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NYILATKOZAT

Alulírott, dr. Juhász-Tóth Angéla, büntetőjogi felelősségem tudatában kijelentem, hogy a Debreceni Egyetem Marton Géza Állam- és Jogtudományi Doktori Iskolában a doktori fokozat megszerzése céljából benyújtott, The Europeanization of the Hungarian National Assembly című értekezésem saját önálló munkám, a benne található, másoktól származó gondolatok és adatok eredeti lelőhelyét a hivatkozásokban (lábjegyzetekben), az irodalomjegyzékben, illetve a felhasznált források között hiánytalanul feltüntettem.

Kijelentem, hogy a benyújtott értekezéssel azonos tartalmú értekezést más egyetemen nem nyújtottam be tudományos fokozat megszerzése céljából.

Tudomásul veszem, hogy amennyiben részben vagy egészben sajátomként mutatom be más szellemi alkotását, vagy az értekezésben hamis, esetleg hamisított adatokat használok, és ezzel a doktori ügyben eljáró testületet vagy személyt megtévesztem vagy tévedésben tartom, a megítélt doktori fokozat visszavonható, a jogerős visszavonó határozatot az egyetem nyilvánosságra hozza.

Debrecen, 2014. augusztus 20.

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aláírás

Témavezetői állásfoglalás Dr. Juhász-Tóth Angéla „Europeanization of the Hungarian National Assembly” című PhD disszertációjáról

A dolgozat - illetve a kutatás, amelyre támaszkodik - két, a jogi és politikatudományi vizsgálódásokban széles körben és behatóan tanulmányozott jelenség, nevezetesen a tagállami parlamentek szerepe az Európai Unióban és a tagállami jogrendszerek, a tagállami intézmények európaizálódása egymást átfedő területén vizsgálódik. A vizsgálódás témája ebben az értelemben nem teljesen eredeti. Teljesen eredeti azonban abban a tekintetben, hogy a kutatás tárgya a magyar országgyűlés európaizálódását próbálja megragadni.

A kutatás - igen gyümölcsözőnek bizonyult - alapgondolata: Vizsgáljuk meg, hogy a nemzeti parlamentek milyen szerepre hivatottak az Európai Unió fejlődésének jelenlegi fázisában, vizsgáljuk meg, hogy vajon a magyar jogi szabályozás megfelel-e ezeknek a kihívásoknak, és végül - és ez adja a kutatás „kemény magvát” - vizsgáljuk meg, hogy vajon a magyar Országgyűlés tényleges működése során mennyiben él a számára adott lehetőségekkel.

A dolgozat hipotézise, hogy miközben az Országgyűlés hatásköreire és működésére vonatkozó szabályozás voltaképpen elfogadható kereteket teremt az Unióban a magyar érdekeket felmutatni és érvényesíteni hívatott kormány ellenőrzésére, az uniós jogalkotás parlamenti befolyásolására, az Országgyűlés ezekkel a lehetőségekkel nem él kellő intenzitással, folyamatos „mulasztásban” van.

A dolgozat mondhatni magától értetődően vázolja a vizsgálódás fogalmi és elvi kereteit nyújtó korszerű tudományos eredményeket. A szerző rendkívül jó érzékkel kezeli a témák hatalmas nemzetközi irodalmát, s nemcsak áttekintést ad róluk, hanem rendszerezett, értelmezett elemzést olvashatunk.

A magyar Országgyűlés tevékenységének a kitűzött célok fényében történő elemzése egyaránt épít a kvantitatív és a kvalitatív tényvizsgálatokra. A kapott eredményeket szisztematikusan nemzetközi összehasonlítás fényében is értékeli.

A dolgozat - sajnos - meggyőzően, minden elemében alátámasztottan igazolja a kutatási hipotézis helytálló voltát.

A dolgozat egyik érdeme, hogy a szerző - aki maga is éveken át dolgozott az Országgyűlés Európai Ügyek Bizottsága mellett - végig meg tudott maradni a tudományos kutató pozíciójában, s elkerülte a kínálkozó aktuálpolitikai megjegyzések csapdáit is.

A dolgozat szerkezete, stílusa példás, hiszen a mondanivaló és az eredmények tárgyilagos, pontos bemutatására törekszik.

A dolgozat angol nyelven íródott. Ennek egyik indoka, hogy a vonatkozó szakirodalomban az angol nyelven írtak jelentős súllyal szerepelnek. A másik indok lehet, hogy mivel olyan eredeti kutatásról van szó, amely a nemzetközi elméleti vizsgálódásokba ágyazódik, reális eséllyel számíthat nemzetközi olvasóközönségre, amelynek ma az elsőszámú nyelve az angol.

A fentiek alapján feltétel nélkül támogatom a disszertáció nyilvános vitára való kitűzését.

Debrecen, 2014. augusztus 31.

Dr. Várnay Ernő
egyetemi tanár, témavezető

To Sára Kamilla, my daughter

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Finally, I wish to thank my husband for his patience, support and encouragement.

CONTENTS

List of abbreviations

CEA	Committee on European Affairs (of the Hungarian National Assembly)
CEE	Central and Eastern Europe
CFSP	Common Foreign and Security Policy
CJEU	Court of Justice of the European Union
Coreper	Committee of Permanent Representatives
COSAC	Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union
EAC	European Affairs Committee
EC	European Community
ECSC	European Cool and Steel Community
EP	European Parliament
EU	European Union
IGC	Intergovernmental Conference
IMF	International Monetary Fund
MEP	Member of European Parliament
MP	Member of Parliament
OJ	Official Journal
OMC	Open Method of Coordination
QMV	Qualified majority voting
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union

Introduction

'In reality, [Hungary] has become a member of the Union only on paper, legally, but internally – in its thinking - not even for a moment.'
Ákos Szilágyi[1]

National parliaments of the Member States of the European Union (EU) play numerous roles in European integration. They participate in the revision and approval of the Treaties.[2] National parliaments control the application of the principle of subsidiarity[3] and hold their governments to account for their participation in EU decision-making procedures. National parliaments transpose European law into domestic law. These functions are not only important in terms of constitutional law, but also in terms of democracy in the EU. In order to perform these functions, national parliaments had to adapt their own procedures and bodies. However, institutional adaptation is not sufficient, only the actual presence of EU affairs on the parliamentary agenda can contribute to the articulation of national interests and party positions and to providing information for citizens about EU affairs.

Since the Maastricht Treaty of 1993, almost every amendment of the Treaties has contained new provisions concerning national parliaments. The Treaty on European Union (TEU) currently in force provides that the functioning of the EU shall be founded on representative democracy, stating that 'Member States are represented in the European Council by their Heads of State or government and in the Council by their governments, themselves democratically accountable either to their national parliaments, or to their citizens'.[4] According to further provisions of the Treaties, national parliaments actively contribute to the good functioning of the EU.

[1] SZILÁGYI, Ákos, Parodisztán, *Heti Világgazdaság*, 10 August 2013, No. 32, pp. 22-25.
[2] Under 'Treaties' are understood the Treaty on European Union (TEU) (originally signed in Maastricht in 1992) and the Treaty on the Functioning of the European Union (TFEU) (originally signed in Rome in 1958 as the Treaty establishing the European Economic Community) (for the consolidated versions in force see the Official Journal (OJ) C 326, 26.10.2012).
[3] Article 5 TEU: "Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level."
[4] Article 10 TEU.

The emergence of national parliaments in the primary law of the EU reflects theoretical assumptions that the EU suffers a democratic or legitimacy deficit. Enhanced involvement of national parliaments in European affairs can assist in tackling this problem and 'bring Europe closer to the citizens' (that is to say, improve understanding and acceptance of European policies and institutions).

The situation of national parliaments in the EU is not, however, unproblematical. They are regarded as 'losers' in the process of European integration but also as adaptive institutions, able to face new challenges and control governments in connection with EU affairs. Without a doubt, national governments have been the most important decision makers in the EU, pushing national parliaments into the background (deparliamentarization). On the other hand, national parliaments have shown themselves ready to implement institutional and procedural changes in order to reinforce the scrutiny of European affairs (Europeanization). The most salient feature of the Europeanization of national parliaments is the establishment of parliamentary bodies (committees, commissions, *délégations*) specialising in EU issues. The predominant function of the parliamentary European Affairs Committees (EACs)[5] is to control and influence the government's activity in EU decision-making procedures (in the Council and European Council).

The objective of this research is to explore how the Hungarian Parliament, also known as the National Assembly (*Országgyűlés*) has adapted to EU Membership and what impact EU integration has had on its functioning; in other words, the Europeanization of the Hungarian Parliament. For this purpose, it is necessary to analyse the role of national parliaments in European democracy, and assess what rights are provided to national parliaments in EU law.

Many studies have reviewed national parliaments' role in the EU. From the 1990s, increasing academic attention has been given to the scrutiny of EU affairs in the Member States' parliaments. Comparative research concerning all or most of the national parliaments has attempted to find the common features and best practices of this EU scrutiny. The main question of such research has been which model of scrutiny is more efficient, giving a stronger position to the national parliaments vis-à-vis the government. Norton concluded that although national parliaments have undergone institutional changes in response to the development of the EU, they 'have been left

[5] 'EAC' generally refers to a national parliamentary body specialised in EU affairs.

behind in the rush', having no formal role in the process of European policy making, limited capacity to give time and attention to EU affairs and difficulties with the burden of EU documents.[6] Laursen and Pappas's work also compares national parliamentary scrutiny of Community legislation, paying attention to inter-parliamentary cooperation in EU affairs.[7]

A new wave of comparative studies focusing on national parliamentary scrutiny of EU affairs was published in the 2000s. Maurer and Wessels' research compared the legal possibilities for parliamentary participation in EU decision-making and the effective use of relevant provisions and constitutional rules. Their research found that only the Danish and Finnish parliaments were able to formulate their own political assumptions about EU affairs effectively, and that these are the only parliaments which can be regarded as multi-level players. The remainder of the national parliaments were found to have modest control in EU affairs or were not willing or able to affect the government position in EU decision-making.[8] A collection of essays edited by Auel and Benz focused on the mechanisms and dynamics of the Europeanization of national parliaments and the impact on the workings of the parliamentary systems.[9]

Several studies have included research on the new Member States, too.[10] Tans et al's book[11] searched for a common ground - drawn from constitutions and political cultures - in the organisation of parliamentary control of EU decision-making. They found that all the scrutiny systems are governed by the constitutional principle of ministerial responsibility and they observed some commonality in the sphere of practices and habits (e.g. the central role of the EACs, information rights). A certain common ground in the political cultures of the Member States was also identified, namely, parliamentary democracy. O'Brennan and Raunio's collection of studies sought to prove that national parliaments have gradually improved their position in the EU.[12] Szalay and Király compared EU scrutiny of the new Member States' parliaments and

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[6] NORTON, Philip, Conclusion: Addressing the democratic deficit, in NORTON, Philip (ed.), *National Parliaments and the European Union*, Cass, London, 1996, pp. 177-193 at pp. 177 and 192.
[7] LAURSEN, Finn and PAPPAS, Spyros A., *The Changing Role of Parliaments in the European Union*, European Institute of Public Administration, Maastricht, 1995.
[8] MAURER, Andreas and WESSELS, Wolfgang (eds.), *National Parliaments on their Ways to Europe: Losers or Latecomers?*, Nomos, Baden-Baden, 2001, pp. 20-21.
[9] See the Special Issue of *The Journal of Legislative Studies*, 2005, Vol. 11, No. 3/4.
[10] 'New' Member States are the states which acceded to the EU after 2004.
[11] TANS, Olaf, ZOETHOUT, Carla and PETERS, Jit (eds.), *National Parliaments and European Democracy: A bottom-up Approach to European Constitutionalism*, Europa Law Publishing, Groningen, 2007.
[12] O'BRENNAN, John and RAUNIO, Tapio (eds.), *National Parliaments within the Enlarged European Union: From 'victims' of integration to competitive actors?,* Routledge, Abingdon, 2007.

described how these countries adopted the scrutiny solutions used by the old Member States[13] and implemented comprehensive scrutiny mechanisms.[14]

Apart from the collections of studies referred to above, monographs and papers by Kiiver, Raunio and Auel represent important elements of the literature on national parliaments. Kiiver's critical attitude sheds light on the contradictions inherent in the theories of national parliaments' involvement in EU affairs and the weaknesses of legal solutions.[15] Raunio pays great attention to cross-country comparison of parliamentary EU scrutiny, searching for variables to explain the differences.[16] In his latest study, conducted with Auel, he underlines the importance of plenary debates on EU affairs.[17] Academic attention has clearly turned to empirical research.[18] Papers of a current research project (OPAL) on the question of how the Lisbon Treaty's institutional reforms and new legal stipulations impact on the role of national parliaments in EU affairs in practice follow this new trend of investigation.[19]

As far as the Hungarian National Assembly is concerned, Ágh's studies have witnessed the first steps of the Hungarian Parliament's Europeanization.[20] Győri, who has made the most comprehensive investigation on the subject in Hungarian so far, analysed not only the EU scrutiny of the Member States, and described the situation of

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[13] 'Old' Member States are the 15 Member States of the EU before the enlargement of 2004.

[14] SZALAY, Klára, *Scrutiny of EU affairs in the national parliaments of the new member states: comparative analysis*, Hungarian National Assembly, Budapest, 2005; KIRÁLY, Andrea, *A parlament és a kormány együttműködése európai uniós ügyekben: a scrutiny megvalósulása a 2004-ben csatlakozott államokban [The cooperation of parliament and government in EU affairs: the implementation of the scrutiny in the states of the enlargement of 2004]*, PhD dissertation, University of Szeged, 2009.

[15] See e.g. KIIVER, Philipp, *The National Parliaments in the European Union: A Critical View on EU Constitution-Building*, Kluwer Law International, The Hague, 2006; KIIVER, Philipp, *The Early Warning System for the Principle of Subsidiarity: Constitutional theory and empirical reality*, Routledge, Oxon, 2012.

[16] See e.g. RAUNIO, Tapio, Holding governments accountable in European affairs: Explaining cross-national variation, *The Journal of Legislative Studies*, 2005, Vol. 11, No. 3, pp. 319-342; RAUNIO, Tapio and WIBERG, Matti, How to Measure the Europeanisation of a National Legislature?, *Scandinavian Political Studies*, 2010, Vol. 33, No. 1, pp. 74-92.

[17] AUEL, Katrin and RAUNIO, Tapio, Debating the State of the Union? A Comparative Analysis of National Parliamentary Debates on EU Affairs, in AUEL, Katrin and RAUNIO, Tapio (eds.), *National Parliaments and Their Electorates in EU Affairs*, IHS Political Science Series, 2012, No. 129, available at http://www.ihs.ac.at/publications/pol/pw_129.pdf accessed 28/08/2013, pp. 47-78.

[18] In 2009 Raunio stated that we lack empirical studies on the Europeanization of national parliaments. See RAUNIO, Tapio, National Parliaments and European Integration: What We Know and Agenda for Future Research, *The Journal of Legislative Studies*, 2009, Vol. 15, No. 4, pp. 317-334 at p. 325.

[19] See OPAL – Observatory of Parliaments after the Lisbon Treaty, www.opal-europe.org .

[20] ÁGH, Attila, SZARVAS, László and VASS, László, The Europeanization of the Hungarian Polity, in ÁGH, Attila and KURTÁN, Sándor (eds.), *Democratization and Europeanization in Hungary: The First Parliament (1990–1994)*, Hungarian Centre for Democratic Studies, Budapest, 1995, pp. 216–245; ÁGH, Attila, Europeanization and Democratization: Hungarian parliamentary committees as central sites of policy-making, in LONGLEY, Lawrence D. and ÁGH, Attila (eds.), *Working Papers on Comparative Legislative Studies II: The Changing Roles of Parliamentary Committees*, Research Committee of Legislative Specialists, Appleton, 1997, pp. 443–453.

EU affairs in the Hungarian Parliament in the pre-accession period, but also elaborated on a possible model for the future Hungarian system.[21] Her basic proposition was that the Hungarian Parliament should undertake a medium-strong role in EU affairs and build up its own EU scrutiny system without transposing any previous models. For this purpose the Parliament should be provided with sufficient information, deal with EU drafts at an early stage of the decision-making procedure, and give its position to the Hungarian government which should, in principle, follow the parliamentary opinion. Similar ideas have appeared in articles by Felföldi, Cserny, Pokol and Fülöp.[22]

After Hungary's accession to the EU, the emphasis of the relevant research was on the application of the legislation concerning parliamentary control of EU affairs. The legal rules and practices were evaluated by Szalay and the present author, as well as Győri, Takács and Tamás and Bíró.[23] Their studies described the control of EU decision-making in the Hungarian National Assembly as a moderately strong system, where the flexible Hungarian legislation provides opportunity for effective EU scrutiny. In 2007, Győri concluded that the Hungarian Parliament was a mute witness rather than a true controller of government activities in EU affairs and a lack of political will to use the scrutiny model properly could be observed.[24] Publications of the present author, who worked for almost five years at the secretariat of the Committee on European

[21] GYŐRI, Enikő, The Hungarian Parliament and the Issue of European Integration, in ÁGH, Attila and KURTÁN, Sándor (eds.), *Democratization and Europeanization in Hungary: The Second Parliament (1994-1998)*, Hungarian Centre for Democratic Studies, Budapest, 2001, pp. 117-134; GYŐRI, Enikő, *A nemzeti parlamentek és az Európai Unió [The national parliaments and the European Union]*, Osiris, Budapest, 2004; GYŐRI, Enikő, The role of the Hungarian National Assembly in EU policy-making after accession to the Union: a mute witness or a true controller?, in O'BRENNAN and RAUNIO, *National Parliaments within the Enlarged European Union…,* op. cit. pp. 220–240.

[22] FELFÖLDI, Enikő, Az európai integráció magyar Országgyűlést érintő alkotmányos vonatkozásairól [Constitutional aspects of the European integration affecting the Hungarian Parliament], in: BODNÁR, László (ed.), *EU-csatlakozás és alkotmányozás*, Szegedi Tudományegyetem, Szeged, 2002, pp. 67–132; FÜLÖP, Botond, A nemzeti parlamentek szerepe az EU-integrációban I., II. [The role of national parliaments in the EU integration], *Európai Tükör*, 1999, Vol. 4, No. 6, pp. 37–62 and 2000, Vol. 5, No. 2, pp. 55–74; POKOL, Béla, Az uniós csatlakozás és a magyar parlamentarizmus [EU-accession and Hungarian parliamentarism], *Politikatudományi Szemle*, 1998, No. 1, pp. 87–98; CSERNY, Ákos, A nemzeti parlamentek és az európai integráció [National Parliaments and the European integration], *Magyar Közigazgatás*, 1999, Vol. 49, No. 3, pp. 128–135.

[23] SZALAY, Klára and JUHÁSZ-TÓTH, Angéla, Control of EU Decision-making in the Hungarian National Assembly: the Experience of a new Member State, in: TANS, et al., *National Parliaments and European Democracy…,* op. cit. pp. 121-142; GYŐRI, Enikő, The role of the Hungarian National Assembly in EU policy-making after accession to the Union, op. cit.; TAKÁCS, Tamara, *Participation in EU Decision Making: Implications on the National Level*, TMC Asser Press, The Hague, 2009, see Chapter 6 pp. 215-260; TAMÁS, Csaba Gergely and BÍRÓ, Marcell, Az egyeztetési eljárás magyar modellje a 2006–2010-es parlamenti ciklusban: elvi keretek és tapasztalatok [The Hungarian model of the scrutiny procedure during the parliamentary term 2006–2010: conceptual framework and experiences], *Európai Jog*, 2011, Vol. 11, No. 1, pp. 22–30.

[24] GYŐRI, Enikő, The role of the Hungarian National Assembly in EU policy-making after accession to the Union, op. cit. pp. 236-237.

Affairs (CEA) of the Hungarian Parliament, focused on the application of the legal rules regarding EU scrutiny. Her empirical studies pointed out that while the CEA was relatively active in the control of the Hungarian government in EU affairs, only a marginal proportion of the plenary session's activities was dedicated to European affairs.[25]

Despite the abundant literature, the issue of national parliaments' involvement in EU affairs remains a topical one, and provides a field for genuine research and novel findings. On the one hand, the Lisbon Treaty contains new provisions concerning national parliaments, giving a new perspective for their role in European integration. On the other hand, as far as the Hungarian Parliament is concerned, the ten years which have passed since Hungary's accession to the EU provide the opportunity to undertake an empirical analysis of parliamentary activities related to EU affairs.

The main question of the present dissertation is how, and to what extent, the EU impacts on the work of the Hungarian National Assembly. The initial hypothesis is that there is a discrepancy between the Hungarian National Assembly's legal ability to participate in EU decision-making procedures on the one hand, and the actual use of the Hungarian National Assembly's powers in European affairs on the other. I assume that the Hungarian Parliament is 'marginalised' rather than 'integrated' in the complex system of EU decision making and democracy.

This research has been inspired by previous investigations, but its approach is somewhat different. The focus is on the Hungarian Parliament, but the comparative approach also plays a role, and helps to assess empirical findings. This research is not confined to analysing the legal and institutional adaptation of the Hungarian Parliament to European integration, but covers the examination of parliamentary customs and practices. Besides the CEA, the work of the plenary and sectoral committees is also assessed. The examination of the Europeanization of the Hungarian Parliament would not be complete without empirical analysis. Through quantitative analysis, I explore the intensity of parliamentary EU scrutiny. Finally, case studies on parliamentary debates form the basis of a qualitative analysis. Apart from some earlier research by the present author, there has not yet been such detailed quantitative and qualitative analysis of Hungarian parliamentary activities in EU affairs.

[25] JUHÁSZ-TÓTH, Angéla, *Európai uniós ügyek az Országgyűlésben [European Union Affairs in the National Assembly]*, Országgyűlés Hivatala, Budapest, 2008; JUHÁSZ-TÓTH, Angéla, Az Országgyűlés tevékenységének europaizálódása [Europenization of the activities of the Hungarian National Assembly], *Jogtudományi közlöny*, 2011, Vol. 66, No. 4, pp. 221-231.

This dissertation contains five chapters, each of which applies different methods and draws on different sources. Chapter 1 seeks to systematize the theories and ideas on the reasons, modes and consequences of national parliaments' involvement in European affairs. National parliaments have been seen as institutions that are able to alleviate the democratic deficit of the EU. Although it is widely accepted that the EU suffers a democratic deficit, it is worthwhile examining why this is the case, to what extent, and how national parliaments may contribute to remedy it. Chapter 1 also deals with how the role of national parliaments has changed with European integration, whether they are weakened vis-à-vis the government (deparliamentarization) and how they have reacted to the changes. I expect that neither the democratic deficit nor the changes in the importance of national parliaments are as radical as they may appear from the majority of theories. The literature serving the basis of this Chapter is not only summarised, but also critically analysed, in order to discover any underlying weaknesses or contradictions in the theories.

Chapter 2 focuses on the constitutionalisation of national parliaments in EU law. Although the process of the emergence of national parliaments in the primary law of the EU is also discussed, the real emphasis of the analysis is on the provisions of the Treaties in force, i.e. on the changes that the Lisbon Treaty has brought about in connection with the involvement of national parliaments in EU decision-making procedures. First, national parliaments' rights to information provided by the Treaties are presented as a precondition of their activity in EU affairs. Second, national parliaments' ability to participate in EU decision-making procedures are described and evaluated. 'Decision-making procedures' are understood broadly, including not only the legislative procedures, but also treaty revisions, the decision-making of the European Council, etc. 'Participation' can include various activities, again understood in a broad sense (e.g. parliamentary ratification of treaties, agreements or decisions, participation in treaty amendments, control of the application of the principle of subsidiarity via the early warning mechanism). Finally, modes of inter-parliamentary cooperation facilitating national parliaments' participation in the EU decision-making procedures are outlined.

Chapter 3 turns to the detailed examination of the Hungarian National Assembly. The research covers the relevant legislation and parliamentary customs and practices. The Hungarian Parliament adopted the legal framework for cooperation with the Hungarian government in EU affairs in 2004. The legislation was changed slightly in

2012 and now contains the necessary provisions for the application of new rights provided by the Lisbon Treaty. According to the legislation, EU law, and European issues in general, are present in various ways in the activities of the Hungarian Parliament. Probably most importantly, Parliament can follow and eventually influence EU decision-making procedures indirectly through the Hungarian government, via the 'scrutiny procedure'.[26] The scrutiny procedure is coordinated by the CEA, which is entitled to adopt a parliamentary standpoint on EU legislative drafts and on the relevant government position in the name of the Hungarian Parliament. Consequently the CEA receives special attention in Chapter 3, but the systematic examination has a global approach and covers every parliamentary instrument which may concern European affairs. I expect to find that the legal adaptation of the Hungarian Parliament was based on the experiences of the old Member States' parliaments, taking into account the Hungarian constitutional system and parliamentary rules and practices. The legislation on the scrutiny procedure is supposed to provide an effective control on the Hungarian government.

Chapters 4 and 5 contain empirical research about European affairs on the agenda of the Hungarian Parliament. Raunio suggests that research on national parliaments, especially on CEE parliaments, should examine whether legal and procedural choices that work on paper also produce effective scrutiny in practice.[27] Accordingly, it is necessary to examine not only the formal rights and possibilities, but also the actual scrutiny itself. 'Actual' scrutiny covers both the intensity of the use of parliamentary means to scrutinise EU matters and the quality of the scrutiny; in other words, whether debates are sufficiently deep and comprehensive. Where possible, results of the empirical research are compared to experiences of other national parliaments.

Chapter 4 examines whether EU affairs are present in the work of the Hungarian Parliament. The quantitative analysis covers the agendas of the plenary, the CEA and sectoral committees. Data has been collected through the Hungarian Parliament's home website page and the public database. As ten years have passed since the accession of Hungary to the EU, longitudinal examination provides an opportunity to identify possible trends and offer explanations for them. I am especially interested in whether

[26] In the context of this dissertation, I have understood the term 'scrutiny' in a broad sense, as a complex set of parliamentary control tools applied vis-à-vis the government. On the other hand, the notion of the 'scrutiny procedure' is used as a specifically regulated parliamentary process including the discussion of selected European draft legislative acts and of the related government position and the adoption of a parliamentary standpoint.

[27] RAUNIO, National Parliaments and European Integration, op. cit. p. 321.

the composition of the government (a coalition cabinet, a government with a minority or a two thirds majority in Parliament) influences the intensity of EU scrutiny.

Conversely, Chapter 5 contains a qualitative analysis of Hungarian parliamentary debates on EU affairs. For the investigation, I read the official and public minutes of the Hungarian Parliament and used the search engine of the parliamentary database. With the help of four case studies, I attempt to gauge the awareness of EU policies and the attitudes of Members of Parliament (MP) towards the EU. I would like to know whether MPs are prepared to articulate their position on EU affairs, hold the government to account in an efficient way and contribute to the formulation of the national interest. The case studies concern different sources of EU law (primary and secondary) and jurisprudence of the Court of Justice of the European Union (CJEU). The research also includes longitudinal aspects and looks for trends in the characteristics of the debates.

The temporal scope of the investigation of Chapters 3-5 mainly covers the post-accession period (that is, from 1 May 2004) and the pre-accession parliamentary activities are only referred to where necessary. The manuscript was completed on 31 December 2013.

Chapter 1

Setting up the framework: reasons for, and consequences of, the involvement of national parliaments in European affairs

'I thought it wrong to consult the peoples of Europe about the structure of a community of which they had no practical experience'

Jean Monnet[28]

INTRODUCTION

At the very beginning of the history of European integration no concerns about democracy were raised. The European Coal and Steel Community (ECSC) was conceived as a technocratic supranational organization, and the foremost concern was to rebuild Europe after the war, avoiding the possibility of another armed conflict. The words of Monnet represent the early, elite-driven nature of the European project, devoid of any need to consult the people. More than half a century later the position of Monnet would not be acceptable, because European integration has fundamentally changed. Democracy already has normative value in the EU and national parliaments, which embody representative democracy at the level of nation states, are searching for their place in European democracy.

During the first decades of European integration the question of whether national parliaments matter in the European architecture was not asked either. National parliaments ratified the treaties, delegated members to the European Parliamentary Assembly (later called the European Parliament), and transposed the European directives to the national legal order. In 1979, with the direct election of the European Parliament, they lost their sole direct connection with the European institutions. More importantly, from the end of the 1980s the widening of the integration process affected the legislative competences of national parliaments and, at the same time, the state of European democracy. The adoption of the Maastricht Treaty in 1993 in particular

[28] Cited by BLONDEL, Jean, SINNOT, Richard and SVENSSON, Palle, *People and Parliament in the European Union: Participation, Democracy, and Legitimacy*, Clarendon Press, Oxford, 1998, p. 3.

triggered academic and public debates on the democracy existing in the European Community/Union. National parliaments began to be seen as important elements of European democracy. This was reflected in a declaration attached to the Nice Treaty of 2001, which finally led to the adoption of the Lisbon Treaty in 2007, incorporating the national parliaments' role in EU primary law including their direct, though very limited, involvement in European decision-making.

Parallel to the constitutionalisation of the role of national parliaments, internal institutional and procedural changes were under way in the Member States to reinforce domestic parliamentary scrutiny of European affairs. The internal changes and the actual use of participative rights in the European decision-making system, however, differ in each national parliament. Meanwhile CEE parliaments played a significant role in the democratisation and Europeanization of their countries after decades of communist regimes. Before the accession of CEE states to the EU, national parliaments had already adapted, similarly to their Western counterparts, internal structures and mechanisms seeking to fulfil their new functions.

In the following I discuss exactly why national parliaments matter in Europe; why they are involved in European decision-making; whether they have adapted to their new roles; and if so, how. Theories and ideas on European democracy underpinning the European role of national parliaments and the parliamentary adaptation to the EU are examined. Special attention to the Hungarian Parliament is given.

I NATIONAL PARLIAMENTS TO TACKLE THE DEMOCRATIC DEFICIT AND THE LEGITIMACY DEFICIT

Arguments for enhanced involvement of national parliaments in European affairs, be it at national or European level, are based on ideas about the democratic deficit and legitimacy of the EU. It is widely accepted that national parliaments can contribute to improve European democracy and legitimacy. The question is, however, not as clear-cut as is often believed. Submerged in the relevant literature are manifold problems: how should democracy and legitimacy be interpreted in the context of the EU; what kind of deficiencies is present in European democracy; how should these deficits be tackled and what is the role of national parliaments? Or from a different perspective: in order to understand the need for national parliaments' involvement in European decision-

making, the deficits of European democracy and legitimacy have to be understood. The democratic deficit can only be comprehended if we can describe the model of European democracy.

1 Democracy and legitimacy in the EU

Democracy is a dynamic concept varying across history and societies. It can be direct or representative, parliamentary or power sharing, participative or deliberative. From one conventional definition -'government of the people, by the people and for the people'[29]- the basic features of modern democracies can be deduced: the source of political power is the people who elect the rulers, who are held accountable. The possibility for the people governed to choose the principal decision makers through free and competitive elections is often considered the minimal criterion of democracy.[30] The CJEU also confirmed that according to the fundamental democratic principle 'peoples should take part in the exercise of power through the intermediary of a representative assembly'.[31] The minimum criterion of democracy in modern states is frequently supplemented with other requirements, such as: the rule of law, guarantees of fundamental rights and liberties, transparency of decision-making, low levels of corruption, or even social welfare.

In the case of the EU, the legality of the delegation of powers, the elected legislative assembly, the guarantees of fundamental rights, and the economic freedoms all point to its fundamentally democratic nature. It was the Maastricht Treaty which referred first to the principle of democracy and aimed at enhancing the democratic functioning of the institutions.[32] The Lisbon Treaty is designed to contribute to the democratisation of the EU with the incorporation of the Charter of Fundamental Rights, the enhancement of good governance (e.g. the definition of the categories of competence, the definition of legal instruments, more transparency in decision-making),

[29] This phrasing was first used by Abraham Lincoln in a speech delivered in Gettysburg in 1863 during the American civil war. It has come to symbolise the definition of democracy itself. Article 2 of the Constitution of the Republic of France contains the same wording: "gouvernement du people, par le people et pour le people".
[30] FOLLESDAL, Andreas and HIX, Simon, Why There is a Democratic Deficit in the EU: A Response to Majone and Moravcsik, *Journal of Common Market Studies*, 2006, Vol. 44, No. 3, pp. 533–562 at p. 545; HUNTINGTON, Samuel P., *The Third Wave: Democratization in the Late Twentieth Century*, University of Oklahoma Press, Norman and London, 1993, pp. 5–10.
[31] Case 138/79 *Roquette Freres v Council* [1980] ECR 3333, paragraph 33.
[32] See the Preamble of the Maastricht Treaty.

the articulation of democratic equality, and representative and participatory democracy. These are principally unproblematic elements. More debated is the explanation of the institutional architecture and the form of governance, and whether they can be considered democratic enough.

The crucial difficulty is that the concepts of democracy have been elaborated in relation to states. The EU is, however, not a state and it 'does not replicate domestic democratic arrangements'.[33] It can be seen as a confederation, a *Staatenverbund*, a *sui generis* system of governance or as 'a new type of political system within the tradition of parliamentary democracies'.[34] Traditional perceptions of governance cannot be applied without modification to the EU, as was also recognized by the German constitutional court in its Maastricht decision.[35] Requiring the EU to have the same or almost the same democratic structure as a state can easily equate to claiming it is a federal system. It is clear that for the time being, this is not the commonly felt political will of the Member States. Furthermore, establishing at EU level the traditional responsibility of the government to the parliament would entail the politicisation of decision-making, which is not acceptable to many.[36]

No single model of democracy (parliamentary or presidential governance) entirely fits the EU mode of governance.[37] According to Weiler's thesis, there are different models of democracy that can be applied to different aspects of the operation of the EU: the international/intergovernmental aspect can be explained with the consociational model of democracy;[38] the supranational aspect of governance through the

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[33] WEILER, Joseph H. H., *The Constitution of Europe: "Do the new clothes have an emperor?" and other essays on European Integration*, Cambridge University Press, Cambridge, 1999, pp. 264–285 at pp. 265 and 268.

[34] ANDERSEN, Svein S. and ELIASSEN, Kjell A., Introduction: Dilemmas, Contradictions and the Future of European Democracy, in ANDERSEN, Svein S. and ELIASSEN, Kjell A. (eds.), *The European Union: How democratic is it?*, Sage, London, 1996, pp. 1–11 at p. 1.

[35] Judgement of the German Federal Constitutional Court (Bundesverfassungsgericht) of 12 October 1993 (2BvR 2134/92 and 2BvR 2159/92).

[36] See GEORGIEV, Jiri, Democracy in the EU: National Parliaments and the Quest for Legitimacy, in SISKOVÁ, Nadezda (eds.), *The Process of Constitutionalisation of the EU and Related Issues*, Europa Law Publishing, Groningen, 2008, pp. 109–119 at p. 113. Georgiev refers to the French position at the Convention.

[37] WEILER, Joseph H. H., European Models: Polity, People and System, in CRAIG, Paul and HARLOW, Carol (eds.), *Lawmaking in the European Union*, Kluwer Law International, London, 1998, pp. 3–33 at p. 17.

[38] Consociational theory concentrates on the explanation of the functionality and stability of pluralist, socially segmented countries. The essential characteristic of a consociational democracy is the deliberate effort by the elites to make the system stable and functioning. It is based on consensus building and package deals (WEILER, Joseph H. H., HALTERN, Ulrich R. and MAYER, Franz C., European Democracy and its Critique, in HAYWARD, Jack (ed.), *The Crisis of Representation in Europe*, Frank Cass, London, 1995, pp. 4–39 at pp. 28–29.)

Schumpeterian competitive elite democracy[39] or the federal vision of pluralist democracy; finally there are infranational[40] elements that can be explained by the neocorporatist[41] democracy model.[42]

Craig, accepting this scheme, argues that the supranational aspect does not really fit the elitist model. He suggests the republican model as normative foundation for the EC (EU).[43] For the republicans decision-making has to serve the public good, and to achieve this a balance between different interests, representing different social groups, has to be assured. According to Craig, in the context of the EU the interests to be represented are primarily those of the Council, the European Parliament, the Commission, national parliaments and regional bodies. If the representatives of these differing interests can participate in the legislative process, the achievement of the general good of the Community can be fostered.[44] The question immediately arises of whether there is a real balance between the institutions. Larsson remarks that the Council dominates the other institutions. The Commission is not really the promoter of a European interest, but an institution that can anticipate the actions of the other institutions. The European Parliament remains in an unequal position.[45]

In the theory of multi-level governance, European Parliament and national parliaments are considered complementary legislative bodies at different levels of decision-making. According to the multi-level governance, 'decision-making competencies are shared by actors at different levels' (European, national and subnational).[46] Contrary to the intergovernmentalists' view, in multi-level governance individual governments do lose control over collective decision-making, although the

[39] Schumpeter argues that political decisions are only made by a minority, the elite. Political leaders offer packages to the electorate, who simply vote and then play no further role. (CRAIG, Paul P., Democracy and Rule-making Within the EC: An Empirical and Normative Assessment, *European Law Journal*, Vol. 3, No. 2, 1997, pp. 105–130 at p. 125)

[40] The infranational approach is characterised by Weiler as the importance of technical expertise, economic and social interests and the relative unimportance of the national element in decision making. A typical example is the comitology (WEILER et al., European Democracy and its Critique, op. cit. pp. 25–27).

[41] According to neo-corporatism, government acting in concert with the representatives of industry and labour have to resolve economic problems. This does not replace parliament, but side-steps it by making policy choices without it. Parliament in this model represents diffuse interests (WEILER et al., European Democracy and its Critique, op. cit. pp. 32–33).

[42] WEILER et al., European Democracy and its Critique, op. cit. pp. 24-33.

[43] CRAIG, Democracy and Rule-making Within the EC, op. cit. p. 106.

[44] Ibid., p. 116.

[45] LARSSON, Torbjörn, Democratic Theory and the European Union: Choosing the Right Tools to Build Legitimacy, in BEST, Edward, GRAY, Mark and STUBB, Alexander (eds.), *Rethinking the European Union: IGC 2000 and Beyond*, EIPA, Maastricht, 2000, pp. 237–255 at p. 246.

[46] HOOGHE, Liesbet and MARKS, Gary, *Multi-level Governance and European Integration*, Rowman & Littlefield Publishers, Lanham, 2001, p. 3.

national political arena still remains important. Multi-level governance also includes media debates, civil society and interest groups networks. Kiiver, criticising the multi-level governance for lacking normative content, observes that while states internally can also be regarded as a system of multi-level governance, they still consider the parliamentary system necessary.[47]

Consequently, democratic elements are undoubtedly present in the European settlement. Controversy arises from the fact that no single democratic mode of governance can appropriately explain the European polity. This is one of the reasons why European decision-making is called the 'Community Method' and why criticisms of a democratic deficit emerged. Before embarking on the various explanations of the democratic deficit, I will consider the various interpretations of legitimacy, an issue that cannot really be separated from democracy.

In contemporary politics democracy is the most important condition of the legitimacy of power; 'in liberal democracies legitimacy and democracy seem to go together'.[48] Even dictatorships regularly declare themselves democracies (or popular democracies). Non-democratic governance is unacceptable and politically illegitimate.[49] The modern concept of legitimacy was introduced by Max Weber, who argues that a system is legitimate if the actors believe in its legality and rightfulness.[50] Legitimacy can be regarded as stemming from support[51] or a 'generalized degree of trust'.[52] Wimmel identifies, besides legality and acceptance, two more elements of the concept of legitimacy: compliance (adherence to legal norms by the citizens) and normative justification (individual freedoms or social justice that political systems must guarantee or ensure to be deemed legitimate).[53] The legitimacy of power in modern democracies mostly lies in the democratic nature of the origin of the power (democratic legitimacy).

The interconnection between democracy and legitimacy (i.e. only a democratic entity can be legitimate) calls for more democracy in the Union as well. In the EU

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[47] KIIVER, *The National Parliaments in the European Union*, op. cit. p. 174.
[48] BLONDEL et al., *People and Parliament in the European Union*, op. cit. p. 4.
[49] WEILER, Joseph H. H., Why Should Europe be a Democracy: The Corruption of Political Culture and the Principle of Constitutional Tolerance, in SNYDER, Francis (ed.), *The Europeanisation of Law: The Legal Effects of European Integration*, Hart Publishing, Oxford, 2000, pp. 213–218 at p. 213.
[50] BAYER, József, *A politikai gondolkodás története* [History of the political thinking], Osiris, Budapest, 2005, p. 283.
[51] BLONDEL et al., *People and Parliament in the European Union*, op. cit. p. 6–10.
[52] JACHTENFUCHS, Markus, Democracy and Governance in the European Union, *European Integration online Papers* (EIoP), 1997, Vol. 1, No. 2, p. 6, available at http://www.eiop.or.at/eiop/texte/1997-002a.htm accessed 31/05/2012.
[53] WIMMEL, Andreas, Theorizing the Democratic Legitimacy of European Governance: a Labyrinth with No Exit?, *Journal of European Integration*, 2009, Vol. 31, No. 2, pp. 181–199.

legitimacy includes different, direct or indirect sources. Legal or constitutional legitimacy is provided by the ratification of the treaties and their amendments by national parliaments, as well as the responsibility of governments represented in the Council to their respective parliaments. From a purely positivist approach the same applies to the decisions adopted at European level, as their constitutional nature is hardly questionable. This procedural legality is only one side of the input legitimacy of the EU. It must, nevertheless, be accompanied by the participation of citizens in the political decision-making process, assured in principle by the directly elected European Parliament.[54]

On the other hand, output legitimacy requires that the citizens' preferences are reflected in the results of policy making. Output legitimacy manifests in support, acceptance of rules and compliance thereto. The success of the common market (again output legitimacy) for a long time contributed to the legitimisation of European integration. Economic success and effectiveness should not, however, replace basic requirements of democracy: accountability, control or participation (again input legitimacy).[55] Furthermore, success and subsequent support can disappear easily. The public debates, surveys and referendums related to the Maastricht Treaty, the Constitutional Treaty and finally the Lisbon Treaty showed that the assumed 'passive or permissive consensus'[56] of citizens has been fading away.[57] The economic crisis since 2008 has demonstrated that the declining effectiveness in managing the crisis has entailed growing mistrust towards European institutions.[58]

The above interpretations of democracy and legitimacy in the EU have to be borne in mind both when diagnosing the problems of the system and when searching for possible solutions.

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[54] Article 10 TEU embodies the concept of double legitimacy: citizens are represented directly through the European Parliament and indirectly through the Member States in the Council and European Council.

[55] ANDERSEN and ELIASSEN, Introduction, op. cit. p. 4.; MICOSSI, Stefano, Democracy in the European Union, in MICOSSI, Stefano and TOSATO, Gian Luigi (eds.), *The European Union in the 21th Century: Perspectives from the Lisbon Treaty*, pp. 218–239 at p. 218.

[56] During the first decades of European integration national governmental elites enjoyed the support of the citizens; there was a 'permissive consensus', for the continuation of the European project, and consequently the elites were not preoccupied with the democratic nature of the integration. See e.g.: WIMMEL, Theorizing the Democratic Legitimacy of European Governance, op. cit. p. 182.; CHRYSSOCHOOU, Dimitris N., *Democracy in the European Union*, Taurus Academic Studies, London, 1998, p. 8–9.

[57] To the Eurobarometer question on trust in political institutions only 34% expressed trust in the European Union, the worst value since 2004. However, trust in national governments is even lower, at 24%. See Standard Eurobarometer 76/Autumn 2011, p. 20.

[58] See Standard Eurobarometer 76/Autumn 2011, p. 22. It is also true that although trust in European institutions shows a declining trend, people think that the EU is better able to take effective action against the crisis than national governments (p. 18).

2 A manifold deficit

Democratic deficit means principally 'the growing gap between the essential requirements of modern democratic government and the actual conditions upon which the governance of the Union is largely based'.[59] In other words, there is a divergence between the normative model of democratic governance or 'popular sovereignty and the actual practices of contemporary governance'[60] leading to a democratic deficit. More precisely, the latter results from 'the reduction of democratic control and accountability arising from the transfer of decision-making power to the international or supranational level'.[61] Different authors, however, make different claims about what constitutes a democratic and legitimate Europe. We can differentiate two groups of arguments: the first concentrates on the institutional settings (increased executive power, parliamentary deficit), the second on functional deficiencies (lack of 'European' elections, transparency and the European 'demos'; policy drift[62]).

The concerns about increased executive power are based on the fact that legislative powers formerly exercised by national parliaments have been transferred to the EU, where the institution acting as main legislator is the Council of national ministers, thus executive actors. The Council performs not only a legislative, but also an executive role. The Council and the other European executive, the Commission, are responsible for most European decisions. The accountability of the Commission before the European Parliament has been enforced,[63] but the Council collectively is not accountable to any other body, particularly any parliamentary organ. As Weiler puts it,

[59] CHRYSSOCHOOU, *Democracy in the European Union*, op. cit. p. 10.
[60] ANDERSEN, Svein S. and BURNS, Tom R., The European Union and the Erosion of Parliamentary democracy: A Study of Post-parliamentary Governance, in ANDERSEN and ELIASSEN, *The European Union: How democratic is it?*, op. cit. p. 244.
[61] BLONDEL et al., *People and Parliament in the European Union*, op. cit. p. 1.
[62] See also Hix's categorisation in HIX, Simon, *The Political System of the European Union*, 2nd ed., Palgrave, Houndmills, 2005, pp. 177–178.
[63] The Treaty of Rome: EP has the right to a motion of censure of the Commission; the Maastricht Treaty: the term of office of the Commission is aligned with the term of the EP, which must be consulted on the nominee of the Commission president and the full Commission is subject to EP approval; the Lisbon Treaty: the elections to the European Parliament must be taken into account by the European Council when proposing the candidate for President of the Commission. Further elements of accountability of the Commission: regular attendance of Commissioners or officials at EP sessions or committee meetings; obligation of the Commission to reply to the oral and written questions of the EP, to submit an annual general report; the EP's right to set up Committees of Inquiry; according to the framework agreement of 2000 between the EP and the Commission, if the EP expresses a lack of confidence in an individual commissioner, the president of the commission considers whether to request that member to resign.

in the EU 'there is no "government" to throw out',[64] which can entail two problems: the 'government' is not easily identifiable, but if we identify it with the Commission or the Council, then the problem is that neither of them can be voted out of office by the electors through elections.

The issue of accountability leads us to the second (institutional) claim regarding the democratic deficit, namely that European institutions exist in a 'parliamentary vacuum',[65] in other words there is a parliamentary deficit. The Council, unlike a national executive accountable to voters via the national parliament, is not responsible to any organ. The transfer of legislative competences from the national to the European level has not been matched with adequate methods of democratic accountability. The phenomena is sometimes called a 'double democratic deficit' referring to the lack of two types of adequate parliamentary control: European and national.[66] At European level, despite the increasing powers of the European Parliament, it cannot be regarded as a traditional parliament.[67] National parliamentary control is sometimes regarded more as an illusion than a reality.[68] Consequently the role of parliaments, either national or European, is relatively weak.

As far as the functional deficits of European democracy are concerned, according to claims about the lack of 'European' elections, campaigns for national and European parliamentary elections usually lack a European dimension and debates are about national issues and express protest votes against national governments in power. Furthermore, poor turnout at European Parliamentary elections also reflects the low level of legitimacy. Additionally, the EU is too distant and not transparent enough: citizens cannot understand it.[69] The lack of a European *demos* (people) impedes, according to the no-*demos* thesis, the achievement of a real European democracy, as any discussion on democracy presumes the existence of a *demos*.[70] These functional

[64] WEILER, Why Should Europe be a Democracy?, op. cit. p. 215.
[65] CHRYSSOCHOOU, *Democracy in the European Union*, op. cit. p. 32.
[66] RIDEAU, Joël, National Parliaments and the European Parliament: Cooperation and Conflict, in SMITH, Eivind (ed.), *National Parliaments as Cornerstones of European Integration*, Kluwer Law International, London, 1996, pp. 159–178 at p. 159.
[67] This can even be considered an advantage as parliamentary behaviour is not bound by party discipline.
[68] WEILER, *The Constitution of Europe*, op. cit. p. 266.
[69] Undoubtedly, the Lisbon Treaty aimed at increasing the openness and transparency of the institutions (see Article 15 TFEU). The actual practice of the ordinary legislative (former codecision) procedure has, nonetheless, moved in a contrary direction: the Council and the EP (and the Commission) increasingly come to an agreement at the first reading due to informal, non-transparent trilogues. See e.g. DASHWOOD, Alan et al., *Wyatt and Dashwood's European Union Law*, Hart Publishing, Oxford, 2011, pp. 73 and 95.
[70] WEILER et al., European Democracy and its Critique, op. cit. p 11. The German Federal Constitutional Court also addressed the question in its Maastricht decisions, stating that there is no European *Volk*

problems lead to policy drift: the EU can adopt policies that are not supported by the majority of the citizens in many or most Member States.[71] The lack of any contest for political leadership and over policy, an essential element of democracy theories,[72] means that EU policy outcomes may not be the ones that would be preferred by a political majority after debate.[73] Concentrated interests, such as the interests of multinational firms and business are more likely to influence EU policy outcomes, than diffuse interests, such as those of consumer groups or trade unions.[74] Union decisions, thus, are not sufficiently representative; furthermore, they cannot develop a European welfare 'state'.[75]

Most of the above criticisms about the institutional settings of the EU are based on the fact that it is not and does not function as a genuine parliamentary system. On the contrary, if a desired model of democracy is not a parliamentary one, a democratic deficit is not as important or is even non-existent. The intergovernmentalist[76] Moravcsik, one of the major proponents of the idea that the EU *is* sufficiently democratic, claims that no further channels of democratic legitimisation are needed. For him, concerns about the EU's democratic deficit are misplaced, because most critics compare the EU to an ideal type of parliamentary democracy and not to the actual functioning of national democracies. The institutions of the EU, which form, in his view, a system of separation of powers,[77] are tightly constrained by institutional checks and balances: well-defined mandates, a multi-level structure of decision-making, and super-majoritarian voting requirements. Among the checks and balances Moravcsik mentions are also *ex ante* and *ex post* national parliamentary scrutiny.[78]

(Judgement of the German Federal Constitutional Court (Bundesverfassungsgericht) of 12 October 1993 (2BvR 2134/92 and 2BvR 2159/92))

[71] HIX, *The Political System of the European Union*, op. cit. p. 178.

[72] FOLLESDAL and HIX, Why There is a Democratic Deficit in the EU, op. cit. p. 533.

