose between several, partly overlapping approaches. One is to sharpen scrutiny itself, via a stricter enforcement of ministerial responsibility *ex ante* and *ex post*. To achieve this, a well-balanced interaction between generalists such as in the European affairs or joint subsidiarity committee, on the one hand, and specialists on the sectoral committees, on the other hand, can enhance the capacity of MPs of independent action. Possibly, higher expenditure for supporting staff, such as research departments, can narrow the information and expertise gap behind the executive apparatus. Furthermore, attention can be paid to the communication to the public of scrutiny efforts that are being made already, which is the main current approach of the UK Lords.<sup>9</sup> Either approach may be supported by a legal codification of scrutiny rules, in the parliament's rules of procedure, in statute, or, as several EU member states have already done, even in the constitution. At this stage, however, three important qualifications need to be added.

First, high-level codification of scrutiny does neither indicate, nor lead to, sharper scrutiny in practice. Among those member states that have constitutionalized parliamentary involvement in EU affairs are some whose parliaments, in comparative analysis, rank among the most lenient in Europe, such as Belgium and Greece. Codification can thus not substitute scrutiny in reality, for codification alone does not guarantee parliamentary activity, nor is it by itself a safeguard that signals parliamentary activity to the public. A constitutional clause is not convincing as a token concession.

Second, those institutional and procedural reforms that do support stricter scrutiny, and that have in fact already been applied, do not require high-level codification. The allocation of resources is a budgetary matter, the improvement of the interaction between parliamentary committees a matter of rules of procedure and practical routine and attitude. For matters of high importance, however, statutory instruments and innovative institutional reforms can be adopted, as the examples of the Dutch assent procedure for the Third Pillar, which allows both chambers to instruct ministers to reject draft acts, and the new joint subsidiarity committee show.

Third, as a qualification underlying both of the above, the implementation of either legal rules or procedural frameworks with a view to scrutiny requires genuine politicization. On

numerous occasions the capacity of parliaments to communicate Europe to the citizens is invoked, either by EU institutions or by a member state's political elite in both government and parliament. Communication, however, is bound to fail if it is understood as a one-dimensional parliament-versus-citizens interaction. The deliberative capacity of parliaments materializes not in efforts by MPs to explain parliament-backed policies, but in opportunities for citizens to relate with one or more actors *within* parliament, as opposed to other parliamentary actors. Communication as in public relations or media campaigns is not specifically parliamentary; they are even hazardous if MPs are exposed as being united over a cause that is in fact controversial. Communication that is carried out in a manner that is suited specifically for parliaments instead requires debate, which in turn requires intra-parliamentary cleavages. In section 4 an action framework shall be outlined how to identify suitable cleavage points and to politicize them in a targeted and effective way.

### 3.1.7 A Plea Against Token Reforms

In the light of the discussed relation between written law and political reality, and coming back to the earlier overview of institutional and procedural scrutiny set-ups in Europe, we should, throughout our discussion, bear in mind one important guideline: the value of new institutions and procedures in a national parliament with a view to enhanced oversight in EU matters is very relative. The import or transplantation of new mechanisms can of course indeed help parliamentary actors to make their oversight activity more efficient and effective. Reform, such as the creation of a new committee, can become a catalyst to stimulate awareness of, and interest in, European integration among MPs. However, we should add two qualifications to this scenario.

First, not all features present in one parliament are suitable for transplantation to all other parliaments, which makes it somewhat more difficult to argue in favour of adopting a 'best practice' based on comparative studies. One might, for instance, admire the inclusiveness of the Finnish oversight routine, whereby a grand committee deliberates with ministers centrally while delegating prior scrutiny work to the sectoral committees. However the adoption of the routine in, for example, the Netherlands, would necessitate at least two shifts in attitude among MPs, namely the acceptance of one committee spearheading, and speaking on behalf of, the plenary, and the adjustment of priority-setting in the sectoral committees to the agenda of the European affairs committee. The German example shows that even where the European affairs committee can, legally, be authorized to speak on behalf of parliament as a whole, this option does not fit well with the notion that all committees are equal.<sup>10</sup> And even if a dominant committee is created, it does not say anything yet about the embedding of its activities in either society or parliament as a whole.

Second, and this a most crucial point, we should distinguish between cause and consequence when observing sharper or more lenient parliamentary practice working within codified or informal institutional arrangements. Scrutiny can be sharp on paper but relatively lenient in practice, as is the case in Austria where legally binding mandates that are issued to ministers are in fact worded in very permissive terms.<sup>11</sup> Scrutiny can also be largely custom-based but still relatively tight in reality, as is the case in Denmark. Either way, sharper scrutiny cannot be decreed. And what will certainly not generate any greater societal acceptance of European integration are token reforms, such as the creation of new institutions and procedures supporting the illusion of parliamentary involvement. Even the starting question of the present discussion, namely how to enhance societal embedding of EU policies via the national parliament, could be taken to come with a subtle yet unmistakable implication. The real question would then seem to be: which mechanisms can we import from abroad, which new committees can we set up, in order to placate the general public? How can we improve the system in order to appease the voters? The implication could not be more hazardous.

First of all, new procedures can in fact paradoxically have a crippling effect on parliamentary oversight, if they come with the implication that they substitute all previous tools. The early warning system for subsidiarity under the Constitutional Treaty, for example, can apparently easily be misunderstood as if national parliaments were in future to monitor subsidiarity *only*, thus abandoning all other scrutiny criteria.<sup>12</sup> Another example is that the Dutch parliamentary assent procedure under the Third Pillar strikingly leads ministers to maintain that this procedure, which sets in at the final stage of Council negotiations, is *enough*. Ministers insist that they be able to negotiate free from parliamentary steering, leaving to parliament only the approval or the rejection of the final draft.<sup>13</sup> Subsidiarity thus becomes the European task for national parliaments in general, assent or rejection of final drafts becomes the task of the Dutch parliament under the Third Pillar in particular. Legally speaking, neither of the two implications is correct. Subsidiarity control does not absolve from other forms of control, nor does it preclude parliaments from other forms of control, and while accountability *ex post* does not have to imply parliamentary involvement *ex ante*, the omission of the latter erodes the effectiveness of the former. Politically, shiny new oversight tools can quickly backfire on eager parliamentarians.

Yet the most important point about institutional and procedural reform is that genuine parliamentary rights, especially minority rights, are claimed in power struggles at pivotal moments, e.g. ratification procedures, the aftermath of political crises, or in the course of a larger constitutional overhaul. They are *not* adopted in the hope of appeasing a sceptical or hostile public, at a time when parliamentary actors are in no fundamental and politicized disagreement with each other. The negative Dutch referendum on the Constitutional Treaty

revealed a discrepancy between majority public opinion (which was against ratification) and political party alignment in parliament (the majority of which was in favour of ratification);<sup>14</sup> new procedures and new committees will not create by themselves any intra-parliamentary cleavage where so far none has manifested itself.