[73] Ibid., p. 545. See also GUSTAVSSON, Sverker, Preserve or Abolish the Democratic Deficit?, in SMITH, , *National Parliaments as Cornerstones of European Integration*, op. cit. pp. 100–123 at pp. 103 and 105.

[74] FOLLESDAL and HIX, Why There is a Democratic Deficit in the EU, op. cit. p. 537.

[75] MAJONE, Giandomenico, Europe's 'Democratic Deficit': The Question of Standards, *European Law Journal*, 1998, Vol. 4, No. 1, pp. 5–28 at p. 13.

[76] A group of ideas or authors stating that the EU is basically an intergovernmental cooperation, where national governments are the ultimate decision makers. Decision making is determined by intergovernmental bargaining. Supranational institutions only have limited power.

[77] On the contrary, van Gerven argues that the EU is far from being a system of separation of powers, although it is true that there are several checks and balances. See: GERVEN, Walter van, Wanted: More Democratic Legitimacy for the European Union, in WOUTERS, Jan, VERHEY, Luc and KIIVER, Philipp (eds.), *European Constitutionalism Beyond Lisbon*, Intersentia, Antwerp, 2009, pp. 147–183 at p. 155.

[78] MORAVCSIK, Andrew, In Defence of the 'Democratic Deficit': Reassessing Legitimacy in the European Union, *Journal of Common Market Studies*, 2002, Vol. 40, No. 4, pp. 603–624.

The European polity can also be explained as a 'regulatory state'. In this model European institutions are, or must be, technocratic, depoliticised and relatively independent agencies. Majone claims that advocates of political integration and federal states apply the standards of legitimacy of parliamentary democracies.[79] This is irrelevant, according to him, as the majority of Member States are opposed to this kind of evolution. For him, the depoliticisation of European policy making is the best means to preserve national sovereignty. He states that paradoxically the 'democratic deficit' is democratically justified. Although he sees no problem with the democratic deficit, he does suggest a more credible EU with more transparent decision-making, greater professionalism, and better scrutiny by private actors and the media.

Moravcsik and Majone agree that there is no democratic deficit in the institutional system of the EU, although they both accept the need for democratisation in the functioning of the Union. These authors only represent a minority of scholars. The majority share some of these authors' ideas, but argue that democracy in the EU has to be improved as people need to have (more) influence on decisions binding on them.

As far as legitimacy is concerned, the growing EU-scepticism, the declining turnout at European Parliamentary elections, the lack of influence of the result of European elections on the direction of European politics and the indirect legitimacy of the Commission all highlight that the level of legitimacy in the EU is not sufficient. Nergelius rightly confirms that the degree of integration has reached a level where it is necessary for the EU to be perceived as a legitimate decision-maker, while at the same time the general acceptance of the Union as being such an actor seems to be very low among European citizens.[80]

The question arises why Member States or the institutions do not themselves eliminate the democratic deficit to gain more legitimacy. The answer seems simple and also paradoxical: the democratic deficit can serve effectiveness, which can foster legitimacy. National governments take strategic decisions and set basic political agendas mainly behind closed doors (first of all in the European Council).[81] Effectiveness may be threatened by a high level of openness.[82] For the governments of the Member States it is very convenient that European decision-making is not as

[79] MAJONE, Europe's 'Democratic Deficit', op. cit. pp. 5-6.
[80] NERGELIUS, Joakim, *The Constitutional Dilemma of the European Union*, Europa Law Publishing, Groningen, 2009, p. 3.
[81] CHRYSSOCHOOU, *Democracy in the European Union*, op. cit. p. 8.
[82] ANDERSEN and ELIASSEN, Introduction, op. cit. p. 10.

hampered by democratic accountability to parliaments at European as it is at national level.[83] More democracy or transparency is not necessarily advantageous for the myriad NGOs, pressure and lobby groups who have already got to know the system and promote their own interest. Effectiveness cannot, nonetheless, replace representation. Output legitimacy cannot overrule input legitimacy. According to Weiler, the European success even has a 'corrupting effect on the […] very meaning of what it means to be a democracy', where citizens are 'consumers of political outcomes rather than active participants in the political process'.[84] There must be a healthy balance between effectiveness and democracy: the policy process must be subject to public control and participation in order to be legitimate.[85]

Democracy can and must always be improved, either at the level of a state or the EU. It seems more justified to speak about a process of democratisation of the EU. Whether we speak of attempts to eliminate the democratic deficit or seek the democratisation of the EU, various methods are conceivable. We have seen so far that there is no political will to convert the EU into a genuine (federal) parliamentary democracy; however, national parliaments do appear in the different governance models as important elements of European democracy. From a constitutional law angle, the most important element of the democratic deficit is the parliamentary deficit. The democratisation of the EU cannot be imagined without the ability of the European citizens to claim democratic control over European decision-making.[86] In the following I sum up the theories according to which national parliaments might enhance European democracy.

3 Democratization through national parliaments

In order to improve parliamentary democracy in the EU two fundamental solutions have arisen: amplifying the European Parliament's powers, and/or strengthening the national parliaments' role in European affairs.

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[83] GUSTAVSSON, Preserve or Abolish the Democratic Deficit?, op. cit. p. 112.; CHRYSSOCHOOU, *Democracy in the European Union*, op. cit. p. 9.
[84] WEILER, Why Should Europe be a Democracy, op. cit. p. 216.
[85] WESSELS, Wolfgang, The Modern West European State and the European Union: Democratic Erosion or a New Kind of Polity?, in ANDERSEN and ELIASSEN, *The European Union: How democratic is it?*, op. cit. p. 58.
[86] CHRYSSOCHOOU, *Democracy in the European Union*, op. cit. p. 29.

The European Parliament has, from a purely consultative assembly, become a genuine co-legislator through the direct election of its members since 1979; as well as through the cooperation procedure of the Single European Act; the co-decision procedure (joint law-making between the Council and the European Parliament) introduced by the Maastricht Treaty; and the extension of areas of the co-decision and assent procedure introduced by the Amsterdam Treaty. The Lisbon Treaty enhanced the legislative powers of the European Parliament by for example further extending the areas of co-decision and assent procedure, the parliamentarisation of the budgetary procedure or the changes in the process of the election of the Commission. Despite these developments, the legitimacy of the European Parliament has not increased, since turnout in European elections is declining.[87]

On the other hand, it was claimed that the legitimacy of the EU cannot be enhanced solely by parliamentarisation at the European level,[88] and the need for national parliaments' involvement in European matters has emerged.[89] As we have seen above, even scholars like Moravcsik, who argue that the EU is not and does not need to be a parliamentary system, underline the importance of *ex ante* and *ex post* national parliamentary scrutiny.[90] Similarly to Moravcsik, Majone considers the existing and increased national parliamentary control over the governments among the balances that prove the democratic nature of the European system. They are, however, silent about any possible role for national parliaments at European level.

The enhancement of the involvement of national parliaments in European affairs has a prolific literature. Two basic, non-exclusive, claims emerged in the 1990s: i) national parliaments should exercise rigorous scrutiny over their governments in European affairs at national level; ii) the involvement should be exerted at European level, possibly collectively. The first possibility lies within the competence of each Member State.[91] As I will discuss the patterns of individual scrutiny of national

[87] Participation in the EP elections decreased from 62% in 1979 to 42,54% in 2014.
[88] The German Constitutional Court even in 2009 in its Lisbon judgment evaluated the European Parliament as incapable of solving the democratic deficit, because it has only a secondary role (compared to national parliaments) to ensure democratic legitimacy.
[89] BENGTSON, Christina, National Parliaments in European Decision-making: A Real Prospect or Wishful Thinking?, *The Federal Trust for Education and Research*, Online Paper 29/03., 2003, available at http://www.fedtrust.co.uk/filepool/29_03.pdf accessed 31/05/2012, p. 3; LAURSEN and PAPPAS, *The Changing Role of Parliaments*, op. cit.; CYGAN, Adam Jan, *National Parliaments in an Integrated Europe: An Anglo-German Perspective*, Kluwer Law International, Hague, 2001.
[90] MORAVCSIK, In Defence of the 'Democratic Deficit', op. cit. pp. 603–24.
[91] As the Protocol on the role of national parliaments in the European Union, annexed to the Treaty of Amsterdam recalls: "[s]crutiny by individual national parliaments of their own government in relation to

parliaments in detail later on (see Chapter 3), here I only refer to the fact there is some convergence between national parliaments concerning the way they hold ministers accountable for decisions taken in the Council. What is common is that every national parliament has established a special body (committee) and procedures to deal with European affairs and monitor and influence the government's activities in the Council. Some parliaments have introduced a system by which governments are given a negotiation mandate before Council meetings, others concentrate on several selected, important European proposals and examine them in detail. There are, on the other hand, several elements that discourage national parliaments from deep scrutiny in European affairs, e.g.: procedural limitations (workload); ideological constraints, since for many parliaments the supranational level is an appropriate level for the formulation of European law.[92]

The second possibility for national parliaments is their more direct involvement in European decision-making. There have been propositions such as the establishment of new bodies, e.g. a European Congress,[93] a second chamber of the European Parliament comprising members of national parliaments,[94] a Council of National Parliaments,[95] a Standing Conference of National Parliaments,[96] the creation of a new chamber or the institutionalisation of COSAC to examine compliance with the principle of subsidiarity.[97] Considering that these propositions have not been accepted, in the following I concentrate on the other direction of the EU-level role of the national parliaments: the control of the application of the principle of subsidiarity.

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the activities of the Union is a matter for the particular constitutional organisation and practice of each Member State". Kiiver calls this principle 'constitutional neutrality', see KIIVER, *The National Parliaments in the European Union*, op. cit. p. 31.

[92] NORTON, Philip, National Parliaments in Western Europe, in SMITH, *National Parliaments as Cornerstones of European Integration*, pp. 19–38 at pp. 30–33.

[93] According to the proposition of Valéry Giscard d'Estaing, president of the Convention on the Future of Europe, the new consultative institution would have been composed of members of national parliaments and of the European Parliaments. Its task would have been to discuss important issues (the state of the Union, enlargements).

[94] FERRER MARTÍN DE VIDALES, Covadonga, *Los Parlamentos Nacionales en la Unión Europea: De Maastricht to Lisboa*, Dilex, Madrid, 2008, pp. 156-162.

[95] In 1991 Anthony Teasdale and Quentin Huxham proposed the creation of this Council, to which the Council (of ministers) would be held accountable. See CHRYSSOCHOOU, *Democracy in the European Union*, op. cit. p. 34.

[96] Its mandate would be to produce regular reports on European policy. See CHRYSSOCHOOU, *Democracy in the European Union*, p. 35.

[97] As for the different proposals and their reception see: NORTON, Philip, National parliaments and the European Union: where to from here?, in CRAIG and HARLOW, *Lawmaking in the European Union*, op. cit. pp. 209–222.; MAURER, Andreas, National Parliaments in the European Architecture: From Latecomers' Adaptation towards Permanent Institutional Change?, in MAURER and WESSELS, *National Parliaments on their Ways to Europe*, op. cit. pp. 27–76 at pp. 56–62.

First of all, the principle of subsidiarity in the EU means that in areas which do not fall within its exclusive competence, the Union can act only if the objectives of action cannot be sufficiently achieved by the Member States, but can rather be better achieved at Union level.[98] Indeed, subsidiarity is an inherent element of the classic normative definition of democracy. The classical concept of democracy includes the principle of identity, that is the identity of the governors and the people, which serves as a basis for self-government. According to the principle of identity, the people must be able to decide on issues affecting them when it is possible. Only in cases where this direct decision is impossible, can the delegation of decision-making power take place.[99]

The principle has been introduced to counter the expansion of (the use of) the powers of the EU, and to support the desire for a more decentralised decision-making procedure which stays strictly within the boundaries of the conferred powers. Accordingly, it seemed logical to entrust to national parliaments, who conferred those powers, the supervisory role when it comes to its application.[100] National parliaments' involvement in the control of subsidiarity also goes back to the considerations on the political nature of the principle. Toth questioned whether the CJEU is equipped to decide whether the objectives of a measure can be better achieved at the Community/Union level than at the national level, or vice versa.[101] This kind of political decision can only be taken by political institutions[102] or be at the discretion of legislative bodies.[103]

It was also argued that national parliaments would probably be more willing, and better able, to address the difficult technical and political issues that subsidiarity revolves around.[104] Parliaments frequently encounter similar questions in their law-

[98] Article 10(3) TEU.
[99] BAYER, *A politikai gondolkodás története*, op. cit. p. 357.
[100] PETERS, Jit, National parliaments and subsidiarity: think twice, *European Constitutional Law Review*, 2005, Vol. 1, No. 1, pp. 68–72 at p. 69; KIIVER, *The National Parliaments in the European Union*, op. cit. p. 155.
[101] TOTH, Akos G., A legal analysis of subsidiarity, in O'KEEFFE, David and TWOMEY, Patrick M. (eds.), *Legal Issues of the Maastricht Treaty*, Wiley Chancery Law, London, 1994, pp. 37–48 at p. 48. TOTH, A. G., Is subsidiarity justiciable?, *European Law Review*, 1994, Vol. 19, No. 3, pp. 268-285; DEHOUSSE, Renaud, Does subsidiarity really matter?, *EUI working papers LAW*, No. 92/32.
[102] PETERS, National parliaments and subsidiarity: think twice, op. cit. p. 70; MANZELLA, Andrea, The Role of Parliaments in the Democratic Life of the Union, in MICOSSI and TOSATO, *The European Union in the 21th Century*, op. cit. pp. 261-274 at pp. 266-267.
[103] COOPER, Ian, The watchdogs of subsidiarity: national parliaments and the logic of arguing in the EU, *Journal of Common Market Studies*, 2006, Vol. 44, No. 2, pp. 281–304 at p. 285. Intervention of Mr. Jean Claude Piris, Director-General of the Council's Legal Service, at the meeting of the Working Group I of the Convention, 25 June 2002.
[104] BARBER, Nick W., Subsidiarity in the draft Constitution, *European Public Law*, 2005, Vol. 11, No. 2, pp. 197–206 at p. 203.

making and scrutinizing function. Another reason for national parliamentary control is the question of interest, i.e. whose interest is it to apply subsidiarity, to keep the regulation of as many policy matters as possible at national level? It is generally thought that it is only in the national parliaments' interest to apply subsidiarity, because the three main institutions in the EU legislative procedure have contrary interests.[105]

Involvement of national parliaments in European decision-making can also cause problems, namely it can hamper the efficiency of the decision-making system or can even paralyse it.[106] The most comprehensive criticism against an enhanced role for national parliaments in the EU is given by Kiiver, who argues that even if more active national parliaments seem to be desirable from a national constitutional point of view or as regards the democratic deficit, the suggestion would cause national constitutional distortion (parliaments artificially set against their governments), and could shift the centre of gravity in the EU toward the Member States and national interests.[107]

The debate on a possible role for national parliaments in Europe was not only of an academic nature. From the 1990s every intergovernmental conference aiming to amend the Treaties dealt with the European role of national parliaments. After a symbolic declaration annexed to the Maastricht Treaty and the protocol on national parliaments attached to the Amsterdam Treaty, the major step came with the Lisbon Treaty. This latter not only incorporates the ways national parliaments can enhance European democracy in the Treaty itself (Article 10 TEU), but provides them with the right to control the application of the principle of subsidiarity.[108] The Treaty of Lisbon suggests that national parliaments' involvement in European affairs, both at a national and European level, do contribute to eliminating the democratic deficit.

It is worth remembering that institutional or procedural changes alone will not solve the democracy and legitimacy deficit, while people's claims for integration is

[105] However, this is not necessarily the case. Although the Commission is the engine of integration, its interest lies in acquiring as many competences for the European level as possible; it has not only repealed legislative acts in power, but decreased the number of new proposals. As regards the European Parliament, Louis points out that though it would seem logical to think that the EP is deliberately acting in favour of more competences at the Union level, it would be an error to present it as an unconditional supporter of EU competences (See: LOUIS, Jean-Victor, National parliaments and the principle of subsidiarity: legal options and practical limits, *European Constitutional Law Review*, 2008, Vol. 4, No. 3, pp. 429–452 at pp. 446–447). It is also questionable that the Council does not have an interest to apply the subsidiarity principle, because it is not always the case that every Member State wishes to regulate a certain issue on the European level.

[106] MICOSSI, Democracy in the European Union, op. cit. p. 228; CRAIG, Paul, The European Union Act 2011: Locks, Limits and Legality, *Common Market Law Review*, 2011, Vol. 48, No. 6, pp. 1915-1944 at p. 1943.

[107] KIIVER, *The National Parliaments in the European Union*, op. cit. p. 169.

[108] For more details see Chapter 2.

more substantial in nature than formal. That is to say, any improvement of input legitimacy by the involvement of more actors in the decision-making procedure (namely national parliaments) has to go hand in hand with progress in output legitimacy (solutions to growing social and economical problems). Or as Chryssochoou et al. put it, the EU 'to remain viable over the long run … must strike a balance between efficiency and accountability in its policy making'.[109] One might also assume that if national parliaments managed to gain influence on European policy making (by scrutiny of government, and through cooperation with the Commission and the European Parliament), European decisions would reflect the policy preferences of the European peoples to a greater extent. In any case, even if national parliaments cannot remedy the alleged democratic and legitimacy deficit of the EU on their own, they may contribute to making it more democratic by providing another check in the complex system of European checks and balances.

A paradox, nonetheless, remains: enhancing the democracy in the Union is the task of institutions (national parliaments) which have been seen for about a century at least in Western democracies as weaker and less influential, passive bodies compared to governments.[110] In addition, trust in national parliaments is lower than in the European institutions.[111] In the next section I will analyse national parliaments with regard to the changes that European integration has induced in their position vis-à-vis the government, powers and functioning.

II CHANGES IN THE POSITION OF NATIONAL PARLIAMENTS

The decline in importance of national parliaments in modern Western democracies is at least as widely accepted as the existence of a democratic deficit in the EU. In the subsequent sections tendencies of deparliamentarisation in contemporary democracies, the influence of European integration, and national parliaments' adaptation will be

[109] CHRYSSOCHOOU, Dimitris N., STAVRIDIS, Stelios and TSINISIZELIS, Michael J., European democracy, parliamentary decline and the 'democratic deficit' of the European Union, *The Journal of Legislative Studies*, 1998, Vol. 4, No. 3, pp. 109–129 at p. 25.
[110] In this sense see KIIVER, *The National Parliaments in the European Union*, op. cit. p. 180.
[111] In 2011 August the trust in national parliaments is 27%, in the Council 32%, in the European Commission 36%, in the European Parliament 41%. All values shows declining trends. See: Standard Eurobarometer 76/Autumn 2011, p. 20.

discussed. Finally the situation of the Hungarian Parliament from the 1990s will be briefly presented from this perspective.

1 Deparliamentarisation

The deparliamentarisation thesis (also called parliamentary decline, the crisis of parliamentary democracy or the national democratic deficit), which emerged after the First World War, describes the decreased influence of parliaments on policy formulation. The often cited Bryce established the myth of the 'golden age' of parliaments, which was followed by the predominance of party politics and discipline in legislatures in the 20th century.[112] In addition, modern society and economy have become complex, increasing the government's role in public policies. But it is also true that parliaments were able to consolidate their legitimising function, their 'image as symbols of representative and responsible government'.[113] According to Keohane and Hoffmann, '[n]ational parliaments have seen their role diminish in all parliamentary democracies, either because the bills they vote are usually initiated by cabinet, or because … the legislature is less important than the directorates of the parties in power'.[114]

The second half of the 20th century did not bring substantial changes to the above phenomenon. Parliaments continued to be seen as less important than governments. The technical nature of legislation and the need for experts in public administration upset the balance between parliament and government in favour of the latter. Parliaments had to face the influence of parties, interest groups, external economic constraints or international commitments. It must be noted that governments are also bound by external constraints; their room for manoeuvre is also limited.[115] Nevertheless, in contemporary Europe, national parliaments tend to exercise *ex post* scrutiny over public

[112] BRYCE, Lord, The Decline of Legislatures, in NORTON, Philip (ed.), *Legislatures*, Oxford University Press, Oxford, 1990, pp. 47-56 at pp. 53-56.
[113] CHRYSSOCHOOU, *Democracy in the European Union*, op. cit. p. 111.
[114] KEOHANE, Robert O. and HOFFMANN, Stanley, Conclusions: Community Politics and Institutional Change, in WALLACE, William (ed.), *The Dynamics of European Integration*, Pinter, London, 1990, p. 294, cited by CHRYSSOCHOOU, *Democracy in the European Union*, op. cit. pp. 23-24.
[115] Even if the margins had previously been accepted by the government themselves. A recent striking example of how states limit their (budgetary) sovereignty is the European fiscal pact.

policy making with very little real possibility to alter its original content.[116] Based on the de facto power of parliaments to modify or veto government policy proposals, in the 1960s and 1970s European parliaments were already classified as having only a modest influence on policy making.[117]

The deparliamentarisation thesis was especially accentuated by European integration. The deepening of the latter led to executive dominance in contemporary governance, since executives (governments) are the main participants in European policy making. Benz observes an important difference between deparliamentarisation before and after European integration. While the first was long-term, incremental and informal, the loss of power due to integration was based on explicit decisions.[118] These decisions, namely the transfer of national legislative powers to the European level, were confirmed by national parliaments themselves (constitutional deparliamentarisation[119]). The transfer of powers implies an adoption of norms at European level which are either directly applicable without the need for any transposition or, even if transposition is required, the margin of discretion of national parliaments has become limited.[120]

Most of the literature considers national parliaments as victims of European integration.[121] It is even argued that it was European integration that led to an 'erosion of parliamentary control over executive office-holders'.[122] The increasing use of qualified majority voting (QMV) in Council has further reduced the possibility for national parliaments to influence the outcome of decisions, since even governments

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[116] CHRYSSOCHOOU, *Democracy in the European Union*, op. cit. p. 59.; ANDERSEN and BURNS, The European Union and the Erosion of Parliamentary democracy, op. cit. p. 227; JUDGE, David, The failure of national parliaments?, in HAYWARD, Jack (ed.), *The Crisis of Representation in Europe*, Frank Cass, London, 1995, pp. 79–100 at p 81.

[117] O'BRENNAN, John and RAUNIO, Tapio, Introduction: Deparliamentarization and European integration, in O'BRENNAN and RAUNIO, *National Parliaments within the Enlarged European Union*, op. cit. pp. 1-19 at p. 6.

[118] BENZ, Arthur, Path-Dependent Institutions and Strategic Veto Players: National Parliaments in the European Union, *West European Politics*, 2004, Vol. 27, No. 5, pp. 875–900 at p. 882.

[119] O'BRENNAN and RAUNIO, Introduction, op. cit. p. 2.

[120] FERRER MARTÍN DE VIDALES, *Los Parlamentos Nacionales en la Unión Europea*, op. cit. pp. 34-35.

[121] RAUNIO, Tapio and HIX, Simon, Backbenchers Learn to Fight Back: European Integration and Parliamentary Government, *West European Politics*, 2000, Vol. 23, No. 4, pp. 142-168; MAURER and WESSELS, *National Parliaments on their Ways to Europe*, op. cit.; ROMETSCH, Dietrich and WESSELS, Wolfgang, Conclusion: European Union and national institutions, in ROMETSCH, Dietrich and WESSELS, Wolfgang (eds.) *The European Union and the Member States: Towards Institutional Fusion?*, Manchester University Press, Manchester, 1996, pp. 328–365 at p. 334.

[122] O'BRENNAN and RAUNIO, Introduction, op. cit. p. 2.; RIZZUTO, Francesco, National parliaments and the European Union: part of the problem or part of the solution to the democratic deficit in the European constitutional settlement?, *The Journal of Legislative Studies*, 2003, Vol. 9, No. 3, pp. 87–109 at pp. 96 and 100.

with obligatory parliamentary mandates can be outvoted in Council.[123] Raunio calls this phenomenon political deparliamentarisation.[124] It is also the volume, complexity and timing of European legislation that make national parliamentary control difficult or even impossible, perverting the balance between legislative and executive state organs in favour of the executive.[125] A 'procedural deparliamentarisation' was also observed and manifested in the absence, until the Maastricht declaration, of any reference to national parliaments in the Treaties.[126]

From a different point of view, it is the national parliamentary decline, according to Chryssochoou's argument, that has extended to the European level. The democratic deficit of the EU, consequently, emanates from the deparliamentarisation at national level.[127] The two phenomena can also be mutually reinforcing, as Chryssochoou et al. also states: the democratic deficit of the EU helped to consolidate or facilitate the parliamentary decline in Western Europe.[128]

The theory of post-parliamentary governance, put forth by Andersen and Burns, observes the national parliaments' position from a wider perspective.[129] They argue that parliaments are facing systematic erosion due to the fact that policy decisions are not made in one single centre and the influence through formal representative democracy has a marginal role. Society is highly differentiated and complex, making it difficult for parliaments (and governments) to deliberate with sufficient knowledge and competence.[130] As a consequence, policy making is increasingly displaced from parliamentary bodies to informal groups or networks in society. Parliaments are, however, not meaningless even in a post-parliamentary governance. First of all they provide legitimacy to political authority. Additionally, Andersen and Burns suggest that they should be monitoring and holding the government to account, and also addressing

[123] As for this latter argument it must be noted that more than half of the decisions made by the Council are A-points, thus have already been made by the Coreper and adopted in Council without debate. According to the empirical study by Mattila, actual voting in the Council is rather rare: from 1994 to 1998, one or more Council members voted against the majority or abstained from voting in only 16 to 25 per cent of the decisions. See: MATTILA, Mikko, Contested decisions: Empirical analysis of voting in the European Union Council of Ministers, *European Journal of Political Research,* 2004, Vol. 43, No. 1, pp. 29–55 at p. 30.
[124] O'BRENNAN and RAUNIO, Introduction, op. cit. p. 2.
[125] WEILER et al., European Democracy and its Critique, op. cit. p. 7.
[126] CYGAN, Adam, The parliamentarisation of EU decision-making? The impact of the Treaty of Lisbon on national parliaments, *European Law Review*, 2011, Vol. 36, No. 4, pp. 480-499 at p. 488.
[127] CHRYSSOCHOOU, *Democracy in the European Union*, op. cit. pp. 13 and 119.
[128] CHRYSSOCHOOU et al., European democracy, op. cit. pp. 109–110.
[129] ANDERSEN and BURNS, The European Union and the Erosion of Parliamentary democracy, op. cit. p. 227.
[130] Ibid., p. 229.

constitutional questions in a broad sense, and considering long-term problems and perspectives.[131]

There is one important factor that has to be borne in mind when examining the parliaments' position vis-à-vis the government. The very essence of parliamentary democracy is that government has a majority in parliament, or at least enjoys the confidence of the majority. From a constitutional law point of view they are two separate institutions with different powers in the decision-making procedure. From a political perspective they are closely interlocked, thus control and influence of the government activity by the parliamentary majority often takes place outside of the parliament, through informal mechanisms, e.g. in parliamentary group meetings.[132] In addition, the parliamentary majority may already feel represented by its government, without further need to be represented, e.g. in COSAC or vis-à-vis any European institution.[133] The catch for parliaments in the scrutiny of their government is that they would like to be involved in the EU decision-making, but they do not want to go against the government.

While many authors accept the declining importance of parliaments vis-à-vis governments, they nonetheless accentuate their still important position or their capacity to adapt to this situation.[134] Although European integration deprives parliaments of some of their traditional powers, it does not challenge their prominent position as the hallmark of national governmental legitimacy, 'both because they are elected by the people, and because the executive emanates from them'.[135] Judge states that parliaments have provided the legitimating frame for the development of integration, not only with the ratification of treaties, but also by 'depoliticising' the issue of Europe and expressing consensus on integration.

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[131] Ibid., pp. 248–251.

[132] O'BRENNAN and RAUNIO, Introduction, op. cit. p. 7-8; RIZZUTO, National parliaments and the European Union, op. cit. p. 97.

[133] MAURER, Andreas and WESSELS, Wolfgang, Major Findings, in MAURER and WESSELS, *National Parliaments on their Ways to Europe*, op. cit. pp. pp. 17-26 at p. 22.

[134] O'BRENNAN and RAUNIO, Introduction, op. cit. pp. 7-8; JUDGE, The failure of national parliaments?, op. cit. pp. 80 and 95., AUEL, Katrin, Introduction: The Europeanisation of parliamentary democracy, *The Journal of Legislative Studies*, 2005, Vol. 11, No. 3/4, pp. 303–318 at pp. 306–307; BENZ, Path-Dependent Institutions and Strategic Veto Players, op. cit. pp. 875–900; NORTON, *National Parliaments and the European Union*, op. cit.; MAURER, National Parliaments in the European Architecture, op. cit. pp. 27–76.

[135] KEOHANE and HOFFMANN, Conclusions, op. cit. pp. 23–24.

As far as adaptation is concerned, the emergence of national parliaments in European primary law demonstrates that they can increase their power.[136] Maurer et al. observes that after the entry into force of the Maastricht Treaty, national parliaments, recognizing that they were losing legislative power and control capacity, tried to be more informed and strengthen the role of standing committees on European affairs. Nonetheless, they remained national players.[137] According to Raunio and Hix's revised deparliamentarisation thesis, integration accentuated an already existing trend towards a stronger government position (in agenda setting, policy preparation and implementation), but parliaments from the 1990s succeeded in scrutinizing governments more effectively. In addition, integration was a 'catalyst in the re-emergence of parliaments' as they could 'strengthen their constitutional and political position vis-à-vis their governments', due to better access to information and the desire of (opposition) parties for tighter parliamentary scrutiny of European affairs.[138]

Concerning the legal and functional changes in parliaments as an answer to the challenges emanating from European integration, theories of Europeanization try to analyse the direction and extent of the adaptation.

2 The Europeanization of national parliaments

As the often cited Ladrech puts it, Europeanization is 'an incremental process reorienting the direction and shape of politics to the degree that EC (European Community) political and economic dynamics become part of the organisational logic of national politics and policy making'.[139] Maurer et al. define Europeanization as a process by which various national actors, including parliaments 'shift their attention to the Brussels arena, involve their resources and invest time'.[140] Similarly, Wessels and Rometsch define the Europeanization of national institutions as the 'shift of attention of all national institutions and their increasing participation … in the EU decision-making

[136] JUDGE, The failure of national parliaments?, op. cit. pp. 80 and 95.
[137] MAURER, Andreas, MITTAG, Jürgen and WESSELS, Wolfgang, National Systems' Adaptation to the EU System: Trends, Offers and Constraints, in KOHLER-KOCH, Beate (ed.), *Linking EU and National Governance*, Oxford University Press, Oxford, 2003, pp. 53–81 at pp. 71, 72 and 77.
[138] RAUNIO and HIX, Backbenchers Learn to Fight Back, op. cit. pp. 143, 151 and 163.
[139] LADRECH, Robert, Europeanization of Domestic Politics and Institutions: The Case of France, *Journal of Common Market Studies*, 1994, Vol. 32, No. 1, pp. 69–88 at p. 68.
[140] MAURER et al., National Systems' Adaptation to the EU System, op. cit p. 54.

cycle'.[141] Maurer adds an important element to this adaptation, namely the aim: i.e. to comply with the 'requirements for an effective participation in European governance'.[142] In the case of national parliaments, the definition could be interpreted as the legal, institutional and functional changes induced by EU membership and EU law.[143] This is only the top-down aspect of the concept, where the impact emanates from the EU.[144] Bottom-up Europeanization occurs when national actors begin to affect Union policies. National parliaments may influence European decision-making directly through the control of subsidiarity and indirectly, via their own government.

According to the idea of Europeanization, European integration is an explanatory factor in domestic legal and political change or continuity.[145] The key question is what the impact of European integration on domestic actors and behaviours has been. As far as national parliaments are concerned their Europeanization began with institutional adaptation. It must be underlined that for national parliaments there is no legal obligation for institutional or statutory changes. Ratifications or transposition of European law do not entail, in principle, any parliamentary (institutional or functional) changes. National parliaments' adaptation to Union membership is fully voluntary. There is not one single pattern to follow, parliaments have learnt and copied the solutions of others. Mimicry of constitutional norms or best practices of scrutiny is derived from the recognition of the need to comply with the logic of EU membership. As a consequence, Europe and the EU have become a 'relevant and important point of political reference for the actors at the level of the Member States'.[146] The EU, thus, not only affects formal rules and institutions, but also values and discourses in the Member States.[147] Europeanization of national parliaments by sharing information and the diffusion of innovation has not, however, lead to total convergence; parliamentary scrutiny of European affairs varies between national parliaments.

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[141] ROMETSCH and WESSELS, Conclusion, op. cit. p. 328.
[142] MAURER, National Parliaments in the European Architecture, op. cit. p. 36.
[143] See for example Sedelmeier's definition for Europeanization as 'influence of the EU' or the 'domestic impact of the EU'. SEDELMEIER, Ulrich, Europeanisation in new member and candidate states, *Living Rev. Euro. Gov.*, 2006, Vol. 1, No. 3, available at http://www.livingreviews.org/lreg-2006-3 accessed 31/05/2012, p. 4.
[144] See AUEL, Introduction, op. cit.
[145] See in this sense: HIX, Simon and GOETZ, Klaus H., Introduction: European Integration and National Political systems, *West European Politics*, 2000, Vol. 23, No. 4, pp. 1–26.
[146] HANF, K. and SOETENDORP, B., *Adapting to European Integration: Small States and the European Union*, London, Longman, 1998, p. 1, cited by FEATHERSTONE, Kevin, Introduction: In the Name of 'Europe', in FEATHERSTONE, Kevin and RADAELLI, Claudio M. (eds.), *The Politics of Europeanization*, Oxford University Press, Oxford, 2003, pp. 1–26 at p. 11.
[147] RADAELLI, Claudio M., The Europeanization of Public Policy, in FEATHERSTONE and RADAELLI, *The Politics of Europeanization*, op. cit. pp. 27–56 at p. 36.

The Europeanization of parliamentary systems highlights how European integration has affected the powers of national parliaments and the balance of power between them and the governments. As we have seen in the previous subsection (2.b), governments are strengthened due to their direct participation in European decision-making. Rometsch and Wessels in 1996 found a common characteristic between Member States: parliaments were the 'losers' of the European integration process.[148] The parliaments were left outside, or were barely involved in the preparation and formulation of EU legislation. National parliaments did not show any interest in investing time in EU affairs. This attitude changed with the Maastricht Treaty: parliaments started to ask governments for more comprehensive information on EU drafts; EU affairs committees were established and/or gained more power (mandating the government, scrutiny reserve[149]); inter-parliamentary cooperation was intensified (for details see Chapter 2). Member States introduced different scrutiny procedures to monitor government activities in the Council. Governments became restricted by national parliaments or by specialised parliamentary committees in negotiation.[150] They can even be seen as 'external veto players' when they reject their government's position on an EU draft, indirectly influencing European decision-making.[151]

Norton distinguishes three stages of adaptation.[152] The first stage (from the 1950s to the mid-1980s) was characterised by limited national parliamentary involvement, with almost no procedural changes. MPs took little interest in European affairs, which they considered as foreign affairs. The second phase (from 1980s to the Maastricht Treaty) was marked by the establishments of EACs in national parliaments and better access to information. Parliaments held their first COSAC meeting in November 1989, and the Assizes[153] in 1990. In the third phase, which – in my opinion - lasted until the entry into force of the Lisbon Treaty, national parliaments were viewed as a means of 'addressing the democratic deficit' within the EU. First a declaration (1993), later a protocol (1998) was attached to the Treaties; national parliaments' involvement in the work of the Convention on the Future of Europe was proof of these developments.

[148] ROMETSCH and WESSELS, Conclusion, op. cit. p. 334.
[149] Mechanism first used by the Parliaments of the United Kingdom. Until the end of parliamentary examination of a European draft, the competent minister must refrain from voting in the Council.
[150] O'BRENNAN and RAUNIO, Introduction, op. cit. p. 5.
[151] AUEL, Katrin and BENZ, Arthur, The politics of adaptation: The Europeanisation of national parliamentary systems, *The Journal of Legislative Studies*, 2005, Vol. 11, No. 3/4, pp. 372–393 at p. 378.
[152] NORTON, Conclusion, op. cit.
[153] A conference held in Rome with the participation of national parliaments of the Member States and the European Parliament.

Without doubt, these three stages have to be completed by a fourth, beginning with the so-called political dialogue and the Lisbon Treaty, characterised by direct communication between European institutions and national parliaments (see Chapter 2). National parliaments, consequently, have gradually 'improved their position' individually, collectively and by gaining recognition in the European constitutional order.[154] Rizzuto even states that European integration has led to a 'positive spill over', as parliaments have tried to strengthen their position vis-à-vis their governments with more effective scrutiny.[155]

Passive and active Europeanization of national parliaments can also be distinguished.[156] With regards to the first, Auel refers to the early decades of integration, during which national parliaments only suffered a loss of power without reacting to the new situation. Active Europeanization, on the other hand, is characterised by the attempt on the part of parliaments to adapt to integration and 'upload' their preferences. Töller proposes three different dimensions of the Europeanization of national parliaments: legislative, institutional and strategic. The first describes the restriction of the legislative options of the parliaments, the second covers institutional and procedural developments for scrutiny of government in European issues, and finally the third is MPs taking the EU into account and adjusting routines accordingly.[157] Auel and Benz also examine the strategic adaptation of national parliaments, arguing that the basic logic of interaction between majority, opposition and government can be also changed.[158]

It is possible that the EU has also benefited national parliaments in another way. Duina and Oliver identified precedent setting and policy transfer as two mechanisms for this.[159] They argue that the EU sets legal precedents in areas previously beyond the remit of national parliaments (e.g. environment, gender equality). National parliaments may, thus, expand their legislative activity and EU law can act as a catalyst. As an example of policy transfer, Duina and Oliver rely on an open method of coordination

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[154] O'BRENNAN and RAUNIO, Introduction, op. cit. p. 15.
[155] RIZZUTO, National parliaments and the European Union, op. cit. p. 97.
[156] AUEL, Introduction, op. cit. pp. 306–307.
[157] TÖLLER, Annette Elisabeth, How European Integration Impacts on National Legislatures: The Europeanization of The German Bundestag, *Center for European Studies Program for the Study of Germany and Europe Working Paper Series* 06.2, 2006, available at http://www.ces.fas.harvard.edu/publications/docs/pdfs/toller.pdf accessed 31/05/2012, p. 5.
[158] AUEL and BENZ, The politics of adaptation, op. cit. p. 373.
[159] DUINA, Francesco and OLIVER, Michael J., National Parliaments in the European Union: Are There Any Benefits to Integration?, *European Law Journal*, 2005, Vol. 11, No. 2, pp. 173–195.

(OMC) that also involves parliaments. OMC has put national parliaments in a position to produce laws of a higher quality. The weak side of their argument is that the amplification of legislative areas does not necessarily mean a stronger position of parliaments, if other factors (party government, the information monopoly of the government) remain the same.

Despite all institutional and functional changes, national parliaments are still rarely seen as influential actors on the European scene. National parliaments are not necessarily able to influence the content of a European draft, even to (re)direct the position of the government.[160] As Maurer observes, there is 'a considerable legal constitutionalisation and institutional adaptation, and … modest impact with regard to the real patterns of participation'.[161] As has already been mentioned above, the increasing role of QMV in Council, the highly technical character of European legislation, the lack of transparency and the speed of decision-making, the lack of national parliamentary resources,[162] the workload of parliaments, and the commitment towards integration all limit national parliaments' ability to be influential players.

Three years after the entry into force of the Lisbon Treaty the question again arises of whether constitutional change at a European level triggers legal, institutional and functional changes in national parliaments. The majority of Member States have approved constitutional or statutory modifications to adjust their legal systems to the new Treaty.[163] Kiiver assumes that the real impact of the Lisbon Treaty for national parliaments would not be the conferral of new powers, but the incentive for parliamentarians to 'take their European role seriously' by keeping EU matters on their agenda or even sharpen scrutiny of European Affairs.[164]

It must be noted that if institutional changes triggered by the Lisbon Treaty may not be a sufficient incentive for national parliaments to engage in European issues, some events occurring since the beginning of the 2010s have shown that European issues do matter in national elections or party politics and it can be worthwhile investing more resources in European affairs. Two striking examples are the following: the economic

[160] O'BRENNAN and RAUNIO, Introduction, op. cit. p. 5.
[161] MAURER and WESSELS, Major Findings, op. cit. p. 19.
[162] AUEL, Introduction, op. cit. p. 307.
[163] For Hungary see Chapter 3; CRAIG, The European Union Act 2011, op. cit.; COSAC's Thirteenth Bi-annual Report: Developments in European Union, Procedures and Practices Relevant to Parliamentary Scrutiny, May 2010, pp. 11–16.
[164] KIIVER, Philipp, European Treaty Reform and National Parliaments: Towards a New Assesment of Parliament-Friendly Treaty Provisions, in WOUTERS et al., *European Constitutionalism beyond Lisbon*, op. cit. pp. 131–146 at p. 145.

crisis since 2008 has raised serious questions in relation to what Member States want from European integration. European crisis management brought about political crises, not only in the most affected Member State (Greece), but also in Slovakia, where the government resigned in 2011 because the parliament did not approve the country's participation in the European Financial Stability Facility. After decades of complaints about the lack of European issues at national elections, in 2012 during the French presidential elections, one of the main promises of the president in office was a review of the Schengen rules, while his main rival called for the renegotiation of the European Fiscal Pact. Due to the economic crisis, EU-scepticism is increasing in Europe. It can be anticipated that national parliaments will engage more time and effort to follow European developments.

3 Parliamentarism and Europeanization in Hungary

Parliaments of CEE do not follow exactly the same development as their Western counterparts. While in Western Europe parliaments were worried about adapting their structures to the deepening European integration, CEE parliaments had to consolidate their position among the new democracies and prepare their countries for EU Membership at the same time. In fact, in the 1990s the reinforcement of parliamentary mechanisms took place in the CEE, at least compared to the communist era.[165] This does not mean, however, that symptoms of Western European deparliamentarisation (the dominant position of the government) cannot be found there too. The main characteristic of the CEE parliamentary democracies is that during the transition and the first years of democracy, parliaments were key actors in political life and appeared more powerful than Western parliaments.[166] With the stabilisation of party systems and the formation of a core executive, the balance between parliaments and governments became similar to that of the established Western parliamentary democracies. The process of European integration, including the transposition of the *acquis communautaire,* needed a high degree of centralisation which again favoured the governments.[167] The Hungarian development follows the above pattern.

[165] GEORGIEV, Democracy in the EU, op. cit. p. 115.
[166] KOPECKÝ, Petr, Power to the Executive! The Changing Executive-Legislative Relations in Eastern Europe, *The Journal of Legislative Studies*, 2004, Vol. 10, No. 2/3, pp. 142–153 at pp. 143–144.
[167] Ibid., pp. 148–150.

Modern Hungarian parliamentarism dates back to 1848, when through a revolutionary political transformation civic democracy and liberalism was established. With the creation of a National Assembly elected by direct suffrage a constitutional parliamentary monarchy with accountable ministries was set up. Parliament existed under different regimes, including non-democratic ones. During the period from 1948 to 1990 - the communist dictatorship - parliamentary elections were not democratic,[168] and the Parliament, sitting for only a few short sessions per year,[169] did not fulfil its fundamental functions. Legislation was ensured by the legislative decrees of the government, the control of government was non-existent, and the field of political socialisation was the party, not the parliament. Due to the strong parliamentary tradition, the elite of the regime change of 1989/90 had a clear vision of how to form a parliamentary government in Hungary: a semi-strong parliament, a semi-strong government and a weak head of state. But already after the first democratic elections of 1990, government and opposition, motivated by fears of government instability, agreed to strengthen the government.[170]

The Hungarian National Assembly is a medium-strong, policy-influencing parliament.[171] The relative strength of the parliament resides in various facts. First of all the scope of legislative subjects, enumerated in the constitution, which can only be regulated by an act adopted with a two-thirds majority vote of the MPs in attendance used to be very broad in the 1989 version of the constitution. In practice this means that the government parties, if they do not have a two-thirds majority in Parliament, have to gain the support of the opposition to legislate in substantial matters (including acts on fundamental rights, elections, courts, prosecution, the constitutional court, etc.). These areas were reduced in 1990 and slightly modified in 2012 with the new Fundamental Law (see Chapter 3, introduction), but there are still a large number of acts which can only be adopted by a two-thirds majority (the so-called cardinal or organic laws). The strength of the parliament's position is also reflected in the fact that the prime minister cannot dissolve the parliament. As we will see in the following, this theoretical strength is not necessarily reflected in political reality.

[168] Only one party could be voted for; furthermore, until the 1980s there was only one candidate in each constituency.
[169] E.g. During the last non-democratic cycle between 1985 and 1990, the National Assembly held 14 sessions and worked altogether only 100 hours.
[170] ILONSZKY, Gabriella, From Minimal to Subordinate: A Final Verdict? The Hungarian Parliament, 1990–2002, *The Journal of Legislative Studies*, 2007, Vol. 13, No. 1, pp. 38–58 at p. 39.
[171] GYŐRI, The role of the Hungarian National Assembly in EU policy-making after accession to the Union, op. cit. p. 222.

The Hungarian unicameral parliament and its relation to the government have gone through several transformations. Ilonszky, examining three parliamentary cycles between 1990 and 2002, concludes that all of these cycles can be characterised differently. In the first period of coordinate parlamentarism, legislative initiative was dominated by the coalition government; parliament was, however, able to get some of its own legislative agenda approved. Party discipline was not absolute. The second term of 1994-98, with a coalition government having more than two-thirds of the parliamentary seats, was a period of rationalisation in search of effectiveness (from the point of view of the government which gained power over the parliament). During the third cycle of 1998-2002 a smaller coalition party in the government gradually broke up which led the bigger government party to marginalise the parliament to avoid large scale confrontation with opposition. From a coordinate parliament, the Hungarian National Assembly had, by the end of the 1998-2002 cycle and two years before the country's accession to the EU, become a subordinate parliament. The legislative and policy making function was dominated by the government and even diminished. This phenomenon was not counterbalanced by scrutiny functions,[172] and was even accentuated with the enormous work of the transposition of the *acquis communautaire* before the accession to the Union.

During the next two parliamentary cycles of 2002-2006 and 2006-2010, when the same parties formed a coalition, the operation of Parliament was re-consolidated. Subordination was not striking, but the Parliament's reactive position did not change. In 2008 the coalition government split and the one party government lost its majority in Parliament. However, the former coalition party assured its support in Parliament. Nonetheless during the last two years of the 2006-2010 cycle the legislative work of the Parliament was reduced to a minimum level.

The 2010 elections again brought new elements into the work of parliament. The government had a two-thirds majority in Parliament, and - based on its power to restructure the whole constitutional system of Hungary - has tended to 'use' the Parliament to rapidly rubber-stamp its decisions. The legislative workload has been considerable, and the legislative procedures have often been accelerated. The government has dominated the setting of the agenda, even if bills for major organic laws are often introduced by government party MPs, and not by the government itself.

[172] ILONSZKY, From Minimal to Subordinate, op. cit. p. 54–56.

It is clear from the above brief summary of the government-parliament relationship since the change of regime, that this relationship is influenced by the actual political situation. Parliament has not been the winner in the process. However, the direct impact of the European integration on deparliamentarisation is hard to prove empirically. This is clearly revealed in the transposition of almost the entire *acquis communautaire* into the domestic legal order before accession (2004). The whole process took more than ten years, beginning from the early 1990s. The following interesting evaluation is valid for all CEE countries, including Hungary: 'Enactment of EU-related laws was often fast-tracked, with little or no serious parliamentary discussions, and with the executive controlling the process throughout. This was perhaps no bad thing, given the notorious inefficiency and incompetence of parliamentary institutions in post-communist states, and was arguably the only way to ensure that the enormous body of EU law was transposed into domestic legislation. ... [I]t strengthened the executive bodies over their parliamentary equivalents… [The goal of accession] gave the executive more power to by-pass parliament and to justify the centralisation of decision-making by the emergency-like circumstances.'[173]

Europeanization in Hungary and in the CEE was also different from that in Western European, as it occurred to a great extent before accession, as we have just seen. What is more, the EU's adjustment requirements also included an explicit political and economic conditionality (Copenhagen criteria), which covered many rules for which EU institutions have no legal competences vis-à-vis member states.[174] Sedelmeier observes that the means of Europeanization in the acceding countries was different from those of the Member States; instead of legal sanctions, they included conditional incentives, normative pressure, and persuasion.

The effects of Europeanization in the CEE are similar to those in Western Europe, as far as national parliaments, including the Hungarian National Assembly, are concerned. Given that Chapter 3-5 will describe in detail the institutional, procedural and functional changes in the Hungarian Parliament, here I only refer to the establishment of the Committee on European Integration Affairs in 1992 (soon after the introduction of the accession application), the establishment of the scrutiny procedure

[173] SADURSKI, Wojciech, 2006, Introduction: The Law and Institutions of New Member States in Year One, in SADURSKI, Wojciech, ZILLER, Jacques and ZUREK, Karolina (eds.) *Après Enlargement: Legal and Political Responses in Central and Eastern Europe*, European University Institute, Florence, 2006, pp. 3–18 at p. 7. cited by SEDELMEIER, Europeanisation in new member and candidate states, op. cit. p. 17.
[174] SEDELMEIER, Europeanisation in new member and candidate states, op. cit. p. 4.

from the accession in 2004, and the procedure for control of subsidiarity. The Hungarian parliament, like CEE parliaments generally, from the 1990s was willing to learn from the experiences of the (old) Member States. Its delegation was present in the Convention on the Future of Europe, whose aim was to build a European Constitution, where the role of national parliaments was a central topic, emphasising the importance of parliamentary scrutiny of European affairs.

In the case of CEE parliaments, Europeanization has, consequently, happened through 'lesson-drawing'. This mechanism of Europeanization is conceptualised by Schimmelfennig and Sedelmeier and understood as a model where internal change is induced by the CEE state, not by members of the Union.[175] The logic of lesson-drawing is that the internal actor considers change as an effective remedy to inherently domestic needs, rather than taking into consideration EU incentives. By analogy, the lesson-drawing mechanism is also valid in the case of parliamentary adaptation, as they emulated parliamentary scrutiny of other parliaments or were at least inspired by them. It must be noted again that in the case of parliaments' handling of EU affairs, there is no European rule or one single model to follow.

Despite doubts about CEE national parliaments' ability to conduct effective scrutiny,[176] empirical studies[177] of new Member States indicate that their parliaments have on average implemented more comprehensive scrutiny mechanisms than the parliaments of the older EU countries.[178] This does, however, not necessarily mean that their scrutiny is more effective. Again, there is a huge variation among CEE parliaments regarding their willingness to deal with European affairs.