What is worse, token reforms that are designed to appease the public will backfire on the political establishment if they reveal even more markedly the absence of politicization on potentially controversial issues, or if they are exposed as window-dressing that is merely supposed to make unwelcome European projects easier to sell. Without politicizing substantive policy proposals, parliamentary actors will only have aggravated their detachment from their constituents. This is why the present discussion will explicitly not conclude with any recommendations for the improvement of European scrutiny by way of procedural or institutional reform. Expectations that the creation of yet another committee, or that the adoption of yet another statutory basis for tying ministers to mandates would miraculously bring the desired solutions will, alas, have been in vain. Instead, it is stressed that what is needed is not a tinkering with the formal scrutiny set-up mimicking other EU member states, but a clear awareness among parliamentary actors as regards the logic, the potential and the limitations of politicization of European affairs in a national parliament. Once that clear awareness is achieved, little stands in the parliamentarians' way to exploit procedures that already exist to their ends. Once that clear awareness is achieved, little stands in their way to even insist, spontaneously rather than calculatingly, on new institutions and procedures if the old ones prove insufficient. One plenary session on an EU project leaves too little time for debate? Another debate will be scheduled. A committee's supporting staff cannot handle the workload as EU measures get prioritized? New staff will be hired. Ministers take too much liberty when negotiating in the Council? Future committee hearings will get rougher. Thus, reform will be demanded when it is needed, not when parliament somehow feels obliged to adopt it. Of course, that also means that no reform will be demanded if existing possibilities are quite sufficient. And existing possibilities are not limited to ministerial accountability enforcement alone; they already reach into the very heart of the European institutional framework.

### **3.2 National Parliaments and Polycentric Governance**

*National parliamentary actors can engage in extensive inter-institutional dialogues and interest networks in the European Union, even without European treaty amendments. National parliamentary participation in the EU need not be restricted to enforcing domestic ministerial accountability.*

Approaches that exclusively focus on domestic ministerial accountability in order to link a national parliament to the EU quickly reach their inherent limits. In theory, ministerial accountability implies a duty for the executive to justify actions and omissions for which it is responsible before parliament, whereby the latter has at its disposal a sanction. Accountability then covers not only domestic policies, but also external representation in the EU, in the broadest possible sense. In the reality of European cooperation, however, the enforcement of ministerial accountability is constrained by a number of circumstances.

Accountability in a strict sense implies reporting and justification in retrospect, as in accounting for things done. In an EU policy context, however, even a sanction will not undo ministerial action: the formal validity of a directive, for example, or a minister's vote in favour or against it, is not affected by the fact that a minister has ignored a negotiating mandate or is sanctioned domestically afterwards.

For those parliamentary actors who wish to have a real impact, scrutiny therefore needs to set in during an *ex ante* stage, the earlier the more effective. This will however require additional efforts, including the allocation of time and energy to the acquisition of technical expertise and the monitoring of consultation and negotiation processes that are highly intransparent, that involve multiple actors including other member states and the civil service, and that follow an externally set time rhythm and agenda. Combined with majority support for the government in parliament, mainstream consensus over the desirability of European cooperation, low media attention and voter indifference, scrutiny of EU matters typically turns out weak as time and energy is better spent, from the point of view of many if not most parliamentary actors, on domestic issues.

Even if the enforcement of ministerial accountability were to be sharpened, the international character of EU decision-making, at least in the Council and European Council, provides for another impediment: qualified majority voting on paper, and the Council's consensual decision-making mode of collegial compromise-seeking in reality, mean that even if domestic scrutiny is strong, the minister can be outvoted or prompted to agree to compromises. Especially smaller member states need to carefully choose the instances where they object to EU measures, so as to maintain bargaining credentials in the long run.<sup>15</sup> In theory, therefore, a minister's voting record in the Council is a textbook example of an object of accountability. In reality, a minister's 'no' vote, in line with parliament's wishes, can mean the forfeiture of a more attractive compromise. Meanwhile a failure to cast a 'no' can be justified with a reference to long-term interests, which is not necessarily a satisfactory justification in the short run. Apart from that, the Council reality of greenlighting without voting the decisions that have been pre-cooked by Coreper largely escapes parliamentary scrutiny. As far as a minister is concerned, it is generally not the voting behaviour that actually matters, but the

*negotiating* behaviour, which is a far subtler notion that includes, but is not limited to, formal voting. The outlined features shall become relevant again in section 4, where the impact of politicization shall be revisited, meaning the extent to which successful polarization and influence translates into real policy results.

### 3.2.1 Beyond Ministerial Accountability

Once the limits of domestic ministerial accountability enforcement are reached, neither national constitutional law, nor European law, prohibits the exploitation of informal networks of interest representation beyond the domestic arena. For national parliamentary actors this means that there are more and subtler access points to EU decision-making than just the holding to account of ministers as they return from the Council. Awareness of this fact presupposes a broader understanding of the term accountability, and it opens new avenues to national parliamentary actors who wish to break free from domestic constraints.<sup>16</sup>

As regards the *Council*, it is not inconceivable that ministers are made to account not only for their own negotiating and voting behaviour, in the narrow confines and with the inherent limitations of ministerial responsibility, but that they are prompted to justify the actions of the Council *as a whole*. After all, if the Council is considered to act as an institution at the European level, which engages, for example, in dialogues with the European Parliament, then instead of making the Council appear as a loose forum once the ministers return home, ministers and MPs can take account of this corporate identity in the domestic arena as well.

As regards the *Commission*, the classical view would imply that accountability is owed to the European Parliament, not national parliaments, and certainly not national governments. Again, however, accountability can be understood more broadly than that. In fact, the nomination of new Commissioners by the governments is already subject to at least theoretical scrutiny in the respective national parliament. One might recall the decision of the first Schröder cabinet to give one of the then two German Commissioner posts to each of the two coalition partners, rather than to stick to the earlier custom of splitting the two posts between government and opposition.

Apart from nomination proceedings, Commission policies have deep regulatory impact in the member states, from competition policy and quasi-autonomous implementation of EU legislation to the formal drafting of proposals for secondary law. In this capacity, a direct dialogue between national parliamentary actors and the Commission is not only conceivable, but it already materializes. The Constitutional Treaty's early warning system for subsidiarity was in fact set up as a means for parliaments to at least formally bypass their governments in



aligning competence boundaries with the EU legislator. Such a subsidiarity dialogue does not require a treaty amendment, it can be carried out already, prompting the Commission to, for instance, better justify its proposals under subsidiarity headings. The Dutch subsidiarity committee and the pilot projects on the early warning system carried out by COSAC, an inter-parliamentary conference, are a case in point: parliamentarians do not need to wait for a new treaty to start entertaining direct links. In fact, also proportionality, formal legality, quality in terms of enforceability and compatibility with existing law, political opportunity and many other criteria can be addressed at the same time that parliaments would be expected to assess subsidiarity compliance.

Of course, Commissioners still may not receive instructions from the national capitals, which is a provision intended to prevent governments from seeing their nominee also as their national representative. Yet when the Commission is addressed as a body, or when Commissioners appear before national parliaments not because of their nationality but because of their portfolio, dialogues with national parliamentary actors can give practical effect to the notions of polycentric (or multi-level) governance, and co-actorship between national and European bodies in the preparation and adoption of European law.

As regards the *European Parliament*, accountability in the sense of ministerial responsibility to national parliaments is not present either. Both the European Parliament and national parliaments, at least their lower chambers, are directly elected. Cooperation or interaction between the two is moreover potentially overshadowed by structural rivalries, or a natural competitive relationship. Simply speaking, the European Parliament would favour broadened EU competences (which limits the freedom of national law-makers), the co-decision procedure (which is harder to monitor than Council unanimity), and a larger EU budget which still relies on taxpayer-financed member state contributions. Integration-friendly MPs in the member states would furthermore shy away from cooperation, let alone exerting influence on the European Parliament, invoking the notion that EU decision-making is legitimized by the European Parliament and should not be interfered with. Even where the expertise of MEPs is called upon, such as in national parliaments that reserve seats or maintain standing invitations for MEPs to join their European affairs committee, MEP attendance is as poor as is the attendance of national MPs to European Parliament committee sessions.

The crucial link between MEPs and national parliamentary actors is however not classical accountability, or a vague and often misleading notion of inter-parliamentary 'alliance', but internal party membership. Independent candidates, fringe parties and single-issue lists running for the European Parliament aside, the national political parties represented in the

European Parliament are usually also represented in the national parliament. MEPs from these 'established' parties depend on the nomination by their party for the next European elections. This applies to the placement as a party candidate in a winnable electoral district, as well as to the placement on a promising place on the party list, depending on the electoral system. It is then not so much the national parliament as an institution, but the political parties represented in that parliament that have a potential tool for convincing MEPs from the same party to cooperate at the national level. The potential sanction would be, for instance, a lower rank on the party list for the next elections. Such links are already materializing, be it in a patchy form. Sometimes they even transcend national party lines. According to a news report, the Bavarian premier Stoiber of the Christian-Social Union successfully exerted influence on the chairman of the European People's Party not to put on the agenda the association of the Turkish moderate Islamists as a fellow conservative party.<sup>17</sup> Neither as a CSU party chairman, nor as a state premier, nor as a member of the German *Bundesrat*, the chamber that represents state governments, could Stoiber have invoked any formal accountability of an MEP or a European party family. Still, networking is quite possible in reality, as long as MPs and other politicians regard the European Parliament not as a hierarchically superior and autonomous body, but as yet another actor in a polycentric European polity.

### 3.2.2 Exploring Existing Possibilities

Depending on how parliamentarians define their role in the EU, it is very much conceivable and valid for them to refuse to bypass their cabinet. After all, government MPs may remain loyal to their executive, since they are elected to support it, albeit critically. To the opposition, the additional work might again not pay off in terms of electoral reward, either because the efforts are insufficiently visible, or insufficiently rewarded, or because the effects (such as an amended directive) set in independently of the domestic agenda and the national electoral rhythm. In either case, MPs might not be willing to interfere with EU decision-making for ideological reasons, sticking to the task of making sure that individual ministers justify their Brussels activities.

Yet if parliamentary actors commit themselves to engaging more pro-actively in the EU policy process, in line with polycentric governance and co-actorship, little stands in their way in terms of national constitutional law or EU institutional rules. No new treaty amendment is required for MPs to scrutinize not only their ministers, but also the Commission, MEPs, as well as the Council apparatus. Again, the benefit of these activities is tightly linked to their actual purpose. Enhanced activity with poor public visibility or awareness will not bring Europe closer to the citizens, and will become, or remain, unattractive to individual MPs. Again, the key is to link enhanced activity to an effective societal embedding.

### **3.3 Parliamentary Activity and Societal Embedding**

*Improving parliamentary powers is not an end by itself; it guarantees neither broad involvement of the whole plenary nor societal embedding of EU policy. Any effort to step up formal or informal means of parliamentary participation should be linked to a practice of targeted politicization.*

A host of countries in the European Union display a discrepancy between the political class in government and parliament, on the one hand, and the citizenry, on the other hand, over Europe. Government and mainstream political parties in parliament tend to be more integration-friendly than large chunks of their electorate. In the Netherlands, this discrepancy has been made clear with the 2005 referendum on the EU Constitutional treaty: a 61% majority of voters rejected the Treaty; in the lower chamber of parliament, meanwhile, the statute of ratification would have mustered a whopping 85% majority in favour.<sup>18</sup>

Taking this into account, one quickly arrives at two related gaps: a gap between the EU as a project and the citizens, and a gap between the domestic political class and, again, the citizens, over Europe. An increasingly popular recipe to tackle both is the addressing of the role of national parliaments in the EU. An enhancement of parliaments' powers in the EU policy process, as well as improved communication of the benefits of integration, is then meant to bridge the gap to the citizenry. This approach may be the most convenient for European treaty drafters, as it is sufficiently soft and open-ended so that it does not jeopardize the fundamental logic of the EU system, and remains acceptable to the greatest amount of players at both national and European level. The approach is, however, based on two fallacies. The first fallacy is to assume that mere power and activity in parliaments brings about societal embedding. The second is that parliaments as such are suitable for recruitment to communicate or in fact to 'sell' Europe to the citizens.

Enhanced powers, such as binding or non-binding parliamentary veto powers enshrined in a treaty, are questionable from the start since parliaments as such act by majority. If anything, veto powers, such as the objection right under the subsidiarity early warning system or the binding one-house veto against the application of the passer Elle clause, envisaged in the Constitutional Treaty, bring about an empowerment of the upper chambers. In the lower chambers, however, the added value of a majority vote in parliament depends entirely on the degree of cleavage between a cabinet, on the one hand, and its own MPs, on the other hand.

Even if such cleavages do exist, powers alone will not promote societal embedding if they are not linked to an exercise of politicization. The same applies to domestically crafted measures: the already existing Dutch assent procedure for the Third Pillar whereby both chambers of

parliament already may impose a scrutiny delay and negotiating mandates upon Brussels-bound ministers, does not seem to impress voters either. For communication in the sense of public relations, whereby politicians jointly seek to convince their citizens, a parliament is also ill-suited: it is exactly the lack of intra-parliament splits that contributes to the gap to the voters in the first place.