Concluding remarks

The evaluation of the state and deficiencies of European democracy divides academics. The symptoms of the illness of European democracy are, from the perspective of our

[175] SCHIMMELFENNIG, Frank and SEDELMEIER, Ulrich, Introduction: Conceptualizing the Europeanization of Central and Eastern Europe, in SCHIMMELFENNIG, Frank and SEDELMEIER, Ulrich (eds.), *The Europeanization of Central and Eastern Europe*, Cornell University Press, Ithaka, 2005, pp. 1–28 at pp. 8–9. They identify further external incentives, and social learning mechanisms of Europeanization (i.e. reception of EU rules).
[176] CYGAN, Adam Jan, *National Parliaments in an Integrated Europe*, op. cit. p. 222.
[177] SZALAY, *Scrutiny of EU Affairs in the National Parliaments of the New Member States*, op. cit.; O'BRENNAN and RAUNIO, *National Parliaments within the Enlarged European Union*, op. cit.; JUHÁSZ–TÓTH, Angéla, Az Országgyűlés tevékenységének európaizálódása, op. cit.
[178] RAUNIO, National Parliaments and European Integration, op. cit.

research, twofold: the lack of sufficient accountability of the Council to parliaments is accompanied by a decline in national parliamentary influence over policy making. The assessment of deficits and solutions depends mainly on normative priorities. In almost every model of European democracy national parliaments have a normative role. Either this role comes down to the domestic scrutiny of the government's activities in European affairs or moves towards a direct participation in European decision-making through the control of subsidiarity. The underlying reasons behind the idea of national parliaments' involvement in European decision-making procedures originally aimed to compensate national parliaments for the loss of legislative competencies; it was then hoped that with their enhanced role democracy and legitimacy in the EU would improve. It must, however, be noted that stronger parliamentary involvement in European integration is surely not a sufficient means to achieve this objective. Nonetheless, stronger parliamentary involvement in EU affairs is of primordial importance or even indispensable for increasing the democratic legitimacy of the EU.

The evolution of European integration not only sheds light on the position of national parliaments, but also entailed internal changes within them. At the beginning, the gradual transfer of legislative power to European institutions highlighted what parliaments lost through integration. Later, it became clear that national parliaments are not necessarily declining, but are adapting to the new European polity both institutionally and procedurally. As Norton affirms, parliaments 'are functionally adaptable bodies, the tasks ascribed to them varying over time and between countries'.[179] The importance of the traditional parliamentary functions has undoubtedly changed in the 20th century. Besides, control of government has to be completed with European matters too, as is already reflected in the Treaty. Parliaments as a public forum should also shift attention to European policies and politics. Furthermore, a new function for national parliaments derives from the Treaty of Lisbon: control of the application of subsidiarity.

Parliaments of the CEE, including Hungary, have gone through a different development. More than twenty years since the changing of the regime and after almost ten years of Union membership, their Europeanization appears, however, similar to that of the parliaments of the old Member States. Before examining the Hungarian National

[179] NORTON, Philip, General Introduction, in NORTON, *Legislatures*, op. cit. pp. 1-16 at p. 1.

Assembly's adaptation to European integration, in Chapter 2 I will explore the national parliament's place in the EU constitutional system.

Chapter 2

National parliaments in the EU constitutional system: rights and opportunities in decision-making procedures

'*Maybe not formally speaking, but at least politically speaking, all national parliaments have become, in a way, European institutions*'
Herman Van Rompuy[180]

INTRODUCTION

Express mention of national parliaments in the European primary law emerged for the first time with two declarations (no. 13 and 14) attached to the Maastricht Treaty.[181] The Amsterdam Treaty contained a legally binding protocol on the role of national parliaments.[182] The Lisbon Treaty amended this protocol by Protocol 1 on the role of national parliaments in the EU, which was attached to the Lisbon Treaty (further referred to as Protocol 1) and included important provisions relating to national parliaments in the protocol on the principles of subsidiarity and proportionality (further referred to as Protocol 2).[183] The Treaties in force contain several articles referring explicitly to national parliaments. It must be noted that the notion of 'national parliament' is not provided in the Treaties. It is up to the constitutional rules of each

[180] *Euobserver*, Van Rompuy: National parliaments are EU institutions, 28/02/2012, http://euobserver.com/institutional/115395, accessed on 23/10/2012.
[181] Declaration no. 13 on the role of national Parliaments in the European Union and Declaration no. 14 on the Conference of the Parliaments (OJ C 191, 29 July 1992).
[182] Protocol on the role of national parliaments in the European Union (OJ C 340, 10 November 1997).
[183] Protocol (no. 1) on the role of National Parliaments in the European Union; Protocol (no. 2) on the application of the principles of subsidiarity and proportionality (OJ C 306, 17 December 2007).

Member State to decide what functions or rights the individual chambers may have in the case of bicameral parliaments or regional parliaments.[184]

Article 10 TEU provides that the functioning of the Union shall be founded on representative democracy. While citizens are directly represented at Union level in the European Parliament, Member States are represented in the European Council by their Heads of State or government and in the Council by their governments, themselves democratically accountable either to their national Parliaments, or to their citizens. The Article is of purely declarative value and does not change anything in the functioning of the Union or the constitutional rules governing national level accountability.[185]

Article 12 TEU provides that national parliaments contribute actively to the good functioning of the Union.[186] Although the wording does not explicitly imply a duty, some scholars consider the provision as involving an obligation on the part of the national parliament to take an *active* part in the functioning of the Union.[187] Article 12 TEU enumerates the mechanisms available for this active participation. The detailed rules of these mechanisms can be found in other provisions of the Treaty and in Protocols 1 and 2. National parliaments are granted the right to receive information and draft legislative acts; control the respect of the principle of subsidiarity; participate in the evaluation of the implementation of the policies in the area of freedom, security and justice and in the monitoring of Europol and Eurojust; participate in the revision procedures of the Treaties; be notified of applications for accession to the Union; participate in the inter-parliamentary cooperation between national Parliaments and with the European Parliament.

The present Chapter applies a functional approach and looks first at national parliaments' right to information as a prerequisite for their participation in European decision-making procedures. Secondly it discusses the participation itself, and finally the inter-parliamentary cooperation as a means for facilitating the participation. The aim

[184] See Declaration no. 51 attached to the Lisbon Treaty by Belgium, making it clear that in accordance with its constitutional law, not only the two chambers of the Federal Parliament but also the parliamentary assemblies of the Communities and the Regions act as components of the national parliamentary system or chambers of the national Parliament.

[185] See also KIIVER, European Treaty Reform and the National Parliaments, op. cit. p. 140.

[186] An English version of the draft Treaty contained 'shall provide' suggesting obligation for national parliaments. See House of Commons, European Scrutiny Committee, *35th Report of Session 2006–2007*, HC 1014, 9 October 2007, points 69–70.

[187] See WYATT, Derrick, Could a "Yellow Card" for National Parliaments Strengthen Judicial As Well As Political Policing of Subsidiarity?, *Croatian Yearbook of European Law & Policy*, 2006, Vol. 2, pp. 1–17 at p. 13; CYGAN, The parliamentarisation of EU decision-making?, op. cit. p. 493; CYGAN, Adam, National parliaments within the EU polity—no longer losers but hardly victorious, *ERA Forum*, 2012, Vol. 12, pp. 517–533 at p. 529.

of the Chapter is to analyse the relevant Treaty provisions, evaluate their legal and practical importance or limits and identify possible problems in their application.

I THE RIGHT TO INFORMATION: A PREREQUISITE OF PARTICIPATION

The national parliaments' right to information covers the transfer of certain documents and the notification of certain decisions defined in the Treaties. These documents serve as a basis for the national parliament, both for their participation in European decision-making procedures and for national scrutiny of European affairs.

Under the Maastricht declaration no. 13, governments ensured that national parliaments receive Commission legislative proposals in good time for information or 'possible examination'. The Amsterdam Protocol provided that all Commission consultation documents (green and white papers and communications) had to be promptly forwarded to national parliaments without specifying who was responsible for the transmission of the consultation documents. With regard to the legislative proposals, the Amsterdam protocol did not differ substantially from the previous provisions of declaration no. 13: the proposals had to be made available in good time so that the national government 'may' ensure that its own national parliament receives them as is appropriate. The aim of the transfer of these documents is their 'possible examination' by the national parliaments. The Amsterdam Protocol, in order to ensure time for this examination, requires that a six-week period elapses between a legislative proposal being made available in all languages by the Commission and the date when it is placed on a Council agenda. The Council, however, can depart from this rule in a case of urgency, but it has to give reasons for this.

The Lisbon Treaty enlarged the scope of the documents transferred to national parliaments and the time available for parliamentary examination. Protocol 1 clarifies that either the author of the (draft) act (i.e. the Commission, the European Parliament) or the Council[188] is responsible for the transfer of consultation documents, instruments

[188] This applies in the case of acts originating from a group of Member States, the Court of Justice, the European Central Bank or the European Investment Bank, since draft legislative acts include not only proposals from the Commission, but also initiatives from a group of Member States, initiatives from the European Parliament, requests from the Court of Justice, recommendations from the European Central Bank and requests from the European Investment Bank, for the adoption of a legislative act.

of legislative planning and draft legislative acts to the national parliaments upon publication. Not only drafts, but amended draft legislative acts (proposals) have to be forwarded to national parliaments, as well as legislative resolutions of the European Parliament and positions of the Council.[189] This means that national parliaments are informed about the developments of the legislative procedures. Agendas for Council meetings and their outcome, and the annual report of the Court of Auditors are also forwarded to national parliaments.[190] Finally, each year the Commission has to submit a report on the application of Article 5 TEU (principles of conferral, subsidiarity and proportionality) to national parliaments.[191]

Under Protocol 1 an eight-week period has to elapse between a draft legislative act being made available to national parliaments and the date when it is placed on a provisional agenda for the Council for its adoption or for adoption of a position under a legislative procedure. Protocol 1 stresses that no agreement may be reached on a draft legislative act during this period. It is, however, unclear, whether 'no agreement' also includes the agreement of the lower levels of the Council, i.e. Coreper and working groups. Nonetheless, even if an agreement is reached in Coreper it can be withdrawn by any government from the 'A lists' of the Council agenda.[192] These eight weeks correspond to the deadline for the submission of reasoned opinion in the early warning mechanism on the principle of subsidiarity (see section II.2 below). A ten-day period has to elapse between the placing of a draft legislative act on the provisional agenda for the Council and the adoption of a position. Consequently, national parliaments have at least a total of 66 days to examine EU draft legislative acts and express opinions on them to the government. Under the urgency clause, applicable both to the eight-week and ten-day period, exceptions to the rule of not placing on the agenda and 'no agreement' are possible in cases of urgency, the reasons for which have to be stated in the act or position of the Council.

The practical importance of the above deadlines is reduced, since in the 'normal' timetable of the adoption of legislative acts a lot more than eight weeks passes before the Council adopts the act or the common position. This is particularly true in the ordinary legislative procedure, and any other occasions when the European Parliament

[189] Article 4 of Protocol 2.
[190] Articles 5 and 7 of Protocol 1. It is worth mentioning that the Council has published voting records since 1994 and has put them on internet since 1999.
[191] Article 9 of Protocol 2.
[192] Article 3(8) of the council decision 2009/937/EU of 1 December 2009 adopting the Council's Rules of Procedure.

is involved in the decision-making, because the Council is obliged to wait for the European Parliament before adopting its position. This means that in practice national parliaments have more time for general scrutiny (but not for subsidiarity checks). On the other hand, in urgent cases the decision-making procedure can be shorter, but in such cases the 'urgency clause' would probably apply.

National parliaments are notified of any proposals for amendment of the Treaties (ordinary revision),[193] the European Council's intention to make use of the general *passerelle* (bridging) clauses[194] (simplified revision) and applications for accession of a third country to the Union.[195] National parliaments are notified of the planned application of the special *passerelle* in the area of family law.[196] The weakness of the wording of these provisions is that in none of the cases is it explicitly spelt out who is responsible for the notification; it can, however, be deduced that the author of the act has this obligation. The Commission, using the procedure for monitoring the subsidiarity principle, must 'draw national Parliaments' attention' to proposals within the framework of the flexibility clause.[197]

The Lisbon Treaty establishes some special provisions in the area of freedom, security and justice: national parliaments are informed of the content and results of the evaluation of the implementation of the Union policies in this area.[198] The regulation determining Eurojust's structure, operation, field of action and tasks has to establish the arrangements for involving national parliaments in the evaluation of Europol's and Eurojust's activities.[199] National parliaments are also informed of the proceedings of the standing committee set up within the Council in order to ensure that operational cooperation on internal security is promoted and strengthened.[200]

It must be observed that a large proportion of the documents forwarded to national parliaments has been public and available through the internet for many years. Besides, it is difficult to imagine that a national parliament does not get to know if, for example, a third country applies for membership. On the other hand, non-legislative acts, i.e. acts

[193] Article 48(2) TEU.
[194] Third paragraph of Article 48(7) TEU.
[195] Article 49 TEU.
[196] Article 81(3) TEU: commission proposal on decisions determining certain aspects of family law with cross-border implications which may be adopted by ordinary legislative procedure.
[197] Under Article 352 TFEU, if action by the Union should prove necessary within the framework of the policies defined in the Treaties, and the Treaties have not provided the necessary powers, the Council can adopt the appropriate measures.
[198] Article 70 TEU.
[199] Article 85 TFEU.
[200] Article 71 TEU.

of Common Foreign and Security Policy (CFSP), are not covered by the access to information, although subsidiarity applies in this area too. The provisions on information and notification are important constitutionally, because they serve as a legal basis for national parliaments' control and participation in European decision making procedures, although their practical importance is less significant.

II PARTICIPATION IN DECISION-MAKING PROCEDURES

In the following section Treaty provisions on the national parliaments' participation in European decision-making procedures will be discussed. In the context of the present study, the notion 'decision-making procedures' is applied in a broad sense, to include all the procedures which result in the adoption or amendment of the primary and secondary law. First, national parliaments' role in the revision of the Treaties and the decisions requiring ratification is examined. This is followed by a detailed analysis of the role of national parliaments in ensuring that the application of the subsidiarity principle takes place. Finally, the opportunity to engage in political dialogue with the Commission is presented.

1 Treaty revisions and ratifications

The role of national parliaments in the ratification of the Treaties has always figured, inherently, in the primary law which requires the approval of these texts according to the 'constitutional requirements of the Member States'; this entails parliamentary approval and/or a referendum. With the innovations introduced by the Lisbon Treaty, the role of national parliaments in the making of the primary law is made explicit and reinforced.

National parliaments take part in the Treaty revision procedures, both in ordinary and simplified procedures, in accordance with Article 48 TEU. In the course of the ordinary revision, representatives of the national parliaments participate in the work of the Convention convened by the President of the European Council with the aim of examining the proposals for amendments of the Treaty. The Convention is composed of

representatives of national parliaments, of the Heads of State or governments of the Member States, of the European Parliament and of the Commission. The Convention adopts by consensus a recommendation to an intergovernmental conference (IGC). The Convention is, accordingly, an advisory body. The text adopted is just a recommendation for the IGC, even if it is politically significant. It must be noted that Article 48 TEU is silent about the proportion of the different kinds of participants. More than half of the members of the Convention of 2002/2003 on the Future of Europe which drew up the text of the Constitutional Treaty were representatives of national parliaments, two from each Member State and candidate countries. This may serve as a precedent for future Conventions.

While the incorporation of the convention method into the Treaties is to be welcome, national parliaments' participation is not a guarantee of the enforced legitimacy of the process, which was the basic idea behind the new rules. Taking account of the French and Dutch referenda, the participation of national MPs in the work of the Convention 2002/2003 does not seem to have legitimised the process.[201] One aim of the convention method is, in fact, to stimulate parliamentary debate, as a result of which national parliaments can make inputs to any future amendments. Representatives of parliaments in the Convention should give continuous feedback to their home country and wait for opinions. At the Convention 2002/2003 most parliamentary representatives worked in some isolation from their parliaments.[202] It seems that national parliamentarians are not in a self-evident situation in a convention: they certainly represent the people of their Member States. But should they also represent the interests of their party or the national parliaments as such? Since governments are present in the Convention to represent the national interest, can national parliaments bring added value? These uncertainties can explain why

[201] KIIVER, Philipp, The Composite Case for National Parliaments in the European Union: Who Profits from Enhanced Involvement?, *European Constitutional Law Review*, 2006, Vol. 2, No. 2, pp. 227-252 at p. 251.

[202] VOS, Hendrik, National/Regional Parliaments and EU Decision-Making under the New Constitutional Treaty, *European Institute of Public Administration*, Working Paper, *2005/W/02*, available at http://www.eipa.eu/files/repository/product/20070816101404_FC0502e.pdf accessed 17/02/2012, p. 10; KIIVER, Philipp, Parliaments, Regions and European Integration: Fresh Perspectives on the European Constitutional Order, in KIIVER, Philipp (ed), *National and Regional Parliaments in the European Constitutional Order*, Europa Law Publishing, Groningen, 2006, pp. 1-11 at p. 10.

representatives of national parliaments at the Convention 2002/2003 lacked cohesion in their position, and had different priorities, unlike for example the EP group.[203]

National parliaments can find themselves pushed out of the elaboration process of the Treaty modification, if, considering the extent of the amendments, the European Council decides not to convene a Convention, but calls an intergovernmental conference directly.[204] The Convention seems to be reserved only for complex or comprehensive modifications of the founding Treaties. At the end of the ordinary revision procedure, ratification, in most of the cases by national parliaments, applies.

According to the simplified revision procedure, not even an IGC is necessary for modification; national parliaments, however, play a role. There are two cases for simplified revision: i) if the amendment only concerns internal policies and actions without increasing Union competences, the European Council can adopt a decision amending the relevant provisions, which has to be ratified by the Member States;[205] ii) the so-called general *passerelle* clauses, with which a switch from unanimity to qualified majority vote or from the special legislative procedure to ordinary legislative procedure can be employed by the European Council. If any national parliament makes the European Council aware of any opposition within six months of the date of the notification of the proposals on the application of *passerelle* clauses, the decision cannot be adopted. The *passerelle* clause thus provides each national parliament with a right of veto. Contrary to Treaty amendments, where every Member State has to ratify, here there is no obligation to pass any national parliamentary act, it remains simply a possibility.[206] While previously the act of the parliament assured approval, here it forms an obstacle to Treaty amendment.

Apart from the above mentioned general *passerelle* clauses, the Treaties contain several specific *passerelle* clauses permitting changes in primary law. In one of these

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[203] FRAGA, Ana, After the Convention: The Future Role of National Parliaments in the European Union (And the day after … nothing will happen), *The Journal of Legislative Studies*, 2005, Vol. 11, No. 3, pp. 409-507 at p. 492; KIIVER, Parliaments, Regions and European Integration, op. cit. pp. 9-10.

[204] For the first time after the entry into force of the TL, this latter possibility was invoked for the negotiations concerning the Treaty amendment on the composition of the European Parliament (Protocol amending the Protocol on transitional provisions annexed to the Treaty on European Union [OJ 2010 C 263, p.1]).

[205] Article 48(6) TEU. This process was applied in 2011 to introduce a stability mechanism as a limited amendment to the Article 136 TFEU for Member States whose currency is the euro (2011/199/EU Council Decision of 25 March 2011).

[206] Except for Germany, where the 'Lisbon decision' of the Bundesverfassungsgericht (federal constitutional court) stated that the parliamentary veto right is not a sufficient equivalent of the requirement of ratification and therefore approval by the representative of the German government of the recourse to the *passerelle* clauses always requires a law passed by two-thirds majority, simply inaction is not sufficient (BVerfG, 2 BvE 2/08, 30 June 2009, see point 319).

cases, namely regarding measures concerning family law with cross-border implications,[207] a national parliamentary veto is provided in the same way as in the case of the general *passerelle* clauses. The other specific *passerelle* clauses do not allow for the participation of national parliaments. The Council may decide to render the ordinary legislative procedure applicable to certain aspects of social[208] and environmental policy[209] in cases where special legislative procedure applies in any case. The European Council may authorise the Council to act by a qualified majority rather than unanimity when adopting the regulation laying down the multi-annual financial framework.[210] In the context of enhanced cooperation, the Council, acting unanimously, may change unanimity to QMV as well as shift from a special to ordinary legislative procedure.[211] Finally, the Council can enlarge the possible scope of certain decisions in the area of judicial cooperation in criminal matters.[212] These decisions in fact represent a Treaty amendment without any approval by national parliaments. What is more, these decisions are adopted in non-legislative procedures where national parliaments cannot submit reasoned opinions on the breach of subsidiarity.

Taking into account of all the possibilities to avoid the convention method, which is declared an *ordinary* procedure, one can conclude that active participation of national parliaments in the formulation of the adoption of the most important European texts is more likely to happen rather exceptionally.

National parliaments' power in the making of primary law does not stop at the convention method and *passerelle* vetoes. The Treaties identify acts of primary and secondary law which have to be adopted by the Member States 'in accordance with their respective constitutional requirements'. In practice, this means an act of the national parliament or a referendum. In any case ratification is a 'take it or leave it' decision with no possibility for national parliaments or citizens to amend the content of the texts.

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[207] Article 81 TFEU.
[208] Article 153(2) TFEU.
[209] Article 192(2) TFEU.
[210] Article 312(2) TFEU.
[211] Article 333(1) and (2) TFEU
[212] Under Article 82(2) TFEU the European Parliament and the Council may establish minimum rules concerning, for example, the rights of individuals in criminal procedure, or the rights of victims of crime. The Council may identify any other specific aspects of criminal procedure to be regulated by minimum rules. According to Article 83(1) TFEU the Council may adopt a decision identifying other areas of crime (i.e. other than those enumerated in the Treaty) where minimum rules can be adopted in the areas of particularly serious crime with a cross-border dimension. Finally, under Article 86(4) TFEU the European Council may adopt a decision amending Article 86(1) in order to extend the powers of the European Public Prosecutor's Office.

As the Treaties themselves are international agreements, their ratification is necessary.[213] The same goes for the amendment of the Treaties and for the accession treaties (which themselves contain amendments to the Treaties). Ratification is also required for the mixed agreements which, falling into the shared or supporting competences, are concluded between the Union and the Members States on the one hand, and third countries on the other. Certain major decisions of constitutional importance are not subject to a formal amendment to the Treaties, nevertheless the 'organic law clause' applies.[214] This means that after the adoption of these major decisions or legislative acts by the Council, Member States have to ratify them.[215]

Although ratification constitutes a very strong tool in the hands of the national parliaments, it has happened only twice that a parliament did not approve the documents prepared by the Member States: in 1954 the French National Assembly rejected the European Defence Community, and in 1984 the Danish parliament did not ratify the Single European Act. The reasons for this quasi 'automatic' ratification can be that national parliaments may not wish to take the responsibility of refusing to ratify and thus very probably leading the EU to a constitutional crisis.[216]

2 Legislative procedures: subsidiarity control by national parliaments

The Lisbon Treaty grants national parliaments the right to participate in EU legislative procedures. Their 'participation' is, however, very specific and limited. Through the so-called early warning mechanism they may indicate to the legislator institutions if they feel a draft legislative act breaches the principle of subsidiarity. In the following, I first present the emergence of the principle in the EU legal order and how national parliaments' involvement in its control have developed. Next, I discuss the most problematic elements of the early warning mechanism and evaluate its importance.

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[213] Article 54 TEU and Article 357 TFEU.
[214] DASHWOOD, *Wyatt and Dashwood's European Union Law*, op. cit. p. 80.
[215] Article 223 TFEU: uniform procedure for EP elections; Article 25 TFEU: strengthening the rights of EU citizens; Article 262 TFEU: act on conferring jurisdiction on the Court of Justice in disputes relating to the application of acts on intellectual property rights; Article 311, third paragraph TFEU: acts on the Union's own resources; Article 42 TEU: decision on common defence policy; Article 218 TFEU: the decision on the accession of the Union to the European Convention of Human Rights; the voting system of the Governing Council of the European Central Bank (Protocol no. 18 on the Statute of the European System of Central Banks and of the European Central Bank).
[216] See RAUNIO and HIX, Backbenchers Learn to Fight Back, op. cit. p. 142.

The Maastricht Treaty elevated subsidiarity to a constitutional principle of Community/Union law in order to compensate for the enlargement of the scope of the competences and the frequent use of QMV within the Council.[217] The Amsterdam Treaty codified, in a Protocol, the guidelines adopted in the Edinburgh European Council of December 1992 on the overall approach to applying the principle of subsidiarity. The Amsterdam Protocol contained various procedural and substantial requirements for the application of subsidiarity. Each institution had to ensure that the principle of subsidiarity was complied with. The Commission had to consult before proposing legislation, justify its proposals with regard to subsidiarity, and submit an annual report on the application of the principle. The European Parliament and the Council had to consider whether the Commission proposals were consistent with subsidiarity. The criteria defined in the Amsterdam Protocol for the substantial requirements[218] were eliminated from Protocol 2 of the Lisbon Treaty. The Amsterdam Treaty did not provide a role for national parliaments in subsidiarity control, contrary to the propositions made by several Member States.[219] However, COSAC was granted a right to address the institutions' contributions on European legislative activities, notably in relation to the application of the principle of subsidiarity.

In the Treaties in force a general expression of subsidiarity is found in the preamble and in Article 1 TEU which states that decisions are taken 'as closely as possible to the citizen'. This provision is more of a political statement, and it cannot be considered as having a legal effect.[220] The principle of subsidiarity as such is formulated in Article 5(3) TEU as follows:

> *[i]n areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local*

[217] DASHWOOD, *Wyatt and Dashwood's European Union Law,* op. cit. p. 114.

[218] To test the efficiency condition the following guidelines had to be used: i) the issue under consideration has transnational aspects which cannot be satisfactorily regulated by action by Member States; ii) actions by Member States alone or lack of Community action would conflict with the requirements of the Treaty or would otherwise significantly damage Member States' interests; iii) action at Community level would produce clear benefits compared with action at the level of the Member States.

[219] According to the Briefing No. 19 of the Intergovernmental Conference (Eighth update: 16th February 1997) on Subsidiarity and Demarcation of Responsibilities, Belgium, Denmark, France, Luxembourg, Austria and the UK supported the idea of national parliamentary control of subsidiarity (but not in the framework of COSAC). See http://www.europarl.europa.eu/igc1996/fiches/fiche19_en.htm#4 accessed 17/02/2012.

[220] See TOTH, A. G., A legal analysis of subsidiarity, op. cit. p. 38; BARBER, N. W., The Limited Modesty of Subsidiarity, *European Law Journal*, 2005, Vol. 11, No. 3, pp. 308-325 at p. 312.

level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.

This disposition lays down three conditions for Union action: a) the action must fall outside the exclusive competencies; accordingly the Union must enjoy a competence falling within the shared or supporting competences; b) the objectives of the proposed action cannot be sufficiently achieved by the Member States (the sufficiency criteria), and c) those objectives can, by reason of the scale or effects of the proposed action, be better achieved by the Union (the efficiency or added value criteria).[221] The subsidiarity principle is, thus, formulated as a two-step test: sufficiency and efficiency.[222] Article 5 contains a preference for the national (or regional and local) level legislation, and only insofar as the Member State action is insufficient *and* Union action is more effective can the EU legislate. Nevertheless, neither criterion establishes an objective point of comparison.[223]

Articles 5(3) and 12 TEU provide that national parliaments ensure compliance with the principle of subsidiarity in accordance with the procedure set out in Protocol 1. The latter requires that draft legislative acts be justified with regard to the principles of subsidiarity and proportionality. Protocol 2 introduces an early warning mechanism which gives eight weeks from the date of the transmission of a draft legislative act, in the official languages of the Union, to national parliaments for examination. If any national parliament (or parliamentary chamber) concludes that the exercise of the competence is not justified, it may send a reasoned opinion to the Presidents of the European Parliament, the Council and the Commission. The reasoned opinion states why the national parliament considers that the draft in question does not comply with the principle of subsidiarity. The institutions have to take account of the reasoned opinions independently of the number of opinions received. National parliaments can, thus, communicate their opinion directly to the European institutions, not through their respective government.

If the reasoned opinions reach a given threshold, two procedures apply, depending on the legislative procedure in the framework of which the draft is adopted and the

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[221] ESTELLA, Antonio, *The EU Principle of Subsidiarity and its Critique*, Oxford University Press, Oxford, 2002, p. 93.

[222] Wyatt suggests a single question to answer: 'Can the objectives of the proposed action *only* be achieved by [EU] wide action?'. If the answer is yes, the draft conforms to subsidiarity; if no, the action should be taken at national level because the objectives can be sufficiently achieved at national level. WYATT, Could a "Yellow Card", op. cit. pp. 5-7.

[223] ESTELLA, Antonio, *The EU Principle of Subsidiarity…*, op. cit. p. 95.

number of reasoned opinions sent by national parliaments. The reasoned opinions are counted on a voting system: unicameral parliaments have two votes, while parliaments that are not unicameral divide their two votes among their chambers. When reasoned opinions represent at least one-third of the votes (the 'yellow card' procedure), the draft has to be reviewed: and then maintained, amended or withdrawn. Reasons must be given for this decision.[224] This threshold is one quarter if the draft concerns the area of freedom, security and justice. Furthermore, if the draft is negotiated under the ordinary legislative procedure and reasoned opinions represent at least a simple majority[225] of the votes, the 'orange card' procedure applies. In this case, all three law-making institutions have to reconsider the draft. If the Commission maintains the proposal,[226] it submits the reasoned opinions to the European Parliament and the Council for consideration.[227] 55 percent of the Member States in the Council, or the majority of votes cast in the European Parliament, can hinder further negotiations, thus the decision-making is blocked.[228] National parliaments, individually or collectively, are consequently unable to reject any EU draft legislative act; it remains up to the institutions to decide whether to accept their objections.

Once the legislative act is adopted, the CJEU has jurisdiction in actions for annulment on grounds of infringement of the principle of subsidiarity brought by Member States or notified by them on behalf of their national parliament or a chamber of it.[229] National parliaments do not, thus, receive *locus standi* before the CJEU as privileged applicants in their own right. Governments may, however, bring an action on behalf of their parliament. Nevertheless, since the entry into force of the Lisbon Treaty, the CJEU has not had the occasion to decide on an action brought by a Member State in the name of its parliament.

In the following section I analyse in more detail the early warning mechanism and judicial control, concentrating on issues which may be problematic in its application.

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[224] Article 7(2) of Protocol 2.
[225] In reality, the 'simple' majority amounts to an absolute majority, since the total number is constituted by the votes allocated to national parliaments and not the votes cast (as reasoned opinions supporting the draft do not count).
[226] See BARRETT, Gavin, Introduction, in BARRETT, Gavin (ed.), *National Parliaments and the European Union: The Constitutional Challenge for the Oireachtas and Other Member State Legislatures*, Clarus Press, Dublin, 2008, pp. xvii-xli at pp. xxx-xxxi.
[227] The submission of the reasoned opinions of the national parliament by the commission to the Council and the EP seems to be unnecessary, since national parliaments have to send their reasoned opinion to these institutions anyway (Article 6 of Protocol 2). See BARRETT, Introduction, op. cit. p. xxxiv.
[228] Article 7(3) of Protocol 2.
[229] Article 8 of Protocol 2.

a) Problematic elements

Subsidiarity: notion and delimitation

The early warning mechanism is designed to control the principle of subsidiarity, not subsidiarity and proportionality, as the title of the Protocol 2 would suggest.[230] Two questions arise: the notion of subsidiarity and its delimitation from proportionality.

The principle of subsidiarity is intended to regulate the exercise of the competences of the Union and not to state whether competence exists in a particular area. It is the Treaty itself which grants competence according to the principle of conferral.[231] Subsidiarity only concerns the question of whether the exercise of the competence is justified. The subsidiarity principle applies only in areas which do not fall within the exclusive competence of the Union. Since the Lisbon Treaty gives an exhaustive list of both the exclusive and shared competences of the Union, the uncertainty of the previous legal situation has disappeared.[232]

In the frame of shared competence, the scope of subsidiarity can be limited by general principles of Union law. Article 2(2) TFEU stipulates that the Member State can exercise competence only to the extent that the Union has not exercised or has decided to cease to exercise its competence within such an area (pre-emption). Accordingly, the existence of previous legislation in a certain matter could, in theory, mean that subsidiarity does not apply, since the Member States cannot exercise the competence and the European action has already been justified (when the original legal act was adopted). Subsidiarity is, however, a dynamic concept: the efficiency of European level

[230] Some members of the Convention thought that the national parliaments' reasoned opinions should not be restricted to the question of subsidiarity alone, but should be expanded to encompass the substantive merits of the proposal, its legal basis, or its compatibility with proportionality.

[231] Article 5(1) and (2) TEU.

[232] Toth states that according to jurisprudence in all matters *transferred* to the Union from the Member States, the Union's competence is, in principle, exclusive and leaves no room for any concurrent competence on the part of the Member States. Toth concludes that the principle of subsidiarity cannot apply to any matter covered by the EEC Treaty and all legislation adopted in the past under the EEC Treaty must necessarily have related to a matter falling within exclusive Union competence and therefore outside the scope of application of subsidiarity. See TOTH, A legal analysis of subsidiarity, op. cit. p. 38. STEINER, Josephine M., Subsidiarity under the Maastricht treaty, in O'KEEFFE, David, TWOMEY, M. Patrick (eds.), *Legal Issues of the Maastricht Treaty*, Wiley Chancery Law, London, 1994, pp. 48-64.

legislation can vary over time. Furthermore, even an amendment to the existing legislation can, for example, broaden its scope and may therefore raise the question of the violation of subsidiarity.

Experience has so far shown that the principles of subsidiarity and proportionality are hard to differentiate from each other; likewise, separation of the examination of subsidiarity and proportionality from the substance of a proposal can also be problematic.[233] The two concepts certainly show some similarity. While proportionality safeguards private rights against excessive public intervention, subsidiarity answers the question of whether European law disproportionally restricts national autonomy. According to Schütze, subsidiarity is, in fact, federal proportionality.[234] There is, without doubt, an overlap between the examination of subsidiarity and proportionality: for example, the suitability of the measures is, in principle, relevant to both.[235]

Finding the boundaries of subsidiarity can be a very important issue. What happens if a proportion of the reasoned opinions which represent more than one-third of the votes designated to parliaments is not about subsidiarity, but rather about

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[233] Parliaments have expressed views on various aspects of the proposals: content, policy issues, current political environment, subsidiarity and proportionality, criticisms of the lack of justification for subsidiarity or insufficient justification (See Annual Report 2008 on relations between the European Commission and national parliaments COM(2009) 343, pp. 5-6; COSAC - Seventh bi-annual report: Developments in European Union Procedures and Practices Relevant to Parliamentary Scrutiny, May 2007, p. 10). Some parliaments called for a more rational or scientific approach in order to operationalize the subsidiarity principle and for collective discussions about how the principles are interpreted during a COSAC meeting. This is quite a peculiar approach if we take into account the fact that national parliaments whose representatives in the Convention 2002/2003 had advocated parliamentary involvement in subsidiarity control asked themselves, *after* the entry into force of the dispositions, what the principle really means and how to apply it. See also DE BÚRCA, Gráinne, Legal principles as an instrument of differentiation?: the principles of proportionality and subsidiarity, in DE WITTE, Bruno, HANF, Dominik and VOS, Ellen (eds), *The Many faces of differentiation in the EU law*, Intersencia, Antwerpen, 2001, pp.131-144; BAUSILI, Anna Vargés, Rethinking the methods of dividing and exercising powers in the EU: reforming subsidiarity and national parliaments, *Jean Monnet Working Paper* 9/02, NYU School of Law, 2002, p.14.

[234] SCHÜTZE, Robert, Subsidiarity After Lisbon: Reinforcing the Safeguards of Federalism?, *Cambridge Law Journal*, 2009, Vol. 68, No. 3, pp. 525-536 at p. 533.

[235] LOUIS, National parliaments and the principle of subsidiarity, op. cit. p. 449.

proportionality or about policy issues?[236] Indeed, national parliaments sometimes use substantive arguments to justify a breach of subsidiarity, such as the potential negative effects of a proposed measure on the overall economic situation.[237] From a legal point of view, the Commission can (should) reject or neglect these opinions. If the Commission takes into account any kind of reasoned opinion (not conforming to its explicit definition), e.g. for political reasons, then national parliaments would feel encouraged to submit reasoned opinions containing any kind of ground just to bring political pressure on the Commission if they generally disapprove the draft politically.

The time limit of eight weeks

National parliaments have eight weeks to scrutinize whether draft legislative acts fulfil the requirement of subsidiarity. The eight-week deadline starts with the transmission of the '*lettre de saisine*' (transmission letter) by the Commission, which is sent at the same time as the transmission of the last language version of a given proposal.[238] There are two issues which merit deeper analysis: the application of the 'urgency clause' and a complaint about the briefness of the deadline.

In principle, no urgency clause applies in the framework of the early warning mechanism of Protocol 2. This means that the eight-week period during which national parliaments are entitled to submit reasoned opinions cannot be shortened. Protocol 1 provides, on the other hand, the possibility for the Council to alter, in cases of urgency, the requirement not to put a proposal on its agenda for adoption within eight weeks of the day of availability of the draft for national parliaments. Consequently, when the Council applies the urgency clause under Protocol 1 and reaches an agreement within

[236] In this regard see DOUGAN, Michael, The Convention's Draft Constitutional Treaty: A 'Tidying-Up Exercise' that Needs Some Tidying-Up of its Own, *The Federal Trust Constitutional Online Paper Series*, No. 27/2003, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=507782 accessed 17/02/2012, p. 5.
[237] Report from the Commission on Subsidiarity and Proportionality (19th report on Better Lawmaking covering the year 2011), COM(2012) 373, pp. 4-5.
[238] Practical arrangements for the operation of the subsidiarity control mechanism, annexed to the letter of José Manuel Barroso and Margot Wallström of 1 December 2009. See p. 4. Available at http://ec.europa.eu/dgs/secretariat_general/relations/relations_other/npo/index_en.htm , accessed on 24 October 2012 (further referred to as Practical arrangements).

less than eight weeks, it undermines the early warning mechanism.[239] However, in the ordinary legislative procedure it is not likely that the Council will reach a final agreement in such a short time, given the fact that first the European Parliament has to adopt its opinion.

The eight weeks for the subsidiarity control are often considered to be too short for national parliaments to discuss the proposal and particularly to consult sectoral parliamentary committees, regional parliaments or stakeholders.[240] After the first experiences of subsidiarity checks, many parliaments found that they were not (yet) in a position to formulate within the deadline a statement on whether a Commission proposal complied with the principle of subsidiarity.[241] A particularly problematic issue is that national parliaments probably have to adopt a position *before* the government has expressed its position, and perhaps even before the government has formed a position at all.[242] It is probable that in many parliaments the lack of government position is a real obstacle to a timely subsidiarity check.

Notwithstanding the short deadline, national parliaments may have some opportunities to save time. The eight weeks begins at the date when a draft legislative act is made available to national parliaments in the official languages of the Union. Supposedly, the English and French versions are published first. The difference between the publication of the first and last language version can even be one or two weeks. Consequently, national parliaments whose language version is ready sooner, or where MPs and their staff can work with the English or French version, can gain some time for the examination and the drafting of the reasoned opinion. Besides, a subsidiarity check could be prepared and start well before the publication of the draft. The annual

[239] See also WYRZYKOWSKI, Miroslaw, European Parliament and National Parliaments, in BENEYTO, José María and PERNICE, Ingolf (eds), *Europe's Constitutional Challenges in the Light of the Recent Case Law of National Constitutional Courts*, Nomos, Baden-Baden, 2011, pp. 241-265 at p. 260.

[240] In the majority of parliaments the EU Affairs Committee scrutinizes the principle of subsidiarity, eventually with the participation of specialised committees or the plenary. The involvement of regional parliaments in the subsidiarity check is also a practice in Member States with regional parliaments (COSAC - Thirteenth Bi-annual Report, p. 20). See also PETERS, National parliaments and subsidiarity, op. cit. p. 71; BERMANN, George A., National parliaments and subsidiarity: an outsider's view, *European Constitutional Law Review*, 2008, No. 4, pp. 453-459 at p. 458.

[241] COSAC - Seventh bi-annual report, p. 7

[242] PASKALEV, Vesselin, Lisbon Treaty and the Possibility of a European Network *Demoi*-cracy, *EUI Working Papers*, 2009, No. 20, pp. 6-7.

legislative and work program of the Commission provides useful information which helps national parliaments to concentrate their attention on certain proposals which could be doubtful from the point of view of the subsidiarity principle. In many parliaments this selection procedure is applied in case of general scrutiny.

The Commission, upon the initiative of COSAC,[243] does not count the month of August or the summer recess of parliaments, when calculating the eight weeks.[244] The Commission's calculation only concerns its own role in the early warning mechanism, and the eight-week deadline for not putting a proposal on the agenda of the Council remains untouched.

The scope: draft legislative acts, but not their amendments

For the purposes of the Protocol 1 and 2, 'draft legislative acts' mean proposals from the Commission, initiatives from a group of Member States, initiatives from the European Parliament, requests from the CJEU, recommendations from the European Central Bank and requests from the European Investment Bank for the adoption of a legislative act. In Article 289(3) TFEU 'legislative acts' are defined as legal acts adopted by either ordinary or special legislative procedure (regulations, directives, decisions). As 'legislative' acts are concerned with the early warning mechanism, the CFSP, acts of the European Council and delegated or implementing acts cannot be the object of the examination of national parliaments.

The interpretation of the notion 'legislative acts' and particularly the 'special legislative procedure' can affect the material scope of the subsidiarity check and Protocol 2.[245] There are various special legislative procedures, depending on the mode of participation of the Council and the European Parliament. Under Article 289 TFEU '[i]n the specific cases provided for by the Treaties, the adoption of a regulation, directive or decision by the European Parliament with the participation of the Council, or by the latter with the participation of the European Parliament, shall constitute a

[243] See point 2.2. of the conclusions of the XL COSAC, Paris, November 2008.
[244] Practical arrangements, p. 4.
[245] The problem was raised by the UK House of Commons in COSAC. The relevant correspondence between the House of Commons and the institutions is available at http://www.cosac.eu/spain2010/meeting-of-the-chairpersons-of-cosac-4-5-february-2010/ and http://www.cosac.eu/spain2010/ordinary-meeting-of-the-xliii-cosac-30-may-1-june-2010/ both accessed on 24 October 2012. See also COSAC: Thirteenth Bi-annual Report, pp. 23-24.

special legislative procedure'. There are, however, several instances in the TFEU[246] where an act is adopted by the Council with the consent of the European Parliament, or after having consulted with it, but where a special legislative procedure is not mentioned.

The main question is whether the adoption of these acts can be considered a special legislative procedure, entering the scope of the subsidiarity check, or not, and thus excluding national parliamentary control. According to a teleological interpretation, if the legislative procedure fits the definition of Article 289(2) TFEU (because of the participation of the Council and the European Parliament), it should be considered a special legislative procedure even in the absence of an explicit reference to this. On the contrary, a literal interpretation suggests that the legal base of the relevant Treaty must explicitly refer to the legislative procedure ('In the specific cases provided for by the Treaties'), whether special or ordinary, for it to constitute a legislative act. The law-making institutions cannot do anything else than apply the relevant provisions literally. Only the CJEU, entitled to interpret the Treaties 'authentically', can give a teleological interpretation of the notion of the special legislative act.

Another problem affecting the material scope of the mechanism is that the original draft may be changed (substantially) during the decision-making procedure. As was mentioned before, national parliaments are informed of the amended drafts of the European legislators. The notion of 'amended draft' can however have two meanings. The draft can be amended by the Commission in the course of the legislative procedure independently from the early warning mechanism, or after the reasoned opinions emanating from the national parliaments have been taken into account. While the amended draft legislation might certainly raise fresh issues of compliance with the principle of subsidiarity, the early warning mechanism is only applicable to the draft and not its amended version,[247] and the forwarding of the amended draft serves merely to inform national parliaments. The only means left to the national parliament to remedy

[246] Under "Freedom, Security and Justice": administrative and judicial cooperation (Article 74 TFEU), provisional measures in emergency situation of a sudden influx of third country nationals (Article 78(3) TFEU), criminal procedure and emergency asylum procedures (Article 82(2)(d)); employment (Article 148(2) and 150 TFEU), social protection (Article 160 TFEU), transport (Article 95(3) TFEU), authorization of enhanced cooperation (Article 329 TFEU) and economic policies (Article 125(2) and 129(4) TFEU). There are also cases from the fields of competition and state aid too, but there subsidiarity is not applicable, since they belong to the exclusive competences.

[247] DOUGAN, The Convention's Draft Constitutional Treaty, op. cit. p. 5. See also Practical arrangements, p. 5.

the breach of subsidiarity which eventually emerges in the course of the legislative procedure is an action for annulment before the CJEU.

Substantial and procedural breaches of subsidiarity

National parliaments may plead that a certain proposal is in breach of subsidiarity on two legal grounds: the principle is violated substantially or the procedural requirements were not respected.

As for the first ground, the Commission, the Council and the European Parliament have to ensure that legislative acts respect the principle of subsidiarity as defined in Article 5(3) TEU. The definition of subsidiarity contains a comparative efficiency test in order to determine the suitable level of legislation. In many areas, particularly in matters pertaining to the single market, the advantage of the Union action is manifest simply in terms of efficiency and this does not seem hard to establish.[248] 'Efficiency' is indeed a flexible notion. There must be a common understanding of the goals and the desired results in order to evaluate a measure as supposedly efficient.[249] The definition of subsidiarity itself contains a problematic element concerning the 'objective of the proposed action'. The objective of an act is the aim that the Commission determines in the preamble of the act. If the objective of the act is a Europe-wide action in a certain field, it certainly cannot be achieved by the Member States alone.[250] The Commission can, thus, formulate the objective of the draft in a way that EU wide action seems necessary.[251] The CJEU has applied a formal approach accepting similar wordings as 'aims' of the act.[252]

As for the procedural violation of subsidiarity, there is an important procedural requirement in Protocol 2 which serves as a basis for the control of the application of

[248] STEINER, Subsidiarity under the Maastricht treaty, op. cit. pp. 60-61.
[249] BARBER, The Limited Modesty of Subsidiarity, op. cit. p. 318.
[250] See WYATT, Derrick, Subsidiarity - Is it too vague to be Effective as a legal Principle?, in NICOLAIDIS, K. and WEATHERHILL, S. (eds.), *Whose Europe? National Models and the Constitution of the European Union*, Oxford University Press, Oxford, 2003, pp. 86-97 at p. 88.
[251] Some examples: the aim of the Directive 2012/13/EU of 22 May 2012 on the right to information in criminal proceedings is 'establishing common minimum standards relating to the right to information in criminal proceedings' (recital (43)); Regulation (EU) No 386/2012 of 19 April 2012 on entrusting the OHIM with tasks related to the enforcement of intellectual property rights indicates in its recital (25) that its objective is to 'entrust the Office with tasks related to the enforcement of intellectual property rights, [which] cannot be sufficiently achieved by the Member States', though it is clear that this is not an aim, but an instrument to achieve another, i.e. the real aim.
[252] See e.g. Case C-491/01 *British American Tobacco* [2002] ECR I-11453, paras 181 and 182.

the principle of subsidiarity by national parliaments, namely the justification of the draft legislative acts regarding subsidiarity. The question arises of whether the violation of this procedural requirement counts as a 'breach of the subsidiarity' in terms of the early warning mechanism. Kiiver considers that the obligation for justification, spelt out in Article 5 of Protocol 2, forms the procedural aspect of subsidiarity compliance.[253] He regards this Article 5 as a *lex specialis* of Article 5 TEU, the subsidiarity principle and the general duty to state reasons of Article 296 TEU. Consequently, he observes, the breach of the obligation of subsidiarity justification is covered by the early warning mechanism, so national parliaments may include it in their reasoned opinions. He argues that it would not be logical for a national parliament to state that a draft does not violate the principle of subsidiarity, but the justification is insufficient, since if the initiator of the draft does not demonstrate that subsidiarity is respected, there is a rebuttable resumption of a breach of subsidiarity.[254]

Although Kiiver's argumentation seems to be convincing, there are some other aspects of the question. Without doubt, the obligation for justification regarding subsidiarity is a special element of the general obligation of the Commission to give reasons for legal acts. However, the CJEU has established that the 'absence of reasons or inadequacy of the reasons stated goes to the issue of infringement of essential procedural requirements …, and constitutes a plea distinct from a plea relating to the substantive legality of the contested measure, which goes to the infringement of a rule of law relating to the application of the Treaty'.[255] If we apply this idea by analogy to the early warning mechanism, national parliaments would only claim a substantial breach of subsidiarity (as the literal interpretation of Article 6 of Protocol 2 also suggests). This solution would not only be disadvantageous for national parliaments, but could undermine the implementation of the early warning mechanism. It is also true that national parliaments often criticize the inadequate justification of the Commission, and the latter has never rejected this argument on the ground that the existence or quality of the justification is not covered by the early warning mechanism.

Judicial control

[253] KIIVER, *The Early Warning System for the Principle of Subsidiarity*, op. cit. pp. 70-71.
[254] Ibid., pp. 100-101.
[255] Case C-378/00 *Commission v European Parliament and Council* [2003] ECR I-937, para 34.

Article 8 of Protocol 2 provides competence for the CJEU to decide, in the framework of appeals for annulment, on appeals pleading the violation of subsidiarity 'notified' by Member States (i.e. governments) 'in accordance with their legal order on behalf of their national parliaments or a chamber of them'.[256] According to one interpretation, Article 8 does not change anything compared to the previous legal situation,[257] since nothing has precluded any Member State from bringing, at the request of its parliament, an action before the CJEU,[258] as has happened in the *Tobacco* case, where the German government brought an action before the CJEU following objections raised within the Bundestag.[259] On the other hand, according to Besselink, with Article 8 two separate actions were established; one, the existing action under Article 263 TFEU, and the other under Article 8 of Protocol 2 which is not an action from a Member State, but from a national parliament and notified by a Member State.[260]

In this regard, it needs to be acknowledged that national parliaments have no *locus standi* before the CJEU,[261] since it is the Member State which notifies the action and consequently acts as applicant. The question arises whether the notion of 'notification' (in French '*transmis*') implies discretion on the part of the governments in connection with the parliamentary initiative which would then depend on the rules regulating the relationship between parliament and government in the Member States' constitutional

[256] In Germany and France even the parliamentary minority can trigger the submission of annulment action before the Court of Justice. Under Section 12 of the Act on Exercise by the Bundestag and by the Bundesrat of their Responsibility for Integration in Matters concerning the European Union 'at the request of one quarter of its Members, the Bundestag is required to bring an action under Article 8 of the Protocol [2]. At the request of one quarter of the Members of the Bundestag who do not support the bringing of the action, their view shall be made clear in the application.' According to the Article 88-6 of the French Constitution Article 88-6 '[e]ach House may institute proceedings before the Court of Justice of the European Union against a European Act for non-compliance with the principle of subsidiarity. […] Such proceedings shall be obligatory upon the request of sixty Members of the National Assembly or sixty Senators'.