Thus, even if parliamentary scrutiny powers are sharpened, including more absolute vetoes at EU level and a mandating and reserve routine across the board domestically, without societal embedding through politicization positive results will not come about as desired. The Danish model of centralized scrutiny, for instance, is exposed to criticism, in that oversight by the European affairs committee may be tight, but the sectoral committees and the plenary remain excluded from the process. The European affairs committee acts like a parliament within parliament, or in fact like an extended cabinet meeting.<sup>19</sup> Even in the Finnish parliament, which involves the sectoral committees in the European scrutiny work more closely, mandating meetings are not public, and Finland remains yet another member state where MPs are more pro-European as compared to their voters. The public in Denmark, meanwhile, does not appear to grow any more pro-European because of the parliamentary oversight regime, which again underlines a crucial point: scrutiny is not there to convince voters of the benefits of European integration, and make them more Europe-friendly. It is there to capture existing salience among the population, so as to translate voter sentiments into parliamentary politics and to maintain the legitimacy of the political class. For that, what is required is politicization.

## **4 ON THE POLITICIZATION OF EUROPEAN AFFAIRS**

*Politicization of European policy in a national parliament needs to be carefully targeted. The scope and intensity of politicization needs to be geared to the trade-offs of different parliamentary actors, and adjusted to a national parliament's effective capacity. If not, politicization will either simply not materialize, or it will turn into a 'recipe for frustration'.*

Our working definition of politicization comprises the following three elements: (1) political conflicts around issues are highlighted rather than covered; (2) political actors take up contrasting positions; and (3) these contrasting views have consequences for political decision-making and the content of policies. This is a very useful approach, be it that a distinction should be made as regards the consequences of politicization: on the one hand, there is (3a) impact on national will-formation in the run-up to EU decision-making, e.g. in the form of a parliamentary resolution or a negotiating mandate for a minister. On the other hand, there is (3b) impact on actual policy outcomes at EU level, e.g. the scope and content of an eventually adopted directive. It is after all a distinctive aspect of EU affairs in national parliamentary politics that, unlike in a domestic legislative procedure, the effects of parliamentary debates at best have an influence on the government, or another EU institution, whereas the eventual decision is taken not in the national capital but away from home, and it involves twenty-four other governments plus additional players.

### **4.1 Modes of Politicization**

Assuming now that politicization helps embed EU policies in a national context, the question arises what exactly should be politicized, when and how? Politicization is not a slumbering force that just waits to be unleashed, it is an exercise that requires an additional effort for MPs to identify the objects on which *they* wish to concentrate, and to adjust their behaviour to their own preferences and trade-offs, taking into account the limitations of politicization in a national parliament.

Several scales can be applied to measure the appropriateness and effectiveness of politicization by different actors in different forums. One dimension is the extent to which a proposed EU decision is technical, and of a low profile, or salient and political.

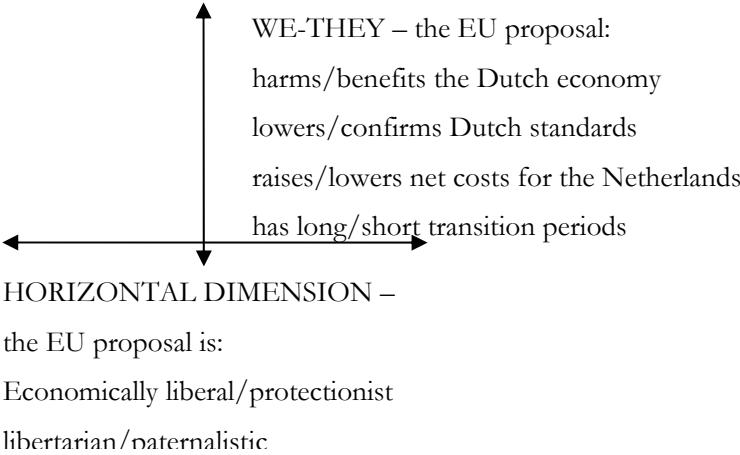
*Figure 2: Regularity and appeal of proposed EU action to parliamentary actors*



To the left of the scale, we would find ordinary legislative proposals. Arising on a regular basis, it is here that sectoral expertise is needed for parliamentary scrutiny, which is found in the sectoral committees. Closer to the right of the scale, we would find big but singular policy issues: most notably treaty reform, the enlargement process (e.g. Turkey’s EU membership), but also salient policy proposals such as selected directives. These tend to require less sectoral specialist knowledge compared with e.g. the harmonization of technical standards or emission limits, and have more to do with a politician’s cultural or economic-policy world views. Moreover, these issues are easier to simplify, and are therefore potentially attractive for both foreign policy generalists as well as MPs with a domestic policy agenda to capitalize on in the plenary. Since they occur with larger time intervals, they can have a greater captivating effect when they do.

Another dimension applicable to politicization would be along which lines politicization should take place. That is, where do MPs identify cleavages? Two simplified axes play a role in the politicization of European affairs: a vertical we-they axis, contrasting national preferences with those of other member states (or ‘Brussels’), and a horizontal axis, which often but not always corresponds to socio-economic left-right dimensions, contrasting different political content that is to be fed into national will-formation and EU policy outcomes.

*Figure 3: Vertical (we-they) and horizontal cleavages regarding EU proposals*



Finding the right side of the fence in this model is even more difficult than it is to identify the right moment and forum for politicization. For arguments from either axis can be merged with those of the other axis, and become potentially hazardous from an integration-friendly perspective. Thus, an argument against an EU smoking ban in restaurants can be phrased in terms of a horizontal or left-right argument ('the ban is paternalistic', 'the ban endangers jobs in the services sector'), but it can also be combined with a we-they argument ('we should not let other countries / Brussels decide where we can and cannot smoke'). An argument for higher environmental standards as regards pollution output can be phrased along a horizontal or left-right dimension ('we want a greener Europe') or a we-they dimension as regards the effectiveness of EU action ('Brussels should regulate since pollution travels across borders'), but it also contains a distinct element of national interest representation ('every country should be held to – already existing – Dutch standards').

What to make, then, of the readily available option to merge a horizontal dimension with a we-they argument, or even to substitute one with the other? From an integration-friendly Brussels-based perspective, one might look in envy at the established nation-states where policy choices hardly call into question the legitimacy of the state itself. Europe, it seems, is less unassailable as a framework. This does not mean that it is somehow morally objectionable to bring up the issue of competence allocation to the EU, under the principle of limited conferred powers, or the exercise of these powers under e.g. the principle of subsidiarity. To the contrary, politicization, the theme of the present discussion, even relies on the spotting of potential for controversy, and after all the EU remains a treaty-based organization. However, the interrelatedness of vertical and horizontal dimensions in the case of the EU, or the wafer-thin boundary that keeps them apart, strongly affects the potential for politicization by national parliamentary actors. This means that, while one dimension is not as such 'better' than the other, the ease with which we-they arguments protrude into debates about horizontal EU policy choices makes integration-friendly mainstream politicians reluctant to engage in politicization in the first place. Conversely, in particular governments have an interest in covering up horizontal dimensions by stressing a positive balance on a we-they scale. The discovery by British police of a terrorist plot targeting airplanes in August 2006 led the German minister of the interior to demand stricter security standards on airplanes, such as restrictions on permitted hand luggage. He was quick to add that such standards should be adopted Europe-wide, for non-mainstreamed standards would be confusing and make little sense. Thus, noting that scale effects make EU regulation attractive and sensible can be used to pre-empt horizontal choices, such as whether passengers should have to accept the inconvenience of tighter security in the first place.