[257] KIIVER, Philipp, The conduct of subsidiarity checks of EU legislative proposals by national parliaments: analysis, observations and practical recommendations, *ERA Forum*, 2012, Vol. 12, No. 4, pp. 535-547 at p. 540.

[258] RAUNIO, Tapio, Towards Tighter Scrutiny? National Legislatures in the New EU Constitution, *Federal Trust Constitutional Online Paper Series*, No. 16/2004, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=580803 accessed 17/05/2012, p. 6.

[259] CYGAN, National parliaments within the EU polity, op. cit. p. 526.

[260] BESSELINK, Leonard F. M., Shifts in Governance: National Parliaments and Their Governments' Involvement in European Union Decision-Making, in BARRETT, Gavin (ed.), *National Parliaments and the European Union: The Constitutional Challenge for the Oireachtas and Other Member State Legislatures*, Clarus Press, Dublin, 2008, pp. 29-45 at p. 44.

[261] A draft version of the Constitutional Treaty conferred them this right. But it was later omitted from the text. The Lisbon Treaty did not change this.

systems.[262] Arguably, the effectiveness of Article 8 can only be ensured if the government is prevented from declining to follow the initiative of Parliament. In the contrary case, the new right of national parliaments to control the application of subsidiarity is curtailed.[263] Acknowledging a discretion for government could question whether subsidiarity control is any different from any other matter when parliaments urge governments to challenge EU measures.

Every parliament or chamber can use the possibility of the judicial control even if it has not issued a reasoned opinion. At the Convention there was a proposition to provide standing only for those parliaments who submitted a reasoned opinion. This proposition was dropped in order to avoid 'false' reasoned opinions objecting to every draft in order to secure future standing. Interestingly, Wyatt submits that a plea that the principle of subsidiarity had been infringed, where the given national parliaments had not sent a reasoned opinion, might be regarded by the CJEU as unfounded - even manifestly unfounded.[264] However the reason for rejecting Wyatt's idea is not only the lack of express admissibility criteria, but also the fact that national parliaments can only examine the original draft, which can be substantially amended during the decision-making procedure. The final act can raise the issue of a violation of subsidiarity even if the original proposal did not do so.

Article 8 does not cover the division of roles between the government and the parliament in their representation before the CJEU. The Member States have to decide who drafts the action and the response, which institution's official appears at the audience, etc.[265] A delicate political situation can emerge if a parliament (or chamber), based on national dispositions, obliges the government to bring an action, although the latter does not agree. If we consider upper chambers, where the government may not have a majority, or Member States where the parliamentary minority is also entitled to

[262] Article 88-6, paragraph 2 of the French Constitution, as revised in 2008, provides that it is the chambers of the French parliament who 'institute' the proceedings ('peut former un recours') which will be 'referred' to the Court by the government ('ce recours est transmis'). In Germany, if the Bundestag or the Bundesrat decide on bringing an action, the Federal Government makes the application without delay (section 12 of the Act on Exercise by the Bundestag and by the Bundesrat of their Responsibility for Integration in Matters concerning the European Union [Gesetz über die Wahrnehmung der Integrationsverantwortung des Bundestages und des Bundesrates in Angelegenheiten des Europäischen Union]). According to the Thirteenth biannual report of COSAC (p. 29) in Austria, the Czech Republic, Ireland and Poland the government cannot reject a request to take action. In other cases, e.g. the Netherlands, Spain or Sweden, a request by Parliament is politically binding on the government.
[263] See LOUIS, National parliaments and the principle of subsidiarity, op. cit. pp. 440–441.
[264] WYATT, Could a "Yellow Card", op. cit. p. 15.
[265] See also WYRZYKOWSKI, European Parliament and National Parliaments, op. cit. p. 262.

request the introduction of the action,[266] the difference in terms of interest is already not unimaginable. In the case of a disagreement between the government and the parliament about a breach of subsidiarity, it seems logical that the parliament draft the action and its representative (and not a representative from a ministry) advances the arguments before the CJEU.[267] In terms of procedural law, however, this arrangement does not have any importance, since it is always the government (more precisely the Member State) which formally acts as an applicant.

National parliaments may be faced with the reluctance of the CJEU to judge the material breach of subsidiarity and also its soft approach to the procedural breach. First of all, the CJEU has never declared a measure for the breach of subsidiarity void.[268] This is not surprising, taking into account its case law, according to which if a Union authority is called upon to make complex assessments, it enjoys a wide measure of discretion, the exercise of which is subject to a limited judicial review in the course of which the CJEU may not substitute its assessment of the facts for the assessment made by the authority concerned. Thus, in such cases, the CJEU must restrict itself to examining the accuracy of the findings of fact and law made by the authority concerned and, in particular to verifying that the action taken is not vitiated by a manifest error or a misuse of powers and that it did not clearly exceed the bounds of its discretion.[269] In a concrete case, the CJEU has applied a surprising criterion: as under the Treaties it was the Council responsibility to adopt the minimum requirement in a certain matter, when the Council found the legal harmonization necessary in that field, the achievement of the objective necessarily presupposed Community wide action.[270] The CJEU is flexible regarding the procedural requirements of subsidiarity, since it considered that it was

[266] See footnote 262 above.
[267] CRAIG, Paul, *The Lisbon Treaty: Law, Politics, and Treaty Reform*, Oxford University Press, Oxford, 2010, p. 187.
[268] However, the Court has already exercised *de facto* subsidiarity review in the *Tobacco Advertising* case (Case C-376/98 Germany v Parliament and Council [2000] ECR I-8419). The applicant placed a genuine subsidiarity argument at the centre of its argumentation and the Court integrated the logic of subsidiarity into its reasoning. See HORSLEY, Thomas, Subsidiarity and the European Court of Justice: Missing Pieces in the Subsidiarity Jigsaw?, *Journal of Common Market Studies*, 2012, Vol. 50, No. 2, pp. 267-282, at pp. 270-271.
[269] Case 55/75 *Balkan-Import Export* v *Hauptzollamt Berlin-Packhof* [1976] ECR 19, paragraph 8, Case 9/82 *Øhrgaard and Delvaux* v *Commission* [1983] ECR 2379, paragraph 14, Case C-225/91 *Matra* v *Commission* [1993] ECR I-3203, paragraphs 24 and 25, and Case C 157/96 *National Farmers' Union and Others* [1998] ECR I 2211, paragraph 39.
[270] Case C-84/94 *United Kingdom v Council*, [1996] ECR I-5755, points 46, 47, 55.

sufficient that the justification in terms of subsidiarity was included only implicitly in the recitals of the act and express reference to the principle was not required.[271]

b) Evaluation

The literature is divided on the question of whether the early warning mechanism is an improvement from the point of view of European democracy and legislation,[272] or represents a real danger for the balance of the decision-making system or of a re-nationalization of the EU.[273] It is also submitted that its effects would be modest because of the low probability of reaching the thresholds.[274] In any case, if one-third or half of the parliaments (chambers) object to a draft, it is very likely that there will be no sufficient majority in Council.[275] Those who think that the effect of the new mechanism is quite negligible often think that this is a positive feature, while the institutional balance and the independence of the Commission is maintained.[276] There are suggestions that the scope of the early warning mechanism should be enlarged to cover, for example, proportionality, or any other principle, right or policy issues,[277] or that a power of veto (a 'red card') could have provided a stronger incentive to take the early warning mechanism seriously[278] or might even contribute to the birth of a European-wide political community.[279] According to Cygan, a mid-way solution between the existing orange card and the red card could be a procedural safeguard providing a presumption that the proposal is withdrawn if the majority of parliaments raise an

[271] Case C-233/94 *Germany v European Parliament and Council*[1997] ECR I-2405, points 23-28.
[272] LOUIS, National parliaments and the principle of subsidiarity, op. cit.; BESSELINK, Shifts in Governance, op. cit.; MAURER, National Parliaments in the Architecture of Europe, op. cit. p. 93. COOPER, The watchdogs of subsidiarity, op. cit.; KOKOTT, Juliane and RÜTH, Alexandra, The European Convention and its Draft Treaty Establishing a Constitution for Europe: Appropriate answers to the Laeken Questions?, *Common Market Law Review*, 2003, Vol. 40, No. 6, pp. 1315-1345; GENNART, Martin, Les parlements nationaux dans le traité de Lisbonne: évolution ou révolution?, *Cahiers de droit européen,* 2010, Vol. 46, No. 1-2, pp. 17-46.
[273] MANZELLA, The Role of Parliaments in the Democratic Life of the Union, op. cit. pp. 265 and 274; KIIVER, *The National Parliaments in the European Union*, op. cit. pp. 167-168.
[274] RAUNIO, Tapio, Destined for Irrelevance? Subsidiarity Control by National Parliaments, *Europe Working Paper*, Real Instituto Elcano, No. 36, 2010; CRAIG, *The Lisbon Treaty*, op. cit. p. 186.
[275] BERMANN, National parliaments and subsidiarity, op. cit. p. 458.
[276] LOUIS, National parliaments and the principle of subsidiarity, op. cit.; DASHWOOD, *Wyatt and Dashwood's European Union Law,* op. cit. p. 369. KOKOTT, and RÜTH, The European Convention and its Draft Treaty, op. cit. p. 1335.
[277] MANZELLA, The Role of Parliaments in the Democratic Life of the Union, op. cit. p. 269; BARBER, Subsidiarity in the draft Constitution, op. cit. p. 203. COOPER, The watchdogs of subsidiarity, op. cit. p. 281.
[278] RAUNIO, Towards Tighter Scrutiny?, op. cit. p. 7.
[279] BARBER, Subsidiarity in the draft Constitution, op. cit. p. 205.

objection. Ultimately, the CJEU, through an action for judicial review brought *directly* by national parliaments, could decide on the issue.[280]

There are a number of authors who consider the early warning mechanism as an incentive for national parliaments to invest more resources in scrutinising EU affairs[281] or as a 'catalyst for European awareness and learning among parliamentarians'.[282] If this does not prove to be true, the apathy of national parliaments to engage in EU matters could result in the ineffectiveness of the early warning mechanism.[283] However, it is also possible that an insufficient early warning mechanism channels national parliaments' scrutiny towards a more effective scrutiny of national governments.[284]

What effects can the early warning mechanism have in terms of the behaviour of the institutions, governments and parliaments? First of all, there can be an anticipative or 'disciplining effect'[285], i.e. the Commission could refrain from proposals that could raise subsidiarity objections. It is also conceivable that 'politically sensitive' national parliaments will, informally, become part of the Commission's consultation.[286] If the threshold is attained, the Commission could feel motivated to review the proposal, especially if the larger Member States' parliaments are among those who have submitted a reasoned opinion. On the contrary, if the proposal still has enough support to be adopted in the Council, the Commission can decide to maintain the proposal. If there are several reasoned opinions, but not enough for the threshold, it is also reasonable for the Commission to justify the proposal again, or even to review it. If the early warning mechanism is not triggered at all, i.e. none of the national parliaments finds any breach of subsidiarity, the Commission position could be strengthened vis-à-vis the European Parliament and the Council. The legitimacy of the adopted legal act

[280] CYGAN, The parliamentarisation of EU decision-making?, op. cit. pp. 485-489.
[281] RAUNIO, Towards Tighter Scrutiny?, op. cit. p. 6. CYGAN, The parliamentarisation of EU decision-making?, op. cit. p. 486. BARRETT, Introduction, op. cit. pp. xli.
[282] KIIVER, Philipp, Implementing the Early Warning Mechanism for Subsidiarity: National Parliaments Beyond the Constitutional Treaty, Conference Paper - Fifty years of interparliamentary cooperation, Berlin, 2007, p. 1. KIIVER, Philipp, The Treaty of Lisbon, the National Parliaments and the Principle of Subsidiarity, *Maastricht Journal of European and Comparative Law*, 2008, Vol. 15, No. 1, pp. 77-83 at p. 82; PERNICE, Ingolf, The Treaty of Lisbon: Multilevel Constitutionalism in Action, *The Columbia Journal of European Law*, 2009, Vol. 15, No. 3, pp. 349-407 at p. 393.
[283] See PASKALEV, Lisbon Treaty and the Possibility of a European Network *Demoi*-cracy, op. cit. p. 6.
[284] SCHÜTZE, Subsidiarity After Lisbon, op. cit. p. 531.
[285] MAURER, National Parliaments in the Architecture of Europe…, op. cit. p. 93.
[286] RIZZUTO, Francesco, The new role of national parliaments in the EU: No longer victims of Integration?, *The Federal Trust Online Paper*, 19/2003, p. 10.

could be stronger, and even the likelihood of non-compliance with the final act could be lower.[287]

In September 2012 the Commission withdrew, for the first time, a proposal on the right to strike[288] published in March of the same year because of the reasoned opinions submitted by the national parliaments. The one-third threshold was reached, as twelve chambers representing nineteen votes[289] and applying the early warning mechanism argued that the proposal breached subsidiarity. The Commission, in its letter addressed to the national parliaments, stressed that it did not agree with the national parliaments and the principle of subsidiarity had not, in its view, been breached. Nevertheless, it withdrew the proposal because it was 'unlikely to gather the necessary political support within the European Parliament and Council to enable [the adoption of the proposal]'.[290] Consequently, the pressure of twelve national parliaments, bolstered by the co-legislators, induced radical change in the European decision-making procedure. It is not possible to know what would have happened if the national parliaments had not submitted reasoned opinions. The proposal might have been rejected in the European Parliament or in the Council (where unanimity was required), but it is also possible that it would only have been modified.

Fabbrini and Granat argue that the Commission 'has taken a strategically wrong decision' when it withdrew the proposal, as national parliaments did not, in fact, identify the breach of subsidiarity, but reacted on other aspects of the draft (e.g. legal basis, proportionality, policy issues). The withdrawal could cause – as they state – misunderstanding among national parliaments about the early warning system and its role in the European legislative procedures.[291] Undoubtedly, the Commission's withdrawal was surprising taken to account the lack of convincing arguments of the national parliaments on the violation of the principle of subsidiarity. However, the decision on the eventual withdrawal, amendment or maintenance of the EU proposal

[287] KIIVER, Philipp, Legal Accountability to a Political Forum? The European Commission, the Dutch Parliament and the Early Warning System for the Principle of Subsidiarity, *Maastricht Faculty of Law Working Paper*, 2009, Vol. 5, No. 8, p. 7; RAUNIO, Towards Tighter Scrutiny?, op. cit. p. 6.

[288] Proposal for a Council Regulation on the exercise of the right to take collective action within the context of the freedom of establishment and the freedom to provide services (COM(2012)130).

[289] The lower chambers of Belgium, Poland, the United Kingdom and the Netherlands, the French senate, the parliament of Denmark, Finland, Latvia, Luxembourg, Malta, Portugal and Sweden indicated opposition to the Commission directive.

[290] The letters sent to national parliaments by the Commission are available at http://www.ipex.eu/IPEXL-WEB/dossier/document/COM20120130.do accessed 24/10/2012).

[291] FABBRINI, Federico and GRANAT, Katarzyna, "Yellow Card, But No Foul":The Role Of The National Parliaments Under The Subsidiarity Protocol And The Commission Proposal For An EU Regulation On The Right To Strike, Common Market Law Review, 2013, No. 50, pp. 115-144 at p. 142.

depends not only on (legal) arguments and counter-arguments about the breach of the subsidiarity, but largely on the current political situation. The second yellow card attests that the Commission does not step back automatically when facing the pressure of the national parliament.

The second yellow card was triggered in connection with the proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office (EPPO).[292] The Commission received 13 reasoned opinions and seven further opinions in the framework of the political dialogue (see next session). Since the number of votes associated with these reasoned opinions passed the threshold of 14 that applies to justice and home affairs proposals, the yellow card procedure was triggered. National parliaments submitted, again, arguments beyond the breach of the subsidiarity (e.g. disproportionate limitation of national sovereignty, lack of sufficient guarantee of fundamental rights). Contrary to the first yellow card, the Commission did not withdraw or amend its proposal considering that the problems raised by the national parliaments could be remedied during the legislative procedure (even if the draft required unanimity in the Council, similarly to the case of the proposal on the right to strike).

The experience of the two early warning procedures (yellow cards) showed that the early warning mechanism is workable, and national parliaments can influence European policy making. However, the Commission considers very carefully the political situation, the possible prospect of the EU draft before reacting on the national parliaments' reasoned opinions. It would not automatically drop a proposal in the case of protests from national parliaments. The latter should also bear in mind that the early warning mechnism is designed to control the application of subsidiarity and not any other principles or policy issues. The complaints beyond subsidiarity should be advanced in the framework of the political dialogue.

The question arises whether the early warning mechanism has any effect on the negotiating position or strategy of the governments in the Council. If no subsidiarity breach is raised, the Commission's position is strengthened, and any governmental intention to prove the breach of subsidiarity will not be credible enough. Those governments whose national parliaments have identified subsidiarity problems will probably follow the parliamentary opinion during the Council debates.[293] Governments

[292] COM(2013)534.
[293] See also COOPER, Ian, A "Virtual Third Chamber" for the European Union? National parliaments after the Treaty of Lisbon, *ARENA Working Paper*, 2011, No. 7, p. 13.

whose national parliaments only finished the subsidiarity check after eight weeks and found a breach of subsidiarity, can raise the issue in the Council.[294] A government which would face the prospect of being outvoted in Council may use its national parliament to oppose the proposal (the instrumentalization of the national legislatures).[295]

How does the early warning mechanism affect the relationship between the government and the parliament? The weakest point of the early warning mechanism seems to be the presumption that national parliaments and governments have different standpoints on an issue. It has even been suggested that this goes against the very principle of parliamentary democracy.[296] In the overwhelming majority of Member States, the government enjoys the support of its parliament (or at least the lower chamber), thus it is not very probable that they will differ in position. If, in the Council, a government approves a draft in connection with which its parliament has submitted a reasoned opinion, it could face being challenged on the issue of its responsibility before its own parliament.[297] According to empirical data, parliamentary opinions mirror the opinions presented in the Council by governments. However, national parliaments do not always simply restate the government's opinion.[298] In fact, national parliaments have to formulate an opinion at a very early phase of the procedure; therefore it can happen that an official government position is not yet available.

Paskalev submits that the early warning mechanism will not significantly change the relative weight of national parliaments vis-à-vis their own governments.[299] On the contrary, Maurer argues that the possibility of objecting to a draft by national parliaments before the first reading strengthens their parliamentary autonomy vis-à-vis their governments, possibly leading to an emancipation of parliaments.[300] Furthermore, the early warning mechanism grants rights not only to national parliaments, but also to

[294] See also KACZYŃSKI, Piotr Maciej, Paper tigers or sleeping beauties? National Parliaments in the post-Lisbon European Political System, *Centre for European Policy Studies, Special Report*, 2011, p. 13.
[295] PASKALEV, Lisbon Treaty and the Possibility of a European Network *Demoi*-cracy, op. cit. p. 7. MAURER, National Parliaments in the Architecture of Europe, op. cit. p. 87. See also the evidence given by Simon Hix to the UK House of Commons European Scrutiny Committee on 18 June 2008, *Subsidiarity, National Parliaments and the Lisbon Treaty*, House of Commons European Scrutiny Committee, Thirty-third Report of Session 2007-08, HC 563., Ev. 14.
[296] FRAGA, After the Convention, op. cit. p. 498. RAUNIO, Towards Tighter Scrutiny?, op. cit. p. 6.
[297] CHENEVIERE, Cédric and WILDEMEERSCH, Jonathan, Le rôle des parlements nationaux dans le Traité de Lisbonne, *Revue de la Faculté de droit de l'Université de Liège*, 2011, No. 3-4, pp. 449-465 at p. 459.
[298] KIIVER, Legal Accountability to a Political Forum?, op. cit. p. 34
[299] PASKALEV, Lisbon Treaty and the Possibility of a European Network *Demoi*-cracy, op. cit. p. 8.
[300] MAURER, National Parliaments in the Architecture of Europe , op. cit. p. 90.

their chamber, which can result in an empowerment of the traditionally less powerful second chambers.[301]

Finally, the question arises of how the early warning mechanism affects the position of national parliaments in the EU in general. Cooper considers that through the early warning mechanism national parliaments collectively form a body, a 'virtual third chamber', performing three key parliamentary functions – legislation, representation, and deliberation.[302] Jancic, similarly, thinks that the Lisbon Treaty gave birth to a new organ of the EU: 'national parliaments jointly', because of the conceptually new relationship between the national parliaments and other EU institutions. In his view the collective action of national parliaments goes beyond their roles in the national legal order, but falls short of the prerogatives of a full-blown EU institution.[303] Kiiver assumes that the new role of national parliaments in the subsidiarity check could be compared to the function of an advisory council of state (Conseil d'Etat) existing in several Member States.[304] Paskalev interprets the early warning mechanism as a European communicative network between national parliaments.[305]

3 Political dialogue

The political dialogue is a structured direct communication channel between the Commission and the national parliaments. In a strict sense, it covers exchanges of views on specific Commission documents, but debates on the Commission Work Programme, and bilateral contacts between Commissioners and national parliaments can also be considered as a part of the political dialogue.[306] It has no express legal basis in the Treaties and was introduced by non-binding acts in 2006.[307] It is true that the indent (9)

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[301] KACZYŃSKI, Paper tigers or sleeping beauties?, op. cit. p. 5.
[302] COOPER, A "Virtual Third Chamber" for the European Union?, op. cit. pp. 1-2.
[303] JANCIC, Davor, A New Organ of the European Union: National Parliaments Jointly, Federal Trust for Education and Research, London, 2008, available at http://www.fedtrust.co.uk/uploads/Parliaments_Jointly.pdf accessed 30/05/2012.
[304] According to Kiiver, as they function in France, Belgium, the Netherlands, Luxembourg, Italy and Spain. See KIIVER, The Early-Warning System for the Principle of Subsidiarity, op. cit. pp. 98-108.
[305] PASKALEV, Vesco, Network For a European *Demoi*-cracy: Are the National Parliaments Up To the Job?, *Croatian Yearbook of European Law & Policy*, 2011, Vol. 7, pp. 43-67 at p. 55.
[306] Annual Report 2011 on relations between the European Commission and national parliaments, COM(2012) 375, p. 2.
[307] COM(2006)211 - Communication from the Commission to the European Council - A citizens' agenda - Delivering results for Europe. The European Council approved this initiative at its meeting of 15 and 16 June 2006. It noted, in point 37 of its conclusions, the 'interdependence of the European and national

of the Amsterdam Protocol on subsidiarity (and also Article 2 of Lisbon Protocol 2) requires that before proposing legislation, the Commission consults widely, but this provision only concerns the pre-legislative phase of the decision-making. The principal aim of the dialogue is that national parliaments become more closely involved with the development and execution of European policy. In 2006 the Commission started to transmit all new proposals and consultative documents directly to national parliaments, inviting them to react so as to improve the process of policy formulation. The transmission of documents was an anticipation of the application of the Lisbon Treaty.

The political dialogue has undeniable similarities to the early warning mechanisms. The direct transmission of the Commission proposals to national parliaments constitutes an element of the early warning mechanism too. The political dialogue has, on the other hand, both a different scope and different legal effects from the early warning mechanism. Its scope is wider, since national parliaments are called on to make any kind of comments on the proposals and policy planning documents as well, not just on subsidiarity. Its effects, however, are more limited, because it does not contain any yellow or orange card mechanism, since it is a 'dialogue' between the Commission and national parliaments and the Commission is by no means obliged to take into account the opinion of national parliaments. As for the practical relationship between the two instruments, the Commission sees the early warning mechanism as part of a wider political relationship between the Commission and national Parliaments, to be applied alongside the political dialogue.[308]

The Commission began providing national parliaments with the relevant documents in September 2006.[309] The number of opinions from national parliaments has been increasing: from 168 in 2007 to 663 in 2012.[310] The majority of the opinions contain substantive comments and questions on the

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legislative processes. […] The Commission is asked to duly consider comments by national parliaments – in particular with regard to the subsidiarity and proportionality principles.'

[308] Letter of José Manuel Barroso and Margot Wallström of 1 December 2009. Available at http://ec.europa.eu/dgs/secretariat_general/relations/relations_other/npo/index_en.htm , accessed on 24 October 2012.

[309] 2006 Annual Report on relations between the Commission and the national parliaments (SP (2007) 2202/4)

[310] Annual Reports on relations between the European Commission and the national parliaments: SP (2007) 2202/4, COM(2008) 237, COM(2009) 343, COM(2010) 291, COM(2011) 345, COM(2012) 375 and COM(2013)565.

content of Commission proposals and initiatives. A small number of opinions were reasoned opinions within the meaning of Protocol 2, notifying a breach of the principle of subsidiarity. The degree of national parliaments' participation in the dialogue varies significantly. The five most active chambers sent almost 70 percent of all opinions in 2012.[311] At the other end of the scale there are 19 chambers which each submitted fewer than five opinions. In 2012 six chambers have not made use of the dialogue process at all.[312]

The question arises as to what the effects of the parliamentary opinions have been. According to the Commission, the political dialogue helps improve European policy formulation. The Commission accepted the suggestion made by the French Senate that it should modify the title of a proposal.[313] There was also an occasion when, during the discussions in the Council, the preamble contained in the proposal on fruit and vegetables[314] was amended and expanded in order to make the justification on subsidiarity and proportionality grounds more explicit.[315] However, according to an empirical study, the Commission's written responses are polite but summary, and at times superficial. The Commission routinely suggests that, essentially, the

[311] Portuguese parliament, Italian senate, German Bundesrat, Czech senate, Swedish parliament.

[312] Begian senate, French Assemblée nationale, Hungarian parliament, Irish upper chamber, the two Slovene chambers.

[313] Proposal for a Regulation of the European Parliament and of the Council on the protection of pedestrians and other vulnerable road users (COM(2007)560).

[314] COM(2007)171.

[315] COM(2008)237.

parliaments should read the impact assessment - which is only available in English - more carefully.[316]

The political dialogue has so far achieved its objective: to provide a space for interested national parliaments to make their opinion on European issues heard. According to the Commission, the new relationship with national parliaments underlines the 'importance of the contribution of parliaments to better European governance'. Empirical verification of this contribution goes beyond the framework of this dissertation. In terms of European democracy, national parliaments' ability to express interests is to be welcome, even if its effect has hitherto seemed modest.

III INTER-PARLIAMENTARY COOPERATION: A WAY OF FACILITATING PARTICIPATION

In order to make it easier to reach the necessary thresholds, the early warning mechanism requires increased cooperation and exchange of information between national parliaments. An obvious solution is recourse to the existing forum of COSAC, the conference of the European affairs committees of national parliaments and the representatives of the European Parliaments. The European Council has also encouraged national parliaments to strengthen cooperation within the framework of COSAC when monitoring subsidiarity.[317]

The first reunion of COSAC was held in 1989 in Paris. Since then, twice a year a maximum of six representatives of the European affairs committees of the national parliaments and of the European Parliament gather for one and a half days in the Member State holding the Council presidency. Every regular COSAC meeting is preceded by a preparatory reunion with the participation of the chairpersons of the

[316] KIIVER, Legal Accountability to a Political Forum?, op. cit. p. 35.
[317] European Council's meeting of 15 and 16 June 2006. Point 37 of the conclusions.

European affairs committees with the objective of deciding on the agenda of the regular meeting. In 1994, an amendment of the rules of the procedure of COSAC established the possibility that three parliamentary observers per candidate country for EU Membership participate at the meetings as soon as the country starts accession negotiations.[318] Although accession negotiations commenced in 1998 with the CEE counties of the 'first negotiating circle', all CEE countries were invited by the Luxembourg presidency to the 1997 November COSAC meeting.[319] COSAC has a permanent secretary based in Brussels. However, the parliament of the Member State holding the presidency takes a major role in the organisation of the meeting.

COSAC was first referred to in the primary law by the 13th declaration attached to the Maastricht Treaty seeking to step up exchange of information between national parliaments and the European Parliament through regular meetings.[320] The Amsterdam protocol specifies the area of freedom, security and justice as an area where COSAC may examine legislative proposals. According to the Amsterdam protocol on subsidiarity, COSAC can make any contribution it wishes to institutions. These contributions do not bind national parliaments or prejudge their position and can be sent in particular on the basis of draft legal texts. Until 2005 COSAC did not submit any contribution in the framework of legislative procedures. In 2005, during the preparation for the application of the early warning mechanism, COSAC examined the third railway package and submitted a contribution on it to the institutions.[321] The Amsterdam Protocol was a symbolic institutionalization of COSAC, but the COSAC contributions have not exerted much influence on European politics.[322]

The Lisbon Treaty inserts a reference in the text of the Treaty itself, saying that national parliaments take part in the inter-parliamentary cooperation between national parliaments and with the European Parliament.[323] They together determine the organisation and promotion of effective and regular inter-parliamentary cooperation within the Union. Protocol 1 recognises COSAC's role in the exchange of information

[318] Rules of Procedure Article 3.2.
[319] GYŐRI, The Hungarian Parliament and the Issue of European Integration, op. cit. p. 126.
[320] The 14th declaration attached to the Maastricht Treaty encouraged the conference of Parliaments, the Assises, to consult on the direction of the Union. The genesis of this declaration is the Assises held in Rome in 1990. One of the main topics of the Assises was the reinforcing the relations between the EP and the national parliaments. Despite the declaration, the Assises was never held again.
[321] Contribution adopted by the XXXIII COSAC, 17 and 18 May 2005. FERRER MARTÍN DE VIDALES, *Los Parlamentos Nacionales en la Unión Europea*, op. cit. p. 104.
[322] Ibid., p. 50.
[323] Article 12(f) TEU.

and best practice between national parliaments and the European Parliament, including their special committees. Contrary to the Amsterdam Protocol, the Lisbon Protocol 1 does not include any reference to the role of COSAC in the overview of legislation and subsidiarity. The Lisbon Treaty provisions on inter-parliamentary cooperation are rather symbolic. They reinforce existing practices, but do not promote further development.

The subjects on COSAC's agenda are generally salient European policy issues, best practices of parliamentary scrutiny of EU affairs and internal procedural matters. The scope of the debates is broad, which tends to lead to generalised or unsatisfactory debates.[324] Furthermore, the limitation on speaking time and the necessary interpretation indicates that there are no real opportunities for comprehensive debate. COSAC had, however, an important role in preparing national parliaments for the application of the early warning mechanism. It organised eight tests altogether of the subsidiarity check before the entry into force of the Lisbon Treaty.[325]

In practice, the early warning mechanism is conducted without much inter-parliamentary cooperation, as some scholars had anticipated.[326] Each national parliament receives the draft legislative proposals and may initiate its own procedure. If a chamber decides to scrutinise a proposal, it can inform other national parliaments about this through IPEX, which is an internet platform for inter-parliamentary cooperation. Another information channel for parliaments is the 'Monday morning meetings' of representatives of national parliaments in Brussels.[327]

The key question in terms of the function of COSAC has been whether it should invest more in direct communication with the institutions regarding European policies or rather serve as an exchange of information and best practices between parliaments.[328] The first role is hindered by the consensual mode of decision-making in COSAC which very often results in neutral contributions and illustrates the difficulty of reconciling the

[324] LORD TORDOFF, The Conference of European Affairs Committees: A Collective Voice for National Parliaments in the European Union, *The Journal of Legislative Studies*, 2000, Vol. 6, No. 4, pp. 1-8 at p. 4.
[325] The general process of the tests was the following: national parliaments in COSAC decided on which proposal(s) to exam. During the first test the selection took place after the publication of the draft, but later, before the exact content of the proposal was known, the drafts submitted for testing were chosen based on the information regarding the annual legislative program, i.e. on the title of the proposal. COSAC fixed the time-limit for the test. After the tests, COSAC received feedback from the parliaments.
[326] RAUNIO, Destined for Irrelevance?, op. cit. p. 8.
[327] KACZYŃSKI, Paper tigers or sleeping beauties?, op. cit. p. 11.
[328] KNUDSEN, Morten and CARL, Yves, COSAC: its role to date and its potential in the future, in BARRETT, Gavin (ed.), *National Parliaments and the European Union: The Constitutional Challenge for the Oireachtas and Other Member State Legislatures*, Clarus Press, Dublin, 2008, pp. 455-483 at p. 456.

different opinions while still saying something of substance.[329] The performance of its second role seems to be more promising, not only because of the subsidiarity tests, but also the biannual reports on parliamentary procedures and practices regarding European affairs. Neither should COSAC's role as an informal channel for parliamentarians be underestimated. However, according to Paskalev, COSAC during its two decades of existence has been almost redundant and virtually unnoticeable, even by academics.[330] Some academics parliamentarians and experts have still managed to notice it, but they are probably the only ones to do so.

Concluding remarks

National parliaments' direct participation in European decision-making procedures is possible both in terms of primary and secondary law making. Their participation in the conventions on Treaty amendments and their capacity to ratify or veto important decisions ensure that the most important acts of the EU (in constitutional terms) are adopted and modified with the approval of national parliaments. By these procedures national parliaments become part of the multi-actor European '*pouvoir constituant'*.[331]

As far as the secondary law making procedure is concerned, the early warning mechanism offers the possibility for national parliaments to raise objections against EU legislative proposals on the ground of a breach of subsidiarity. In spite of the limitations of the mechanism (limited scope, tight time limits, high threshold), the experience proved that the mechanism is workable, the yellow card can be shown, and it can be an exceptional, but important element in European policy making. The early warning mechanism is completed by the right of national parliaments to initiate an action for annulment before the CJEU via their governments. Again, this opportunity is limited, because of the lack of standing. Through the political dialogue, national parliaments can voice interests before the legislative procedures have started. To facilitate the national parliaments' participation in European decision-making, the Treaties ensure accessibility to documents and an improved transparency of the decision-making procedures. Inter-parliamentary cooperation may contribute to a situation where national parliaments fulfil their functions more efficiently.

[329] LORD TORDOFF, The Conference of European Affairs Committees, op. cit. p. 5.
[330] PASKALEV, Lisbon Treaty and the Possibility of a European Network *Demoi*-cracy, op. cit. p. 6.
[331] WYRZYKOWSKI, European Parliament and National Parliaments, op. cit. p. 243.

Chapter 1 examined the origins and objectives of the instruments summarized above. In the present Chapter, I have analysed the legal and political potential and limits of the direct participation of national parliaments in the decision-making procedures. The question arises of how far national parliaments can contribute to the enhancement of European democracy and legitimacy. As providing empirical evidence would go beyond the dimensions of the present study, I can only answer the question from a theoretical point of view. If we accept that increased parliamentary involvement in European decision-making is beneficial for democratic legitimacy, the post-Lisbon situation is an improvement. National parliaments have demonstrated their capacity to show a yellow card, and therefore they can be indeed regarded as European players (or as Van Rompuy declared 'European institutions').

However, national parliaments' direct participation in European decision-making can only be meaningful if their European counterparts take their obligations (i.e. justification, taking parliamentary opinions into account) seriously too. This can be a real incentive for national parliaments, also for those who have not yet shown much interest in cooperation, to invest in European affairs, something which can generate a better understanding of the EU on the part of citizens and the parliaments themselves. The rules on the standing of national parliaments before the CJEU would be worth revising to provide more effective judicial protection to their rights which emanate from the Treaties.

After the analysis of the theory of national parliaments' European roles (Chapter 1) and the possibilities provided by the Treaties for national parliaments to participate in European decision-making (the present Chapter), in the following chapters I direct the focus of my study to the Hungarian National Assembly. In Chapter 3 I discuss the legal background and the system of the EU-related procedures of the Hungarian Parliament.

Chapter 3
EU affairs in the Hungarian National Assembly: constitutional rules and customs

INTRODUCTION

EU issues are present in various ways in the activities of the Hungarian National Assembly. First of all, under the Fundamental Law of Hungary amendments to the EU Founding Treaties or the adoption of new Treaties require the approval of Parliament.[332] As far as secondary EU law is concerned, Parliament is entitled, according to the Treaty of Lisbon, to examine whether EU draft legislative acts comply with the principle of subsidiarity and, if it considers that the principle has been violated, to address reasoned opinion directly to EU institutions. Furthermore, Parliament can follow and eventually influence EU decision-making procedures indirectly through the government in the so-called scrutiny procedure. Although legal harmonization under EU law is the responsibility of the government,[333] following from its central position in the legislative process Parliament plays a key role in the implementation of EU law by transposing directives into domestic law and ensuring that domestic legislation is compatible with EU obligations.[334] Finally, Parliament is provided with instruments beyond the scrutiny procedure to hold the government accountable for its participation in EU decision making procedures and for the implementation of EU law and policies.

The Treaties do not contain many provisions about the national parliaments' EU scrutiny functions. The TEU underlines the importance of the accountability to national

[332] Article E(2) and (4) of the Fundamental Law. On 25 April 2011 a new constitution, officially called the Fundamental Law, was promulgated in Hungary. It entered into force on 1 January 2012 and replaced the former Constitution, the Act XX of 1949, entirely modified in 1989/90.
[333] See particularly, Article 17 of the government decree no. 212/2010. (VII.1.) and government decree no. 302/2010. (XII.23.).
[334] Article 291 TFEU: Member States shall adopt all measures of national law necessary to implement legally binding Union acts.

parliaments of the governments which compose the Council.[335] Nevertheless, Protocol 1 reminds us that the way in which national parliaments scrutinize their governments in relation to the activities of the Union is a matter for the particular constitutional organization and practice of each Member State.[336]

The present Chapter discusses EU related activities in the Hungarian Parliament, by which I understand every parliamentary procedure where EU affairs are debated, irrespective of whether they belong to parliamentary control or participation in EU decision-making. Although most of the relevant literature focuses on the scrutiny procedure and the EACs, the present dissertation uses a more global approach. There is one exemption: transposition of EU legislation will only be treated incidentally, not in detail. Two main reasons lie behind this: first, in Hungary the coordination of the implementation of EU law is the responsibility of the government; second there is no procedural difference in the legislation in terms of a 'national' bill or bill which transposes EU law.[337]

At this point, an important clarification must be made. Under 'scrutiny' in the broad sense, I understand the tools of parliamentary control applied vis-à-vis the government. 'EU scrutiny' refers to all parliamentary monitoring activities in connection with EU matters. On the other hand, the notion of 'scrutiny procedure' is used as a specifically regulated parliamentary process of the discussion of European draft legislation and the related government position resulting in a parliamentary standpoint. The methodological distinction between scrutiny and the scrutiny procedure is justified by the fact that the Hungarian scrutiny procedure is only one, though probably the most important, of the several instruments at the disposal of the parliament to control the government's activity in EU matters.

The aim of the Chapter is to analyse the legal background of EU related parliamentary activities, including constitutional norms and customs. Constitutional norms cover the constitution (Fundamental Law) itself, and other dispositions of a constitutional nature concerning the government-parliament relationship and

[335] Under Article 10(2), second paragraph, TEU: Member States are represented in the European Council by their Heads of State or government and in the Council by their governments, themselves democratically accountable either to their national Parliaments, or to their citizens.

[336] The first recital of Protocol 1. See also the first recital of the Protocol on the role of national parliaments in the European Union attached to the Amsterdam Treaty.

[337] On the institutional and procedural framework for legal harmonisation in Hungary see SOMSSICH, Réka, The process and methodology of coordinating the transposition of EU law in Hungary, in VARJU, Márton and VÁRNAY, Ernő (eds.), *The Law of the European Union in Hungary: Institutions, Processes and the Law*, HVG-ORAC, Budapest, 2014, pp. 112-150.

parliamentary procedures (e.g. cardinal acts, Standing Orders). Although the treatment of EU affairs in Parliament is regulated in detail, parliamentary customs, routines and practices are of primary importance, since they shape the actual functioning of the relevant parliamentary procedures. These routines and practices can be regarded as constitutional customs[338] or the 'living constitution'[339].

First, the EU scrutiny systems of the other Member States are discussed, since they - and especially the best practices of the old Member States - inspired the elaboration of the Hungarian rules. Second, the Hungarian constitutional rules concerning the relevant parliamentary procedures are presented. After the systematization of the parliamentary bodies and procedures regarding EU affairs, special attention is given to the CEA and the scrutiny procedure. Then, the other EU related parliamentary procedures are discussed. Finally, the relationship between the European Parliament and the Hungarian Parliament as a source of information contributing to EU scrutiny is presented.

I EU AFFAIRS IN NATIONAL PARLIAMENTS: PATTERNS FOR HUNGARIAN REGULATION

Generally speaking, the CEE parliaments followed the developments of Western parliamentary systems, and borrowed institutions, including the committee system.[340] This general statement is valid for the Hungarian Parliament too, which, similarly to the new Member States' parliaments, was inspired by the best practices of the old Member States in the process of their adaptation to European integration. The influence did not, however, signify a mere copying of existing solutions.[341] These were adapted to the given constitutional and political system. For these reasons, it is worth giving a

[338] For the conceptualization of constitutional norms and customs see TANS, Olaf, Introduction: National Parliaments and the European Union, in TANS et al., *National Parliaments and European Democracy*, op. cit., pp. 3–21 at pp. 10–15.
[339] RAUNIO, Holding governments accountable in European Affairs, op. cit. p. 320. BERGMAN, Torbjörn, National Parliaments and EU Affairs Committees: notes on empirical variation and competing explanations, *Journal of European Public Policy*, 1977, Vol. 4, No. 3., pp. 373-387 at p. 375.
[340] ÁGH, Attila, *Anticipatory and Adaptive Europeanization in Hungary*, Budapest, Hungarian Centre for Democratic Studies, 2003, p. 77.
[341] Before the accession, several studies were published in Hungarian on EU scrutiny models. See particularly FELFÖLDI, Az európai integráció magyar Országgyűlést érintő alkotmányos vonatkozásairól, op. cit.; FÜLÖP, A nemzeti parlamentek szerepe az EU-integrációban, op. cit.; POKOL, Az uniós csatlakozás és a magyar parlamentarizmus, op. cit.; CSERNY, A nemzeti parlamentek és az európai integráció, op. cit.; GYŐRI, The Hungarian Parliament and the Issue of European Integration, op. cit.

summary of the essential characteristics of the EU scrutiny systems of the old Member States. In the following, the constitutional basis of EU scrutiny, the different models of scrutiny procedures and the elements affecting the efficiency of scrutiny are discussed.

1 Common features

In all Member States, there is some kind of parliamentary control over the government via a hearing in the EAC before and/or after Council meetings. The common basis (*ius commune*) for national parliamentary control of EU decision-making is the constitutional principle of ministerial responsibility.[342] The control is made possible by granting parliaments information rights covering the negotiation positions of the government. Beyond the common constitutional basis, among the old Member States some convergence has emerged in the organizational adaptation to European integration.[343] Although the plenary and also sectoral committees may discuss EU affairs, in every national parliament a committee dealing, generally exclusively,[344] with EU matters was established (in France it is called a delegation, and not a committee).[345] The leading role of the EU affairs committees in this control can be observed in all national parliaments and includes the general possibility to involve sectoral committees in EU scrutiny.

The basis of the scrutiny procedures consists of the reception of EU documents from the EU institutions, and eventually from the government. This latter may be obliged to provide an explanatory memorandum and/or its position on EU documents, especially on legislative drafts. Documents are usually filtered and discussed in the EAC, and eventually in sectoral committees. Often a government member or high

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[342] TANS, Olaf, Conclusion: National Parliaments and the European Union, in TANS et al., *National Parliaments and European Democracy*, op. cit. pp. 225–249. See also KIIVER, *The National Parliaments in the European Union*, op. cit. p. 43.

[343] MAURER, Andreas, National Parliaments in the Architecture of Europe After the Constitutional Treaty, in BARRETT, *National Parliaments and the European Union*, op. cit. pp. 47–103 at pp. 53 and 55.

[344] In the Portuguese and Maltese parliament, and in the Slovene National Council, there is a joint committee on EU and foreign affairs.

[345] MAGONE, José, South European national parliaments and the European Union: An inconsistent reactive revival, in O'BRENNAN and RAUNIO, *National Parliaments within the Enlarged European Union*, op. cit. pp. 116–131 at p. 123; SZALAY, *Scrutiny of EU affairs in the national parliaments of the new member states*, op. cit. p. 112; JUHÁSZ-TÓTH, Angéla, *A nemzeti parlamentek és a kormányok együttműködése Európai uniós ügyekben Magyarországon és az Európai Unió többi új tagállamában [Cooperation between the national parliaments and governments in European Union Affairs in Hungary and in the other new Member States]*, Országgyűlés Hivatala, Budapest, 2005, p. 19.

ministry official gives evidence before the EAC. After the discussion, and before the Council decision, the EAC adopts a resolution, an opinion on the subject or gives a mandate (instructions) to the government for the Council negotiations. The government is usually obliged to give feedback about the decision made in the Council (and eventually the European Council). Apart from the common features there are many differences in the scrutiny procedures between the parliaments in terms of such aspects as the intensity of the control, the access to information, the timing of the procedure, the involvement of specialised committees, the legal nature of the parliamentary opinion, and the transparency of the procedures.

2 Categorizing scrutiny procedures

Based on the method of the scrutiny procedure, the literature distinguishes between a document-based and mandating model. The prototype of the document-based model is the British scrutiny procedure, whereas the pattern of the mandating system rests on the Danish scrutiny procedure.[346] The ultimate aim of both models is the same, the monitoring of EU legislation and the government's participation in it; only the approach is different. Document-based scrutiny concentrates on the early stage of EU legislation, when the draft legislative act is published, while mandating scrutiny focuses on Council negotiations. In the first system the parliamentary opinion is communicated to the government who are supposed to follow it, in the framework of its general accountability. In the mandating system, the EAC meetings before the Council meeting are of importance, and this is where the committee instructs the government.[347] The literature usually focuses on the mandating system, and the Danish scrutiny procedure is regularly evaluated as the most effective way of scrutinizing the government. Apart from the two basic methods, it is possible to distinguish those parliaments which simply adopt a more informal dialogue with the government ('informal scrutinisers').[348] As far

[346] Other parliaments applying a document-based system: Ireland, France (both chambers), Italy, Netherlands (Senate), Germany (Bundestag), Malta, the Czech Senate. Further mandating systems: Austria, Finland, Sweden, Latvia, Lithuania, Estonia, Slovakia.
[347] CYGAN, Adam, Some Reflections from the United Kingdom on the Role of National Parliaments in the European Union, in BARRETT, *National Parliaments and the European Union,* op. cit. pp. 119-142 at p. 125.
[348] See KIIVER, *The National Parliaments in the European Union*, op. cit. p. 54. E.g. Greece, Spain, Belgium.

as the new Member States is concerned, many states have combined the characteristics of the two basic methods, creating a mixed model.[349]

As far as the legal nature of the parliamentary decision on EU drafts is concerned, the literature distinguishes between two basic categories: binding and non binding (consultative) parliamentary opinions. Binding positions can be legally or politically binding.[350] The Danish mandate, which is usually considered legally binding, cannot be in fact qualified as such, since it is not regulated in normative terms.[351] It has its basis in the general principle on ministerial responsibility existing in every parliamentary system. It is rather the political system (regular minority government) and public opinion which have led to and maintain the Danish parliamentary scrutiny.[352] It is true that in practice the Danish mandate is so authoritative that it is regarded as the strongest mandate of all national parliaments.[353] On the other hand, there are national parliaments where the legal possibility for a binding mandate is given, but is seldom applied (Austria, the Dutch lower chamber in justice and home affairs, the German Bundesrat).[354] After all, if most national parliaments tied the hands of their governments with mandates leaving small room for manoeuvre, Council negotiations could be hampered.[355] In addition, it is also argued that demanding that the government explain and justify in public may be a more effective form of scrutiny than issuing a binding

[349] E.g. Poland, the Czech lower chamber, Estonia, the Slovene National Assembly. See SZALAY, *Scrutiny of EU affairs in the national parliaments of the new member states,* op. cit. p. 165; JUHÁSZ-TÓTH, *A nemzeti parlamentek és a kormányok együttműködése*, op. cit. p. 111.

[350] Maurer considers that one group of parliaments is able to legally mandate the government's representative (the Danish Parliament, the Austrian Nationalrat, the Finnish Parliament, the German Bundesrat and in former third pillar issues the Dutch lower chamber). See MAURER, National Parliaments in the Architecture of Europe, op. cit. pp. 62–63.

[351] CYGAN, Some Reflections from the United Kingdom, op. cit. p. 126. RAUNIO, Tapio and WIBERG, Matti, Too Little, Too Late? Comparing the Engagement of Nordic Parliaments in European Union Matters, in BARRETT, *National Parliaments and the European Union*, pp. 379-391 at p. 383; HEGELAND, Hans, The European Union in national parliaments. Domestic or foreign policy? A study of Nordic parliamentary systems, in O'BRENNAN and RAUNIO, *National Parliaments within the Enlarged European Union,* op. cit. pp. 95-115 at p. 106.

[352] MAURER, National Parliaments in the Architecture of Europe, op. cit. p. 64.

[353] KIIVER, *The National Parliaments in the European Union*, op. cit. p. 48.

[354] In Austria ministers can even be prosecuted before the Constitutional Court for violating the mandate. See AUEL, Katrin, Democratic Accountability and National Parliaments: Redefining the Impact of Parliamentary Scrutiny in EU Affairs, *European Law Journal*, 2007, Vol. 13, No. 4, pp. 487–504 at p. 493; KIIVER, *The National Parliaments in the European Union*, op. cit. p. 54. BLÜMEL, Barbara and NEUHOLD, Christine, The Parliament of Austria: A "normative" Tiger?, in TANS et al., *National Parliaments and European Democracy,* op. cit. pp. 143–160; TANS, Olaf, The Dutch Parliament and the EU: A Constitutional Analysis, in TANS et al., *National Parliaments and European Democracy,* op. cit. pp. 161–182.

[355] RAUNIO, Tapio, Ensuring Democratic Control over National Governments in European Affairs, in BARRETT, *National Parliaments and the European Union*, op. cit. pp. 3-27 at p. 10; VOS, National/Regional Parliaments and EU Decision-Making under the New Constitutional Treaty, op. cit. p. 12.

mandate.[356] In any case, even if a mandate is binding, nothing precludes the parliamentary majority from formulating it in a broad sense, providing a considerable margin of manoeuvre for the minister.