Of course, parliamentary actors cannot unilaterally reject or dictate the terms of politicization: once an argument is formulated in parliament, it is in the open. Yet what parliamentarians who wish to avoid politicization can do is to agree not to politicize EU issues themselves, to ban potentially controversial issues to the committees and away from the plenary, and to expect that challengers, e.g. fringe parties, will rather allocate their resources, or their political capital, with domestic subject-matters that are more rewarding than EU questions tend to be. Effective politicization would, in the light of the above, require parliamentary actors to take into account that parliamentary impact mechanisms affect, via the minister or directly via input to EU institutions, both the intensity of EU-level regulation in the first place and the direction of EU action. Why has such full use not materialized so far, then?

## **4.2 Trade-Offs**

Every parliamentary actor will, in the light of scarce resources, time and energy, first consider costs and benefits before choosing a political issue, a cleavage line and polarization style, a standpoint and a forum. In essence, this exercise will require a weighing of trade-offs at each stage of the politicization process: highlighting conflicts, taking up contrasting positions, and attempting to generate an impact on both national will-formation and EU policy outcomes. At this point the different categories of parliamentary actors, as identified in section 2, may be recalled.

*Individual MPs* – An individual parliamentarian is tied to overlapping memberships, and therefore faces multiple target audiences. For the purposes of the present discussion, MPs will be primarily addressed in their capacity as party members, since party alignment is one of the most fundamental dimensions of parliamentary politics. As a committee member, an MP's personal expertise profile will become relevant. The interests of an MP's constituency will be covered by party alignment: the Dutch electoral system is based on proportional representation, so that the parochial interests of home districts are of lesser significance; still, since political parties have voter bases, including regional ones, and since preference votes for lower-ranking MPs can be cast on the ballot paper, party alignment will again be relevant on a left-right scale.

*Government (coalition) parties* – Perhaps the greatest dilemma in a parliamentary system of government is the fact that citizens vote for parties in order to bring them into government, while MPs are at the same time expected to maintain critical scrutiny of the executive. A political party group in government is therefore caught between the constitutional mandate of parliament-government duality, on the one hand, and loyalty to the cabinet and coalition agreements, on the other hand. In European affairs, government MPs will have little incentive



to embarrass their own ministers by contradicting them in front of the other member states, or in front of the opposition.

On the other hand, in certain situations more room is available for MPs to engage the cabinet in different modes of interaction, other than the mode where the majority supports the cabinet and the minority opposes it.<sup>20</sup> First, in a coalition setting, especially where the coalition agreement does not provide for detailed plans, a political party can make its voice heard to ensure that its own views are duly taken into account within the collegiality of the cabinet. Second, coalition MPs may unite with opposition MPs on a single issue of common concern. Third, MPs may unite as a parliament as against the government (or an EU institution). While these modes of interaction are admittedly the exception rather than the rule, and Dutch politics and literature raise concerns about an insufficient distance between the cabinet and the parliamentary majority, the Dutch political landscape and its parliamentary customs still come far closer to a vivid parliament-government duality than, say, German practice does, to the point where Dutch ministers are in fact summoned excessively often to appear before the parliament.

*Opposition parties* – The primary reason why national parliaments enhance the democratic legitimacy of the actions they sanction is the fact that they are the primary forum for minority parties to be heard. The representation of a member state through a ministry after all is intended to be unitary, and therefore majority-backed. Yet it is opposition parties, along with intra-coalition challengers and defectors, that fuel lively parliamentary debates and provide for polarization as against the government.

What makes European affairs problematic from the opposition's point of view is, first, that EU-critical notes and direct interventions on the European scene may contradict a party's integration-friendly and pro-European Parliament consensus, as well as its deference to the executive's prerogatives at foreign policy. Second, too loud polemic, such as turning left-right arguments into we-they arguments, may put into jeopardy a party's chances of being considered as a serious coalition partner in the future. Third, there remains the questionable yield of politicization over Europe in terms of electoral reward. A record of scrutinizing draft directives, which may enter into force long after the electoral term is over and re-appear anyway in the form of a government bill for implementation, will represent a misallocation of resources and media attention if voters remain indifferent and instead focus on issues considered to be closer to the citizens, and more immediate in regulatory effect, such as taxes, pensions, health care and law enforcement.

One may however rightly argue that European affairs are not a substitute for, but a continuation of, domestic politics. Thus, European projects can be attached to a domestic agenda, as they equally represent public action, only on a larger scale. A green agenda for Europe can be a continuation of a green agenda on the domestic scene, and so can a drive towards the liberalization of markets, consumer protection or foreign policy, such as transatlantic relations. An important side-note would be that such agenda causes may run right through political parties and cross larger foreign-policy ideology, which is why it is tempting for parties to ban intra-party cleavages to committees. Yet there is no reason why parties should be excused from aligning themselves just like they do in other controversial areas, and no reason to assume that they cannot successfully adapt their socio-economic manifestos just like they did in the transition from 19th and early 20th century industrial societies to modern times.

*Left-of-Centre and Right-of-Centre Parties* – In a comparative perspective, most critical potential for polarization over Europe can be found at the edges of the political spectrum. Broadly speaking, leftist parties would denounce the European Union's liberalist and market-oriented character, while the right would oppose the accompanying supranational competence drain on the nation-state. The earlier constraints on politicization, such as loyalty to the government or credibility maintenance in the mainstream, may be recalled here, however. At the same time, one should not forget that certain properties and political choices seem hard-wired into the European project. The opening up of markets is exactly the very point of economic integration and the removal of barriers to trade, capital, and the intra-Community movement of workers, while national sovereignty as in full autonomy or even autarky remains an illusion even if a country were to step out of the EU. However, the EU is also capable of producing measures pointing towards 'social Europe', such as the successful sequence of equal treatment directives. Furthermore, an appreciation of EU politics as a continuation of national politics could serve even the sovereignty-minded camp and, perhaps more importantly, their base. This might help resist the temptation of claiming credit for bringing about EU measures and then pledging resistance against an over-intrusive EU, the popular game of Brussels-bashing, depending on the opportunity. A party that complains about 'Brussels' could potentially even be become, in the public eye, simply a party that has failed to tilt an EU measure into a left or right direction in a timely and effective manner, for example by pressing the minister, or the Commission, or by mobilizing fellow party members in the European Parliament, and that has therefore no-one to blame but itself.

*Committees* – Politicization is an ambivalent issue when it comes to the working style of committees, since their very purpose is continuity, technical specialization and indeed *de*-politicization. Result-oriented, more confidential and less adversarial in setting than the

gladiatorial showdowns in the plenary, committees allow parliamentarians to take the heat out of policy questions. Furthermore, one can hardly expect a committee to attract public attention to an EU proposal that would merit little or no attention if it were a domestic bill. Even if a proposal turns out to be controversial, majority-minority proportions are the same in committees as they are in the plenary, so the already cited trade-offs in party behaviour set in.

Sectoral committee members, however, due to the continuity of committee membership and their specialization, might share a common attachment to a specific cause, which they might furthermore share with their counterparts from the European Parliament or other national parliaments. Even if a committee is divided, it is within committees that MPs can back up policy claims with sectoral expertise. If linked to a party commitment, committee work on EU proposals can be added to a party's domestic track record, underlining its ideological coherence.

*The Plenary* – All players within a national parliament, at least in the mainstream, face a more fundamental sort of trade-off that stems from the nature of a parliament and its place in the domestic and European constitutional order. On the one hand, it is the mandate of MPs to reflect the sentiments of voters, and to align themselves along the wishes of their constituents. On the other hand, MPs also fulfil an educative role in society, and sheer populism rarely leads to good governance. Where the political class is united in a consensus over the desirability of European integration, they may be criticized for pursuing a cause by stealth, yet they also contribute to the peace and prosperity of their constituents and the continent as a whole. Where a parliamentary majority remains lenient as regards actual policy content, they may be criticized for being unacceptably permissive, yet they are after all also elected to support a functioning majority government, and committed not to unduly sabotage the EU policy process. In any event, communication in the sense of a public relations exercise whereby government and opposition jointly praise the European Union is ill-suited for parliamentary dynamics. It merely creates or underlines impressions of a national parliament being staffed with an out-of-touch elite that can muster sham debates at best, for they are not in disagreement with each other.

Even where politicization does occur, a national parliament remains constrained by being, in the Dutch case, the assembly of a medium-sized member state that is but one out of twenty-five, equipped with inter-institutional links to other players in Europe that are informal at best, and for the rest having an ambivalent grip on a minister who can get into a confrontation with a European Parliament which is also elected, and who can within the Council be outvoted or pressed into accepting concessions for a greater good. The dilemma

for parliamentary actors across parliament, even a united parliament, is therefore between, on the one hand, not politicizing EU issues and thereby losing legitimacy, and, on the other hand, politicizing and thereby raising expectations that can turn out to be unwarranted. Enhancing the salience of a topic in the run-up to EU decision-making will after all affect national will-formation; yet a compromise or package deal, or an outright rejection of that particular national will on the EU arena, is potentially disappointing, and can therefore even provoke anti-European backlashes. Knowledge of an ongoing decision-making process, and awareness of being but one country in a vast continent, can be a burden on the electorate, and increased salience over Europe can be a recipe for frustration.

The resulting shift in attitude could of course be turned into a positive development: a new realism, which allows for a conscious and less idealistic appreciation of European integration, and a rediscovery of the importance of direct means of interest representation at EU level – perhaps even a boost in voter turnout at elections to the European Parliament, and popular insistence that both the composition of the Commission and the attitude of the Council reflect European election results. However, this remains a far shot. For the integration-friendly mainstream, Euro-realism or cynicism is not the way to build social support for the European idea, and few parliamentarians will volunteer to deliberately frustrate their voters just so that the latter might come to appreciate Europe over the member states. For the time being, therefore, the potential for Europe-related frustration – the external agenda-setting, the indirect means of influence, the complexity of the decision-making, the remoteness of the results and the possibility for a member state to be overruled or cajoled into compromises – is a clear impediment to politicization of European affairs. As such it needs to be factored into the equation.

#### **4.3 The Link to the Electorate**

Time windows and opportunity ranges to politicize, and to capitalize on a European question in a national parliament, may well turn out to be exceedingly narrow. The complex trade-offs that face parliamentary actors, combined with the inherent limitations in the capacity of a national parliament in Europe in the first place, and the desire to avoid politicization that leads to frustration, will mean that veritable scrutiny occasions may be few and far between, and often low-profile. In fact, and this is a prospect of which parliamentary actors should be aware, windows of opportunity may turn out to be near-absent. The services directive, which as an EU legislative proposal attracted above-average attention, was still poorly politicized in the Netherlands, with deficiencies in the provision of information and low assertiveness of the 'yes' camp; the habitats directive, in spite of its far-reaching consequences, was treated as a technical issue during the preparatory stages and was poorly communicated; debate and accountability processes on the family reunification directive started only after the directive

had already entered into force; parliamentary or societal debate on the Constitutional Treaty project during the Convention process was near-absent, and thus the Treaty itself came to be perceived as an alien artefact when it came to ratification; and public hostility to the introduction of the euro arose only at a time when euro bills and coins were in fact already in circulation. The liberalization of the EU gas market, in turn, indeed did trigger some debate on the project's merits in the Dutch parliament.<sup>21</sup>

The controversy around a potential EU membership for Turkey also displays some key ingredients for potential targeted politicization: for once, debate actually *precedes* the decision-making, it does not set in after the deals are already struck or, like with the euro, when results already materialize. Political parties can join either camp on a geo-strategic ticket, on a cultural ticket, advocating Turkey's accession because it would strengthen the EU, rejecting it because it would hinder deeper integration, or vice versa. At the same time, constraints are visible: the European Council cannot keep all its options open if too many member states have already formed a national consensus to which governments have committed themselves. Boundaries between the 'yes' and the 'no' camps will cut through party lines for different reasons.<sup>22</sup> Frustration is looming as well: when at some point negotiations with Turkey are concluded, no further delays as regards admission will be warranted, and a *fait accompli* situation will arise. Already now, the argument that negotiations had to be opened because Turkey was promised it in the past is in itself a recipe for frustration, an unconvincing if not outright hazardous argument: it allows parliamentary actors to avoid a substantive commitment on whether or not to grant Turkey full membership, and to hide the controversy behind a veil of quasi-technicality, but the manoeuvre in fact needlessly highlights the helplessness of the citizens. Thus, even this policy question, it seems, allows for politicization but to a limited extent.

One specific scenario for Europe-related politicization needs separate attention here, namely debates about alleged failures by a government to implement EU targets. Such debates will more easily unite political parties in a supportive or opposing position with respect to the incumbent cabinet. Opposition charges may comprise questions such as 'why are other EU member states doing better than we are?' or 'why is the government lagging behind the implementation schedule?', questions that may be raised in the context of the transposition of directives, the pursuit of goals agreed in the open method of coordination, or even in a purely domestic context of tax or pensions reform. While these debates may be attractive to seize, however, they are not exactly European affairs in the strict sense of the word. They concern the measurement of a domestic record by European standards, not the setting of these European standards themselves. If anything, cabinet-bashing over the late implementation of directives only petrifies the image that policy targets are set externally in

'Brussels', the citizens wielding little influence over the scale that is being applied, and confined to watch over the transposition process – another recipe for frustration. And comparing a country's tax or pensions system to those of others has even less to do with treaty-based EU policy in a strict sense.