A politically binding parliamentary standpoint requires not only consideration by the government, but also justification in the case of any divergence from it during Council negotiations.[357] In other words, even if it is not obligatory to follow a parliamentary resolution, the general principle of ministerial responsibility ensures that ministers do not overstep its boundaries.[358] In the case of a non-binding opinion from parliament, the government can decide to take it into account or not.[359] Finally, Maurer considers that some parliaments do not have any means to effectively influence their government's standpoint.[360]

Based on the different features affecting the efficiency of parliamentary scrutiny of EU affairs, the literature distinguishes strong, moderate and weaker scrutiny. Kiiver suggest that strong national parliaments among the old Member States include the Danish, Finnish, and Swedish parliaments and the Austrian Nationalrat. The German Bundesrat is considered strong or moderate. The Bundestag belongs to the group of moderate scrutinisers, like the Dutch parliament in former third pillar issues, the UK House of Commons and the French Assemblée nationale. The rest of the old Member States' parliaments, that is those of Belgium, Luxembourg, Ireland, Portugal, Spain, Italy and Greece, are weak in terms of parliamentary scrutiny.[361]

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[356] SPRUNGK, Carina, Ever more or ever better scrutiny? Analysing the conditions of effective national parliamentary involvement in EU affairs, *European Integration online Papers (EIoP)*, Vol. 14, Article 02, http://eiop.or.at/eiop/texte/2010-002a.htm, accessed on 24/02/2013, pp. 9–10; AUEL, Democratic Accountability and National Parliaments, op. cit. pp. 487–504. RAUNIO, Ensuring Democratic Control, op. cit. p. 7; VOS, National/Regional Parliaments and EU Decision-Making, op. cit. p. 12.

[357] E.g. Estonia, Hungary, Latvia, Lithuania, the Polish Sejm, Slovakia, the Slovene National Assembly, see SZALAY, *Scrutiny of EU affairs in the national parliaments of the new member states*, op. cit. p. 142; JUHÁSZ-TÓTH, *A nemzeti parlamentek és a kormányok együttműködése*, op. cit. p. 59-60.

[358] KIIVER, *The National Parliaments in the European Union*, op. cit. p. 55; O'BRENNAN and RAUNIO, Introduction, op. cit. p. 18; MACCARTHAIGHT, Muiris, Accountability through national parliaments: practice and problems, in O'BRENNAN and RAUNIO, *National Parliaments within the Enlarged European Union…,* op. cit. pp. 29-55 at p. 35; BENZ, Path-Dependent Institutions and Strategic Veto Players, op. cit. p. 876.

[359] E.g. France, Luxembourg, Belgium, Spain, United Kingdom, see MAURER, National Parliaments in the Architecture of Europe, op. cit. pp. 62–63. In the new Member States e.g.: Cyprus, the Czech Republic, Malta and the Polish Senate. See SZALAY, *Scrutiny of EU affairs in the national parliaments of the new member states*, op. cit. p. 142; JUHÁSZ-TÓTH, *A nemzeti parlamentek és a kormányok együttműködése*, op. cit. p. 59-60.

[360] E.g. Greece, Italy, Ireland, Portugal, see MAURER, National Parliaments in the Architecture of Europe, op. cit. pp. 62–63.

[361] KIIVER, *The National Parliaments in the European Union*, op. cit. p. 62.

Maurer distinguishes between multi-level players (the Danish and Finnish parliaments), national players (the Austrian and Dutch parliaments) and slow adapters (the Irish, Luxembourg, Italian, Spanish, Portuguese and Greek parliaments). He considers multi-level players as the best performing parliaments, able to work both at European and national level. National players have efficient means to represent their interests at national level, but they do not shift their resources to become present in EU decision-making. Slow adapters are those national players whose adaptation to the EU context remains low and they cannot even maintain the status quo regarding their prerogatives at national level. The French and UK parliaments are modest policy makers, wishing to be national players, but unable to change government positions on EU drafts. Maurer considers the slow adapters and national players as 'losers' in the evolution of the EU system.[362]

3 Limits of scrutiny

In the literature, various elements appear which affect the efficiency of parliamentary control: the scope of information available for national parliaments (both European proposals and government notes on them); the timing of the process (both the reception of information and the timing of the procedure); the involvement of specialised committees; the presence of scrutiny reserve; the follow up of parliamentary resolutions; institutional capacities; and personnel resources.[363] According to Maurer, about half of the old Member States' parliaments run effective scrutiny over their governments in EU affairs.[364]

National parliaments willing to control their governments face several and sometimes inevitable difficulties. The literature often speaks of the problem of informational asymmetry, that is to say national parliaments, even despite their increased access to information based on the Lisbon Treaty, have an information deficit

[362] MAURER, National Parliaments in the Architecture of Europe, op. cit. pp. 67–69.
[363] RAUNIO, Ensuring Democratic Control, op. cit. p. 13–14. MAURER, National Parliaments in the Architecture of Europe, op. cit. p. 49. CYGAN, Some Reflections from the United Kingdom, op. cit. p. 123; SPRUNGK, Ever more or ever better scrutiny?, op. cit. p. 3.; LAPRAT, Gérard, Parliamentary Scrutiny of Community Legislation: An Evolving Idea, in: LAURSEN and PAPPAS, *The Changing Role of Parliaments in the European Union*, op. cit. pp. 1–19 at pp. 6 and 8.
[364] MAURER, National Parliaments in the Architecture of Europe, op. cit. p. 60.

compared to the government.[365] The domestic rules and practices show important variations between the national parliaments in terms of rights to information. Explanatory memoranda from the government are intended to reduce information asymmetry and assure that national parliaments are informed about the relevance of the given EU document to their country and, in most cases, the position of the government.[366] Control of EU decision-making can also be hampered by party politics, since the parliamentary majority supports the government, while the opposition criticizes it, and political differences of opinion tend to be handled informally in party groups. Sanctions on ministers in EU affairs are infrequent.[367] Norton observed, in 1996, that national parliaments had been unable and, to some extent unwilling, to play a significant role in EU decision-making. He stated that the inability was constitutional, -while neither national nor European constitutional arrangements helped national parliaments to realise control and affect outcomes- and procedural (e.g. the workload of parliaments). On the other hand, the unwillingness stemmed from ideological reasons, as national parliaments were committed to European integration, and the culture of mistrust between national parliaments and the European Parliament prevented any deep cooperation.[368]

Further difficulties for parliamentary scrutiny arise from the complexity, remoteness and often unpredictability of EU decision-making. The OMC and other intergovernmental instruments for policy coordination (e.g. CFSP, the growth and stability pact) easily escape national parliamentary control.[369] The trend towards the less transparent practice of early trilogues and agreements between the Council, the European Parliament and the Commission makes it even more difficult for national parliaments to follow the decision-making procedure.[370] QMV is often cited as an element making national parliamentary scrutiny illusionary. In fact, QMV does not diminish the efficiency of parliamentary control, while governments can be called to report independently on the question of whether it was part of the qualified majority or

[365] RAUNIO, Ensuring Democratic Control, op. cit. pp. 6–7; KIIVER, *The National Parliaments in the European Union*, op. cit. p. 43.
[366] E.g. in Austria, Denmark, Finland, Germany, the United Kingdom, the Netherlands and Sweden, see RAUNIO, Holding governments accountable in European affairs, op. cit. p. 322.
[367] TANS, Conclusion, op. cit. p. 238.
[368] NORTON, Conclusion, op. cit. pp. 186–191.
[369] RAUNIO, Ensuring Democratic Control, op. cit. p. 23. TANS, Conclusion, op. cit. p. 232.
[370] DASHWOOD et al., *Wyatt and Dashwood's European Union Law*, op. cit. pp. 73 and 95.

the minority. On the other hand, QMV does reduce the capacity of national parliaments to influence EU decision-making through their governments.[371]

All the above experiences of the old Member States influenced the Hungarian legislators in their adoption of the legal background of Hungarian EU scrutiny.

II ADAPTATION TO EU INTEGRATION: THE HISTORICAL AND LEGAL BACKGROUND

The Hungarian National Assembly, like most of the other CEE parliaments, started to scrutinize the government in connection with European integration from the beginning of the 1990s. The Committee on European Community Affairs (known as the Committee on European Integration Affairs from 1994) was established in 1992,[372] two years before Hungary presented, after parliamentary authorization, its application for accession to the Communities. Both committees' main task was to oversee the implementation of the association agreement,[373] the legal harmonization, and the accession negotiations.

In September 2002, another parliamentary body dealing with European matters was established: the so-called Grand Committee, chaired by the Speaker of the House. It was clearly designed on the example of the Finnish Grand Committee.[374] Its members were party group leaders, the chairmen of the committees on constitutional, integration and foreign affairs. The foreign minister and the prime minister participated in the meetings which were held behind closed doors. The body worked as a monthly forum of consultation on the Hungarian position before European Council meetings, and cooperation on important issues concerning the country's EU accession, including the

[371] AUEL, Democratic Accountability and National Parliaments, op. cit. p. 499.
[372] Resolution No. 47/1992 (VI.30.) OGYH.
[373] Act I of 1994 on the promulgation of the Europe Agreement, signed on 16 December 1991 in Brussels, establishing an association between the European Communities and their Member States, of the one part, and the Republic of Hungary, of the other part. For the English version of the Agreement see OJ L 347, 31.12.1993, p. 2–266.
[374] The membership of the Grand Committee is appointed in proportion to the parliamentary representation of the political parties. The political and institutional representativity of the Grand Committee is enhanced by the fact that many political group leaders and chairmen of the specialised committees are also members of the Grand Committee. This is not a statutory requirement but rather reflects the importance of the Grand Committee. See: http://web.eduskunta.fi/Resource.phx/parliament/committees/grand.htx accessed 17/02/2014.

preparation of the amendment of the Constitution and the act on the cooperation of the Parliament and the government in EU affairs.[375]

The modification of the Constitution in 2002 provided the constitutional foundation for Hungary's accession to the Communities.[376] The so-called 'Europe-clause' (Article 2/A) entitled Hungary to exercise certain constitutional powers jointly with other EU Member States and to conclude the necessary international agreements. Article 35/A of the Constitution specified that the government is obliged to provide the Parliament with information by sending the Parliament all the proposals on the agenda in the decision-making procedures of those institutions of the EU which function with government participation.[377] The article also stated that detailed rules concerning the controlling powers of Parliament, the cooperation between the Parliament and the government, and the informational obligations of the government shall be elaborated in a law passed by a two-thirds majority of MPs in attendance. The Constitution clearly defined the distinction in roles between the government and the Parliament: Parliament has the right to control, but the government is the actor, the body which represents the Republic of Hungary in the institutions of the EU that require government participation.[378]

It is worthy of note that not every Member State has included in its constitution the right of parliamentary oversight. Among the old Member States it was in 1992 that Germany and France first laid down basic constitutional rules for parliamentary scrutiny of EU affairs. Later Belgium, Portugal, Finland and Austria made similar amendments.[379] Among the new Member States, Hungary, the Czech Republic, Slovenia, Bulgaria and Romania included dispositions on EU scrutiny in their constitutions. In Lithuania and Slovakia the form of the act on EU scrutiny is a constitutional law.[380] Ultimately, giving constitutional rank to scrutiny rules does not guarantee a better or stronger application of scrutiny. It is sufficient to remember that the Danish scrutiny rules are not even spelled out in a law, being based on an EAC report and parliamentary custom.

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[375] See GYŐRI, The role of the Hungarian National Assembly in EU policy-making, op. cit. pp. 222–223.
[376] Act LXI of 2002.
[377] Article 35/A(2) of Act XX of 1949.
[378] Article 35(1)(k) of Act XX of 1949.
[379] KIIVER, *The National Parliaments in the European Union*, op. cit. pp. 57–59.
[380] SZALAY, *Scrutiny of EU affairs in the national parliaments of the new member states*, op. cit. p. 110; JUHÁSZ-TÓTH, *A nemzeti parlamentek és a kormányok együttműködése*, op. cit. p. 14-15.

In order to elaborate the detailed rules on the Hungarian Parliament's role after the accession, an expert working group was created by the Grand Committee at the end of 2002 including representatives of the government, the Parliament, political parties and some independent experts. The report of the working group referred to the relationship between the national parliaments and the governments in the EU, the principles of the Amsterdam Protocol (see Chapter 2), COSAC's Copenhagen Guidelines on parliamentary scrutiny of EU matters[381] and the Constitutional Treaty's relevant dispositions. The report underlined that future rules should be guided by Hungarian constitutional traditions, especially the principle of ministerial responsibility. It suggested two new procedures: the first for the monitoring of EU legislation, the second for the control of subsidiarity. It was made clear that the existing parliamentary control mechanism would be also available in EU matters.[382]

The political negotiations on the report started in September 2003 in the framework of a body created by the Grand Committee with the participation of an MP from each parliamentary group and the representative of the government.[383] The negotiations were broken off after two months, since the positions of the government and the parliamentary parties became irreconcilable on certain major points, namely the binding nature of the parliamentary standpoint.[384] It must be underlined that both government and opposition parties shared the same idea, and it was the government who did not accept the parliament's opinion.[385] Since then, no similar division lines have emerged during the application of the scrutiny procedure.

The solution was a compromise between the two blocks which was reached in March 2004. The Act LIII of 2004 on cooperation in EU affairs between the Hungarian National Assembly and the government (further referred to as the Cooperation Act) was adopted in May and entered into force on 24 June 2004, almost two months after Hungary's accession to the EU, just before the parliamentary summer recess. The

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[381] 'Copenhagen Parliamentary Guidelines' – Guidelines for relations between governments and Parliaments on Community issues (instructive minimum standards) (OJ 2003 C, 154/01).

[382] JUHÁSZ, László, *Az egyeztetési eljárás [The scrutiny procedure]*, Budapest, Országgyűlés Hivatala, 2007, pp. 13–17.

[383] GYŐRI, The role of the Hungarian National Assembly in EU policy-making, op. cit. p. 226.

[384] During the negotiations several options have appeared: i. the government can deviate from the standpoint only in justified cases (e.g. to protect better the national interest) or with the post facto requirement to provide reasons; ii. if the European proposal concerns a matter which in Hungary is regulated by cardinal law the government can only deviate from the standpoint if the Parliament authorize it; iii. the government should act in Council, taking into account the major points of the standpoint. See JUHÁSZ, *Az egyeztetési eljárás*, op. cit. pp. 20–21 and 29.

[385] JUHÁSZ, *Az egyeztetési eljárás*, op. cit. pp. 32–33.

Standing Orders of the National Assembly were also modified to give further details to scrutiny within the National Assembly.[386] All the legal means regulating scrutiny (the Constitution, the Cooperation Act and the Resolution) had been adopted by a qualified majority. The qualified method of adoption of legal norms is meant to serve as a strong guarantee for the stability of the system. All the three layers of legislation were modified in the course of 2011 and 2012 within the framework of a wider constitutional reform in Hungary. In the following, I concentrate on the legislative background in force and refer to the differences between the former and present provisions where necessary.

The Fundamental Law, which came into force on 1 January 2012, modified the constitutional basis both for Hungary's participation in the EU (Article E, Europe-clause) and the parliamentary scrutiny of European affairs (Article 19). The Fundamental Law did not alter the logic of the original Europe-clause in the former Constitution despite the simplified wording of the clause.[387] Article 19 contains, however, substantially different provisions on the scrutiny of EU affairs. Firstly, the adoption of the act providing the detailed rules on the cooperation between Parliament and the government in EU affairs does not henceforth require a two-thirds majority vote of MPs in attendance (a so-called cardinal act). This creates some inconsistency, because while the act on cooperation is an ordinary law adopted by simple majority, the Standing Orders containing further details on European scrutiny are adopted by a two-thirds majority. It would have been reasonable to keep the previous requirement for a cardinal act because the basic rules on cooperation between the government and Parliament are of a constitutional nature and their adoption or modification should be based on a wider consensus.

Another substantial difference between the former and present constitutional dispositions lies in the formulation of the relevant rights and obligations of Parliament and the government. The former Constitution stated that the government shall send Parliament all the proposals on the agenda in the decision-making procedures of those

[386] Resolution No. 47/2004 (V.18.) OGYH. As far as the government is concerned, a decree regulates the organization of the representation of the government in EU institutions. So far, three government decrees have dealt with the coordination of government participation in the decision-making procedures of the European Union: decrees no. 1007/2004. (II.12.); no. 1123/2006. (XII. 15.) and no. 1169/2010. (VIII.18.).
[387] For detailed analysis see CHRONOWSKI, Nóra 'The new Hungarian Fundamental Law in the light of the European Union's normative values', *Est Europa*, 2012, Numéro spécial n° 1, pp. 120–124. For an assessment of the constitutional changes see FAZEKAS, Flóra, EU Law and the Hungarian Constitutional Court, in VARJU, Márton and VÁRNAY, Ernő (eds.), *The Law of the European Union in Hungary: Institutions, Processes and the Law*, HVG-ORAC, Budapest, 2014, pp. 32-76.

institutions of the EU which function with government participation.[388] As we have seen in Chapter 1, since the Treaty of Lisbon, EU institutions are obliged to transfer draft legislative acts and other documents directly to the national parliament. Direct transfer of EU documents can explain why the new Fundamental Law does not place a constitutional obligation on the government to provide these documents. A further new element of the legislation is that the new Fundamental Law now includes in Article 19 the Parliament's right to ask for the government position to be represented in EU institutions and the right to express its position on EU drafts. The wording of the second right is not the most fortunate, inasmuch as it rules that the Parliament can express a position on an 'EU draft'. Consequently, Article 19 does not expressly provide the right to Parliament to adopt a standpoint on the government position, while the Act XXXVI of 2012 on the National Assembly (see below) and the Standing Orders include this possibility.[389]

Another novelty of Article 19 is the government's obligation to take the parliamentary standpoint regarding the EU draft into consideration. This obligation was previously part of the Cooperation Act, and has now acquired a constitutional rank. It has to be noted that the violation of Article 19, in other words ignoring the parliamentary standpoint, cannot effect the legality of the EU legislative act and there are no *a posterior* remedies available against such a constitutional violation. Arguably, in such an event Parliament will have to draw its own conclusions and call the government to account, relying on existing instruments of accountability.

A final observation on the difference between the former and present constitutional rules must be mentioned. The former Constitution expressly stated that the government represents Hungary in the institutions of the EU that require government participation.[390] This provision implied that it is the government's task to elaborate the negotiating position. The Hungarian Parliament can, therefore, only control or influence the national position. The Fundamental Law does not contain a similar provision. From the actual wording of Article 19, it can be deduced only

[388] Article 35/A (2) of the Constitution. For further analysis on this provision see SZALAY and JUHÁSZ-TÓTH, Control of EU Decision-making in the Hungarian National Assembly, op. cit. p. 124.
[389] Article 65(7) of Act XXXVI of 2012 and Article 134/B(1) of the Standing Orders ("…the elaboration of a standpoint concerning the position proposed by the government shall fall in the authority of the European Union Committee"). As it will be shown below, the parliamentary standpoint clearly states whether the Parliament supports the government's position. See also TAMÁS and BÍRÓ, Az egyeztetési eljárás magyar modellje a 2006–2010-es parlamenti ciklusban, op. cit. p. 23.
[390] Article 35(1)k of Act XX of 1949.

indirectly that the government remains responsible for the elaboration and representation of the position.

The details of parliamentary scrutiny in European affairs are spelt out in Act XXXVI of 2012 on the National Assembly (further referred to as the Parliament Act). This act repealed the Cooperation Act which originally regulated the scrutiny process. Chapter VI of the Parliament Act is dedicated to the rules on the cooperation between the government and Parliament in European affairs. Chapter VI contains the basic dispositions on the scrutiny procedure, the other information obligations of the government, the examination of subsidiarity and the legal basis on the objection to the application of *passerelle* clauses. The Standing Orders of the National Assembly, also modified in 2012, give further detail regarding the scrutiny procedure and other control mechanisms within the National Assembly. Neither the Parliament Act nor the modified Standing Orders brought about fundamental changes in parliamentary control. Building on the approximately eight years of parliamentary experience with European affairs, the rules they contain suit the needs of parliamentary work. They regulate the Hungarian parliamentary procedures for subsidiarity control, the veto on *passerelle* clauses and the political dialogue between the European Commission and the Hungarian Parliament (see Chapter 2).

III EU RELATED PARLIAMENTARY ACTIVITIES: AN OVERVIEW

In the Hungarian Parliament, European affairs are discussed and debated in the plenary session, in the CEA and in other standing (sectoral) committees, and in the EU Consultative Body. The plenary session ratifies the Treaties (with the participation of the standing committees in the discussion), adopts the final decision on the submission of reasoned opinion under Protocol 2, or raises opposition to the recourse to *passerelle* clauses. The debates at the plenary serve – or should serve – as an important framework for public debates on European affairs. The prime minister informs the plenary sitting on the outcome of the European Council meetings. The questions or interpellations in connection with the EU are not only a means of control of the government, but also inform citizens on EU affairs.

The CEA is the central parliamentary actor regarding EU related issues. It is the standing committee specializing in EU affairs and manages the scrutiny of the government's EU related activities. The CEA is one of the standing committees and participates in every EU related parliamentary procedure.[391] Besides the discussion on ratification acts, it participates in the legislative procedure (including implementation of EU law), in initiating a reasoned opinion on subsidiarity and an opposition to the *passerelle* clauses. Its most important task is the scrutiny procedure.[392] The CEA has an unusual role in this procedure since it has the power to decide matters in the procedure concerning drafts of the EU and to adopt a standpoint in the name of the whole Parliament.[393] Whilst the scrutiny procedure is focused on specific EU drafts, the CEA is given competence to oversee the government's EU related activities in general. The CEA bears the responsibility for engaging in a political dialogue with the European Commission[394] and for hearing of the nominees for certain EU posts (e.g. member of the Commission, members of the CJEU).

Involvement of other standing committees (sectoral committees) in the scrutiny procedure is often considered a crucial element in the efficiency of the procedure.[395] In the Hungarian parliament, like in most of the new Member States, the participation of standing committees in the scrutiny procedure is institutionalized.[396] Nonetheless, their main functions remain related to domestic lawmaking and control of the government in domestic affairs. They can follow EU policies concerning their competences through hearings and participate in the discussion of bills implementing EU law.

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[391] Under Article 16 of Parliament Act, the CEA is among the eight standing committees which the Parliament is obliged to establish in every cycle. The number of standing committees varies in every parliamentary cycle, e.g. 2002-2006: 25; 2006-2010: 18; 2010-2014: 20.

[392] Among the new Member States the EAC of the Estonian, Latvian, and Maltese parliaments, and both Polish chambers deal exclusively with the scrutiny procedure and do not participate at all in the national legislative activities. SZALAY, *Scrutiny of EU affairs in the national parliaments of the new member states,* op. cit. p. 114.

[393] Article 62(2) of Parliament Act. The German Bundestag's EAC can be also authorized to speak on behalf of the plenary, see Article 93b(2), rules of procedure of the Bundestag. Similar authorization is given by law to the EAC of the Estonian and Latvian parliaments and both chambers of the Polish parliament. SZALAY, *Scrutiny of EU affairs in the national parliaments of the new member states,* op. cit. p. 135; JUHÁSZ-TÓTH, *A nemzeti parlamentek és a kormányok együttműködése*, op. cit. p. 21.

[394] Article 134/G of the Standing Orders.

[395] See RAUNIO, National Parliaments and European Integration, op. cit. p. 319; RAUNIO, Holding governments accountable in European affairs, op. cit. pp. 319–342.

[396] Exemptions are the Czech Chamber of Deputies, the Polish Sejm and the Latvian parliament, where involvement of standing committees is possible, but hardly applied in practice. See SZALAY, *Scrutiny of EU affairs in the national parliaments of the new member states,* op. cit. pp. 112–113 and 126–128; JUHÁSZ-TÓTH, *A nemzeti parlamentek és a kormányok együttműködése*, op. cit. p. 20-21. Among the old Member States, involvement of sectoral committees is the most institutionalized in the Finish parliament.

The distinct EU Consultative Body, the successor to the Grand Committee, is not a standing committee, but a parliamentary forum at a high political level organized to discuss issues on the agenda of the upcoming European Council meeting or similar important events. It was designed following the models of Finnish Grand Committee and the Austrian Main Committee.[397]

Table 1 summarizes which parliamentary bodies are involved in the above mentioned procedures and the different forms of their involvement. It has to be added that there is no legal provision on who represents the Hungarian Parliament in a prospective convention on the modification of the EU Treaties. The previous Convention on the Future of Europe, in which the members of the Committee on European Integration Affairs participated, may provide the blueprint for future conventions.

Table 1 – Parliamentary instruments related to European law

<table>
<tr><th colspan="2"></th><th>Plenary</th><th>CEA</th><th>Sectoral committees</th><th>EU consultative body</th></tr>
<tr><td colspan="2" rowspan="2">Participation in primary law making</td><td colspan="3">Convention, ratification</td><td rowspan="5"></td></tr>
<tr><td colspan="2">opposition to passerelle clauses</td><td rowspan="2"></td></tr>
<tr><td rowspan="2">Participation in the secondary law making</td><td>Directly</td><td colspan="2">subsidiarity check</td></tr>
<tr><td>Indirectly</td><td></td><td>political dialogue</td><td></td></tr>
<tr><td colspan="2">Implementation of EU law</td><td colspan="3">scrutiny procedure</td></tr>
<tr><td colspan="2" rowspan="2">Control of the government activities in connection with the EU</td><td colspan="3">legal harmonization</td></tr>
<tr><td>questions, interpellations, etc.</td><td colspan="2">hearings</td><td>hearings before EU summits</td></tr>
<tr><td colspan="2"></td><td colspan="3">report on EU Membership</td><td></td></tr>
</table>

The parliamentary instruments for supervising or influencing European affairs can be grouped in the following way:[398]

1. *Traditional parliamentary tools*: long-existing parliamentary instruments which are also used in connection with EU affairs: ratification of international agreements or other acts determined in the Treaties, transposition of EU law,

[397] ÁGH, *Anticipatory and Adaptive Europeanization*, op. cit. p. 88, note 7.
[398] SZALAY and JUHÁSZ-TÓTH, Control of EU Decision-making, op. cit. p. 125.

and means of control, such as interpellations, questions, speeches before or after the orders of the day, policy debates, reports and records.

2. *The scrutiny procedure*: serves for discussion in the CEA and other standing committees of selected EU draft legislation acts and the related government positions with the aim of the adoption of a parliamentary standpoint which the government has to take into account during the negotiations in the Council.
3. *Other EU scrutiny tools*: subsidiarity control, veto on *passerelle* clauses, political dialogue with the Commission, hearings before and after the European Council meetings, regular reports on the government's activities in EU matters and hearings of government nominees to EU institutions.

In the following, the legal rules and parliamentary practices based on this grouping are discussed.

IV TRADITIONAL PARLIAMENTARY TOOLS

As was presented in Chapter 2, certain legal instruments of the EU have to be ratified by the Member States according to their constitutional requirements. The Fundamental Law and Act L of 2005 on procedures relating to the conclusion of international agreements define which international acts have to be ratified by Parliament. If the subject matter of the international agreement belongs to the competence of Parliament, its parliamentary ratification will take place in the form of an act of Parliament. In other cases, ratification will be completed with a decree by the government.[399] Article E of the Fundamental Law specifically stipulates that ratification of international agreements on participation in the EU requires a two-thirds majority of the votes of all MPs. The notion of 'international agreements on participation in the European Union' was interpreted on two occasions by the Constitutional Court. According to the Court's first decision, the notion includes not only Hungary's Accession Treaty, but also amendments to the EU Treaties.[400] Concerning the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (the European Fiscal Pact), the

[399] Article 7(1) and 9(1) of Act L of 2005.
[400] Decision no. 143/2010. (VII. 14.) of the Constitutional Court.

Constitutional Court stated that if an international agreement includes amendments of rights and obligations stemming from the founding Treaties and covers the common exercise of further competences transferred to the EU following the authorisation of the Fundamental Law, then Article E and the two-thirds voting rule apply.[401]

In Hungary, ratification takes place after the closing of international negotiations and the signature of the agreement. The act of Parliament ratifying the international agreement authorizes the President of the Republic, or the government, to recognize its binding legal effect. In the parliamentary process, the discussion of the bill first takes place in standing committees. The committee on foreign affairs discusses every bill of this kind. As a general practice, depending on the subject matter of the agreement, other competent standing committees may also take part in the ratification process. The CEA will include on its agenda any bills proposing the ratification of measures originating from the EU. Amendments introduced to these bills cannot concern the text of the original agreements.[402] After the discussion in committees, voting on the bill will be taken in the plenary session of Parliament.

Parliament, together with the government, is under a duty to ensure that the Hungarian legal system complies with the requirements of the EU Treaties and any other sources of EU law, and to ensure that the effectiveness of EU law is not compromised.[403] As a norm, this obligation is discharged by adopting new laws or by modifying existing laws (legal harmonization). The principal responsibility for submitting bills in this area belongs to the government. As a general rule, if the subject matter of the EU measure belongs to the competence of Parliament, a parliamentary act is required for its transposition. If a bill contains dispositions for transposing directives or in any way ensures conformity with EU law, it must include a 'legal harmonization clause' enumerating the transposed EU measures. The parliamentary discussion of bills transposing EU law does not differ from the legislative procedure on bills of domestic origin. The CEA is not necessarily invited by the Speaker to take part in the legislative procedure. In some national parliaments (e.g. Italy, Portugal and Greece), the government has to report regularly (yearly, or at the end of the legislative session) on

[401] Decision no. 22/2012. (V. 11.) of the Constitutional Court. For further details see MOHAY, Ágoston, Hungarian Constitutional Court: The Ratification of the Fiscal Compact, *Vienna Online Journal On International Constitutional Law*, 2013, Vol. 7, No. 21., pp. 261-266. o.
[402] Except translation mistakes, see Article 123(2) of the Standing Orders.
[403] See the duty of loyal cooperation stemming from Article 4(3) TEU.

the state of legal harmonization.[404] In Germany, the federal government submits a note on each new EU directive stating the deadline and schedule of transposition, and reports if a transposition deadline is exceeded by more than six months.[405] In Hungary, the parliamentary monitoring of legal harmonization does not have a regulated form. The CEA usually includes this question in the annual hearing of the minister on justice concerning EU matters within its responsibility.[406]

The means available to Parliament to control the government are also used to supervise government activities in the EU institutions and the implementation and enforcement of EU law by the government and its agencies. Beyond supervision, these parliamentary tools may also serve as a source of information for MPs and also for citizens. Parliamentary debates, some parts of which are broadcast, are regarded as an important arena for public debate and for the articulation of party opinions. Both from the perspective of government responsibility and ensuring public debate on matters of policy, probably the most significant tool of parliamentary control in Hungary is interpellation. Interpellations are addressed by MPs to the members of the government and to other holders of public office as determined by law. If the answer is not accepted by the MP initiating the interpellation, Parliament will take a vote on it.[407] During parliamentary sessions,[408] about one hour every Monday is set aside for interpellations. Normally, every parliamentary group has the opportunity to present an interpellation.

Similar publicity and media attention is given to speeches before the agenda (orders of the day) at the plenary. These speeches can be given by members of the government and the parliamentary group leaders and are dedicated to important current issues. Parliamentary questions may also be asked every Monday after the interpellations. No vote is held on questions. The so-called 'policy debates' can be held on key policy issues in a timely manner (lasting about four or five hours). In some

[404] MAGONE, South European national parliaments and the European Union, op. cit. p. 112.
[405] CYGAN, *National Parliaments in an Integrated Europe*, op. cit. pp. 40–141.
[406] Nor was the control of legal harmonization exercised by the CEA stronger or much deeper before the accession. See GYŐRI, *A nemzeti parlamentek és az Európai Unió*, op. cit. pp. 391–392.
[407] A ministerial refusal to answer the interpellation is not sanctioned with any direct political consequence, but it is considered a major loss of political prestige. See KÖRÖSÉNYI, András, TÓTH, Csaba and TÖRÖK, Gábor, *The Hungarian Political System*, Budapest: Hungarian Center for Democracy Studies Foundation, 2009, p. 97.
[408] The session is a period during which the National Assembly is in actual operation, holding plenary and committee sittings. There are two regular sessions: in spring (from 1 February to 15 June) and autumn (from 1 September to 15 December). In almost every year spring and autumn sessions are extended by a few weeks with the convention of the summer and winter extraordinary sessions. A sitting is a plenary sitting of one or more days convened within a session. For further details see SOLTÉSZ, István (ed.), *The Hungarian National Assembly*, Centre for Parliamentary Management, Budapest, 2008, pp. 132–133.

national parliaments there are legal opportunities to hold regular plenary debates on EU matters. In France, for example, a monthly question-and-answer session is dedicated to EU issues at the plenary and broadcast on television; furthermore 'Europe days' are organised for the discussion of the Commission's annual legislative programme.[409] In Hungary such regular EU debates do not take place at the plenary.

V THE COMMITTEE ON EUROPEAN AFFAIRS AND THE SCRUTINY PROCEDURE

As has already been mentioned, the CEA was first established in June 1992 as a special committee. The Hungarian Parliament was the first among the CEE national parliaments to have a committee dealing with EU integration.[410] After the 1994 elections, the committee was established again, but this time as a standing committee. Its 'special' nature was, however, maintained due to the horizontal field of interest (i.e. any kind of European policy) and its low involvement in the legislation.[411] In 2004, besides the modification of the name of the committee to the Committee on European Affairs, an important change occurred in its status: it became one of the standing committees whose establishment is obligatory.[412] This solution is somewhat similar to the status of the EAC of the German Bundestag which is one of the few parliamentary committees mentioned in the Basic Law.[413]

As for the responsibilities of the CEA, the accession of Hungary to the EU marked a dividing line in the work of the CEA. Before the accession, the tasks of the Committee were not enumerated in any specific legal norms, apart from the general powers vested in every standing committee in the Constitution. From 1994, the CEA worked as the

[409] MAURER, National Parliaments in the Architecture of Europe, op. cit. p. 100.
[410] The national parliaments of the New Member States founded their EACs in the following years: 1992: Hungary, Poland: Sejm; 1993: Poland: Senate, Slovenia: National Council; 1995: Czech Chamber of Deputies, Latvia, Romania; 1996: Slovakia, Bulgaria; 1997: Estonia, Lithuania; 1998: Czech Senate; 1999: Cyprus, Slovenia: National Assembly; 2000: Croatia; 2003: Malta.
[411] ÁGH, Europeanization and Democratization, op. cit. p. 450.
[412] 47/2004. (V.18.) OGY Határozat on the modification of the Standing Orders. In 2012, the rule was included in the Parliament Act, which, in its Article 16(2), provides for the obligatory establishment of the committees on immunity, incompatibility and mandate, constitutional affairs, budget, foreign affairs, European affairs, national defence, national security and on national cohesion.
[413] See Article 45 of the Basic Law of Germany.

Hungarian side of the EU-Hungary Joint Parliamentary Committee, which ceased to exist after 2004. Further tasks of the committee were to oversee the implementation of the association agreement, legal harmonization, and the accession negotiations. The success of the committee is uncertain, while it failed to have any impact on the last and most important matter, the accession negotiations, which started and took place without preliminary parliamentary approval of the negotiation strategy.[414] The government informed the CEA on the negotiations, but only ex post.[415] In addition, neither was the CEA active in the monitoring of the legal harmonization (transposition of the *acquis communautaire* into Hungarian law) before accession, which did not induce important debates in Parliament. The process was driven by the government.[416]

In 2004, as we have seen above, the special powers of the CEA were included in the Cooperation Act and the Standing Orders. Since then, the CEA, besides those powers which the other standing committees also have at their disposal (hearing, etc.), has been responsible for managing the scrutiny procedure, subsidiarity control and, since 2012, objections to the application of *passerelle* clauses and the political dialogue with the Commission. There are functions which have always been exercised by the committee, such as organising hearings on EU-related issues, examination of the draft national budget from the point of view of EU-related expenditures, hearings for candidates for minister and ambassador, and monitoring the approximation of laws.[417]

The composition of the CEA reflects the proportion of parliamentary groups. In Hungary, according to the parliamentary custom, one MP can only sit on one standing committee, thus the practice of overlapping committee membership between the EAC and sectoral committees, which is the practice in several national parliaments (like in Denmark and Sweden), is not followed.[418] Unlike in some national parliaments (e.g. in Denmark and Finland), the members of the CEA in Hungary are not, generally speaking, the more influential or senior ranking parliamentarians, such as former ministers or leaders of parliamentary parties. Exemptions from this trend have been the

[414] It must be underlined that in 1994 the Hungarian Parliament authorised the government to present the accession application [16/1994. (III.31.) OGY Határozat]. This act may be considered as approval to conduct the accession negotiations. GYŐRI, The Hungarian Parliament and the Issue of European Integration, op. cit. p. 131.
[415] GYŐRI, *A nemzeti parlamentek és az Európai Unió*, op. cit. pp. 412–413.
[416] GYŐRI, The role of the Hungarian National Assembly in EU policy-making after accession to the Union, op. cit. pp. 222–223.
[417] GYŐRI, The Hungarian Parliament and the Issue of European Integration, op. cit. p. 123.
[418] There is an exemption from this rule: a parliamentary group which has fewer members than the number of standing committees may have one seat in every standing committee, accordingly MPs from these groups may be members in more than one committee. See Article 17 of Parliament Act.

chairpersons of the CEA. The chairperson is usually a member of the government party; except in the 1994–1998 cycle, when the leader of the largest opposition party held this office, and the last two years of the 2006–2010 cycle when the party of the chairperson – the smaller coalition party until 2008 – left the coalition and became an opposition party.

CEA meetings are, as a general rule, open,[419] although adoption of the parliamentary standpoint in the scrutiny procedure always takes place in camera. Closed sessions can also be ordered on the government's request. Theoretically open sessions are preferable if we take into account the deliberative and information functions of parliaments.[420] On the other hand, it may be justified not to reveal the national position in public during Council negotiations. Interestingly, the Nordic parliaments' EACs, which are considered to be characterised by strong scrutiny, deliberate behind closed doors. This secrecy is compensated for there by publication of summary minutes or press conferences.[421]

In the next sections, I will focus on the main function of the CEA: the scrutiny procedure. It is a multi-phase procedure beginning with the reception of information on EU legislative drafts from the EU institutions and the government. It continues with the discussion in the CEA and in other standing committees of the selected draft, and with the formulation of the parliamentary standpoint. The procedure is closed by an *ex post facto* examination of how the government represented the parliamentary standpoint in the Council. The CEA, given a unique role in the parliamentary control of EU decision-making in Hungary, makes the decisions in the scrutiny procedure and adopts the standpoint in the name of the whole Parliament.[422] This power is unprecedented within Parliament but not without precedent in the scrutiny systems of other Member States. A similar structure of the delegation of decision-making powers to Committee level exists in, for example, Estonia, Latvia, Poland, Denmark and Finland. In these countries only the EAC, and not the plenary, is empowered to adopt the parliamentary

[419] Article 58 of Parliament Act.
[420] See KIIVER, Philipp, European scrutiny in national parliaments: individual efforts in the collective interest?, in O'BRENNAN and RAUNIO, *National Parliaments within the Enlarged European Union*, op. cit. pp. 66–78 at p. 71.
[421] HEGELAND, The European Union in national parliaments, op. cit. pp. 99–100.
[422] Article 62(2) of Parliament Act and Article 134/B(1) of the Standing Orders. Similar formal delegations of power can be observed in the German Bundestag and the Czech Chamber of Deputies. Other EACs may not have such formal power, although they play practically the same role. See TANS, Conclusion, op. cit. p. 233.

standpoint.[423] In some other Member States, the EAC adopts resolutions on EU drafts as a rule, but in specific cases the plenary votes on the resolution (e.g. the Czech Chamber of Deputies, Lithuania, Slovakia and Slovenia).[424]

I will discuss the Hungarian scrutiny procedure from three basic perspectives: the documents and information at the disposal of Parliament, the course of the procedure, and the legal nature of the parliamentary standpoint.

1 Documents in the scrutiny procedure

The Parliament Act imposes upon the government the duty to send to Parliament all EU draft legislation, proposals or other documents on the agenda of the Council (including the Coreper and the working groups) and the European Council, immediately after receipt.[425] A new element in the Act is that the method of providing information can be 'transfer or any other method', the latter referring to direct access to government databases.[426] In practice, since 2004 Parliament has received from the government all material forwarded to Hungary through the Council extranet service.[427] A record of these documents is kept with the CEA in the EUDOC database and is accessible to MPs, parliamentary groups and their staff and the Office of Parliament.[428] As timing of the procedure is very important, the obligatory early reception of these documents is fundamental. It must be underlined that the Lisbon Treaty's innovation regarding the direct transfer of EU documents did not change in substance the scope of the documents available to the Hungarian Parliament.

EU drafts are not the only documents and information that the government is obliged to provide to Parliament. Parliament can request any other clearly specified

[423] See SZALAY, *Scrutiny of EU affairs in the national parliaments of the new member states*, op. cit.; JUHÁSZ-TÓTH, *A nemzeti parlamentek és a kormányok együttműködése,* op. cit.
[424] SZALAY, *Scrutiny of EU affairs in the national parliaments of the new member states,* op. cit. pp. 135–136; JUHÁSZ-TÓTH, *A nemzeti parlamentek és a kormányok együttműködése*, op. cit. pp. 21-22.
[425] Article 63(1) of the Parliament Act. The Act's definition of an EU draft covers all COM proposals (directive, regulation), documents of intergovernmental conferences, communications, invitations, agendas, nominations, etc.
[426] Direct access to the government database containing relevant EU documents is provided in 18 out of 40 national parliaments/chambers. See COSAC: Seventeenth Bi-annual Report: Developments in European Union, Procedures and Practices Relevant to Parliamentary Scrutiny, April 2012, p. 6.
[427] 'All material' includes not only EU drafts, but Council agendas, working groups and COREPER documents on the state of negotiations in the decision-making procedures. See SZALAY and JUHÁSZ-TÓTH, Control of EU Decision-making, op. cit. p. 127.
[428] Article 134/A(1) of the Standing Orders.

document from the government.[429] The transfer of documents is – at the beginning of each Council presidency – supplemented by a so-called indicative list. With this list, the government identifies the documents that it believes belong to the legislative competence of Parliament and/or are of extraordinary importance for the country and, as a result, their parliamentary discussion is justified. The government needs to identify in particular those documents which refer to a subject matter which is regulated in a cardinal act in domestic law.[430] The government has to support its selection with adequate reasons. In practice, the list would contain about 30–40 items.[431]

The information on an EU draft subjected to scrutiny can be regarded as complete when the government sends to Parliament the position it intends to take in the decision-making procedure on the EU level. In other Member States, governments' explanatory memoranda contain three basic types of information, concerning: the proposal itself (legal basis, respect of the principle of subsidiarity); impacts on the economy, legislation, budget, environment, social policy, etc.; the progress of EU decision-making. It must be underlined, that the position of the government in a strict sense is not included in the explanatory notes in every Member State.[432]

In Hungary, the position proposed by the government needs to include certain obligatory elements defined by the Parliament Act: a summary of the EU draft, an indication of the applicable decision-making procedure, the expected schedule of the adoption of the draft, the position of the government concerning the draft, the objectives to be achieved in the decision-making procedure and their reasons, and the presentation of possible legislative tasks stemming from the draft.[433] According to general experience, the government provides sufficient information to the CEA in the proposed position. Occasionally, the position of the government is expressed laconically, in a minimalist interpretation of the requirements, as if the government did not wish to disclose its negotiating strategy with sufficient candour.[434]

What seems to be a unique feature of the Hungarian scrutiny procedure is that the

[429] Article 63(2) of the Parliament Act.
[430] Article 63(3) and (4) of Parliament Act.
[431] JUHÁSZ-TÓTH, *A nemzeti parlamentek és a kormányok együttműködése,* op. cit. p. 39.
[432] See KERSE, Christopher, Parliamentary scrutiny in the United Kingdom Parliament and the changing role of national parliaments in European Union affairs, in BARRETT, *National Parliaments and the European Union,* op. cit. pp. 349–378; RAUNIO and WIBERG, Too Little, Too Late?, op. cit.; SZALAY, *Scrutiny of EU affairs in the national parliaments of the new member states,* op. cit. p. 130; JUHÁSZ-TÓTH, *A nemzeti parlamentek és a kormányok együttműködése*, op. cit. p. 42.
[433] Article 64(3) of the Parliament Act.
[434] TAMÁS and BÍRÓ, Az egyeztetési eljárás magyar modellje, op. cit. p. 25.

CEA can request an extended version of the proposed position from the government.[435] In this case, the government position should also include references to the regulation applicable in Hungary and in the EU, a brief presentation of the expected economic, budgetary and social impacts, and the opinions of the EU institutions and Member States.[436] So far, Parliament has not resorted to this instrument; however, it has received impact assessments from the government concerning some of the EU drafts under the scrutiny procedure.[437]

It must be observed that according to the relevant government decree the government position prepared for meetings of the different Council levels is different in content from the basic or extended version of the government position prepared for the parliament.[438] The main difference is that the government decree requires proper impact assessments, whereas the extended government position intended for the parliament only involves a brief presentation of the impacts. Besides, the government decree places more importance on the identification of Hungarian interests and any possible allies. In sum, the government position destined for the Council meetings is broader than the position sent to the parliament. What is more, the first must be modified throughout the Council negotiations, whereas in the case of the second the formal modification is not obligatory, although the government is obliged to 'inform' the parliament about the significant changes in its position.[439]

2 The course of the scrutiny procedure

The scrutiny procedure is initiated on the proposal of the chairman of the CEA following a decision by the CEA.[440] The government may also initiate the procedure.[441] On a motion supported by two-fifths of the CEA members consultation on a specified

[435] SZALAY and JUHÁSZ-TÓTH, Control of EU Decision-making, op. cit. p. 128.
[436] Article 64(4) of Parliament Act.
[437] SZALAY and JUHÁSZ-TÓTH, Control of EU Decision-making, op. cit. p. 128.
[438] Point 37 of the government decree no. 1169/2010. (VIII.18.).
[439] Article 66 of the Parliament Act: 'The government *may* modify its proposed position taking into consideration the decision-making process of the European Union. The government *shall inform* the Parliament regularly *on significant changes* in the contents of drafts of the European Union or the *proposed positions*. The Parliament may also amend its former standpoint on that basis.' (emphasis added by the author).
[440] Article 134/B(2) of the Standing Orders.
[441] Article 64(2) of Parliament Act. In 2009, the government officially initiated a scrutiny procedure, but finally the procedure was not launched because of 'lack of time'. See TAMÁS and BÍRÓ, Az egyeztetési eljárás magyar modellje, op. cit. p. 24.

EU draft must also begin.[442] The scrutiny procedure is thus selective and not conducted on every EU draft. During the selection, the CEA considers the economic and policy impacts of the proposal and its political importance. In practice, the staff of the CEA and the experts from the political parties in Parliament play an important role in the selection process. They follow the EU decision-making procedures and examine the annual legislative work program of the Commission and the agenda of the Council Presidency. The indicative list created by the government is also taken into account. Proposals of importance are examined in more detail, and a short summary is prepared for each. Parallel with the procedure, the chairman of the CEA consults the vice-chairmen of the same committee and the experts in the parliamentary groups.[443]

Once a draft is selected for the scrutiny procedure the government position is requested by the CEA. A government position is not, therefore, sent for every EU draft proposed by the Commission, as, for example, is the case with the explanatory memoranda in the UK scrutiny.[444] According to the Parliament Act, the government could send, or the CEA could also request, the government position on any draft. In practice, however, the CEA only asks for the position on the draft selected for the scrutiny procedure. There is no time-limit specified for the government to forward its position to the CEA.[445] In contrast to the Hungarian flexibility, in several Member States the government is bound by strict deadlines to forward explanatory memoranda (or initial/preliminary positions) to the parliaments.[446]

After the selection, the Parliament's Speaker calls upon the appropriate standing committee(s) to develop an opinion on the EU draft.[447] The standing committee would be nominated on the proposal of the chairman of the CEA. The parliamentary groups can propose other standing committees too. Standing committees may also initiate their

[442] Article 134/B(3) of the Standing Orders. Such a motion may be proposed for consultation on not more than four EU drafts in each ordinary session. The use of this possibility is rare given that the selection is based, in principle, on consensus among the parliamentary groups.
[443] SZALAY and JUHÁSZ-TÓTH, Control of EU Decision-making, op. cit. p. 128.
[444] KERSE, Parliamentary scrutiny in the United Kingdom Parliament, op. cit. p. 355.
[445] Similarly as in e.g. Germany, the Netherlands, Luxembourg. See GYŐRI, *A nemzeti parlamentek és az Európai Unió*, op. cit. p. 294.
[446] E.g. ten days after the receipt of the EU draft: United Kingdom; two or three weeks after the receipt of the EU draft: Latvia, Poland, Slovakia; four or five weeks: Denmark, Finland, Slovenia. See KERSE, Parliamentary scrutiny in the United Kingdom Parliament, op. cit. p. 355; SZALAY, *Scrutiny of EU affairs in the national parliaments of the new member states*, op. cit. p. 139; JUHÁSZ-TÓTH, *A nemzeti parlamentek és a kormányok együttműködése*, op. cit. p. 44.
[447] Article 134/B(5) of the Standing Orders. It must be emphasised that the designated standing committee is only entitled to give an opinion on the draft itself and not on the government position.

nomination for the development of an opinion.[448] Experience shows that the readiness of a standing committee to become actively involved largely depends on the personality and interest of its chairperson.[449] An important new disposition of the Standing Orders is that the members of the committee designated to participate in the scrutiny procedure have access to the government position.[450] Previously, the Chairman of the CEA sent the government position only to the chairman of the designated standing committee, who was not entitled to forward it to the members.[451]

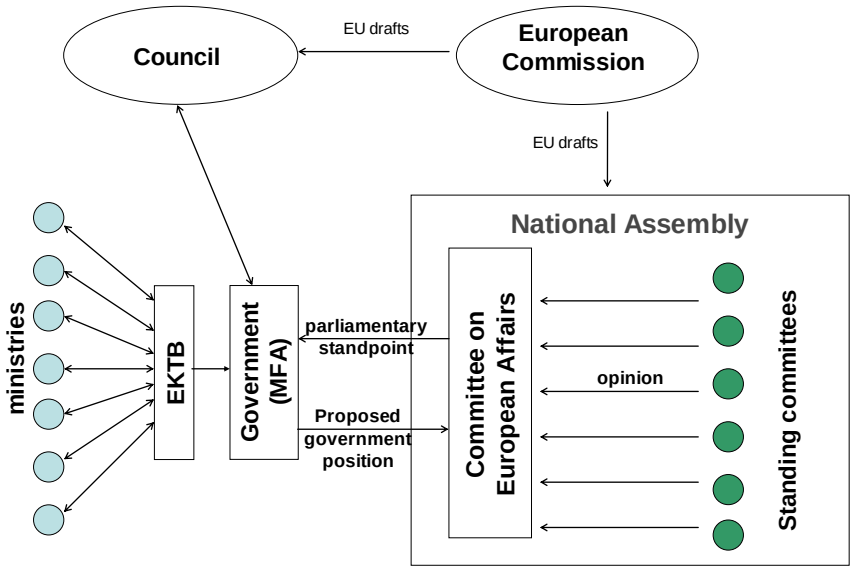
The CEA puts the EU draft on its agenda and invites the government representative to present the position a few weeks or even months after the initiation of the scrutiny procedure, considering the schedule of the EU legislative procedure. In principle, the government sends its initial position to the CEA before this first parliamentary discussion of the draft. In order to match the progress of the legislative draft in EU decision-making, the EU draft can be put on the agenda of the CEA for consultation several times. The progress of EU decision-making can, however, require that the CEA discusses the draft only once before adopting its standpoint. The scrutiny by the CEA mainly concerns the objective of the draft, its legal basis, its content, its possible implications for Hungarian legislation, and its economic and social impact. The procedure is made flexible by the possibility that the CEA may adopt its standpoint in the absence of the opinion of the standing committee, if this is necessary in the context of the EU decision-making procedure.[452]

In 2006, a *rapporteur* system was established as a parliamentary practice of the scrutiny procedure.[453] For each EU draft under the scrutiny procedure *rapporteurs* are designated from the members of the CEA representing the government and the opposition parties. The parliamentary groups decide on the person of the *rapporteur* whose responsibility it is to present before the CEA the opinion of the corresponding

[448] Article 134/B(4) of the Standing Orders.
[449] SZALAY and JUHÁSZ-TÓTH, Control of EU Decision-making, op. cit. p. 129.
[450] Article 134/A(2) of the Standing Orders.
[451] The modification of 2012 of the Standing Orders clarified that the government position may be made known to the members of the designated standing committee (Article 134/A(2)). According to the previous disposition, the negotiating position, which is a confidential document, was made known to persons entitled to participate in the in camera meeting of the CEA and to persons authorized by the chairman of the CEA. Based on this, the chairman sent the position to the chairman of the designated committee.
[452] Article 134/B(9) of the Standing Orders.
[453] The informal division of subject matter had been a practice in the CEA since the early 1990s. Every member of the committee selected one EU policy to follow. Until 2002, even the *rapporteur* system was applied, and the *rapporteurs* presented a verbal or written report to the committee. See: GYŐRI, *A nemzeti parlamentek és az Európai Unió*, op. cit. pp. 389 and 391. For the re-establishment of the practice, see the minutes of the CEA meeting of 18 October 2006 (EIB-15/2006.).

group on the issue. Unlike the *rapporteurs* of the European Parliament, in the CEA no written report is submitted.[454] The rationale behind the introduction of the *rapporteur* system was that it was necessary in order to create a feeling of 'ownership'[455] among the members of the CEA. With the *rapporteur* system, at least one MP from the government and opposition party is encouraged (though not obliged) to prepare a question for the government representative. Finally, it must be mentioned that the CEA is the only committee in the Hungarian Parliament where such a practice exists.

Scheme of the scrutiny procedure



EKTB: Committee for Interministerial Coordination for European Affairs

Regarding the conduct of the scrutiny procedure, neither the Parliament Act, nor the Standing Orders specify a time-frame or any deadlines. Aiming for maximum flexibility, the Act only states that Parliament may adopt a standpoint 'within reasonable time' taking into account the EU's decision-making agenda.[456] According to Győri, the timing of the adoption of the standpoint in the CEA is the main obstacle to effective parliamentary control.[457] She suggests that the CEA should start the discussion of the EU draft and eventually adopt the standpoint at an earlier stage of the EU decision-making procedure, possibly in the phase of Council working groups. When the political decision is reached in the Council, most of the text of the draft (or even the

[454] JUHÁSZ-TÓTH, *Európai uniós ügyek az Országgyűlésben*, op. cit. p. 32. See also the minutes of the meeting of the CEA of 26 September 2011.
[455] SPRUNGK, Ever more or ever better scrutiny?, op. cit. p. 17.
[456] Article 65(1) of Parliament Act.
[457] GYŐRI, The role of the Hungarian National Assembly in EU policy-making, op. cit. p. 230.

whole draft) has already been finalized in the Council working groups or in Coreper. National parliaments involved in this phase of the procedure may have only a marginal opportunity to control and influence.[458] A parliamentary standpoint adopted just before the political decision can be considered as a posterior control (approval) of what the government has represented in working groups, rather than a real attempt to influence the government position. In several Member States, the national parliament has to adopt its standpoint by a pre-determined deadline, otherwise the government can conduct negotiations in the Council without parliamentary instructions.[459]

The flexibility of the procedure has another drawback, too. The Hungarian scrutiny procedure is, to a great extent, stuck in the logic of the organisation of ordinary parliamentary work. The list of EU drafts to scrutinise in the CEA is, as a general rule, adopted at the beginning of each parliamentary session, i.e. twice a year. This can mean that the discussion of the EU draft may already have been started several months before the Hungarian Parliament starts the scrutiny. The CEA does not convene meetings in parliamentary recess in order to react to the eventual developments of EU decision-making, although it is entitled to do so.[460] During the months of parliamentary election campaigns, when the Parliament is in recess, parliamentary control of government activity in EU affairs is entirely lacking.

The Hungarian scrutiny procedure does not provide a so-called parliamentary scrutiny reserve. In some Member States[461] parliamentary scrutiny of EU drafts is supported by this mechanism, according to which the government representative cannot make any commitment (agreement or vote) in the Council until his/her home parliament has finished the examination of the EU proposal. Exceptions can be made in urgent cases and an obligation of posterior justification usually applies. Whilst the parliamentary reserve does not figure in the legal provisions in Hungary, on several occasions the Hungarian government (particularly the ministry for the interior) has, during Council working group meetings relied, probably as a negotiating tactic, on the

[458] RAUNIO, Holding governments accountable in European Affairs, op. cit. p. 322.
[459] E.g. the Czech Senate: 35 working days from the receipt of the proposal, Lithuania, Poland, Slovakia: 14–21 days from the receipt of the government position. SZALAY, *Scrutiny of EU affairs in the national parliaments of the new member states,* op. cit. p. 140; JUHÁSZ-TÓTH, *A nemzeti parlamentek és a kormányok együttműködése*, op. cit. p. 55-56.
[460] Article 67(3), second phrase, of the Standing Orders.
[461] E.g. Denmark, Austria, France, the United Kingdom, Sweden, Greece, Portugal, Spain, and in former third pillar issues in the Netherlands.

parliamentary scrutiny reserve while the scrutiny procedure was in course in Parliament.[462]

The CEA develops its standpoint in an *in camera* meeting.[463] In practice, this happens one or two weeks prior to the political decision of the Council on the EU draft. Before the final decision is made the responsible minister or state secretary presents to the CEA the final position the government will represent at the Council meeting.[464] Timely adoption of the parliamentary standpoint can be fostered by the government's readiness to inform, without any specific demand, the CEA of any unforeseeable development of EU decision-making. This kind of cooperation may help to avoid situations where the Parliament fails to adopt a standpoint before the political decision in Council.[465]

The standpoint takes the form of a summary by the CEA chairman which is recorded in the minutes of the meeting. No vote is taken; the standpoint is based on consensus in the CEA.[466] MPs may formulate a counter-opinion which, however, will not affect the content of the standpoint.[467] The parliamentary standpoint is sent to the Speaker of the House and the government within 24 hours of the CEA meeting.[468]

3 The legal nature of the parliamentary standpoint

In its standpoint, the CEA identifies the main issues it considers necessary to represent in the decision-making procedure of the EU.[469] In practice, it refers to the objectives of the EU draft and its most important elements, to the opinion of the standing committee involved and to the position of the government. The standpoint declares clearly whether

[462] See for example the second point on the agenda of the CEA meeting of 19 October 2010 (minutes no. EUB-11/2010).
[463] Article 65(4) of Parliament Act. Before 2012; the disposition on the closed meeting was in the Standing Orders (Article 134/B(6)).
[464] Article 65(3) of Parliament Act. The CEA seems to consistently adhere to this rule: in June 2009 it even cancelled the discussion of the EU draft on the agenda, because no political level representation was provided by the competent ministry. See TAMÁS and BÍRÓ, Az egyeztetési eljárás magyar modellje…, op. cit. p. 30 in note 31.
[465] As happened in 2006 with a proposal on a European Union Agency for Fundamental Rights (COM(2005)280–1) and in 2007 in the case of the proposal on the financing of the common agricultural policy (COM(2007)122).
[466] In October 2008, the Constitutional, Judicial and Standing Orders Committee of the Parliament declared, on the request of the largest opposition party, that the practice of not voting on the standpoint conforms to the Standing Orders (opinion no. 14/2006–2010).
[467] JUHÁSZ, *Az egyeztetési eljárás*, op. cit. p. 85.
[468] Article 134/B(9) of the Standing Orders.
[469] Article 65(2) of Parliament Act.

the government position is supported.[470] The intentionally careful wording of the standpoint will, however, provide flexibility for the government in its EU negotiations.[471] As the adoption of the standpoint occurs in a closed meeting, it is classified as a confidential parliamentary document which will not be published for the purposes of broader public scrutiny. It might be reasonable, in order to ensure more transparency, to provide *de lege ferenda* that the parliamentary standpoint (the minutes of the relevant CEA meetings) automatically become publicly available after the adoption of the EU draft by the EU legislator.

The standpoint of the CEA is politically binding on government; that is, the government must elaborate its final position on the basis of the standpoint and in a contrary case give justification.[472] In appropriate circumstances, it may, however, modify its position in the course of the EU negotiations. According to the explanatory memorandum of the bill which led to the Cooperation Act of 2004, the discretion enjoyed by the government when representing Hungary in the Council implies that the negotiating position is determined by the government subject to the informed decision of the responsible minister.[473] In a case where the government decides to deviate from the parliamentary standpoint, it needs to take into account whether the subject matter is regulated in domestic law in a cardinal law. In such instance, only in justified cases may the government depart from the standpoint.[474] When the EU draft concerns a subject matter regulated in Hungary by ordinary law, the government faces no such limitation on its discretion.[475] Either way, the legal norms do not define what 'justified cases' mean. The Parliament has to consider the justification in the context of the responsibility of the government.

For this reason, after a decision in the EU is made, the government has to inform the CEA in writing about any decision in connection with which the CEA has adopted a standpoint, or regarding any other decision specified by the CEA.[476] The government

[470] JUHÁSZ, *Az egyeztetési eljárás*, op. cit. p. 54.
[471] SZALAY and JUHÁSZ-TÓTH, Control of EU Decision-making, op. cit. p. 130.
[472] Article 65(5) of Parliament Act.
[473] Point 15 of the explanatory memorandum of Bill T/9588 from the 2002–2006 parliamentary cycle.
[474] Article 65(6) of Parliament Act.
[475] In 2004 in the course of the elaboration of the Act LIII this was a controversial point between the parliamentary groups and the government. In the government's view, if the government can only deviate from the parliamentary standpoint in 'justified cases', this would mean a binding mandate, which would alter the constitutional relationship between the government and the parliament. The parliamentary parties were of the opinion that the term 'justified cases' leaves enough margin for manoeuvre for the government. See JUHÁSZ, *Az egyeztetési eljárás*, op. cit. p. 32.
[476] Article 67(1) of Parliament Act.

must give a verbal justification, if its eventual position differs from the standpoint (see also Chapter 5 section III). A verbal justification of this kind was given by the minister of agriculture on the adoption of the council regulation on the common markets in the sugar sector because he deviated from the original position confirmed by Parliament in order to reach a better compromise.[477] If the decision concerns a 'qualified majority subject matter' (cardinal law) in Hungarian constitutional law, the CEA will decide (vote) whether the justification submitted by the government is accepted.[478] To date, the CEA has not decided on such an issue.

VI OTHER MEANS OF EU SCRUTINY

The Parliament Act and the Standing Orders regulate other forms of parliamentary control of EU affairs apart from the scrutiny procedure, and establish the rules for the application of subsidiary control and the parliamentary veto on the application of *passerelle* clauses.

The Parliament Act establishes a general obligation on the government to inform Parliament about European Council meetings and other events of strategic importance. Prior to these meetings and on the initiative of the Speaker of Parliament, the Prime Minister informs the EU Consultative Body on the position to be represented. The Consultative Body is composed of the Speaker, the leaders of the parliamentary groups, the chairman and vice-chairmen of the CEA, the chairman of the Committee dealing with constitutional affairs, the chairman of the Foreign Affairs Committee and other persons invited by the Speaker. At the meetings of the Consultative Body, the Prime Minister is usually accompanied by the Minister for Foreign Affairs and the highest state official responsible for European Affairs (minister or state secretary) and other experts. The members of the Consultative Body pose questions and raise issues, but no formal opinion is adopted. The meetings are held *in camera*.[479]

The tasks of the EU Consultative Body were broadened in 2007 when parliamentary groups agreed on the establishment of a working group within the framework of the Consultative Body to monitor the preparation for Hungary's

[477] JUHÁSZ, *Az egyeztetési eljárás*, op. cit. pp. 86–88.
[478] Article 67(2) of Parliament Act and Article 134/B(10) of the Standing Orders.
[479] JUHÁSZ-TÓTH, *Európai uniós ügyek az Országgyűlésben,* op. cit. pp. 55–56.

presidency of the Council in the first six months of 2011. The group was composed of the parliamentary group leaders (or the person delegated by them) and another MP from each group. The representative of the Ministry of Foreign Affairs took part in the meetings. The activity of the working group began in February 2008 and was based solely on the agreement of the parliamentary parties and not on legislation. Its aim was to reach consensus between the parties on the most important questions of the presidency (priorities, image, symbols and messages, institutional and personal background). It was not obligatory for the government to accept the opinion of the working group but it was expected that it would follow the recommendations.[480] The working group had eighteen meetings altogether and finished its work in July 2011 after the end of the Hungarian presidency.

Political feedback following European meetings of strategic importance is ensured through the traditional parliamentary mechanism. The Prime Minister informs the plenary sitting of Parliament in person, following the meeting of the European Council.[481] In practice, the Prime Minister will request to speak at a Monday plenary sitting before the orders of the day following the EU event. He presents the conclusions of the European Council and the achievements of Hungarian diplomacy at the meeting. Then party leaders are provided with time to react.

The government informs Parliament annually on questions concerning Hungary's membership of the EU and the status of European integration.[482] This written report is usually handed in at the end of March and it is handled like any other government report: it is discussed first by the standing committees, then by the plenary where the endorsement of the report is voted on in the form of a parliamentary resolution. In practice, however, this process has never been followed in the case of reports about EU affairs. The plenary has never put the report on its agenda and standing committees, although several have been designated, have often failed to discuss the report. When they put the report on their agenda, it usually happened months after its submission, when the relevance of discussing the report which concerns developments of the

[480] It must be noted that from spring of 2008 the smaller coalition party left the government, which then functioned until 2010 as a minority government. This fact, and the unpopularity of the government, made the opposition parties believe that it was quite probable that they would win the 2010 parliamentary elections. This expectation was even reinforced with the 2009 EP elections where the biggest opposition party received 56.36% of the votes, more than three times more than the governing party. In this situation opposition parties were particularly eager to have an insight into the preparation of the Hungarian Council presidency, which they expected to lead as governing parties.
[481] Article 69(4) of Parliament Act.
[482] Article 69(4) of Parliament Act.

previous year is low. The CEA is, however, an exception as it always discusses the annual report soon after its submission to Parliament.[483]

The Parliament Act includes the possibility for hearings of government delegated nominees for certain posts in the EU. These hearing are organized by the CEA and the standing committee in charge of the subject matter related to the given EU post. The posts at issue include the EU Commissioner, the judge at the Court of Justice and the General Court, the members of the Court of Auditors and the Board of Directors of the European Investment Bank. The Act clearly states that it is for the government to make the proposal to the respective institutions of the EU and that the Parliament 'may' hear the person proposed by the government. An important new element was introduced in 2012 which created an obligation for the government to inform Parliament before the official proposition is made. Consequently, Parliament may hold a hearing before the government's proposition is issued. Parliament does not vote on the nominee, as the holders of these posts are not responsible to Parliament. Nevertheless, the hearing ensures that the government's policy related to these nominations is subject to parliamentary supervision.

In Parliament, the CEA is entitled to conduct the subsidiarity check. If the CEA considers that the conditions for the adoption of a reasoned opinion are met, it submits a report to the plenary with regard to the deadline of eight weeks determined in Protocol 2. Since the plenary has 15 days to adopt the report, the draft report must be submitted to the plenary at least 15 days before the deadline laid down by Protocol 2 for the submission of the reasoned opinion. Once the report on the reasoned opinion is adopted, the Speaker forwards it to the presidents of the European Parliament, the Council and the European Commission, and informs the government.[484] As opposed to the standpoint in the scrutiny procedure, the CEA is not granted the right to adopt the reasoned opinion in the name of the Parliament.

In the case of the judicial control of subsidiarity, i.e. bringing action before the CJEU, the final parliamentary decision to initiate the action is made not by the plenary but by the CEA. If the CEA deems that an EU legislative act breaches the subsidiarity principle it initiates a process in which the government brings the action before the CJEU. The initiative must be taken within one month of the publication of the act,

[483] JUHÁSZ-TÓTH, *Európai uniós ügyek az Országgyűlésben,* op. cit. pp. 55–56.
[484] Article 71(1) and (2) of Parliament Act; Article 134/D(1)–(4) of the Standing Orders.

which allows the government up to one month to prepare the action.[485] The Speaker of the Parliament is informed about the initiative. The government may decide to follow the CEA's initiative or refuse to take proceedings. The CEA and the government may attempt to conciliate their position. In 2012, during the debate of the bill on Parliamentary Act in the CEA, the representative of the Ministry of Public Administration and Justice justified the government's right to reject the parliamentary initiative with reference to the fact that under the constitutional relationship between Parliament and the government, the first cannot instruct the second (except in the case of passing legislation).[486] It is questionable whether the possibility of the government to reject the CEA's initiative is in harmony with the aim of Article 8 of Protocol 2 (see Chapter 2).

Although the Hungarian dispositions are, in legal terms, in full conformity with Protocol 2, the effectiveness of Article 8 would have been better ensured if the Hungarian rules had not left discretion for the government and had eventually provided for the involvement of the plenary of Parliament in the procedure. A counter argument could be that the scrutiny procedure provides discretion for the government to follow the parliamentary standpoint too. However, the scrutiny procedure cannot serve as an analogy since in that case leaving room for manoeuvre for the government in EU decision-making may be justified. An argument for the non-involvement of the plenary could be that the deadline is too short for the plenary to take these kinds of decisions. In this respect, it must be taken into account that the publication of legislative acts is preceded by a long EU decision-making procedure during which national parliaments are informed under Protocol 2 of the proposal by the author of the measure. Even between the political decision in Council and the publication of the act in the Official Journal several months can elapse. National parliaments scrutinising government activities in the Council can be aware of the possible breach of subsidiarity. They can prepare the initiative for legal action before the CJEU well before the publication of the act.

In connection with the right of veto of national parliaments (*passerelle* clauses), the parliamentary procedure is similar to the one followed in subsidiarity control. The CEA submits a report to the plenary if it considers that an opposition should be raised.

[485] Under the sixth paragraph of Article 263 TFEU the action for annulment can be introduced within two months of the publication of the measure, or of its notification to the plaintiff.
[486] CEA meeting of 2 April 2012 (minutes no. EIB-12/2012).

The plenary decides on the adoption of the report within 15 days. The Parliament Act provides that Parliament simply informs the government when an objection based on Article 48(7) TEU and Article 81(3) TFEU is raised.

The Standing Orders contain one further disposition on the participation of Parliament in EU decision making. This concerns the political dialogue between the Commission and national parliaments. In this respect, the CEA can adopt an opinion within the framework of the dialogue and has to inform the Speaker of the National Assembly about this.

VII THE EUROPEAN AND HUNGARIAN PARLIAMENTS

In connection with the relationship between the European Parliament and the Hungarian National Assembly, two aspects are worth discussing in the framework of the present dissertation: i) the bilateral inter-parliamentary cooperation between the two institutions, and ii) the participation of Hungarian MEPs[487] in the work of the Hungarian Parliament. Both aspects are of importance in terms of improving Hungarian MPs' knowledge of European policies and providing better access to EU information, which fosters EU scrutiny too.

Official bilateral contacts between the Hungarian and European Parliament began as early as in 1988 with the visit of the President of the European Parliament in Hungary. Two bilateral inter-parliamentary meetings were held in 1991 and 1992 which contributed to Hungarian MPs gaining information about the EC/EU and establishing personal contacts with MEPs.[488] After the signature of the association agreement in December 1991, in 1992 the Hungarian Parliament created the Committee on European Community Affairs which, from 1994 until 2004, worked as the Hungarian side of the EU-Hungary Joint Parliamentary Committee created in the association agreement.[489] The Joint Committee's task was to discuss all aspects of EU-Hungary relations, the implementation of the association agreement and future accession, including the

[487] Under 'Hungarian MEP' I understand the MEPs elected to seats reserved in the European Parliament for Hungary, not including the MEPs belonging to the Hungarian minorities of other Member States (mainly from Slovakia and Romania).
[488] GYŐRI, The Hungarian Parliament and the Issue of European Integration, op. cit. pp. 118–119.
[489] Articles 110–112 of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Hungary, of the other part (OJ L 347, 31.12.1993, p. 2–266.).

accession negotiations. It had the right to adopt recommendations addressed to the EU institutions, Member States and the Hungarian government. The recommendations were, in practice, prepared by the Hungarian side and did not generate much debate in the Joint Committee, as Győri observes. Generally, meetings were quite formal without genuine discussions and new ideas. What is more, MEPs' attendance was rather poor at the meetings.[490] On the other hand, Ágh states that the Joint Committee played an important role in the political learning process and socialisation of Hungarian MPs.[491]

Regarding the present relationship, there are several forms of cooperation between the European Parliament and national parliaments: joint parliamentary meetings,[492] joint committee meetings,[493] inter-parliamentary committee meetings,[494] the parliamentary week of the European Semester, workshops, bilateral meetings, and meetings with EP political groups.[495] Since accession, Hungarian MPs have participated in more than fifty such meetings on such topics as the area of freedom, security and justice, the Hague program, the future of Europe, the multi-annual financial perspective, the annual EU budget, climate change, CFSP, the Lisbon Strategy. Mostly before accession, but to some extent after it as well, MPs and parliamentary officials participated in conferences and seminars organised by TAIEX.[496] The aim of these meetings was to familiarize future and new Member States' administrations with EU law and its implementation.

In order to facilitate the relationship between the Hungarian and European Parliaments, the first has had a permanent office in the second since September 2004. The office informs Hungarian MPs in weekly reports on EP activity, especially on EP discussions on EU drafts under Hungarian parliamentary scrutiny.

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[490] GYŐRI, The Hungarian Parliament and the Issue of European Integration, op. cit. pp. 124–125.
[491] ÁGH et al., The Europeanization of the Hungarian Polity, op. cit. p. 221.
[492] Joint parliamentary meetings are co-chaired by the president of the EP and the speaker of the national parliament representing the Member State holding the Council presidency. Priority is given to important issues where the EU does not legislate (CFSP, monetary policy coordination, the area of freedom, security and justice, and climate change. The aim is to establish better parliamentary oversight in intergovernmental and non-legislative issues (www.europarl.europa.eu/webnp/cms/lang/en/pid/10 accessed 2/3/2013).
[493] These meetings are organised by the EP and the parliament of the Member State holding the EU Council Presidency. Members of corresponding committees debate EU legislation (www.europarl.europa.eu/webnp/cms/lang/en/pid/1605 accessed 2/3/2013).
[494] Based on the Article 130(3) of the EP Rules of Procedure, these meetings are proposed by EP committees which invite national MPs from corresponding committees. The aim is to promote exchanges of views between parliamentarians on EU legislative issues with a view to influencing the legislative decisions of the EP. This form of cooperation is based on Article 130(3) of the Rules of Procedure of the EP (www.europarl.europa.eu/webnp/cms/lang/en/pid/11 accessed on 2/3/2013).
[495] NEUNREITHER, Karlheinz, The European Parliament and National Parliaments: Conflict or cooperation?, *The Journal of Legislative Studies*, 2005, Vol. 11, No. 3, pp. 466–489.
[496] Technical Assistance and Information Exchange Instrument of the Institution Building Unit of Directorate-General Enlargement of the European Commission.

Regarding the relationship between Hungarian MEPs and the Hungarian Parliament, the first important observation is that before the accession, from 1 May 2003, the political groups of the Hungarian Parliament delegated altogether 24 deputies to participate in the work of the European Parliament as observers. The MEPs representing Hungary were elected on 13 June 2004, one and a half months after accession. Since the election, there has been incompatibility between membership of the European and the Hungarian Parliament.[497]

There is a great deal of variation between national parliaments in connection with MEPs' opportunities to participate in the work of the national parliaments and especially the EAC. In some parliaments MEPs elected from the same country are full-fledged members of the EAC (e.g. Belgium, the German Bundestag, and Greece). Moreover, the Irish EAC includes not only MEPs from Ireland, but also from Northern Ireland.[498] The most general practice, however, is for MEPs to have access to the meetings of the EAC with a deliberative right excluding the right to vote.[499] In the German Bundestag, for example, German MEPs appointed by the President of the Bundestag, on the proposal of the parliamentary groups, can attend EAC meetings, may propose items to be debated and provide information to the EAC. On the contrary, in the UK MEPs cannot attend EAC meetings without special invitations to give evidence.[500]

The Act LVII of 2004 on the legal status of Hungarian MEPs and the Standing Orders of the Parliament provide a number of possibilities for Hungarian MEPs to take part in the activity of the Hungarian Parliament. Hungarian MEPs are entitled to participate in plenary debates, if the agenda point is related to the EU, and are invited to the meeting of the standing committees independently of the matter on the agenda.[501] They do not, however, have the right to vote. It is the general secretariat of the Parliament that proposes to the House Committee which agenda points of the plenary can be designated as EU-related. There is no strict rule for the designation, but in principle bills of significant importance are chosen (e.g. the bill on the budget, the

[497] Article 8(2)(c) of Act LVII of 2004 on the Legal Status of the Hungarian Members of the European Parliament (MEP Status Law).
[498] LAFFAN, Brigid, The Parliament of Ireland: A Passive Adapter Coming in from the Cold, in MAURER, Andreas and WESSELS, Wolfgang (eds.), *National Parliaments on their Ways to Europe: Losers or Latecomers?*, Nomos, Baden-Baden, 2001, pp. 251-268 at p. 260.
[499] COSAC: Third bi-annual Report: Developments in European Union – Procedures and Practices Relevant to Parliamentary Scrutiny, May 2005, p. 95.
[500] CYGAN, *National Parliaments in an Integrated Europe*, op. cit. pp. 134–135; KIIVER, *The National Parliaments in the European Union*, op. cit. p. 117.
[501] Article 16(1) of MEP Status Law and Articles 39(1) and 40(1) of the Parliament Act.

ratification of Treaty amendments). Bills transposing European law do not necessarily belong to these categories. Between 2004 and 2012 32 bills were considered as EU-related for the purpose of the participation of the MEPs in their discussion. Altogether 69 Hungarian MEPs demanded the floor during these debates at the plenary.[502] As regards the standing committees there have been about sixty agenda points which were discussed in the presence of Hungarian MEPs.

Similarly to the situation in other Member States,[503] there are practical limits to the extent to which Hungarian MEPs can take part in the activities of the Hungarian Parliament. First of all, this is not their main concern. Second, they spend on average three weeks a month in Brussels and Strasbourg, thus they only have one week to be in their Member States, meet their electors and members from their party. Thirdly, MPs and MEPs from the same party have their own channels of communication and cooperation, they do not necessary have an interest in formal contacts in Parliament. Nevertheless being able to be present in the House contributes to maintaining relationships inside the party. A further incentive for the participation of MEPs in national parliamentary debates could be a situation where an MEP represents a party which does not have domestic parliamentary seats.[504]

Concluding remarks

The adaptation of the Hungarian Parliament to the country's EU membership was based on two factors. First, patterns and best practices of parliamentary scrutiny of the old Member States were taken into account. Second, a great part of the chosen scrutiny instruments has its roots in Hungarian constitutional and parliamentary law. The reaction to European integration was somewhat different than in the case of the old Member States. Dimitrakopoulos observes that in the case of France, the UK and Greece the adaptation of parliaments displayed 'an incremental logic marked by slow, small and marginal changes based on existing institutional repertoires', and the reaction

[502] It is probable that more MEPs were present in plenary debates without asking for the floor, but there are no statistics about their attendance.
[503] See e.g. HEGELAND, The European Union in national parliaments, op. cit. pp. 100–101.
[504] For example a Hungarian party, Jobbik, was represented by three MEPs from 2009 at the EP, but only got parliamentary seats in the Hungarian Parliament in 2010.

was path dependent and consistent with long-established patterns.[505] On the contrary, in Hungary the scrutiny procedure managed by the CEA and the EU Consultative body has been inspired by foreign practices and is without precedent in the Hungarian Parliament. The changes do not, however, modify the position of the Parliament vis-à-vis the government. Consequently the Hungarian adaptation can be also considered path-dependent. It might also be the case that the adaptation was rather a 'mimetic gesture in order not to stay behind the parliaments of other member countries'.[506]

The legal adaptation took place in 2004, when the greater part of the existing EU scrutiny tool was established. The original provisions were complemented in 2012 with the creation of the procedures necessary to implement the Lisbon Treaty. Thereby the Hungarian parliamentary EU scrutiny is regulated at three levels: in the Constitution, in law and in the Standing Orders. The Hungarian system of parliamentary EU scrutiny is composed of various procedures providing the participation of all parliamentary bodies: the plenary and the standing committees.

The scrutiny procedure, which is considered 'the single most important task for national parliaments insofar as concerns their European activities',[507] integrates, in the Hungarian Parliament, the characteristics of the document-based and the mandating models. The legal background provides a flexible course for the procedure, enabling the examination of EU drafts and the corresponding government position. The CEA adopts a politically binding standpoint before the Council meeting where it is supposed the political decision will be made. The scrutiny procedure is centralised, since the CEA manages the whole process: selection of EU drafts to be scrutinised, designation of sectoral committees, examination of the merits of the selected EU drafts and the government position, adoption of the parliamentary standpoint, and finally getting feedback from the government after the conclusion of EU decision-making.

The present Chapter has shown that the legal background itself provides the elements necessary for an efficient scrutiny, but the question of how the legal rules are implemented remains. The internal organisation of the parliamentary work significantly affects the appreciation of the EU scrutiny. This latter cannot, however, be evaluated

[505] DIMITRAKOPOULOS, Dionyssis G., Incrementalism and Path Dependence: European Integration and Institutional Change in National Parliaments, *Journal of Common Market Studies*, 2001, Vol. 39, No. 3, pp. 405–422 at p. 405.
[506] MAGONE, South European national parliaments and the European Union, op. cit. p. 126.
[507] CYGAN, Some Reflections from the United Kingdom, op. cit. p. 123.

entirely without empirical research on the implementation, which will take place in the following two Chapters.

Chapter 4
EU affairs on the parliamentary agenda: the Europeanization of parliamentary work

Not everything that counts can be counted,
and not everything that can be counted counts[508]

INTRODUCTION

The legal, institutional and procedural rules of parliamentary EU scrutiny are one sign of Europeanization in the work of national parliaments. However, these rules are not necessarily effective in practice, nor are they always implemented in accordance with their original aims.[509] More particularly, the formal institutional power of parliaments does not guarantee active scrutiny in EU matters.[510] An efficient scrutiny is based on the potential intensity (formal rights) and the frequency of scrutiny in terms of the level of proactive involvement in EU affairs.[511] Empirical analysis of parliamentary work is, thus, necessary in order to be able to evaluate more comprehensively the Europeanization of a national parliament.

Empirical literature on the Europeanization of national parliaments is not very broad, since the majority of the relevant studies focus on legal-institutional adaptation.[512] Only sporadic data are available on the intensity of EU scrutiny in the

[508] Quote often attributed to Albert Einstein.
[509] See RAUNIO, National Parliaments and European Integration, op. cit. p. 321. He especially urges empirical studies of the CEE Member States, given that they are still adjusting to the demands of integration. MAURER, National Parliaments in the Architecture of Europe After the Constitutional Treaty, op. cit. p. 101. They mention the example of the German Bundestag's EU committee which is entitled to issue opinions on EU drafts which the government has to take into account, although the EU committee rarely adopts such opinions.
[510] SPRUNGK, Ever more or ever better scrutiny?, op. cit. p. 5.
[511] Ibid., p. 4.
[512] RAUNIO, National Parliaments and European Integration, op. cit. p. 325.

volume edited by Norton, Maurer and Wessels, and O'Brennan and Raunio.[513] One phenomenon of the Europeanization of national parliaments has gained more attention: the impact of EU membership on domestic law, i.e. the proportion of legislation of EU-origin. The evaluation of the impact of the EU on national parliamentary work, however, needs more a comprehensive approach which has only been adopted by a few empirical studies.[514] The possibility for cross-country comparison is, thus, limited.

The basic question of the present Chapter is, accordingly, to what extent EU membership has influenced the work of the Hungarian Parliament. In order to answer this question, a quantitative analysis has to be produced. I will therefore examine how often the Hungarian Parliament has recourse to the different means of control in EU affairs (presented in Chapter 2 and 3).[515] For this purpose, I propose separate examinations of the work of the plenary, the CEA and the sectoral committees. As far as the plenary and the sectoral committees are concerned, the proportion of EU-related issues on their agenda seems an adequate indicator of Europeanization. In the case of the CEA, the intensity of its activity and the proportion of its different tasks (legislation, the scrutiny procedure, EU scrutiny in general, subsidiarity) provide important points of reference in the evaluation of its work. These variables may be suitable for cross-national comparison.[516]

Beyond this quantitative approach, there are two more aspects which will provide the focus of the present Chapter: i) trends in the intensity of EU scrutiny (the longitudinal aspect); and ii) the effect of government composition on the intensity of EU scrutiny. As for the first aspect, the main research question is whether parliamentary EU scrutiny has become more intensive over the course of time. Before the accession of Hungary to the EU, the Parliament showed little interest in EU integration issues. At the plenary, the question was hardly ever raised and the control of legal harmonization was limited.[517] About ten years after the accession it is worth examining whether the nature

[513] NORTON, *National Parliaments and the European Union*, op. cit.; MAURER and WESSELS, *National Parliaments on their Ways to Europe*, op. cit.; O'BRENNAN and RAUNIO, *National Parliaments within the Enlarged European Union*, op. cit.

[514] TÖLLER, How European Integration Impacts on National Legislatures, op. cit. p. 7.; RAUNIO and WIBERG, How to Measure the Europeanisation of a National Legislature?, op. cit.

[515] For an earlier analysis see JUHÁSZ-TÓTH, Az Országgyűlés tevékenységének európaizálódása, op. cit.

[516] Raunio, for a similar purpose, also suggests the analysis of time dedicated to EU affairs in sectoral committees, at the plenary and at party groups meetings. There are, however, no available Hungarian data or statistics for these variables. See RAUNIO and WIBERG, How to Measure the Europeanisation of a National Legislature?, op. cit.

[517] CSERNY, A nemzeti parlamentek és az európai integráció, op. cit. p. 132; GYŐRI, Enikő, The role of the Hungarian National Assembly in EU policy-making after accession to the Union, op. cit. p. 224.

of scrutiny has changed or not. In Chapter 1 we have seen that the adaptation of the Member States' parliament to European integration was gradual. It is not only the legal and institutional environment which has evolved; the level EU scrutiny can change, too.[518] Based on these findings, it is expected that EU scrutiny has become more intensive since 2004.

The second aspect is inspired by the contradictory findings of previous studies. While Raunio states that the frequency of minority governments can explain the cross-national variation of EU scrutiny,[519] Bergman does not find such an unambiguous relationship for this variable.[520] In the present dissertation I will test whether changes in the composition of the government have affected EU scrutiny within one country.[521] Hungary provides a good field for this examination, as, starting from 2004 three distinctive phases of governance can be identified: 2004-2008 coalition governments made up of two parties (socialist-liberal coalitions)[522]; 2008-2010, a minority government enjoying the informal support of the former coalition partner (a socialist government with the support of the liberals); 2010-2014, a coalition government (conservative-Christian democrat) having more than a two-thirds majority of parliamentary seats. According to the literature, the lower the share of the seats the government parties have in the parliament, the more the government needs to take the position of MPs into account.[523] I will test whether in Hungary there has been any relationship between the composition of the government and the intensity of EU scrutiny.

[518] Magone observes that EU scrutiny has become more salient over time in Portugal and Italy. See MAGONE, South European national parliaments and the European Union, op. cit. pp. 121-123. See also data on the increase of Spanish parliamentary activity in EU affairs: LLORÉNS BASABE, Felipe and GONZÁLEZ EXCUDERO, Maria Teresa, The Parliament of Spain: Slowly Moving to the European Direction?, in MAURER and WESSELS, *National Parliaments on their Ways to Europe,* op. cit. pp. 199-221 at p. 208; Public debates on Europe have also increased in the French Assemblée Nationale: SZUKALA, Andrea and ROSENBERG, Olivier, The French Parliament and the EU: Progressive Assertion and Strategic Investment, in MAURER and WESSELS, *National Parliaments on their Ways to Europe,* op. cit. pp. 223–250 at p. 233.

[519] RAUNIO, Holding governments accountable in European Affairs, op. cit. pp. 326-327.

[520] BERGMAN, National Parliaments and EU Affairs Committees, op. cit. pp. 381 and 383.

[521] It must be noted that Raunio has already urged a similar approach. See RAUNIO, Holding governments accountable in European Affairs, op. cit. p. 338.

[522] The first coalition of this period was established in 2002. The same parties won the 2006 election, but the coalition dissolved in 2008.

[523] RAUNIO, Holding governments accountable in European Affairs, op. cit. p. 333.

I THE PLENARY: THE EUROPEANIZATION OF LEGISLATION AND POLITICAL CONTROL

As far as the plenary is concerned, the effect of European integration can be measured by two basic variables. First, the share of EU originated laws shows the Europeanization of the legislative functions of the parliament. Töller calls this 'legislative Europeanization' and observes that national parliaments are, in this case, the object of Europeanization.[524] In other words, the proportion of domestic laws implementing EU law reflects the top-down direction of Europeanization (see Chapter 1), where the pressure from the EU induces domestic changes.

Second, the share of EU issues involved in parliamentary control represents bottom-up Europeanization. By bottom-up Europeanization, in general, I understand the incentive of Member States to upload preferences and policy choices to the EU.[525] As we have seen in Chapter 2, national parliaments dispose of some ways of exerting pressure directly on European institutions (the early warning mechanism, political dialogue); their main field of action remains, however, the national political area. Bottom-up Europeanization, in the case of national parliaments, thus occurs when MPs try to actively influence government EU policy by means of control or by specific EU scrutiny tools. In this case, the use of control tools by individual MPs is not stimulated by any pressure from the EU. The recourse to parliamentary control instruments in EU issues illustrates the willingness of the national political elite to voluntarily engage in EU affairs by monitoring and attempting to influence government activities in European institutions. The application of these parliamentary tools and the determination of their content depend primarily on the political preferences of MPs and the parties in Parliament.

1 Share of EU-related laws

Between May 2004 and the first half of 2010 (before the elections), of the acts adopted by Parliament, 295 were connected with the fulfilment of EU obligations. The 295 EU-related acts (of which 56 concerned international agreements) amounted to 30% of all

[524] TÖLLER, How European Integration Impacts on National Legislatures, op. cit. p. 5.
[525] BÖRZEL, Tanja A., Pace-Setting, Foot-Dragging, and Fence-Sitting. Member State Responses to Europeanization, *Journal of Common Market Studies*, 2000, Vol. 40, No. 2., pp. 193-214 at p. 194.

acts adopted in Parliament. The data indicate a significant penetration of EU law into national law as a consequence of Hungary respecting its obligations stemming from EU law.

Identifying those acts aiming at the harmonization of laws (187 of 295) is not always a simple task. Without any doubt, acts containing a so-called harmonization clause (see Chapter 3 section IV) belong to the category in question. There were some acts that did not contain this clause, but from the explanatory memorandum it appeared that the act was actually aimed at the approximation of laws or, more generally, the fulfilment of EU obligations. On the contrary, laws only indirectly fulfilling European obligations were not considered EU-related. For example, if an excessive deficit procedure is under way against a Member State, it will probably need to modify national policies and laws for the sake of budgetary savings.

Table 2 – Acts of EU origin

	2004*	**2005**	**2006**	**2007**	**2008**	**2009**	**2010#**	**Total**
Adopted acts	94	198	118	184	127	164	234	**960**
EU related acts, of which:	21	74	48	69	41	35	7	**295**
Approximation of laws	15	42	31	42	32	23	2	187
Acts based on Article 4(3) TEU[526]	4	22	8	10	3	4	1	52
EU related international agreements	2	10	9	17	6	8	4	56

* from 1st May 2004; # until 22 July 2010 (the end of the 2006-2010 parliamentary cycle)

In the period under examination, Parliament adopted 261 acts and decisions concerning international agreements, of which 66 were related to the EU. In other words, 25% of the international agreements ratified in Hungary originated from the EU.

Table 3 – International agreements in the National Assembly

	2004*	**2005**	**2006**	**2007**	**2008**	**2009**	**2010#**	**Total**
Total	44	56	36	43	26	39	17	261
EU-related	5	14	9	20	6	8	4	66
%	11.3	25	25	46.5	23	20.5	23.5	**25.2**

* from 1st May 2004; # until 22 July 2010 (the end of the 2006-2010 parliamentary cycle)

[526] Article 4(3) TEU, second indent: "The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union".

When interpreting the above numbers one has to be careful. The proportion of EU-related acts in a certain period does not mean that the same proportion of Hungarian law is influenced in some way by the EU; it may be a greater or lesser proportion. Our investigation does not include the lower level of legal instruments (government or ministerial decrees, etc.). The statistics reflect the partial restriction on legislation emanating from EU law, but cannot take into account the policy areas where national parliaments cannot take any legislative action (the exclusive EU powers). These data do not take into account the margin that directives leave for the national legislation, and the extent to which a parliament uses a liberty provided by a directive to introduce, for example, stricter rules. Similarly, the statistics cannot reflect whether a given act contains only a few paragraphs transposing EU rules, or almost all of its dispositions are of EU origin.

Regarding the country-cross comparison, it must be borne in mind that Member States may transpose EU law at different levels of the legal hierarchy. Nonetheless, my findings do not differ significantly from the findings of the relevant literature and disprove the 'myth of 80%'.[527] In the Bundestag about 34% of the legislation was influenced by a 'European Impulse' between 1998 and 2005.[528] Between 1998 and 2003 20% of the Swedish parliament's legislation was related to binding EU legislation, and 10% more was 'in some way' related to the EU.[529] Between 1992 and 2007 the Finnish parliament produced 9,210 laws of which 11% contained an explicit reference to the EU. The proportion varies year by year, the peak being in 2004 when 25 percent of the laws were related to the EU.[530] According to estimations, in the UK from 1997 to 2009 6.8% of primary legislation (Statutes) and 14.1% of secondary legislation (Statutory Instruments) had a role in implementing EU obligations, although the degree of involvement varied from passing reference to explicit implementation.[531]

[527] Jacques Delors, European Commission President at the time, stated in 1988 in the European Parliament that within ten years 80% of economic legislation, and perhaps also fiscal and social legislation, would be of European origin.
[528] TÖLLER, How European Integration Impacts on National Legislatures, op. cit. p. 7.
[529] O'BRENNAN and RAUNIO, Introduction, op. cit. p. 5.
[530] RAUNIO and WIBERG, How to Measure the Europeanisation of a National Legislature?, op. cit. pp. 82-83.
[531] MILLER, Vaughne, *How much legislation comes from Europe?*, UK House of Commons Research Paper 10/62, 13 October 2010, available at http://www.parliament.uk/briefing-papers/RP10-62 accessed on 19/5/2013, p. 5.

2 EU issues in parliamentary control

Turning to the second aspect of Europeanization of the plenary, there are various variables that illustrate the effect of integration and the willingness of MPs to control and eventually influence government activities in EU affairs. In this regard, I selected the most important control mechanisms applied at the plenary (see also Chapter 2), which are mostly broadcast by the media, and I examine the proportion of EU related topics.

First and foremost, the different kinds of parliamentary questions need to be analysed, as they are one of the most important means for MPs to obtain information and to hold the government to account. *Table 4* shows that between 2004 and 2010 on average about 4% of instantaneous questions, questions and interpellations in the Hungarian Parliament related to EU affairs. For the identification of EU related questions, I looked both at the title and content of the questions, since a title containing a reference to the EU was on its own often misleading as to the content of the question. Regarding the content, most of the EU issues concerned agricultural and regional policy.

Table 4 - Proportion of EU-related instantaneous questions, questions and interpellations

	Instantaneous question			**Question**			**Interpellation**		
	EU	**Total**	**%**	**EU**	**Total**	**%**	**EU**	**Total**	**%**
2004*	11	223	4.9	68	2672	2.5	12	156	7.6
2005	10	324	3.1	276	3830	7.2	8	250	3.2
2006	2	191	1.0	55	1124	4.8	3	141	2.1
2007	7	291	2.4	30	1508	1.9	10	224	4.4
2008	13	273	4.7	110	2469	4.4	8	199	4.0
2009	14	281	4.9	68	1938	3.5	11	218	5.0
2010	12	268	4.4	67	1940	3.4	13	223	5.8
2011	7	318	2.2	30	1966	1.5	4	263	1.5
2012#	6	183	3.2	15	1604	0.9	9	151	5.9
Total	**82**	**2352**	**3.4**	**719**	**19051**	**3.7**	**78**	**1825**	**4.2**

* from 1st May 2004; # until 12 July 2012, the end of the spring-summer parliamentary session.

As far as the trends in parliamentary control are concerned, i.e. whether over time or during different government majorities EU scrutiny has changed or not, the following observation can be made. The intensity of EU scrutiny at the plenary is not increasing.

An increase in intensity would be a logical consequence of the time which has passed since accession, as European affairs gain more salience, both in the eyes of the voters and the MPs. However, the number of EU-related questions or interpellations has increased compared to the period before accession.[532] Regarding the effect of government composition on the EU scrutiny, neither is there any relationship between the majority of the government in Parliament and the intensity of the EU scrutiny. Despite the variations between years, there is no significant divergence between the periods of different types of government.

Turning to another parliamentary control instrument, the subjects of the speeches not forming part of the orders of the day – including speeches before and after the orders of the day -, the proportion of speeches referring to EU affairs is similar to the proportion of EU related questions and interpellations. *Table 5* shows that nearly 6% of these speeches referred substantially to EU matters. Here again, no trends can be identified in the intensity of the control.

Table 5 - EU affairs in speeches not forming part of the orders of the day

	Speeches not forming part of the orders of the day		
	EU	**Total**	**%**
2004*	29	285	10.1
2005	20	405	4.9
2006	14	208	6.7
2007	16	364	4.3
2008	17	345	4.9
2009	22	262	8.3
2010	19	431	4.4
2011	20	359	5.5
2012	22	473	4.6
Total	**179**	**3132**	5.7

* from 1st May 2004.

In the Hungarian Parliament the so-called 'policy debates' mean special debates held on key policy issues in a timely manner. Between 2004 and 2012, 36 policy debates were held, three of which concerned European issues. These were the following: 'Is Hungary

[532] Between 1998-2002, only one interpellation, four questions and four instantaneous questions concerned EU integration. See GYŐRI, *A nemzeti parlamentek és az Európai Unió*, op. cit. p. 400.

sufficiently prepared for EU accession?',[533] 'Gyurcsány's Report: EU – unsatisfactory!',[534] 'Debate on the New Hungary – Rural Development Plan',[535] and 'Priorities of the Hungarian EU Presidency'.[536] The number of policy debates on EU issues seems particularly low if we take into account that before accession five such debates were held between 1999 and 2003, i.e. one per year. However, Győri observes that those debates made little political impact.[537]

Comparing the two kinds of Europeanization of the plenary, the difference between the proportions of EU related acts and political control tools is striking. While about one-third of the adopted acts transposed EU law, EU issues were seldom raised in parliamentary control. When controlling the government, MPs are free to set their agenda, however they do not seem to be keen on asking about EU affairs. In other words, top-down Europeanization is much stronger than bottom-up Europeanization in the Hungarian Parliament. The reasons behind this phenomenon must be complex and reach beyond the limits of this dissertation. Nevertheless, an assumption may be mentioned: Raunio observes that parties are more supportive of integration than their voters; consequently, avoiding parliamentary debates on EU issues is a logical response from the parties.[538] Fundamental consensus between government and opposition parties on EU integration may also discourage MPs from taking recourse to the control instruments.[539]

The limited engagement of the plenary in EU related debates is not a Hungarian particularity. In the UK House of Commons, the average time spent on European affairs between 1978 and 1980 was 47 hours, and between 1981 and 1988, 32 hours.[540] A fixed 20-minute slot for European questions per month was abandoned in 1985, and since then two general debates take place each year prior to European Council meetings and

[533] Initiated by opposition MPs and held on 12 May 2004.
[534] Initiated by opposition MPs and held on 20 May 2005. Ferenc Gyurcsány was Prime Minister between 2004 and 2009.
[535] Initiated by the Prime Minister and held on 17 October 2006.
[536] Initiated by the parliamentary leader of the government party and held on 4 December 2010.
[537] GYŐRI, The role of the Hungarian National Assembly in EU policy-making after accession to the Union, op. cit. pp. 223–224.
[538] RAUNIO, National Parliaments and European Integration, op. cit. p. 320.
[539] HÖLSCHEIDT, Sven, The German Bundestag: From Benevolent 'Weakness' Towards Supportive Scrutiny, in MAURER and WESSELS, *National Parliaments on their Ways to Europe,* op. cit. pp. 117–146, at p. 133.
[540] DIMITRAKOPOULOS, Incrementalism and Path Dependence, op. cit. p. 413.

there are debates on the EU budget, agriculture and fisheries.[541] Nonetheless, 0.4% of floor time was spent on EU documents between 1997 and 2000.[542] In Finland too, plenary involvement in European matters has been limited. Only far-reaching EU political decisions inspire longer debates. Of other types of questions 3-8% percent focused on European affairs in the Finnish Parliament.[543] In the German Bundestag about 6% of the Große Anfragen (questions followed by a short debate) concerned EU matters and only 8 out of 243 Aktuelle Stunden (hours dedicated to questions) were used to get information on EU issues in the 1990s.[544] In the 1980s, even less attention was given to EU affairs in the plenary (between 1983 and 1987 none of the Große Anfragen concerned EU business, and only one Actuelle Stunden examined EU matters).[545] In the French Assemblée Nationale, since 2002 there have been hour-long question sessions (questions au gouvernement),[546] which means on average 6% of plenary debates dedicated to EU issues.[547]

In sum, the involvement of the plenary in European affairs in the Hungarian Parliament is just as low as in the other Member States. The debating function, which is an important function of any parliament, remains weak in this field. The weak plenary involvement can be a logical consequence of the creation of the EACs and the increasing role of sectoral committees in EU scrutiny.[548] It is more surprising that, contrary to our preliminary assumptions based on previous literature, the salience of EU issues has remained low, independently of the time spent as a Member State and of the composition of the government.