The above qualifications are merely to remind us that we should not be surprised if occasions for politicization of EU matters arise only very, very rarely. Yet where they do, there is little that stands in the way of a parliamentary actor to make full use of what the polycentric constitution of Europe offers: individual MPs may mobilize their committee, coalition parties may press ministers, the opposition may recruit like-minded MEPs, and even a minority is free to send angry letters to the Commission for over-intrusive proposals. Perhaps a pile of letters from opposition parties across Europe is a far more impressive display of MPs' self-assurance than the implicitly majority-based and therefore potentially government-controlled early warning mechanism as incorporated into the Constitutional Treaty!

In any event, in order to embed both activity and inaction in the society of their member state, parliamentary actors need to establish a connection between promises and deeds. Action that is severed from the ticket on which a party has entered parliament will either not materialize, or it will go unnoticed because voters cannot place it into a larger consistent party-political framework. Accountability of elected MPs can only be enforced if they have committed themselves credibly, most prominently during election campaigns, so that they can be judged on their performance at the next elections. That is after all the essence of a well-functioning indirect democracy. Parties will not necessarily be elected and punished or rewarded for their European scrutiny record, but if that record is shown to be in line with, and a logical continuation of, their domestic agenda, parliamentary actors, including mainstream parties, will have embedded European policy in a way that is far more convincing than any media campaign can achieve. At the same time, they will have contributed to raising public awareness of the fact that parties are not ready to politicize everything across the board, and that even if they do, there are limits to what one national parliament can do in a European context. In that case, however, the citizens and the political class will have arrived at a sober, realistic and above all transparent contract, which allows for the exploration of other means of political activity where a national parliament reaches its limits.

## **5 TOWARDS TARGETED POLITIZATION: A FOUR-STEP ACTION FRAMEWORK**

Based on the above discussion, we arrive at a four-step recommendation for national parliamentary actors who wish to contribute to a better societal embedding of European policy.

### *I Self-Reflection*

Admit that there are limits to what a national parliament can do.

MPs should not conceal from the public that in the European Union, national will-formation does not automatically translate into policy outcomes. The agenda is set externally, and the results may become tangible only after a long period of time. A national parliament of a medium-sized member state remains but one of twenty-five, and within parliament not every subject will be suitable for politicization. Citizens thus cannot exclusively rely on national elections to make their voice heard in Europe.

### *II Targeting*

Identify issues that can be politicized.

MPs and their political parties should carefully choose the subject matters on which they wish to have an impact, and on which they are ready to be held to account. In the light of their trade-offs, they should spot windows of opportunity where they can capitalize on a European issue while preserving the coherence of their party ideology, including a generally EU-friendly attitude, or constituency interest. Self-reflection (I) should remind them that such windows of opportunity may be exceedingly narrow.

### *III Commitment*

Announce European policy goals in election campaigns.

Once an issue has been identified and targeted for politicization (II), MPs and their political parties should openly commit themselves to their own preferences. Even if the EU component of a party manifesto will not be decisive for election or re-election, European policies can be announced as a logical continuation of domestic policies. This would underline that voters are entitled to transparency and coherence of policies, and ensure that they will not unwittingly support unwanted policies that come in the guise of 'Brussels'. Self-reflection (I) remains crucial, in that both voters and the party can note that on many issues no particular commitment will be made. Where a commitment is established, however, the party can

announce that in order to maximize voter impact in a Union of twenty-five member states, the corresponding list for the European Parliament should be supported as well.

#### *IV Implementation*

Make full use of existing EU channels for the identified purpose.

Once MPs enter the political realm, they should implement what they have committed themselves to (III), namely to pursue a substantive agenda on an issue identified as suitable for politicization (II). By no means should MPs then assume, however, that their role is limited to the questioning of ministers as they depart to, or return from, the Council. Whether MPs belong to a majority or the opposition, means of interest representation are manifold, including but not limited to joint committee meetings with other national parliaments, the mobilization of MEPs from the same political party, direct access to the Commission (bypassing the cabinet) and EU advisory organs, even the stimulation of cross-border voter initiatives.

Successful targeted politicization of EU matters in national parliaments may lead to the adoption of new binding legal frameworks at both national and European level, including veto or assent rights for national parliaments. Procedural and institutional reform, including improved working routines of parliamentary committees, can enhance the effectiveness and efficiency of MPs. However it should be noted that societal embedding via targeted politicization in parliament can work without a new statute, without a new constitutional clause, and without a new European treaty. Conversely, neither a statute, nor a constitutional clause, nor a treaty can activate MPs or decree sharper scrutiny by itself. It is unconvincing and even hazardous to create new committees or new parliamentary procedures only as gestures in the hope of appeasing the public. Instead, to improve the societal embedding of European affairs, parliament requires the commitment of MPs to targeted politicization – institutional adaptation will follow when it is needed.



## **6 CONCLUSION**

Targeted politicization of European affairs as it is defined here relies above all on a thorough reflection on the causes of parliamentary restraint in EU matters, and on the prevailing trade-offs. Account needs to be taken of the mainstream consensus over the desirability of European integration, of the reluctance of MPs to disrupt the efficiency of Council decision-making and their reluctance to compete with the European Parliament, their loyalty to a majority cabinet and their interest in preserving party coherence, their reluctance to sound populist in European affairs or to specialize in technical matters in the light of voter indifference as regards EU policy performance. This exercise will also require a recognition of the structural inhibitions to making the result of national parliamentary debates actually matter. That includes the necessities of flexible international compromise-building, the possibility for the government to give in on one issue in order to be able to make a stand on another, the pre-emption of political decisions at the level of civil servants, the formal possibility to be outvoted under QMV or blocked by the European Parliament, and the informal pressure that is exerted on a government that is but one out of twenty-five, representing a medium-sized member state. The outcome of the self-reflection process should not be concealed from the voters, for if politicization is not adjusted to trade-offs and targeted to suitable issues, it may either prove unsustainable, or turn out to be a 'recipe for frustration' in which the stakes are increased, and so is the potential for an anti-EU backlash.

The actual targeting of issues follows from the initial reflection, as well as the readiness to openly admit that there are limits to what parliamentarians can achieve, and that not everything will be politicized. Windows of opportunity where a wholehearted politicization of an EU policy question is feasible may be few and far between, and will probably be found most often in the continuation of domestic policy manifesto items. Where windows open, however, it is absolutely legitimate for MPs to venture beyond the limited process of pressing their own cabinet ministers, and to explore the full spectrum of polycentric constitutionalism, including direct links to the Commission, the European Parliament or other national parliaments. Whatever the form of implementation, the previous commitment should always be clear and transparent. This will allow voters to judge not only on a party's domestic record, but also on its European performance, and it will furthermore help prevent the hazardous game of unwarranted Brussels-bashing.