[541] NORTON, Philip, The United Kingdom: Political Conflict, Parliamentary scrutiny, in NORTON, *National Parliaments and the European Union*, op. cit. pp. 92-109 at p. 99.
[542] AUEL and RAUNIO, Debating the State of the Union?, op. cit. p. 39.
[543] RAUNIO and WIBERG, How to Measure the Europeanisation of a National Legislature?, op. cit. pp. 85-86 and 88.
[544] SPRUNGK, Carina, The French Assemblée Nationale and the German Bundestag in the European Union: Towards convergence in the 'old' Europe?, in O'BRENNAN and RAUNIO, *National Parliaments within the Enlarged European Union…,* op. cit. pp. 132–162 at p. 142.
[545] SAALFELD, Thomas, The German Houses of Parliament and European Integration, in NORTON, *National Parliaments and the European Union*, op. cit. pp. 12-45 at p. 24.
[546] SPRUNGK, The French Assemblée Nationale and the German Bundestag in the European Union, op. cit. p. 142.
[547] AUEL and RAUNIO, Debating the State of the Union?, op. cit. p. 28.
[548] RAUNIO, National Parliaments and European Integration, op. cit. p. 320.

II THE COMMITTEE ON EUROPEAN AFFAIRS: THE INTENSITY OF EU SCRUTINY

For the analysis of the intensity of EU scrutiny in the CEA, different indicators are needed from those applied in the case of the plenary. All of the CEA's activity concerns EU issues, consequently the proportion of EU issues on its agenda is not an adequate indicator for the purpose of the research. The intensity of European scrutiny in the CEA can instead be evaluated through an analysis of the organisation of its work and the actual use of the scrutiny tools available to it. In this section again, I will pay special attention to eventual trends in the intensity of scrutiny.

1 The organisation of work

CEA meetings take place as a general rule once or twice a week during parliamentary sessions. Monday meetings are usually dedicated to legislative work (i.e. debates on bills) and last about one hour. On the Tuesday or Wednesday meetings, the CEA puts EU drafts on its agenda in the framework of the scrutiny procedure or holds hearings on more general EU matters. *Table 6* gives an overview of the number and length of CEA meetings between 2005 and 2012.

Table 6 – CEA meetings

Year	Number of meetings	Meeting time (h:m)	Average length of one meeting (approx. h:m)
2005	51	66:00	1:20
2006	30	54:52	1:50
2007	46	64:58	1:25
2008	40	66:31	1:40
2009	27	51:55	1:55
2010	20	34:01	1:40
2011	32	32:02	1:00
2012	36	36:38	1:01
On average	35.25		

It is hard to draw any general conclusion from the above data; some explanations may, however, be offered. Firstly, the fewer meetings of 2006 and 2010 may be justified by the parliamentary elections, since during the campaign period Parliament is in recess

and fewer committee meetings are held than normal. The relatively lower frequency of meetings in 2009 and 2011 is more difficult to explain. In 2009, a minority government was in office. As was mentioned before, according to the relevant literature, scrutiny, including scrutiny on European affairs, is more intensive in the case of minority cabinets.[549] While the number of CEA meetings in 2009 does not reflect this assumption, data from 2011 and 2012 tend to support the theory. In 2011 and 2012, the government had an overwhelming (more than two-thirds) majority in Parliament. In these years, not only was the frequency of meetings relatively low (although higher than in 2009 and 2010), but the average length of meetings was also the shortest. As far as the year 2010 is concerned, besides the two-thirds majority of the government, a further explanation for the low number of meetings is also possible: this period coincided with the Hungarian presidency during which the CEA, on a solidarity basis, might have refrained from putting under heavy scrutiny a government preoccupied with the running of the presidency.

In cross country comparison, the frequency of CEA meetings cannot be considered low. It holds a meeting on average once a week during parliamentary sessions, which seems to be a common practice among national parliaments. More active EACs are those in the Finnish parliament (twice a week lasting two/two and a half hours), in the French lower chamber (one or two a week with meetings lasting about two hours), and the Italian lower chamber (three times a week).[550] The German Bundestag's EAC holds one meeting a week during parliamentary sittings with one meeting lasting about 4 hours or even longer. It is common practice to convene meetings during the parliamentary recess, too.[551] Probably at the other end of the scale we find Greece, where the EAC spends a monthly average of about 1.4 hours in meetings, with 7-8 meeting per year.[552] The Austrian Nationalrat's EAC also meets only once a month on average.[553] The Spanish EAC meets on average between 8 and 12 times a year with a striking exception of 2012 when 31 meetings took place. Magone

[549] Ibid. p. 322.
[550] GYŐRI, *A nemzeti parlamentek és az Európai Unió,* op. cit. p. 298. RAUNIO and WIBERG, Too Little, Too Late?, op. cit. p. 384; SZUKALA and ROSENBERG, The French Parliament and the EU, op. cit. p. 232.
[551] CYGAN, *National Parliaments in an Integrated Europe*, op. cit. p. 150.
[552] DIMITRAKOPOULOS, Incrementalism and Path Dependence, op. cit. p. 415. GYŐRI, *A nemzeti parlamentek és az Európai Unió,* op. cit. p. 298.
[553] BLÜMEL, Barbara and NEUHOLD, Christine, The Parliament of Austria: A Large Potential with Little Implications, in MAURER and WESSELS, *National Parliaments on their Ways to Europe,* op. cit. pp. 313–336 at p. 329.

notes that this was due to the European Convention and the Spanish Council Presidency in the first half of the year.[554]

Another point worth noting is that the CEA does not convene meetings in the parliamentary recess in order to react to the eventual developments in EU decision-making, although it is entitled to do so.[555] During parliamentary election campaign months, when the Parliament is in recess, the parliamentary control of government activity in EU affairs is entirely lacking. *Table 8* below gives proof of this: in the spring session of the election years of 2006 and 2010, no scrutiny procedures were launched, showing MPs lack of interest in EU scrutiny during campaigns.

A final observation concerns public access to the CEA meetings. These are open to the press as a general rule, but adoption of the parliamentary standpoint in the scrutiny procedure always takes place in camera. Verbatim minutes are published for every public meeting a few weeks after the event. Accordingly, the less public part of the CEA work concerns the scrutiny procedure, where neither the CEA meeting which adopts the standpoint nor the standpoint itself is accessible to the public. There is no established practice for a review of the confidentiality of the standpoint (which forms part of the confidential minutes of the relevant meeting). It would be reasonable to automatically change the classification of the parliamentary standpoints after the conclusion of the EU legislative proposals. Once the negotiations are closed, there is no justification for hiding the Hungarian government position nor the parliamentary standpoint. As for cross-country comparison, about half of the EACs convene in public, while the rest generally meet behind closed doors.[556] The EAC meetings are closed for example in Finland, Sweden, Denmark, Estonia, Germany, France, the UK and Slovenia. Almost all EACs provide information to the public in the form of press releases, making documents considered, minutes of the discussion, resolutions, standpoints, opinions etc., available on parliamentary websites.[557]

[554] MAGONE, South European national parliaments and the European Union, op. cit. p. 124.
[555] Article 67(3), second phrase, of the Standing Orders.
[556] COSAC: Third bi-annual Report: Developments in European Union Procedures and Practices Relevant to Parliamentary Scrutiny, May 2005, pp. 16-18.
[557] COSAC: Twelfths bi-annual Report: Developments in European Union Procedures and Practices Relevant to Parliamentary Scrutiny, October 2009, p. 10.

2 Composition of the agenda

Examining the agenda of the CEA can provide information on what kinds of issues acquire priority in its work. In terms of the number of agenda points, the scrutiny procedure takes up the largest proportion (38%) of the activity of the CEA. It must be noted that as discussion of connected EU proposals is often organized in packages and treated as a singe agenda point, the statistics might indicate a more prevalent role for these matters than they enjoy in practice. The scrutiny procedure is followed by hearings and bills put before Parliament, both representing 31% of the agenda. The proportion of these issues on the agenda and the time dedicated to them are not necessarily correlated. No statistics exist relating to the discussion time devoted to individual agenda points, but based on the minutes of the meetings it seems that the CEA generally devotes more time to hearings than to the scrutiny procedure or to discussing bills.

Table 7 – Activities of the CEA (number of agenda points)

	Scrutiny procedure		**Bills and resolutions**		**Hearings**		**Other**		**Total**
	No.	**~%**	**No.**	**~%**	**No.**	**~%**	**No.**	**~%**	
2004*	11	22	20	41	17	35	1	2	49
2005	61	49	39	31	23	18	2	2	125
2006	32	36	27	31	28	32	1	1	88
2007	50	37	45	34	36	27	3	2	134
2008	80	56	24	17	38	27	2	1	144
2009	21	29	15	21	34	47	3	4	73
2010/I	1	8	1	8	10	77	1	8	13
2010/II	11	24	15	33	17	38	2	4	45
2011	9	18	12	24	25	51	3	6	49
2012	27	34	32	40	20	25	1	1	80
Total	**303**	**38**	**230**	**29**	**248**	**31**	**19**	**2**	**800**

* from the 1st May 2010. The year 2010 is divided: the first line shows the data before the parliamentary elections of April, the second after the institution of the new Parliament.

a) The scrutiny procedure

Regarding the scrutiny procedure, altogether 124 EU proposals were under the scrutiny procedure between September 2004 and December 2012 in 17 parliamentary sessions. So on average, about seven drafts per session were examined by the CEA. The number

seems low, especially considering that approximately 300 draft directives and regulations are adopted by the European Commission annually. It is also striking that the number of scrutiny procedures seems to have been decreasing markedly since 2009 (see *Table 8*). It remains a question whether this is a provisional phenomenon, or reflects a general perception on the part of MPs as they realise the inherent limits of the EU scrutiny (see Chapter 3).

Table 8 – Scrutiny procedures launched (one EU draft = one procedure)

Year	Session	EU drafts	Total per cycle
2004	autumn	7	34
2005	spring	11	
	autumn	16	
2006	spring	-	
2007	autumn	18	67
	spring	3	
	autumn	10	
2008	spring	12	
	autumn	15	
2009	spring	9	
	autumn	-	
2010	spring	-	
2011	autumn	5	29
	spring	-	
	autumn	7	
2012	spring	11	
	autumn	-	
2013	spring	6	
	autumn	-	

For the sake of comparison, in the UK House of Commons about 60 EU documents are selected yearly for detailed scrutiny in the commissions or at the plenary.[558] The German Bundestag's EAC examines about 5% of the documents received and develops formal positions on them (which the plenary approves regularly without further debate).[559] The EAC of the French Assemblée Nationale adopted about six opinions per

[558] GYŐRI, *A nemzeti parlamentek és az Európai Unió*, op. cit. pp. 168 and 295.
[559] SPRUNGK, The French Assemblée Nationale and the German Bundestag in the European Union, op. cit. p. 143.

year on average in the early 2000s.[560] In Austria, the lower chamber examines about 6-13 documents per year and adopts a maximum of 4 opinions annually (and the frequency is clearly decreasing).[561] The UK House of Lords produces 20-30 very detailed reports each year. It is worth adding that the Lords scrutinise policy trends rather than individual draft legislation.[562] Taking into account these data, the intensity of the Hungarian scrutiny procedure is not extremely low. It is rather the trend which is unfavourable.

The EU proposals scrutinized by the Hungarian Parliament cover practically all European policies (e.g. agriculture, environment, telecommunications and the area of freedom, security and justice) excluding the common foreign and security policy. As the meetings (or the parts of a meeting) which adopt the parliamentary standpoint are held *in camera*, no information is available on the question of whether the CEA generally supports the proposed government position or the standpoints require the modification of the government position. Minutes of the meetings held in public (or public parts of meetings), however, show that the members of government parties in the CEA seek to assure approval of the government position.

b) Hearings

Almost one third of the CEA's agenda points concerned hearings and exchanges of views. At hearings, usually ministers, state secretaries or sometimes representatives of economic interest groups provide the CEA with specialist information. The issues cover general political questions (enlargement, modification of the Treaties), European policies, hearings of ministers on European issues in their portfolio, hearings of the government's nominees for European posts, hearings of ambassador nominees, and exchanges of views with the ambassadors of EU countries in Budapest.[563] Contrary to practices adopted in many other national parliaments, the CEA does not regularly

[560] SIRITZKY, David, Ensuring Democratic Control Over National Government in European Affairs: the French Model, in BARRETT, *National Parliaments and the European Union,* op. cit. pp. 433–454 at p. 442.
[561] GYŐRI, *A nemzeti parlamentek és az Európai Unió*, op. cit. pp. 135 and 295; BLÜMEL and NEUHOLD, The Parliament of Austria, op. cit. p. 327.
[562] DIMITRAKOPOULOS, Incrementalism and Path Dependence, op. cit. p. 413.
[563] For further details see JUHÁSZ-TÓTH, *A nemzeti parlamentek és a kormányok együttműködése Európai uniós ügyekben Magyarországon és az Európai Unió többi új tagállamában*, op. cit.

discuss the Commission's annual legislative program.[564] Neither is it a practice that Commission green or white papers or conclusions of the European Council are put on its agenda.[565]

Besides the examination of EU drafts, holding hearings is an important means of control in other EACs too. The German Bundestag dedicates most of its meeting at least partly to hearings, while the French lower house holds about 15-20 hearings per year. Unlike the Hungarian practice, where the overwhelming majority of those invited are ministerial officials, and to a lesser extent representatives of interest groups, both in Germany and in France hearings of experts and scholars also take place.[566] Similarly, the UK Parliament consult often academics.

c) Subsidiarity control and political dialogue

Other kinds of issues on the agenda may include subsidiarity control and eventually discussions on the passerelle clauses. As far as subsidiarity control is concerned, before the entry into force of the Lisbon Treaty, COSAC organized subsidiarity control check tests in order to prepare national parliaments for the application of the Treaty of Lisbon. Although the CEA participated in almost all of these tests and put the chosen proposals on its agenda, according to the minutes of the meetings, no discussion on the merits of the drafts took place. Most of the time, the members of the CEA made no contributions on the issue.[567]

On one occasion the CEA made an attempt to trigger inter-parliamentary cooperation in a case when a draft seemed to breach the principle of subsidiarity.[568] In 2008, the two standing committees designated to carry out the scrutiny procedure on the draft regulation establishing the European Electronic Communication Market

[564] One exemption is the meeting (open day) held in December 2005 on the Commission's Annual Legislative and Work Programme for 2006.
[565] An important exception was the financial perspectives: Communication from the Commission to the Council and the European Parliament – Building our Common Future – Policy Changes and Budgetary means of the Enlarged Union 2007-2013 (COM(2004) 101).
[566] SPRUNGK, The French Assemblée Nationale and the German Bundestag in the European Union, op. cit. p. 142.
[567] Dates of the relevant meetings: 4 April 2005, 10 December 2007, 16 September 2008, 24 February 2009, 22 September 2009 and 17 November 2009.
[568] TAMÁS, Csaba Gergely, Új lehetőségek a nemzeti parlamentek előtt? [New opportunities for national parliaments?], *Európai Tükör*, 2010, No. 7–8, pp. 7–22 at p. 20.

Authority[569] submitted an opinion to the CEA stating that the draft might violate the subsidiarity principle. The Chairman of the CEA addressed a letter to COSAC proposing common inter-parliamentary action.[570] However, COSAC did not put the question on its agenda and in the meantime the European Parliament and Council reached a compromise and changed the draft. Consequently, the initiative of the CEA was not followed through.

Since the entry into force of the Treaty of Lisbon, the CEA has relied on the new provisions to address reasoned opinion to the EU institutions on one occasion. A similar low level of activity can be observed in the CEA's almost entire lack of participation in the political dialogue with the Commission.[571]

At the beginning of 2013, for the first time after the entry into force of the Lisbon Treaty, a subsidiarity issue was raised in the CEA.[572] The draft directive on tobacco products[573] was put on the CEA's agenda in order to examine an eventual breach of subsidiarity. The chairperson of the committee presented two options to the members: i) the adoption by the CEA of a simple opinion to be sent to the Commission in the framework of the political dialogue; or ii) the adoption of a proposal on a reasoned opinion and its submission to the plenary. The representative of the government, agreeing with the subsidiarity check, did not express an opinion on the two options, considering that the decision belongs to the competence of Parliament. The only remark from the CEA members was formulated by an opposition MP (from an EU-sceptical party) who basically agreed with the objectives of the directive, but was hesitant on the subsidiarity question, stating that there had not been enough time to consider the merits of the proposal with experts.

The most remarkable part of the meeting was the argumentation of the chairman who succeeded in convincing the CEA that the political dialogue was a more efficient solution for raising subsidiarity concerns. He argued that the involvement of the plenary

[569] COM(2007)699.
[570] See http://www.cosac.eu/42france2008/meeting-of-the-chairpersons-of-cosac-6-7-july-2008/e2-letter_hungary.pdf accessed 29/12/2013.
[571] In 2011, the Commission received a total of 622 opinions in the framework of the political dialogue and 64 reasoned opinions on the subsidiarity principle. There were four chambers (the Estonian and Hungarian Parliament and the two chambers of the Slovene Parliament) which did not submit any opinion to the Commission. See: Annual report 2011 on the relations between the European Commission and national parliaments (COM(2012) 375).
[572] Meeting of 18 February 2013. Minutes no. EUB/15-1/2013.
[573] Proposal for a directive of the European Parliament and of the Council on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products, COM(2012)788.

would imply that it would no longer be the CEA who decides the question and communicates directly with the EU institutions, implicitly suggesting that the decision of the plenary is unforeseeable. Based on this, he took a stand on the direct political dialogue where the CEA can send a letter directly to the Commission. The really problematic point of his reasoning was, however, that he stated that the outcome of the two options would be the same, and if 18 national parliaments had sent a letter in the framework of the political dialogue, the Commission could have been persuaded to reconsider its draft directive. Interestingly, he did not argue with the short time (two weeks) still available for the plenary decision, which would have been a reasonable argument for the initiation of the political dialogue. Finally, the CEA voted for the use of the political dialogue and it adopted its opinion during its next meeting. The lesson that can be drawn from this CEA meeting is that almost four years after the entry into force of the Lisbon Treaty, the CEA still does not understand its role and power in subsidiarity control. In a contrary case, it should have initiated the adoption of a reasoned opinion. Even if the political effect of the political dialogue might be the same (i.e. that the Commission modify or withdraw its draft), the political dialogue is only an informal procedure.

The first reasoned opinion in the framework of the early warning mechanism was adopted by the Hungarian Parliament in 2013. It concerned the EU proposal for Council regulation on the establishment of the European Prosecutor's Office.[574] The process was initiated by the CEA, which first held a hearing with the participation of the competent ministry and a representative of the European Commission on 23 September, and than introduced a parliamentary draft opinion to the plenary on 14 October.[575] On the same day, the commission on constitutional affairs discussed the draft opinion and supported its general debate. Still on the same day, the plenary held the general debate which lasted about one hour and 40 minutes. As an opposition party introduced proposals for amendment, another debate had to be organised and took place the next day. The reasoned opinion was finally adopted one week after its introduction and one week before the two month deadline of the Lisbon Protocol 2 expired. Consequently, the procedure completed in the Hungarian Parliament was very fast, proving that the eight week deadline available for subsidiarity control is long enough if there is sufficient political will to adopt a reasoned opinion.

[574] COM(2013)534.
[575] See proposal for resolution No. H/12695 and report No. J/12694.

The first Hungarian reasoned opinion states that the CEA supports the aim of the EU draft. It underlines that the planned measure cannot result in a disproportional limitation of the Member States' existing sovereignty in the field of criminal law and in the restriction of the independence of the public prosecution. According to the CEA, the exclusive competences provided for the European Public Prosecutor's Office would exceed the authorisation of Article 86 TFEU; the draft does not sufficiently justify the idea that the new procedures would be more efficient than the existing ones; there would be difficulties in the course of the implementation; and finally there is no proof of a real added value of the EU level action. The arguments of the CEA have different bases including subsidiarity, proportionality and other not strictly relevant questions (such as sovereignty and the attribution of powers). A broad variety of arguments appeared during the parliamentary discussion of the draft reasoned opinion, reflecting the theoretical expectation in connection with the delimitation of subsidiarity and other issues (see Chapter 2 Section II.2.a).

III SECTORAL COMMITTEES: LAGGING BEHIND

In the case of the sectoral committees, the evaluation of the intensity of EU scrutiny is based on the following factors. The analysis of their participation in the scrutiny procedure sheds light on their attitude towards EU affairs. Besides the scrutiny procedure, sectoral committees may take an active part in the control of government by organising hearings or creating subcommittees in connection with EU affairs. I will be also interested in the ad hoc committees whose responsibility was connected to EU issues.

1 Participation in the scrutiny procedure

As has been shown in Chapter 2, the role of the sectoral committees in the scrutiny procedure is to examine EU drafts and adopt an opinion on them. They are designated for this task by the Speaker of the House following the proposal of the CEA or their

own initiative. Sectoral committees send their opinion to the CEA, which takes these into account when elaborating the parliamentary standpoint.

Approximately two-thirds of the designations concern five parliamentary committees (out of 18-25 standing committees, depending on the parliamentary cycle) dealing with: economic affairs, environmental protection and sustainable development, constitutional affairs and justice, national defence and internal security, and agriculture. Clearly, the responsibilities of these committees cover important EU policies. Some committees have never been asked to participate in the scrutiny procedure (e.g. the committees on sport, on local authorities, on consumer protection, and on national security). Although the legal rules concerning the scrutiny procedure do not *expressis verbis* contain the possibility for sectoral committees to propose the initiation of a scrutiny procedure, the committee on environmental protection informally asked the CEA to examine an EU draft and the latter launched the scrutiny procedure.[576]

During the discussion of the EU drafts in sectoral committees, representatives of the government and occasionally stakeholders are invited to present their position. An EU draft may be put on the agenda of the sectoral committees several (two or three) times before the adoption of the opinion. The committee on economic affairs established a subcommittee on EU affairs whose main function was the discussion of EU drafts and the preparation of the opinion, which the committee on economic affairs adopted without debate. This 'outsourcing' of the scrutiny may be efficient in terms of work organisation, but it results in a more limited number of MPs being informed about the EU legislation and exercising control over the government than in the case of a debate in the whole committee.

There is no legal rule or established custom for the form and content of the opinion of standing committees. Consequently, the extent and the depth of the opinion vary greatly. Especially at the beginning of the application of the scrutiny procedure, some standing committees only gave a one sentence opinion (about supporting the EU draft) or simply sent the extract of the minutes of the debate to the CEA. The best practice seems the one in which the sectoral committee includes in the opinions the most important points of the discussion and the actual opinion of the committee.[577]

[576] See the CEA meeting of 9 October 2007.
[577] TAMÁS and BÍRÓ, Az egyeztetési eljárás magyar modellje a 2006-2010-es parlamenti ciklusban, op. cit. pp. 26–27.

Although, according to the Standing Orders, the sectoral committees elaborate opinion on the EU draft, the opinions often refer to their support for the government position.

2 EU related control

Standing committees can, independently of the scrutiny procedure, put hearings concerning European matters on their agenda, although they are not particularly eager to do so, as *Table 9* shows. In this regard, there are some more active committees (such as environment, health, agriculture, foreign affairs), which dedicate some agenda points to European affairs every year. The environmental protection committee occasionally discusses Commission communications or even EU drafts independently of the scrutiny procedure. One can wonder, however, why some sectoral committees (such as constitutional affairs and justice, economic affairs, budget and finance) whose responsibility covers fields where the EU has significant powers, do not consider it necessary to discuss EU-related matters regularly. It would be desirable if standing committees organize hearings at least once per parliamentary session (twice every year) on European policies or programs that are related to their scope of activities or concern the implementation of these policies in Hungary. Furthermore, such hearings could be imposed by the Parliamentary Act or the Standing Orders, as in the case of the Swedish Parliament.[578]

It is worth mentioning that European Commissioners have appeared several times at committee meetings to inform MPs about their activities.[579] Hungarian members of the Court of Auditors regularly inform the competent committees.

[578] HEGELAND, Hans, The Parliament of Sweden: A Successful Adapter in the European Arena, in MAURER and WESSELS, *National Parliaments on their Ways to Europe*, op. cit. pp. 377–394 at p. 381.
[579] In 2010, the following visits took place: Kristalina Georgieva and Connie Hedegard to the committee on sustainable development; László Andor to the committee on employment and labour; Michel Barnier to the committee on consumer protection; Androulla Vassiliou to the committee on youth, social, family and housing affairs; Andris Piebalgs to the committee on the audit office and budget; Michel Barnier, Michael Leigh and Andris Piebalgs to the CEA.

Table 9 – EU related hearings in sectoral committees

Sectoral committee	**2007**	**2008**	**2009**	**2010***	**2011**	**2012#**
Constitutional, Judicial Affairs	-	-	1	-	-	-
Economic Affairs and IT	1	-	-	-	-	n.a.
Youth, Social, Family Affairs	2	-	-	-	-	n.a.
Audit Office and Budget	1	1	1	-	-	n.a.
Local Government and Regional Development	3	1	1	-	-	n.a.
Health Affairs	3	2	6	1	-	-
Education, Science and Research	-	-	-	-	-	-
Agriculture	3	4	3	1	-	n.a.
Foreign Affairs	2	3	3	3	3	5
Human Rights, Minority, Religious Affairs	1	-	-	-	-	n.a.
Employment and Labour	7	1	2	-	1	1
Sustainable Development	11	10	3	3	-	-
Cultural and Press Affairs	2	-	-	-	-	-
Sport and Tourism	-	2	3	-	3	-
Defence and Internal Security	2	1	2	1	1	-
National security	-	-	-	-	-	-
Consumer Protection	×	×	×	-	2	1
Total	**38**	**25**	**25**	**9**	**10**	**8**

* Data cover only the period after the elections. # Data available in the parliamentary online database seem to be incomplete.

Another striking fact which *Table 9* reveals is that the number of EU-related hearings has fallen since the election of 2010. The possibility arises that government parties, having a two-thirds majority in Parliament, do not wish to put the government under strong scrutiny in EU affairs. However, there could be another logical explanation for this: during the years of 2010-2012 the legislative workload of the Hungarian Parliament was extremely high. 150 acts were adopted in 2010 (in the new cycle), 215 in 2011 and 224 in 2012, which is 1.5 times more than during the first three years of the previous parliamentary cycle (2006-2007).[580] Sectoral committees may simply be so overburdened by the legislative work that they do not have resources to engage in EU scrutiny.

From a comparative perspective, the lack of interest of sectoral committees is not experienced only in Hungary. In some national parliaments, standing committees may submit reports to the plenary which can be regarded as an analogue tool to the hearings in the Hungarian sectoral committees. In Sweden, of approximately 100 reports submitted every year, five concern EU matters. In Denmark, fifteen similar reports on EU issues were drafted during the period 1997/98-2000/01, twelve of them coming

[580] The number of adopted act were 84 in 2006, 182 in 2007, 117 in 2008.

from one committee, namely the environmental committee.[581] In the UK House of Lords, while about 20% of the incoming EU documentation is sifted for further scrutiny to the subcommittees, in practice only half of it is examined in detail.[582]

For better organisation of their work, standing committees may establish subcommittees composed from among their members.[583] Subcommittees can prepare the tasks of the committee, give advice, and consult stake holders and interest organisations in order to help the 'mother' committee. From the accession until the end of the 2006 spring session, 14 standing committees established subcommittees for EU affairs. In the 2006-2010 parliamentary cycle there were five standing committees, while in the 2010-2014 cycle only one. The diminution of the number of EU-subcommittees is a logical consequence of the fact that most of these subcommittees did not function at all.[584] Exceptions were the committee on economic affairs, the committee on the budget and the committee on employment, whose subcommittee also worked in practice.

Finally, we should touch upon the ad hoc committees, which may be established for fixed time for the examination of a given issue.[585] Since 2004, there have been two ad hoc committees established to discuss EU-related affairs. The first started work in 2005 and scrutinised the conformity of the Hungarian and the EU drug strategies.[586] The second was established in 2006 and functioned until the end of the parliamentary cycle (2010). Its responsibility was the control of the execution of the New Hungary Development Plan which provided the framework for the utilisation of the resources of the EU development policy.[587] This committee was very active as it held a meeting on average every two weeks, keeping the relevant government policy under tight control.

[581] HEGELAND, The European Union in national parliaments, op. cit. pp. 104-105.
[582] CYGAN, *National Parliaments in an Integrated Europe,* op. cit. p. 94.
[583] Article 21(1) of the Parliamentary Act.
[584] Győri makes similar observation in connection with the EU-subcommittees before accession: 'many of them have existed only on paper'. See GYŐRI, The role of the Hungarian National Assembly in EU policy-making after accession to the Union, op. cit. p. 223.
[585] Article 23 of the Parliamentary Act.
[586] Established by OGY Resolution no. 19/2005. (IV.14.).
[587] Established by OGY Resolution no. 55/2006. (XII. 6.).

Concluding remarks

Quantitative analysis of the work of the Hungarian National Assembly shows that after about ten years of EU Membership European affairs are still isolated in the Parliament. The plenary session and sectoral committees do not dedicate much attention to what is happening in the EU and how the government represents Hungarian interests or implements EU law. The frequency of EU-related issues in the plenary is low, although similar to other national parliaments. There are no regular and specially organised debates on EU issues, leaving the debating functions of the Parliament marginal in EU matters. This is, however, not a Hungarian particularity.[588]

It is, consequently, the Committee on European Affairs which takes almost all the responsibility for controlling the government in EU matters. While its work organisation (the frequency and duration of the meetings) seems to be essentially sufficient to establish effective EU scrutiny, deeper analysis shows that it does not take full advantage of the available legal instruments. The scrutiny procedure is managed at a minimum level, that is to say the number of scrutinised EU drafts is low, and - what is more - declining. Furthermore, the secrecy of the procedure does not help the public to be informed about this important parliamentary function. Hearings of government members or officials about EU matters operate more efficiently. On the other hand, the CEA does not take the opportunity to make its opinion heard at EU level: subsidiarity control and political dialogue is almost non-existent in practice. Consequently, the Hungarian Parliament has not yet realised the potential of these mechanisms.

The intention of this Chapter was to detect trends in parliamentary EU scrutiny. It was expected that the intensity of scrutiny would increase in time, but this assumption cannot be confirmed. What is more, the CEA's commitment to the scrutiny procedure has decreased over the last few years. I have not found sufficient evidence of the effect of government composition on the intensity of EU scrutiny, although some trends (e.g. less frequent scrutiny procedure) may be explained by the comfortable majority of the coalition in parliament. On the other hand, trends in EU scrutiny do not necessarily reflect strategic choices, but may be justified by other reasons (e.g. excessive parliamentary workload).

[588] O'BRENNAN and RAUNIO, Introduction, op. cit. p. 17.

The quantitative analysis carried out in this Chapter is an important element of empirical research on the Europeanization of parliamentary work, but in order to have a more complete picture on the issue, qualitative analyses have to be performed too.

Chapter 5
Parliamentary debates on EU affairs: doubtful awareness of the stakes

'Union Membership has no influence in practice on the adversarial, divided, superficial and underdeveloped Hungarian political life.'

Zoltán Pogátsa[589]

INTRODUCTION

The emergence of EU affairs in national parliamentary debates provides a field for MPs to show political alternatives, hold the government to account, inform citizens, and assure the democratic legitimacy of EU policy making.[590] National parliaments can provide a space for public debate on important European issues and their domestic implications, thus contributing to making policy processes more transparent and so more accessible to their national public.[591] Research into parliamentary debates may also bring to the surface an important aspect of Europeanization: the attitudes and strategies of MPs and political parties towards the EU and EU law.

Is the above strict judgement of Pogátsa valid for the Hungarian parliamentary debates? Are parliamentary discussions of EU affairs 'superficial and of low standard'? Do MPs appreciate the internal implications of EU law and policies? The purpose of the present Chapter is to acquire - through a mosaic of carefully selected case studies of parliamentary debates - a global view on whether the Hungarian Parliament provides a forum for meaningful public debates on EU affairs. In the course of the selection of the cases I have been careful to include the different organs of the Parliament (plenary,

[589] POGÁTSA, Zoltán, *Álomunió: európai piac állam nélkül* [Dreamunion: A European Market without a State], Nyitott Könyvműhely, Budapest, 2009, pp. 143-144.
[590] AUEL and RAUNIO, Debating the State of the Union?, op. cit. p. 47.
[591] AUEL, Democratic Accountability and National Parliaments, op. cit. p. 498.

commissions), to cover the whole period after the country's accession to the EU and to include matters concerning different sources of EU law.

The first case study comprises parliamentary debates on the ratification of EU treaties, i.e. primary law. These debates are characterized by an inherent contradiction: national parliamentary discussions cannot have any effect on the text of the Treaties, and the overwhelming majority of the political elite shares a consensus on EU integration, and thus no vivid disputes are to be expected. On the other hand, these debates may also include value-oriented discussions on the merits of the EU as such. For the second case study I have chosen a politically and economically salient EU issue: European economic and financial crisis management. The relevant EU instruments are legally complex and include primary law acts and intergovernmental cooperation outside the EU law framework. The third case study concerns the scrutiny procedure of politically important EU draft legislations: the EU sugar sector reform of 2005 and its consequences on the Hungarian sugar sector. Finally, I will study how MPs react to the case law of the CJEU and how the rulings of the CJEU impact on national parliamentary law-making and debates.

During the course of the research, I examined verbatim records of parliamentary debates in detail since 2004. Where possible, I carry out cross-country comparison.

I TREATY RATIFICATIONS

In Chapter 3 it was argued that the role of the plenary has so far been limited in European issues. However, according to the literature, more salient EU topics, such as Treaty reforms, may trigger plenary debates.[592] In the following, I am interested in the content of the 'ratification debates' in the Hungarian Parliament, i.e. the plenary and committee discussions of treaty modifications that have been held since the country's accession to the EU. This includes parliamentary debates on the Constitutional Treaty, the Romanian and Bulgarian accession treaty, the Lisbon Treaty, two treaty modifications since Lisbon[593], and the Croatian accession treaty. The focus of the

[592] AUEL and RAUNIO, Debating the State of the Union?, op. cit. p. 48.
[593] Treaty amendment on the composition of the European Parliament (Protocol amending the Protocol on transitional provisions annexed to the Treaty on European Union [OJ 2010 C 263, p.1]); European Council Decision No 2011/199/EU of 25 March 2011 amending Article 136 of the Treaty on the Functioning of the European Union with regard to a stability mechanism for Member States whose currency is the euro (OJ L 91, 6.4.2011, p. 1–2).

analysis is on whether i.) government and opposition parties follow different strategies in matters on which they share basically the same opinion; ii.) national interests and party attitudes toward the EU are articulated; and iii.) the debate is sufficiently detailed to adequately inform the public of the interests at stake. I am also interested in the possible changes over time of the characteristics of the ratification debates.

The Constitutional Treaty was discussed on two occasions: first, the Parliament authorized the government to sign the Treaty[594] by a two-thirds majority of all MPs (absolute qualified majority). The plenary discussions lasted three and a half hours.[595] During the debate, the government emphasised that all the Hungarian objectives which had been represented at the IGC had been achieved; therefore the text reflected Hungarian interests.[596] The contributions by MPs from the government parties (socialist and liberal parties) were somewhat solemn and stayed at the level of generalities, such as enumerating various elements of the Constitution. The focus of the criticism from of the opposition (conservative and Christian democrat parties), which supported the Constitutional Treaty anyway, was firstly the omission of any reference to Christianity from the preamble of the Constitution; secondly, they suggested that the government should attach a unilateral declaration to the final act of the IGC which negotiated the Constitution which would express the Hungarian understanding of minority rights included in the text of the Constitution.[597] There was one independent MP who argued that there should be a referendum to approve the Constitution,[598] but the government representative found legal obstacles to this proposal.[599]

The second step in the approval of the Constitutional Treaty was, strictly speaking, ratification.[600] The plenary debate on ratification lasted about four and a half hours.[601] Hungary was the second Member State to ratify the Constitution and, according to the explanatory memorandum of the proposal in question, the government placed emphasis on expressing, by its rapid ratification, the country's commitment to European

[594] Proposal for resolution No. H/11434.
[595] Plenary debates of 5 October 2004 (general debate: 2 hours and 43 minutes) and 11 October 2004 (debate in detail: 46 minutes).
[596] Contribution of András Bársony (state secretary) on 5 October 2004 (No. 18).
[597] According to the proposal (No. H/11434/3), Hungary should state that minority rights include collective rights and that the common practice of them, and positive discrimination towards national or ethnic minorities, cannot violate the principle of the general prohibition of discrimination. See the plenary session of 5 October 2004.
[598] Contribution of Attila Körömi (independent) on 5 October 2004 (No. 44).
[599] Contribution of András Bársony (state secretary) on 5 October 2004 (No. 58).
[600] Proposal for resolution No. H/12631.
[601] Plenary debates of 1 December 2004 (general debate: 2 hours and 24 minutes) and 6 December 2004 (debate in detail: 1 hour 54 minutes).

integration.[602] In other words, the government sacrificed deep political or wider public debate in order to make a (probably questionable and short-lived) diplomatic gesture. The discussion can be considered a 'copy and paste' of the first debate which focused on the mention of Christianity in the preamble and on minority rights. This time government and opposition parties were able to reach a compromise in connection with the interpretation of minority rights which was finally included in the parliamentary resolution ratifying the Constitution. No detailed examination of the dispositions of the Constitution took place. Neither did MPs seek to express their general approach to European integration.

After the failure of the Constitutional Treaty, on 13 December 2007 the Member States signed the Lisbon Treaty, a less significant amendment to the existing Treaties. Again, the Hungarian government wanted to express its commitment to the EU and ratified the Treaty first among the Member States, after an extremely short debate of 50 minutes.[603] Some MPs from smaller opposition parties raised serious concerns about the fast ratification, as according to them MPs had not received the text of the Treaty which formed the annexe to the bill.[604] On the other hand, the largest opposition party assisted in the derogation from the Standing Orders[605] which enabled the fast procedure, ensuring in return the support of the government for another proposal whose approval was crucial for the opposition's long term political aims.[606] Government and opposition sacrificed public discourse on a Treaty modification in order to be able to ratify first, and by arguing that the Lisbon Treaty did not entail major change compared to the Constitutional Treaty.

The Parliament discussed the Romanian and Bulgarian accession treaty on two occasions: first it decided to sign,[607] then it approved the treaty[608]. The first plenary debate lasted one and a half hours. In spite of the cross-party consensus on the approval of the accession treaty, opposition parties articulated some doubts on whether Romania was prepared for EU-accession. The question of Bulgarian accession was almost absent

[602] Explanatory memorandum of the proposal no H/12631 for resolution on the ratification of the Treaty establishing a Constitution for Europe.
[603] Bill No. T/4678; date of the plenary debate: 17 December 2007.
[604] Contributions of László Salamon (KDNP) (No. 38 and 376) and Péter Boross (MDF) (No. 40) on 17 December 2007.
[605] This was possible with 4/5 of the MPs present.
[606] Namely, the parliamentary resolution calling for a referendum initiated by the opposition. The result of the referendum subsequently led to a deep political crisis between government parties and finally the disintegration of the coalition in 2008.
[607] Proposal for resolution No. H/15259; date of the plenary debate: 5 April 2005.
[608] Bill No. T/16966; date of the plenary debate: 26 September 2005.

in the debate. The opposition criticised the government for not using the occasion of the accession negotiation to promote Hungarian interests, mainly in connection with the Hungarian minorities in Romania, and certain environmental issues.[609]

During the second parliamentary debate, which lasted two and a half hours at the plenary, the government argued – particularly in connection with the case of Romania – for Hungary's moral obligation and historical responsibility to approve the accession treaty rapidly. The government attached importance to a fast ratification, hoping that this political gesture would contribute to a good bilateral relationship.[610] The opposition criticized the timing of the ratification as important EU decisions had not been taken at that moment (e.g. the monitoring report of the Commission, the position of the Council on the safeguard clauses).[611] It is worth noting that in some contributions there were signs that the debate was taking place in a wider context (e.g. Hungary's aims in the EU; possible future enlargements).[612]

The two modifications of the Lisbon Treaty (amendment of the composition of the European Parliament,[613] and the modification of Article 136 TFEU[614]) attracted very low attention in the Hungarian Parliament. There was practically no contribution from MPs on the issue of the composition of the EP, either in the CEA[615] or at the plenary. This is probably due to the fact that the treaty modification was not politically important. The second amendment triggered some more attention, although the plenary debate took only half an hour. The government underlined that the modification concerned above all the Eurozone Member States, thus for Hungary it did not yet have any particular importance. However, the Eurosceptic opposition party did not vote for the bill, arguing that in the longer term it would entail a serious obligation for the country which would lose another important element of its sovereignty.[616]

[609] For a detailed analysis of the Parliamentary debates on the Romanian accession see SZALAY, Klára and SZABÓ, Gergely, Románia európai uniós csatlakozása a Magyar Köztársaság Országgyűlésének munkájában [The accession of Romania to the EU in the work of the Hungarian National Assembly], in *Romániai Magyar Jogtudományi Közlöny*, 2007, No. 4, pp. 37–54.
[610] Contribution of Mátyás Eörsi (SZDSZ, chairperson of the CEA) on 20 September 2005 (No. 86).
[611] The European Commission published its monitoring report on 26 September 2006 (COM(2006)549) proposing the 1st of 2007 as the accession date. See the contribution of Zsolt Németh (Fidesz) on 20 September 2005 (No. 84).
[612] See particularly the contribution of Ferenc Gyurcsány (Prime Minister) on 20 September 2005 (No. 76).
[613] Bill No. T/1669; date of the plenary debate: 22 November 2010.
[614] Bill No. T/5950; date of the plenary debate: 27 February 2012.
[615] CEA meeting of 15 November 2010 (minutes no EUB-16/2010).
[616] Contribution of Tibor Bana (Jobbik) on 27 February 2012 (No. 191).

Finally, Croatia's accession treaty did not trigger much debate in Parliament either.[617] The plenary discussion took one hour and 16 minutes and reflected the all-party consensus on the issue. In fact, Hungary treated the Croatian accession as a priority during the Hungarian presidency of the Council. Accordingly, the discussion was solemn, without any reservations from any opposition party. The government underlined, again, the fact that Hungary would be the second Member State to ratify the accession treaty.[618]

In sum, treaty ratifications have not generated profound debates in the Hungarian National Assembly, except when a direct national interest was at stake, such as the interpretation of minority rights in the Constitution or bilateral interests in the case of Romanian accession. Governments often seem to place overriding importance on the fast ratification procedure, preferring probably short term diplomatic advantages to detailed parliamentary debate. Therefore, the Hungarian Parliament has not provided a forum for public debate on such fundamental issues as Treaty amendments. This is not surprising if we take into account that not even the approval of the Hungarian accession Treaty itself was preceded by a parliamentary debate, as it was ratified by a referendum whose result was binding on the Parliament.[619] Similarly, there was no plenary debate on the Convention on the future of Europe.[620]

For the sake of cross-country comparison the example of the German Bundestag and the French Assemblée nationale can be mentioned. According to Sprungk, both chambers organized information campaigns and internet platforms in connection with the constitution. In the Bundestag, the EAC held policy-specific debates, and the plenary organized six plenary debates dealing with the Convention. The constitutional process formed a new field of activity for these chambers and their EACs.[621] In the Southern parliaments, which are usually considered less Europeanized, increased attention was given to the constitutional process.[622] In Portugal, the EAC organized a hearing with members of the Convention and seminars or conferences to promote public debate on the future of Europe. The EAC of the Italian Chamber of Deputies established

[617] Bill No. T/5841; date of the plenary debate: 13 February 2012.
[618] CEA meeting of 13 February 2012, contribution of Enikő Győri, Minister of State for EU Affairs (minutes no EIB-1/2012).
[619] GYŐRI, *A nemzeti parlamentek és az Európai Unió*, op. cit. pp. 397–398. It must be added that between 1999 and 2003 the Parliament organised once a year the so-called political debate on integration.
[620] Ibid., pp. 422–424.
[621] SPRUNGK, The French Assemblée Nationale and the German Bundestag in the European Union, op. cit. pp. 147-149.
[622] MAGONE, South European national parliaments and the European Union, op. cit. pp. 127-128.

a special subcommittee during the Convention and invited prominent figures involved in European integration. Similarly, the two chambers of the Spanish parliament followed the activities of the Convention through monitoring subcommittees on the future of Europe and enlargement. In the UK Parliament both chambers paid particular attention to the Lisbon Treaty. The House of Commons' European Scrutiny Committee dedicated several meetings in autumn 2007 and spring 2008 to the question of the role of national parliaments, based on the new Treaty. It invited legal experts, government representatives and representatives from the Commission.[623] The House of Lords' European Union Committee organized hearings in its sub-committees and made an in-depth analysis of the Treaty based on oral and written evidence.[624]

From the above examples it is clear that, despite national consensus, national parliaments may indeed play a role in treaty modification and ratification processes, providing information for the citizens and a forum for public debates.

II THE ECONOMIC AND FINANCIAL CRISIS

Since 2008, Hungary and Europe have been struggling with a serious economic and fiscal crisis. The situation worsened in 2010 with the Greek sovereign debt crisis. Hungary was subject to the excessive deficit procedure which in 2012 led to the suspension of the financial commitments from the Cohesion Fund for Hungary.[625] Furthermore, for a long time it remained uncertain whether and when Hungary would resort to an International Monetary Fund (IMF) loan to sustain its public finances.[626] The preconditions of the IMF negotiations were respect for the recommendations of the EU institutions concerning the excessive deficit and various infringement procedures of economic and political importance which had been launched by the European Commission (concerning, for example, economic regulation, taxation, the independence

[623] See *Subsidiarity, National Parliaments and the Lisbon Treaty*, Thirty–third Report of Session 2007–08, European Scrutiny Committee, House of Commons, 2008.
[624] See *The Treaty of Lisbon: an impact assessment*, Volume I and II, 10th Report of Session 2007-08, European Union Committee, House of Lords, 2008.
[625] Council Implementing Decision No 2012/156/EU of 13 March 2012 suspending commitments from the Cohesion Fund for Hungary with effect from 1 January 2013 (OJ L 78, 17.3.2012, p.19-20). The excessive deficit procedure was closed for Hungary in 2013 (Council decision No 2013/315/EU of 21 June 2013 abrogating Decision 2004/918/EC on the existence of an excessive deficit in Hungary (OJ L 173, 26.6.2013, p. 43).
[626] In 2008, Hungary received a 20bn euro standby-loan from the IMF and EU. In November 2011, the government announced it was seeking a new loan, but the negotiations later failed.

of the Hungarian Central Bank, the judicial system and the ombudsman). In dealing with its own sovereign debt crisis the Hungarian government in office between 2010 and 2014 found the policy constraints following from EU law increasingly inconvenient.

The European Council took several measures aimed at resolving the fiscal crisis (the European semester, measures on economic governance, the European Financial Stability Facility, the Euro Plus Pact, the European Fiscal Compact, the European Stability Mechanism). Most of the EU measures in response to the crisis are the fruits of intergovernmental negotiations in the European Council, at Euro summits (meetings of head of states and governments of the Euro area), and in Ecofin and Eurogroup, leaving a secondary role to the Community method. The European Stability Mechanism further complicates the picture as it is an intergovernmental organisation under international law, created by an international treaty between the Euro zone Member States, consequently it was established outside the EU legal framework.[627] It must be underlined that during these high level meetings prime ministers or economic ministers have taken far-reaching decisions without public debates or parliamentary involvement and behind closed doors. The strengthening of the intergovernmental method of decision-making logically calls for greater involvement of national parliaments in the control of governments or eventually in the implementation of the EU measures.[628]

Furthermore, a significant development of the EU anti-crisis measures is the growing constraints on the budgetary sovereignty of the Member States and on the discretion of national parliaments in the determination of national budgets. The new rules enable the Council and Commission to examine national draft budgets and take a

[627] In connection with the problem of democratic legitimacy and control of the new economic governance see: RUFFERT, Matthias, The European Debt Crisis and European Union Law, *Common Market Law Review*, 2011, No. 48, pp. 1777-1806; HÖING, Oliver and NEUHOLD, Christine, National parliaments in the financial crisis. Between opportunity structures and action-constraints, *ÖGfE-Policy Brief*, 02/2013, available at http://www.euractiv.de/fileadmin/images/OEGfE_Policy_Brief-2013.02_NeuholdC_Hoeing.pdf accessed 28.08.2013; Editorial comments, *Common Market Law Review*, 2012, No. 49, pp. 1833-1840; CHITI, Edoardo and TEIXEIRA, Pedro Gustavo, The Constitutional Implications of the European Responses to the Financial and Public Debt Crisis, *Common Market Law Review*, 2013, No. 50, pp. 683–708.

[628] In the framework of the EMS and EFSF, in some Member States the parliament has to approve the implementation of decisions. The most prominent example is the German Bundestag, which, after the relevant Constitutional Court decisions, has the right to decide on each tranche of financial assistance of a sovereign aid package under the EFSF or ESM. See HÖING, Oliver, Differentiation of parliamentary powers: The German Constitutional Court and the German Bundestag within the financial crisis, *OPAL Online Paper Series*, 9/2012, available at http://www.opal-europe.org/index.php?option=com_content&view=article&id=86 acceded 28.08.2013.

position before they are adopted by national parliaments.[629] Consequently, it is expected that EU crisis management would receive particular attention in parliamentary debates and the available control mechanisms would gain a new prominence for MPs. According to a recent study, national parliaments have started to develop special activities of control before or after European Council meetings and Euro zone summits.[630] In the following, I will examine how the Hungarian Parliament dealt with these strongly interlinked economic questions; and whether MPs showed any familiarity with the highly complex issue, and whether the discussions were informative to the public.