It is easy to call upon national parliaments to communicate Europe to the citizens, and to enhance their formal powers. Yet parliaments maintain their link to the citizenry, and their legitimacy, not through public relations festivals in favour of a common cause, or through paper competences that fail to impress. What parliamentarians can do, though, is reflect on why scrutiny of EU matters tends to be lenient, and where the limits of their own institutional

and political capacities lie; select EU issues that they deem suitable for politicization in the light of their trade-offs, even if there will be but few such issues; commit themselves in public to a standpoint on the issue, preferably in logical continuation of their domestic manifesto; and then, on these occasions, not shy away from using to a full extent the formal and informal influence opportunities within their own member state and beyond. National parliaments will then not produce any miracles, but they can put their relation with the constituents as regards the attitude towards Europe on a new, clear and honest footing. It will then be up to the citizens to hold MPs to account for their performance in EU matters, and to explore supporting routes, including their representation in the European Parliament, when they see that the effect of national parliamentary involvement in one member state will get them far, but not quite far enough.

## NOTES

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- <sup>1</sup> See Ph. Kiiver, 'The Composite Case for National Parliaments in the European Union: Who Profits from Enhanced Involvement?', 2 *European Constitutional Law Review* (2006) pp. 227-252.
- <sup>2</sup> For an overview of normative approaches to the EU, see M. Sie Dhian Ho, 'Democratisering van de EU: permanente evenwichtskunst', in M. Scheltema, ed., *De staat van de democratie. Democratie voorbij de staat* (Amsterdam, AUB, 2004); for an application to national parliaments, see Ph. Kiiver, *The National Parliaments in the European Union – A Critical View on EU Constitution-Building* (The Hague/London/New York: Kluwer Law International, 2006).
- <sup>3</sup> See for a discussion of selected features of the Constitutional Treaty: Ph. Kiiver, 'De parlementen van Nederland en België en het Europese besluitvormingsproces', 54 *SEW Tijdschrift voor Europees en Economisch Recht* (2006) pp. 222-229.
- <sup>4</sup> See for a comparative overview of scrutiny models in the EU-25: Ph. Kiiver, *The National Parliaments in the European Union – A Critical View on EU Constitution-Building* (The Hague/London/New York, Kluwer Law International, 2006). See also the edited volumes by A. Maurer and W. Wessels, eds, *National Parliaments on their Ways to Europe: Losers or Latecomers?* (Baden-Baden, Nomos, 2001); F. Laursen and S.A. Pappas, eds, *The Changing Role of Parliaments in the European Union* (Maastricht, European Institute of Public Administration, 1995) and E. Smith, ed., *National Parliaments as Cornerstones of European Integration* (London/The Hague/Boston, Kluwer Law International, 1996).
- <sup>5</sup> See on Denmark e.g. J. Fitzmaurice, 'National parliamentary control', in M. Westlake, *The Council of the European Union* (John Harper, London 1999).
- <sup>6</sup> See B. Hoetjes, 'The Parliament of the Netherlands and the European Union: Early Starter, Slow Mover', in A. Maurer and W. Wessels, eds, *National Parliaments on their Ways to Europe: Losers or Latecomers?* (Baden-Baden, Nomos, 2001).
- <sup>7</sup> See O. Tans, 'The Dutch Parliament and the European Constitution', in Ph. Kiiver, ed., *National and Regional Parliaments in the European Constitutional Order* (Groningen, Europa Law Publishing, 2006).
- <sup>8</sup> This categorization is applied by A. Fraga, 'Wanting more power... a struggle for what? Comments on the report by Mr Tapio Raunio "Parliamentary Scrutiny of EU Decision-Making: Comparing National Systems"', in Finnish Eduskunta, ed., *National Parliaments and the EU – Stock-Taking for the Post-Amsterdam Era* (October 1999 COSAC seminar, Eduskunnan Kanslian Julkaisu 1/2000).
- <sup>9</sup> House of Lords EU Select Committee, *EU Legislation – Public Awareness of the Scrutiny Role of the House of Lords*, 32nd Report 2005/06, HL Paper 179.
- <sup>10</sup> See H. Hofmann, 'Parliamentary Representation in Europe's System of Multi-Layer Constitutions: A Case Study of Germany', 10 *Maastricht Journal of European and Comparative Law* (2003) pp. 39-65.
- <sup>11</sup> See H. Hegeland and Chr. Neuhold, *Parliamentary participation in EU affairs in Austria, Finland and Sweden: Newcomers with different approaches* (European Integration online paper 6/10 (2002) at <http://eiop.or.at/eiop/texte/2002-010a.htm>).
- <sup>12</sup> At the 32nd COSAC meeting, Finnish MP Heidi Hautala urged her fellow parliamentarians not to lose sight of other scrutiny criteria when implementing subsidiarity control.
- <sup>13</sup> See E. Jurgens, 'Parlementair toezicht op de EU-ministerraad ontbreekt, ten onrechte', in J.L.W. Broeksteeg, J.Th.J. van den Berg and L.F.M. Verhey, eds, *Ministeriële verantwoordelijkheid opnieuw gewogen* (Deventer, Kluwer, 2006).
- <sup>14</sup> See O. Tans, 'The Dutch Parliament and the European Constitution', in Ph. Kiiver, ed., *National and Regional Parliaments in the European Constitutional Order* (Groningen, Europa Law Publishing, 2006).
- <sup>15</sup> See T. Raunio and M. Wiberg, 'Parliamentarizing Foreign Policy Decision-Making: Finland in the European Union', 36 *Cooperation and Conflict* (2001) pp. 61-86.
- <sup>16</sup> See for an enlightening discussion: L. Besselink, 'National Parliaments in the EU's Composite Constitution: A Plea for a Shift in Paradigm', in Ph. Kiiver, *National and Regional Parliaments in the European Constitutional Order* (Groningen, Europa Law Publishing, 2006).
- <sup>17</sup> *Der Spiegel* weekly, 29 May 2006, p. 17.
- <sup>18</sup> See O. Tans, 'The Dutch Parliament and the European Constitution', in Ph. Kiiver, ed., *National and Regional Parliaments in the European Constitutional Order* (Groningen, Europa Law Publishing, 2006).
- <sup>19</sup> See Ph. Weber-Panariello, *Nationale Parlamente in der Europäischen Union* (Baden-Baden, Nomos, 1995) at p. 308.
- <sup>20</sup> See R. Holzhaecker, 'National Parliamentary Scrutiny over EU Issues', 3 *European Union Politics* (2002) pp. 459-479.

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<sup>21</sup> See the dossier papers on the Constitutional Treaty (B.J.J. Crum), the euro (E.R. Engelen) and the mentioned directives commissioned by the WRR for the 2007 Report 'Europe in the Netherlands'.

<sup>22</sup> See S. Hollander, 'Accession of Turkey to the European Union' WRR dossier paper june 2007.