In the Hungarian Parliament, the Monday plenary sittings attract the most political and media attention. Before the orders of day, members of the government and parliamentary party leaders give speeches on important, urgent and extraordinary political, economic and social issues. The Prime Minister's speech attracts the most attention from government and opposition parties. In 2011, the Prime Minister gave eight speeches before the orders of the day; four of them provided information about European Council meetings on the relevant economic issues and two other occasions were devoted to European economic affairs.[631] In 2012, during the spring-summer session, the two speeches by the Prime Minister concerned EU summits.[632] In other words, economic policy and EU anti-crisis measures provided the subjects for the most important political debates in the Parliament. As to their content, the speeches often contained a simplified explanation of the decisions taken in Brussels and attempted to place the question in a wider context. On a few occasions, the Prime Minister engaged

[629] European Parliament and Council Regulation No 1175/2011/EU of 16 November 2011 amending Council Regulation (EC) No 1466/97 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies. Regulation (EU) No 473/2013 of the European Parliament and of the Council of 21 May 2013 on common provisions for monitoring and assessing draft budgetary plans and ensuring the correction of excessive deficits of the Member States in the euro area (OJ L 140, 27.5.2013, p. 11–23).

[630] WESSELS, Wolfgang et al., *Democratic Control in the Member States of the European Council and Euro zone summits*, European Parliament, Policy Department C: Citizens' Rights and Constitutional Affaires, 2013, available at http://www.europarl.europa.eu/committees/fr/studiesdownload.html?languageDocument=EN&file=90910 accessed 24.08.2013. The study of Wessels et al. contains a regrettable methodological error in connection with the Hungarian parliamentary control of European Council meetings. Although it recognises the existence and role of the Consultative Body, it does not take the meetings of this organ into account among the ex-ante 'committee debates'. This leads to an erroneous classification of the Hungarian Parliament which should rather be placed in the same group as Austria and Sweden.

[631] Dates of the feedback provided after European Council meetings: 4 April, 27 June, 24 October and 12 December 2011. The two other meetings on European economic affairs took place on 14 February and 12 September 2011.

[632] On 13 February and 2 July 2012.

in a detailed explanation of the decisions, of the standpoint of other Member States or of the potential consequences of the decisions.[633]

Contributions by party leaders and other MPs reacting to the Prime Minister's speeches are also relevant when following economic policy developments on the European level. MPs would respond to the Prime Minister's speech or give a speech before the orders of the day in a five minute time-frame. Speeches from the government parties basically express support towards government policies and suggest what position the government should take in negotiations within and with European institutions. In the current Parliament (2010-2014), the biggest opposition party (the socialist party) has not shown much familiarity with the details and the further consequences of European developments and addressed these issues instead as a basis for condemnation of the government's domestic economy policy.[634] In contrast, the two smaller opposition parties (the Eurosceptic radical right party and the leftish eco-party) showed a more profound understanding of the issues in question and did not hesitate to articulate their wider vision on European integration.[635] The quality of the answers of the government varied, as sometimes they touched on the merits of the issues raised[636] and on other occasions they stayed at the level of generalities.[637]

As an unusual element in parliamentary practice, on one occasion the Prime Minister's speech invited Parliament to discuss certain European draft measures outside the generally applicable legal framework for participation in EU affairs (i.e. the scrutiny procedure). At the European Council summit in December 2011, Hungary, like some other Member States, declined to give a final opinion on the European Fiscal Compact[638] and referred the issue to the Hungarian Parliament.[639] Under domestic

[633] See the speeches before the order of the day of the Prime Minister on 12 December 2011 and 2 July 2012.
[634] See e.g. contributions of Attila Mesterházy (MSZP) on 27 June 2011 (No. 12), on 12 December 2011 (No. 8), 13 February 2012 (No. 16), 2 July 2012 (No. 8).
[635] See e.g. contributions of: Zoltán Balczó (Jobbik) on 29 June 2010 (No. 10), on 4 April 2011 (No. 10); András Schiffer (LMP) on 4 April 2011 (No. 6), on 24 October 2011 (No. 12); Lajos Mile (LMP) on 21 June 2011 (No. 2); Gábor Vona (Jobbik) on 24 October 2011 (No. 14).
[636] See e.g. contributions of: Sándor Czomba (state secretary) on 17 May 2011 (No. 8); Zsolt Németh (state secretary) on 6 July 2010 (No. 6); Kristóf Szatmáry (state secretary) on 21 June 2011 (No. 4).
[637] See e.g. contributions of: Zoltán Cséfalvay (state secretary) on 29 June 2010 (No. 12); György Matolcsy (minister) on 11 April 2011 (No. 20).
[638] The official name of this international agreement is the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union. It was signed by the Member States, except for the Czech Republic and the United Kingdom.
[639] *'[T]he Hungarian constitutional conception did not allow the head of government to do this [i.e. to accept the draft of the European Fiscal Compact]; in questions affecting national sovereignty, parliamentary decision [and] debate is necessary for the representation of the national position on the*

constitutional law, the government would have been able to sign the Compact in March 2012 without a parliamentary mandate,[640] and secure its ratification in Parliament later.[641] Instead, the government decided to inform the CEA in writing on the development of the negotiations and the EU Consultative Body in person before the decision on the final text of the Compact, and requested the prior authorization of Parliament to sign the Compact.

The discussion on the parliamentary resolution enabling the government to conclude the agreement was extremely heated and took more than four hours at the plenary sitting, which is relatively long considering previous practices (see the previous section on Treaty modifications) and the fact that the wording of the Compact could not be changed.[642] While government party MPs were almost absent from the debate, opposition parties were especially active and well-prepared. They not only analysed the Compact in detail, but also managed to open a debate on the wider economic and political context (e.g. what kind of Europe we want; global economic tendencies; Hungary's place in the European economic area).[643] Interestingly, an MP from the government party repeatedly criticized this aspect of the discussion, inviting the others to stay on the main issue.[644] Compared to the plenary discussion, the debate in the CEA was less animated, as only three MPs made comments and put questions to the secretary of state representing the government. Not even the disposition of the Compact enabling national parliaments to hold inter-parliamentary conferences on fiscal issues gained any attention from the members of the CEA.[645] On the other hand, the debate in the Budget committee and the Committee on economic affairs engaged in details of the Fiscal Compact, MPs from opposition and government entering the debate to comment on the merits of the texts.[646]

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international scene' – words of Viktor Orbán, the Prime Minister, in his speech before the orders of the day on 12 December 2011.

[640] Under the Article 5(3) of Act L of 2005, only the competent parliamentary committee has to be informed.

[641] The ratification took place in March 2013. According to the Decision no. 22/2012. (V. 11.) of the Hungarian Constitutional Court, for the ratification of the Fiscal Compact 2/3 majority of the MPs was required.

[642] Proposal for resolution no. H/5834; date of the plenary debate: 13 February 2012.

[643] See the plenary debate of the proposal for resolution No. H/5834 on 13 February 2012, particularly the contributions of: Márton Gyöngyösi (Jobbik) (No. 263); Gábor Scheiring (LMP) (No. 265-267, 275, 343); András Schiffer (LMP) (No. 273, 281, 309, 317); Tamás Gaudi-Nagy (Jobbik) (No. 279, 337); Ferenc Gyurcsány (independent) (No. 305); Dániel Z. Kárpát (Jobbik) (No. 329-331); Gábor Harangozó (MSZP) (No. 335).

[644] Contributions of Mihály Babák (Fidesz) on 13 February 2012 (No. 285, 291 and 301).

[645] CEA meeting of 13 February 2012, minutes no EIB-1/2012.

[646] Both meetings took place on 13 February 2012; see minutes no KTB/2/2012 and GIB-1/2012.

It is important to note that MPs, particularly from opposition parties, often make reference to the position of their European counterparts, e.g. the leftish eco-party to the European greens.[647] In other words, Hungarian parties tend to use the opinion or proposals of the European parties from the same political family in their argumentation used in parliamentary debates.

The picture would be incomplete without an examination of the character of the economic crisis debates in sectoral committees. In the CEA, during the spring parliamentary session in 2011, EU related economic issues were on the agenda every month. The state secretary of the ministry for the national economy informed the CEA four times on the evolution of the EU decision making procedure on the drafts on economic governance and the Hungarian economic convergence program.[648] The information provided was very detailed and substantial, but only allowed for *ex post* control as the meetings took place after the relevant Council meetings or the submission of the convergence program to the Commission. Interventions from CEA members were scarce; on average three or four members put questions or expressed views.[649] A similar proportion of MPs from government and opposition parties asked for the floor. MPs belonging to the opposition parties often criticized the timing of the reporting to the CEA. No other standing committee (neither the committee on economic affairs nor the committee on the budget) put these issues on its agenda as hearings.

On the whole, the experience of parliamentary involvement in European economic policy developments is mixed. Whilst on the level of the plenary session of Parliament increased attention was given to the discussion of the relevant economic issues - especially when compared with the parliamentary debates on the Constitutional Treaty and the Lisbon Treaty which were less heated and concentrated on only a few issues which seemed important at the time (a reference to Christianity in the Treaties, the protection of national minorities) -, with the possible exception of the CEA the work in parliamentary committees was disappointing. The plenary debates relating to reforms in economic and fiscal governance in the EU revealed a keener interest in the future functioning of the EU and showed that the parties, particularly the two smaller

[647] See for example the contribution of Gábor Vágó (LMP) to the debate on the Fiscal Compact on the meeting of the Budget Committee of 13 February 2013 (minutes no. KTB/2/2012, p. 14); the contributions of Gábor Scheiring (LMP) on the meeting of the Committee on economic affairs of 13 February 2013 (minutes no. GIB-1/2012, p. 28) and on the plenary of the same day (No. 265-267); the contribution of Gábor Harangozó (MSZP) on the plenary debate of 13 February 2013 referring to the European Socialists (No. 335).
[648] 28 February, 28 March, 9 May and 4 July 2012.
[649] The CEA has had 21 members during the 2010-2014 cycle.

opposition parties, are more familiar with the merits and consequences of the proposed European measures.

III EU SUGAR SECTOR REFORM

The Commission proposals on the sugar sector reform of 2005 and the relevant position of the Hungarian government were discussed in the framework of the scrutiny procedure. For that reason the plenary session was not involved and only the CEA and the Committee on Agriculture participated in the discussion. The main research question is whether the scrutiny procedure was efficient, considering the timing of the procedure, the expertise of the parliamentary work, the involvement of the stakeholders and the added value of the parliamentary standpoint in terms of articulating the national interest. Further attention is given to the after-effects of the reform and the parliamentary reaction to it (the committee of inquiry on the Hungarian sugar sector).

The European Commission published its proposals on the sugar sector reform on 22 June 2005.[650] The aim of the proposals was to enhance the competitiveness and market orientation of the EU sugar sector by the following measures: a cut totalling 39% in the price of white sugar; the abolition of intervention; a voluntary restructuring scheme encouraging less competitive producers to leave the sector; compensation to farmers for 60 percent of the price cut. In Hungary, sugar-beet production has a long tradition going back to the beginning of the 19th century. At the time of the EU reform, 3-4000 farmers produced 400,000 tonnes of sugar-beet on 56 thousand hectares.[651]

In the EU decision-making procedure, the Council discussed the proposals first as agenda item B on 18 July 2005; consequently its working groups had been negotiating on the texts beforehand. In the Hungarian Parliament, the CEA decided to launch the scrutiny procedure on the proposals at the end of September, shortly after the beginning of the autumn parliamentary session. It is clear that the parliamentary recess constituted

[650] Proposal for a Council Regulation on the common organisation of the markets in the sugar sector (COM(2005)263-1); Proposal for a Council Regulation amending Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers (COM(2005)263-2); Proposal for a Council Regulation establishing a temporary scheme for the restructuring of the sugar industry in the European Community and amending Regulation (EC) No 1258/1999 on the financing of the common agricultural policy (COM(2005)263-3).

[651] For the sake of comparison, in 2003/2004 France produced 3.5 million tonnes, Germany 3.3 million, Spain and Italy 900,000 tonnes, the Czech Republic 455,000 tonnes (source: Commission's impact assessment: SEC(2005)808, p. 14).

an obstacle to an earlier commencement of the national parliamentary discussion, meaning that important working group meetings could already have taken place in Council. The CEA requested the government position, which arrived about the middle of October,[652] approximately when the Hungarian Parliament's Committee on Agriculture discussed the reform.

In the latter committee, the deputy state secretary of the Ministry of Agriculture and Rural Development outlined the commission proposals.[653] Besides the international context, he engaged in a detailed presentation of the reform, its possible implications in different Member States, the government position and objectives to achieve during the EU decision-making procedure. After this exposition, members of the committee expressed their views and concerns. The contributions and remarks arrived from government and opposition parties in a similar proportion. Several MPs who expressed their view were concerned personally or directly by the reform as (former) sugar-beet growers or representatives of concerned regions. The remarks of the MPs were quite convergent, independent of their party position, but sometimes also contradictory: a total rejection of the reform and support for the government position (which was open to compromise) appeared in the same contribution.[654] A representative of the Federation of Hungarian Food Industries (ÉFOSZ) attended the meeting too, representing the interests of the sugar producers. On the whole, members of the Committee supported the government's opinion, but several concerns were raised. The deputy state secretary assured members that the proposals and views expressed during the discussion would be taken into account by the Ministry. He mentioned the cooperation between the Ministry and Hungarian MEPs which was aimed at achieving better interest representation.

One week after the meeting of the sectoral committee, the CEA put the sugar sector reform on its agenda in order to get timely information from the government about the state of the EU decision-making procedure.[655] The secretary of state of the Ministry of Agriculture and Rural Development presented the EU sugar sector reform in detail, as well as the Hungarian position, and referred to the possible date of a Council approval of the proposals. One MP from each parliamentary party (acting in the role of a 'rapporteur') put questions or made remarks or recommendations. The MP

[652] JUHÁSZ, *Az egyeztetési eljárás*, op. cit. p. 81.
[653] See the meeting of the committee on agriculture, 12 October 2005, minutes no. MB/28/2005.
[654] See the contribution of György Czerván (Fidesz); meeting of the committee on agriculture, 12 October 2005, minutes no. MB/28/2005.
[655] See the meeting of the CEA; 18 October 2005, minutes no. EIB/35/2005.

representing the biggest opposition party presented the party's opinion expressing a request that it would be integrated in the final government position.[656]

Both committee discussions identified the key issues of the reform (about five elements) which were of importance both generally and for Hungary. In fact, the sugar sector reform was a very technical matter where the different interests of the sugar-beet growers, sugar producers and consumers had to be reconciled on a national and European level. In the Committee on Agriculture of the Hungarian Parliament, the contributions of the MPs mainly concerned the interests of the farmers, and also that of the producers. One contribution referred to the EU interest, and argued that Hungary had to respect the Europe-wide interest.[657] The representative of ÉFOSZ expressed the interests of both the sugar industry and the farmers. At the CEA meeting, the chairman argued that 'we are unable to formulate Hungarian interests, because there are [the interests of the] farmers, producers and consumers. […] the factories are mostly in foreign ownership, [so the question arises] whether their interest is a Hungarian interest or not'.[658] Irrespective of the struggle to identify the 'Hungarian interest', parliamentary parties formulated their opinion and finally supported the government position.

The CEA accepted the parliamentary opinion at its meeting of 8 November 2005. As the CEA meeting was held in camera, the contents of the standpoint cannot be examined. Nevertheless, based on the committee discussions it can be supposed that the CEA supported the government. The agreement reached in the EU Agricultural Council on 24th November seemed to be somewhat different from the 'red lines' of the Hungarian position. The CEA invited the Minister of Agriculture to its meeting of 12 December in order to ask for an explanation of the reasons why he had deviated from the parliamentary standpoint during the Council negotiations and voted yes on the proposals.[659]

The Minister presented the compromise reached in the political agreement and concluded that the deviation from the original government position and parliamentary standpoint in connection with certain issues had been necessary to reach a compromise and a better position on other questions. There was only one contribution, namely from

[656] See the contribution of Zoltán Nógrádi (Fidesz); meeting of the CEA, 18 October 2005, minutes no. EIB/35/2005.
[657] See the contribution of Imre Herbály (MSZP); meeting of the Committee on Agriculture, 12 October 2005, minutes no. MB/28/2005.
[658] See the reflection of the chairman, Mátyás Eörsi (SZDSZ) following the introduction of the state secretary; meeting of the CEA, 18 October 2005, minutes no. EIB/35/2005.
[659] See the meeting of the CEA; 12 December 2005, minutes no. EIB/50/2005. The obligation to give an explanation follows from Article 67(2) of the Parliamentary Act 2012.

an opposition MP, which entertained doubts about the extension of the effects of the deviation. He asked for more details about how the Ministry conciliated between the interests of the (Hungarian) farmers and the (foreign owned) producers. However, he did not question the Minister's vote. In his answer, the Minister described his negotiation strategies, which consisted in a policy of cooperation with the most concerned Member States and a search for compensation or advantages in return for every Hungarian concession. He emphasised the interests of the farmers who would, in his opinion, in no way be put at a disadvantage. He concluded that the representatives of the Ministry carried out the negotiations in the Council representing the Hungarian interests to the utmost extent.

The scrutiny procedure on the sugar sector reform came to an end with this hearing of the minister, but the matter gained again importance in 2011/12. During the years following the approval of the EU proposals, the Hungarian sugar-producing sector has diminished dramatically: four out of the five sugar factories have been closed; the Hungarian sugar quota has been decreased by 75%; contrary to the previous situation when the country could export about 100,000 tonnes of sugar, nowadays it has to import about 200,000 tones, which means 2/3 of its annual consumption. In the meantime, the word market price of sugar has increased significantly,[660] affecting sensibly Hungarian consumers and the sweet industry. Therefore, the consequences of the reform have been considerably more negative in Hungary than most of the decision-makers or stakeholders had thought, at least in the light of the parliamentary discussions of 2005. At the relevant meetings of the CEA and the Committee on Agriculture in 2005, the representatives of the Ministry of Agriculture seemed to be rather optimistic, considering that the production of the sugar-beet would decrease by 'only' 40-50%,[661] the radical cut-back of the sector might be prevented,[662] and even that all of the sugar factories would continue to work and about 90% of the sugar-beet production would be maintained.[663] On the contrary, others pointed to a grimmer outlook: it could not be

[660] The average consumer price of sugar (1 kg) was 192 HUF in 2010, and 300 HUF in 2011. (source: Központi Statisztikai Hivatal [Hungarian Central Statistical Office]).
[661] See the contribution of Ferenc Nyújtó (deputy state secretary of the Ministry of Agriculture and Rural Development) at the meeting of the committee on agriculture, 12 October 2005, minutes no. MB/28/2005; and András Pásztohy, state secretary of the Ministry on Agriculture and Rural Development on the meeting of the CEA, 18 October 2005, minutes No. EIB/35/2005.
[662] See the contribution of Ferenc Nyújtó (deputy state secretary of the Ministry on Agriculture and Rural Development) at the meeting of the CEA, 18 October 2005, minutes No. EIB/35/2005.
[663] See the contribution of József Gráf (Minister on Agriculture and Rural Development) at the meeting of the CEA, 12 December 2005, minutes No. EIB/50/2005.

excluded that within some years no more sugar-beet would be produced in Hungary;[664] the application of the de-linking of production and aid would represent a 'death-sentence' for Hungarian sugar-beet and sugar production.[665] All in all, the effects were not foreseen accurately, and there is no evidence that any impact assessment was prepared in Hungary, although some MPs demanded one and the Ministry promised one.[666]

Confronted with the situation of the sugar sector and market, in 2011 the Hungarian Parliament decided to establish a committee of inquiry in order to examine the privatization of the sugar factories, the Hungarian position represented in the course of the EU sugar sector reform and the consequences thereof.[667] The report of the committee of inquiry enumerates the persons heard and the documents examined.[668] On these lists there are various references to press sources, but there is no mention either of the minutes of the CEA and the Committee on Agriculture concerning the scrutiny procedure on the reform of the sugar sector, nor the parliamentary standpoint adopted by the CEA. The lack of any examination of these documents could explain why the report establishes that the strategy of the government to back the reform was erroneous,[669] but does not reveal that the Hungarian Parliament itself (government and opposition parties) supported the government's position. Neither does the report expose the fact that the government altered its original position and parliamentary standpoint during the EU decision-making procedure, or examine whether this affected the consequences of the reform. Similarly, the report states that the government and the Ministry of Agriculture knew exactly what the future effects of the reform would be,[670] but does not investigate what could explain the uncertainty of the participants at the relevant parliamentary meetings of 2005.

During the discussion of the committee of inquiry's report in the CEA (27th February 2012) the co-chairmen of the committee of inquiry presented the main

[664] See the contribution of Sándor Farkas (Fidesz) at the meeting of the Committee on Agriculture, 12 October 2005, minutes No. MB/28/2005.
[665] See the contribution of Béla Fischer (ÉFOSZ) at the meeting of the Committee on Agriculture, 12 October 2005, minutes No. MB/28/2005.
[666] See the contributions of György Czerván (Fidesz), János Karakas (MSZP) and Ferenc Nyújtó (deputy state secretary of the Ministry on Agriculture and Rural Development) at the meeting of the Committee on Agriculture, 12 October 2005, minutes no. MB/28/2005. It must be noted that the Commission's impact assessment attached to the proposals (SEC(2005)808) indicated that in Hungary the production was likely to be maintained, but at a significantly lower level (p. 13).
[667] Resolution No. 54/2011 (VI.29.) OGY and Resolution 59/2011 (VII.7.) OGY.
[668] Report No. J/5596 submitted on 28 December 2011. See pp. 11-12.
[669] Report No. J/5596, p. 55.
[670] Report No. J/5596, pp. 54-55.

findings of the examination and condemned the strategy of the Minister of Agriculture during the negotiations of the sugar sector reform of 2005 and the fact that he supported the proposals with a yes vote. The contributions of the CEA members mostly concerned the general situation of Hungarian agriculture since the change of regime in 1989. However, one MP from the government party (in opposition at the time of the scrutiny procedure on the sugar sector reform) admitted that in connection with some elements of the sugar sector reform there had been complete agreement between the Ministry and the opposition of that time.[671] Apart from this comment, the CEA did not analyse the Hungarian position and its representation in Council, though this issue would have come within its competence.

Based on the above considerations, it can be concluded that the scrutiny procedure generally followed the schedule of EU decision-making. Although the theoretically advantageous early control (see Chapter 3) was not carried out, the CEA adopted the parliamentary standpoint two weeks before the political agreement in Council. The members of the sectoral committee showed expertise in the matter, which was very technical in nature. The CEA placed more emphasis on the negotiation strategies and the conciliation between the different interests. This was the first occasion when the government deviated from the parliamentary standpoint and duly gave reasons for this. The CEA did not raise serious concerns in connection with the derogation. Faced with the serious consequences of the sugar sector reform, the Hungarian Parliament decided to examine the representation of the Hungarian position in 2005, but the inquiry was superficial, did not cover the scrutiny procedure and was dominated by political considerations.

IV THE CASE LAW OF THE CJEU

National parliaments are not in a direct institutional or legal relationship with the CJEU. Nonetheless, the judgements of the CJEU may directly affect the law adopted by national parliaments, when the CJEU establishes - either in the framework of reference for preliminary rulings or action for failure to fulfil obligations - that certain kinds of national legislation are not compatible with European law. Governments and national

[671] See the contribution of Ferenc Ivanics (Fidesz) at the meeting of the CEA, 27 February 2012, minutes No. EIB-4/2012.

parliaments are then under obligation to modify the law in force. In this case study I am interested in the way MPs take into account the case law of the CJEU. For that purpose I examine plenary debates where the role of the CJEU and its case law has emerged. The main research questions are whether parliamentary parties consider the importance of the case law of the CJEU and its implications on Hungarian legislation; whether parliamentary majority and opposition show different attitudes towards the CJEU, and whether there is any anticipatory effect of a probable CJEU decision. As far as the committees are concerned, I will see whether there is a systematic follow up of the 'Hungarian cases' or control of the government in connection with the Hungarian representation before the CJEU.

Concerning MPs' awareness of the nature and consequences of CJEU case law, it is worth seeing, first of all, whether the 'Treaty debates', that is to say parliamentary debates on Treaty ratification, have dealt with the role of the CJEU. Among these debates, it was during the discussions on the Constitutional Treaty that the issue was raised in the arguments of MPs concerning the protection of minority rights. Opposition MPs appraised the presence of the reference to minority rights in the Constitution, as a possible basis for the development of a minority protection case law, similarly to the protection of fundamental rights evolved by the CJEU.[672] It was argued that the Hungarian interpretation might serve as an element of the 'common constitutional traditions' of the Member States which can inspire the CJEU in the future.[673] On the contrary, the state secretary of the Foreign Ministry and MPs from the majority, in order to reject the declaration on the Hungarian interpretation of minority rights (see section I above), argued that the only competent authority to interpret the Union law is the CJEU of Luxembourg, which will not take into account the interpretation of the Hungarian Parliament.[674] The state secretary also mentioned the problematic nature of positive discrimination in the case law of the CJEU.[675]

As far as the attitudes of majority and opposition MPs towards the jurisprudence of the CJEU are concerned, I studied plenary debates from 2006 to September 2013

[672] See contributions of Zsolt Németh (Fidesz) during the plenary debate on 6 December 2004 (No. 215); János Hargitai (Fidesz) during the plenary debate on 6 December 2004 (No. 221).
[673] Contribution of János Hargitai (Fidesz) during the plenary debate on 6 December 2004 (Nos. 221 and 257).
[674] Contributions of: András Bársony (state secretary of the Foreign Ministry) during the plenary debate on 5 October 2004 (No. 58); Pál Vastagh (MSZP) during the plenary debate on 11 October 2004 (No. 244); Mátyás Eörsi (SZDSZ) during the plenary debate on 6 December 2004 (No. 247).
[675] Contribution of András Bársony (state secretary of the Foreign Ministry) during the plenary debate on 11 October 2004 (No. 252)

during which the CJEU was mentioned.[676] It can be ascertained that the approach of the MPs varies to a great degree. Occasionally, both opposition and government refer in a purely objective and neutral way to the case law or to the fact that legal harmonisation is necessary in order to comply with the case law of the CJEU.[677] References to cases other than Hungarian ones or even to principles elaborated by the CJEU (e.g. indirect effect, supremacy) have sometimes appeared, proving that there is some familiarity of the MPs with the jurisprudence.[678] However, the reactions of the parliamentary majority and minority to the CJEU rulings are mostly divergent. Especially during the 2010-2014 parliamentary cycle, opposition MPs have been eager to monitor the government's compliance with the jurisprudence of the CJEU.[679] They have signalled that certain bills introduced by the government would be judged contrary to EU law by the CJEU,[680] or urged the government to make the necessary legislative steps to comply with CJEU rulings.[681] It has also happened that opposition MPs used a judgement condemning Hungary to attack the government generally.[682]

Government has also expressed in Parliament its different approaches towards the CJEU. The Foreign Minister stated that '[w]e have executed, without exemption, every judgement of the CJEU, and will do so in the future. We will do so, even if we do not agree with it, consider it unjust or injurious for some reason. This is the legal order of

[676] Using the search engine of the parliamentary information system, with the help of the words 'European Court' (Európai Bíróság), 'Court of Justice of the European Union' (Európai Unió Bírósága).
[677] See e.g. the contributions of: József Ékes (Fidesz) on 23 May 2013 (No. 212); András Schiffer (LMP) on 23 May 2013 (No. 220); Richard Hörcsik (Fidesz) on 30 October 2012 (No. 96); Lajos Kopcsok (Fidesz) on 21 June 2011 (No. 101); Dezső Avarkeszi (state secretary of the Ministry of Justice) on 9 December 2008 (No. 84 and 96); Gábor Csizmár (state secretary of the Ministry of social affairs and labour) on 22 May 2007 (No. 160).
[678] For references to foreign cases, see the contributions of: Gábor Vona (Jobbik) on 10 April 2012 (No. 18); Antal Rogán (Fidesz) on 14 May 2012 (No. 316); Imre Szabó (MSZP) on 27 September 2011 (No. 194); Rebeka Szabó (LMP) on 27 September 2011 (No. 206); Sándor Font (Fidesz) on 16 October 2012 (No. 30). For references to CJEU principles, see contributions of: Gábor Staudt (Jobbik) on 16 April 2013 (No. 176-182); Gábor Stágel (KDNP) on 3 October 2012 (No. 38); Tamás Gaudi-Nagy (Jobbik) on 13 February 2012 (No. 279).
[679] Slagter has similar findings for the Bundestag, see SLAGTER, Tracy H., National Parliaments and the ECJ: A View from the Bundestag, *Journal of Common Market Studies*, 2009, Vol. 47, No. 1, pp. 175-197 at p. 191.
[680] See e.g. the contributions of: Zsolt Horváth (Fidesz) on 3 November 2009 (No. 26); Géza Varga (Jobbik) on 4 April 2011 (No. 303); Gábor Vágó (LMP) on 19 September 2011 (Nos. 274 and 244) and 8 December 2011 (No. 250); Imre Szabó (MSZP) on 27 September 2011 (No. 194); István Göndör (MSZP) on 19 September 2011 (No. 201); Ferenc Baja (MSZP) on 9 December 2011 (No. 348), on 14 May 2012 (No. 310-314 and 318); Zoltán Varga (MSZP) on 9 July 2012 (No. 28); Péter Szilágyi (LMP) on 18 September 2012 (No. 172); Gábor Simon (MSZP) on 12 February 2013 (No. 180).
[681] See e.g. contributions of: András Csáky (independent) on 29 June 2009 (No. 56); Gergely Bárándy (MSZP) on 12 November 2012 (No. 193) and 28 November 2012 (No. 34).
[682] See e.g. the contributions of: Márton Gyöngyösi (Jobbik) on 12 November 2012 (No. 96); Csaba Gyüre (Jobbik) on 12 February 2013 (No. 182).

the European Union'.[683] Contributions of the state secretary of the Ministry of Justice have had a similar tone.[684] MPs from the governing parties of 2010-14 have expressed what sort of approach they expect from the government in pending infringement procedures or judicial proceedings. In these cases they expressed their desire for consistent behaviour from the government.[685] Neither majority nor minority MPs have called the rulings of the CJEU into question on any occasion.[686]

The anticipatory effect of the case law of the CJEU may come into question if a national parliament adopts or modifies law in order to comply with the CJEU's future decision. This kind of legislative anticipation is more than a simple fulfilment of legal harmonization, which could also be seen as an attempt to avoid judicial procedures. For the sake of this study, the connection between a certain legislative behaviour and the CJEU has to be more direct. I consider that an anticipatory effect of a future CJEU decision can be established: i.) if the parliament modifies legislative behaviour in matters in connection with which the CJEU adopts a judgement in a case concerning similar regulation to a Hungarian one; ii.) and if the European Commission launches an infringement procedure against Hungary and the Parliament adapts legislation to answer the complaint of the Commission, independently of whether the procedure has entered the judicial phase or not.[687]

I have found some evidence of alteration of legislative behaviour induced by the 'pressure' of a possible CJEU sanction. As was stated above, opposition MPs have argued with a possible CJEU sentence during discussion of bills. Moreover, there have been occasions when opposition MPs introduced bills in order to put pressure on the majority to adopt legislation conforming to EU law.[688] None of these bills was, however, supported by the majority. During 2006-2010, the government justified

[683] Contribution of János Martonyi on 4 July 2013 (No. 200).
[684] Contributions of Róbert Répássy on 12 February 2013 (No. 172) and 25 February 2013 (No. 317-319).
[685] Contributions of István Pálffy (KDNP) on 28 May 2013 (No. 539); József Ékes (Fidesz) on 8 May 2012 (No. 133).
[686] Such a strong reaction has occurred in the House of Lords, where a Lord suggested that British courts should ignore a 'wrong' decision of the CJEU. See NICOL, Danny, The legal constitution: United Kingdom parliament and the European court of justice, *The Journal of Legislative Studies*, 1999, Vol. 5, No. 1, pp. 135-151 at p. 145.
[687] Slagter also exams legislative anticipation of CJEU decisions. She applies, however, a wider definition. For her, legislative anticipation occurs when the governing majority sacrifices initially held policy objectives, by explicitly referring to previous rulings, in order to conform to how it believes the CJEU will rule. See SLAGTER, National Parliaments and the ECJ, op. cit. pp. 180-181 and 183.
[688] See the contributions of János Volner (Jobbik) of 19 September 2011 (No. 276) and 6 July 2012 (No. 14) referring to the case C-274/10 (then pending) before the Court of Justice and the bill No. T/384. See also the contribution of Csaba Molnár (MSZP) of 12 November 2012 (No. 191) referring to the case C-286/12 and the bill No. T/7990 which was actually introduced a few months before the Court of Justice gave its judgement.

several bills, especially by the need to close an infringement procedure initiated by the Commission or avoid CJEU sanctions.[689] As far as the period of 2010-2013 is concerned, I have not found any evidence in plenary discussions of the introduction of a bill for similar reasons.[690] Consequently, the two governments followed different approaches when faced with a possible CJEU sanction.

Apart from the plenary debates, standing committees may also deal with CJEU matters. The competent committee is the CEA, which, in the framework of its general power to control the government, may hold hearings on the subject. Hungarian cases and the Hungarian representation before the CJEU may be touched upon during the hearing of the nominee for Minister of Justice, who is responsible for the issue, or his/her obligatory yearly hearing. In practice, these hearings usually provide some information about the matter, but the control is not systematic. It has happened that the minister does not mention the topic[691] or does so only superficially (e.g. reminding those present of the importance of informing the Hungarian courts about the case law;[692] stating that the statistics of the infringement procedures are very favourable;[693] referring to the division of power between the ministries in infringement procedures[694]); it has also been the case that the members of the CEA do not ask for more detailed information. There have been some occasions when the Minister of Justice gave more detailed information about individual cases pending before the CJEU.[695] Questions asked of the members of the CEA have been mainly directed towards the accessibility

[689] Contributions of: Lajos Oláh (state secretary) of 14 October 2008 (No. 18; see also p. 12 of the bill No. T/6437); László Keller (MSZP) of 2 October 2007 (No. 146); Ferenc Kondorosi (state secretary) of 22 May 2007 (No. 38); Miklós Hankó Faragó (SZDSZ) of 22 May 2007 (No. 46); György Szilvásy (minister) of 15 May 2007 (No. 58); Károly Herényi (MDF) of 15 May 2007 (No. 74); Ábel Garamhegyi (state secretary) of 7 November 2006 (No. 116; see also p. 5 of the bill No. T/1139).

[690] On the other hand, the fifth amendment of the Hungarian Basic law addresses complaints from the European Commission. In this matter, the Commission has not initiated an infringement procedure, so the bill does not fit my initial definition of the anticipatory effect. See bill No. T/12015, pp. 5 and 8.

[691] See the hearing of: Tibor Draskovics (nominee for Minister of Justice) before the CEA, 15 February 2008, minutes no. EIB-3/2008; Imre Forgács (nominee for Minister of Justice and Internal Security) before the CEA, 14 December 2009, minutes no. EIB-27/2009; Tibor Navracsics (Minister of Justice) before the CEA, 22 June 2011, minutes no. EUB-14/2011.

[692] Hearing of József Petrétei (nominee for Minister of Justice) before the CEA, 6 June 2006, minutes no. EIB-1/2006.

[693] See the hearing of Tibor Draskovics (Minister of Justice) before the CEA, 10 March 2009, minutes no. EIB-6/2009.

[694] Hearing of Tibor Navracsics (nominee for Minister of Justice) before the CEA, 27 May 2010, minutes no. EUB-2/2010.

[695] Hearing of Albert Takács (Minister of Justice) before the CEA, 30 October 2007, minutes no. EIB-34/2007. Hearing of Tibor Navracsics (Minister of Justice) before the CEA, 26 June 2012, minutes no. EIB-23/2012.

of the judgements in Hungarian,[696] the situation of the infringement procedures against Hungary,[697] and the training of Hungarian judges in EU law.[698]

In sum, it can be stated that the CJEU and its case law is present in the debates of the Hungarian Parliament, and that MPs are aware of the power of the CJEU.[699] Relying on the lack of compliance of bills with the jurisprudence of the CJEU has proved to be a regular tool for opposition MPs in their argumentation. Evidence has been found that MPs are relatively familiar with the development of the case law affecting Hungary directly. Moreover, future rulings have also had anticipatory effects on the legislative behaviour. On the other hand, the control of the government in connection with the Hungarian cases before the CJEU in the CEA is not systematic and is quite general in nature.

Concluding remarks

The four case studies concerning debates on EU affairs in the Hungarian Parliament reveal a mixed picture. Discussion of ratification of EU Treaties remained solemn and superficial, especially in cross-country comparison. Only in rare cases, where national or symbolic political interests emerged, did the debates go beyond diplomatic show. The aim of fast ratification was a stronger incentive than having an informative public debate on the matter.

On the other hand, parliamentary debates on the economic crisis show more understanding, at least on the part of the opposition, of the importance and consequences of the issue. Several MPs were ready to seize the opportunity to voice

[696] Contribution of Márton Braun (Fidesz) during the hearing of József Petrétei (nominee for Minister of Justice) before the CEA, 6 June 2006, minutes no. EIB-1/2006. Contribution of József Ékes (Fidesz) during the hearing of Tibor Draskovics (nominee for Minister of Justice) before the CEA, 15 February 2008, minutes no. EIB-3/2008. Contribution of Roland Mengyi (Fidesz) during the hearing of Tibor Navracsics (nominee for Minister of Justice) before the CEA, 27 May 2010, minutes no. EUB-2/2010.

[697] Contribution of Jenő Manninger (Fidesz) during the hearing of Albert Takács (Minister of Justice) before the CEA, 30 October 2007, minutes no. EIB-34/2007. Contribution of József Ékes (Fidesz) during the hearing of Tibor Draskovics (nominee for Minister of Justice) before the CEA, 15 February 2008, minutes no. EIB-3/2008.

[698] Contribution of József Ékes (Fidesz) during the hearing of Tibor Draskovics (Minister of Justice) before the CEA, 10 March 2009, minutes no. EIB-6/2009. Contribution of Imre Vejkey (KDNP) during the hearing of Tibor Navracsics (nominee for Minister of Justice) before the CEA, 27 May 2010, minutes no. EUB-2/2010.

[699] In his research into the UK Parliament Nicol found that only in the mid-1990s was the CJEU exposed to a degree of parliamentary attention commensurate with its seminal role in the Community constitution. See NICOL, The legal constitution, op. cit. p. 149.

viewpoints about European integration in general. However, these ‘several’ MPs form only a small group in Parliament; the majority of MPs do not engage in discussions of EU affairs.

The detailed analysis of the scrutiny procedure on the sugar sector reform reveals that despite the expertise of the sectoral committee, the parliamentary work was not able to anticipate the consequences of the policy change. The added value of the parliamentary standpoint can hardly be demonstrated. The articulation of the ‘national’ interest proved to be difficult for MPs, despite the essential consensus between majority and opposition.

The references to the jurisprudence of the CJEU in parliamentary debates demonstrate that the echo of those CJEU decisions which are of importance for Hungary is heard in parliamentary debates. MPs seem to be aware of the limited margins of the national legislation and they rely to an increasing extent on possible CJEU sanctions for (assumed) breaches of EU law. On the other hand, the control of how the government represents Hungarian cases before the CJEU in the CEA is not regular and does not cover the details of individual cases.

Conclusions

The aim of the dissertation has been to analyse the Europeanization of the Hungarian National Assembly. I have explored how the Hungarian National Assembly has adapted to EU Membership and what impact EU integration has had on its work. For this purpose it has been necessary to understand what the role of national parliaments is in the European democracy, and what rights are provided to these domestic institutions in EU law. In the following I sum up the main ideas and findings of the dissertation.

NATIONAL PARLIAMENTS AND THE EU

When we think about national parliaments of the Member States and the EU, the most essential question that has to be examined is what impact one may have on the other. In other words, what is the role of national parliaments in the European architecture, and how does European integration affect the position and functioning of national parliaments?

It is widely accepted in the literature that the EU suffers a democratic deficit and national parliaments may contribute to improve European democracy. However, more detailed analysis shows that the question is not quite so clear. First of all, the basic elements of democracy are undoubtedly present in the EU. Furthermore, the Lisbon Treaty enhances good governance, articulates democratic equality, and representative and participatory democracy. These are principally unproblematic elements. The problematic point is the missing direct accountability of the Council (and the European Council), the main European decision-maker. However, the ideas on the democratic deficit stem from the fact that the concepts of democracy are elaborated for states, and the EU is not a state, and neither parliamentary nor presidential governance entirely fits the EU mode of governance. If we accept this fact, the democratic deficit of the EU seems less important.

In any case, EU democracy has to be improved to gain more legitimacy. Indeed, support for the EU is declining among European citizens, while at the same time the EU institutions have to tackle, or at least contribute to the resolution of, complex economic

and social problems. To achieve this aim it is necessary that EU institutions adopt successful EU policies (output legitimacy) through democratic decision-making (input legitimacy) which needs to be transparent, and that they establish a balance between different national and sector interests.

National parliaments may contribute to making the EU and its decision-making more democratic. Two basic possibilities are provided: national parliaments can be involved in certain decisions at European level and can exercise control over their governments in European affairs at national level. Furthermore, public national parliamentary debate on EU matters could foster understanding and acceptance of EU institutions and policies.

These theoretical ideas constituted the background for the emergence of EU law provisions concerning the role of national parliaments in EU decision-making procedures. The relevant dispositions of Treaties and Protocols 1 and 2 attached to them may be grouped in terms of their function: informational rights serving as the basis of national parliaments' participation in EU decision-making, the participation itself, and the inter-parliamentary cooperation as a means supporting the participation. As regards the informational rights, the Lisbon Treaty enlarged the scope of the documents and information sent directly to national parliaments by EU institutions, including draft legislative acts, legislative resolutions of the EP, agendas and positions of the Council. It must be observed that Treaty provisions on information and notification are important constitutionally, because they constitute the legal basis for national parliaments' participation in European decision making procedures, though their practical importance is less, since these documents and information are publicly available.

The participation of national parliaments in EU decision-making includes their role in the Treaty revisions, the ratification of well-defined EU acts and control of the compliance of EU drafts with the principle of subsidiarity. In the ordinary revision procedure representatives of national parliaments take part in the work of the Convention, and thus in the elaboration of Treaty amendments. However, the 'ordinary' revision seems to be only applied exceptionally in practice, and simplified revisions are used more generally, where the role of national parliaments is limited to a ratification or veto of the modification of the primary law.

The control of the principle of subsidiarity by national parliaments is one of the most remarkable innovations of the Lisbon Treaty. With the help of the so-called early warning mechanism national parliaments may signal to the EU law-making institutions

if they assume that an EU draft legislative act breaches the principle, i.e. that the planned EU measure should not be regulated at Union level, because it lacks added value compared to national regulation. If the number of reasoned opinions sent for this purpose in connection with a given draft reaches a threshold, the law-making institutions have to review the draft (the yellow card procedure). If more than half of the national parliamentary chambers send a reasoned opinion in the framework of an ordinary legislative procedure, the Council and the European Parliament may hinder further negotiation of the draft (the orange card procedure). Consequently, national parliaments, either individually or collectively, are not able to reject any EU draft legislative act or block the decision-making procedure, but they can warn, at an early stage of this procedure, that a proposed EU measure could be efficiently regulated at national level.

Although the early warning mechanism is considered an important innovation, it has several limitations, attenuating its practical effect. It is confined to the principle of subsidiarity, and does not include, for example, the very closely linked principles of conferral or proportionality, not to mention policy considerations. Furthermore, the eight week time-limit to send a reasoned opinion seems quite short for national parliaments to complete the internal process of the adoption of the opinion, although experience so far shows that this cannot be an obstacle to the implementation of the early warning mechanism. The early warning mechanism is completed by the right of national parliaments to initiate the introduction of an action for annulment of EU legislative acts before the CJEU via their governments. This opportunity is also limited, because of the lack of *locus standi* of national parliaments. The rules on the *locus standi* of national parliaments before the CJEU would be worth revising, thus providing more effective judicial protection to their rights emanating from the Treaties.

Since increased national parliamentary involvement in European decision-making may be beneficial for the democratic legitimacy of the EU, the post-Lisbon situation is therefore an improvement. However, national parliaments' direct participation in EU decision-making can only be meaningful if the European institutions take their obligations (i.e. justification, taking into account of parliamentary opinions) seriously, too. This can be an incentive for national parliaments to invest in European affairs, which can generate a better understanding of the EU both by themselves and by citizens.

As far as the influence of European integration on national parliaments is concerned, various explanations exist related to the changes that have occurred in the position of national parliaments vis-à-vis the government. The deparliamentarization thesis accentuates the declining importance of parliaments in contemporary governance, something which has been further accentuated by European integration. With European integration national parliaments accepted the transfer of certain legislative powers to EU institutions, where the most important decision-maker, the Council, is composed of the already dominant executives. However, national parliaments should not become meaningless even in this situation, as they have a considerable constitutional and legitimising function. National parliaments should, thus, adapt to the new modes of governance.

Theories of the Europeanization of national parliaments analyse and explain the legal, institutional and functional changes in legislatures induced by European integration. National parliaments' adaptation to Union membership has been gradual and voluntary and based on the constitutional traditions of each Member State. However, parliaments have learnt and copied the solutions adopted by other parliaments. Mimicry of constitutional norms or best practices of scrutiny is derived from a recognition of the need to comply with the logic of EU membership. National parliaments have established special committees to deal with European affairs and control government activities in the Council. With the help of EU scrutiny, national parliaments may take part in the formulation of the national interest to be represented in the EU institutions and decision-making procedures.

The Europeanization of the Hungarian Parliament has been characterised by copying EU scrutiny mechanisms of the old Member States, similarly to the other CEE parliaments. Based on the experiences of several decades of the old Member States, CEE parliaments have introduced more comprehensive EU scrutiny systems than many of the old Member States. Their development has another special feature: in the 1990s and early 2000s they had both to consolidate their position in the new democracies and prepare for EU Membership at the same time. Parliamentarization after the regime change and deparliamentarization consequently seem to have a special dynamism.

THE EUROPEANIZATION OF THE HUNGARIAN PARLIAMENT

The analysis of the Europeanization of the Hungarian National Assembly has had two main approaches: while Chapter 3 analysed those constitutional rules and customs serving as a basis for parliamentary EU scrutiny, Chapter 4 and 5 examined empirically the implementation of these rules and how EU issues are present in the work of the Parliament.

The legal adaptation of the Hungarian Parliament to EU membership took place in 2004, when most of the existing EU scrutiny tools were established in the Constitution, in the Act on cooperation between the Parliament and the government in EU affairs and in the Standing Orders of the Parliament. Best practices of the old Member States inspired the elaboration of the legal rules, and the institution of new procedures (scrutiny procedure) and bodies, especially the Committee on European Affairs and the EU Consultative Body. The original provisions were complemented in 2012 with the creation of the procedures necessary to implement the Lisbon Treaty's provisions concerning national parliaments. The Cooperation Act has been abolished, and most of its provisions have been transferred to the Act on Parliament. The amendments of 2012 have not brought about fundamental changes in parliamentary EU scrutiny.

The Hungarian system of parliamentary EU scrutiny is composed of various procedures providing for the participation of all parliamentary bodies: the plenary and the standing committees. The parliamentary instruments for supervising or influencing European affairs can be divided into three groups. There are traditional parliamentary tools which are long-established parliamentary instruments also used in connection with EU affairs (e.g. questions, interpellations). The scrutiny procedure allows for discussion in the CEA and other standing committees of selected EU draft legislative acts and the related government positions with the aim of the adoption of a parliamentary standpoint which the government has to take into account during the negotiations in the Council. Finally, other EU scrutiny tools provided for the implementation of subsidiarity control, the veto on *passerelle* clauses, the political dialogue with the Commission, the hearings before and after the European Council meetings, regular reports on the government's activities in EU matters and hearings of government nominees to EU institutions.

As far as the plenary session is concerned, EU affairs rarely feature on its agenda. Examination of the most important control mechanisms applied at the plenary, which are mostly broadcast by the media, has shown that in the Hungarian Parliament between

2004 and 2010 on average about 4% of instantaneous questions, questions and interpellations and 6% of speeches before the agenda related to EU affairs. The so-called 'policy debates' seldom concern EU matters. The weak plenary involvement may be a logical consequence of the creation of the CEA. It is more surprising that, contrary to preliminary assumptions, based on the literature, the salience of EU issues has remained low in Parliament, regardless of the time spent as a Member State and the composition of the government. Another aspect of Europeanization is the share of EU-origin bills on the parliamentary agenda: between 2004 and 2010 30% of all acts adopted in Parliament were EU-related. The data indicate a significant penetration of EU law into national law, following on from Hungary respecting its obligations stemming from EU law.

The case study of plenary debates of treaty ratification has revealed that these discussions have not generated profound debates and have remained rather solemn and superficial, especially in cross-country comparison. Only in rare cases, where national or symbolic political interests emerged, did the debates go beyond diplomatic show. Governments (and government parties) seem to place overriding importance on fast ratification procedures. Therefore, the Hungarian Parliament has not provided a forum for public debate on such fundamental issues as Treaty amendments.

The results of the case study on parliamentary debates on the economic crisis and EU crisis management are different. These debates have generated heated debates, especially at the plenary session. The relevant plenary discussions revealed a keener interest in the future functioning of the EU and demonstrated that the parties, particularly opposition parties, are familiar with the merits and consequences of the proposed European measures. Several MPs were ready to seize their opportunity to voice viewpoints about European integration in general. However, these 'several' MPs form only a small group in Parliament, the majority of MPs do not engage in discussions of EU affairs.

The CEA is the central parliamentary actor regarding EU related issues. It is the standing committee specialized in EU affairs and has managed the scrutiny of the government's EU related activities since 1992. Its composition reflects the proportion of parliamentary groups, thereby assuring support for the government in EU matters. The CEA is responsible for managing the scrutiny procedure, the subsidiarity control, the objection on the application of *passerelle* clauses and the political dialogue with the Commission. In addition it organises hearings on EU-related issues.

The CEA's most important task is the scrutiny procedure. The prerequisite of the scrutiny procedure is the multitude of EU documents, including EU legislative drafts, emanating from the EU institutions and the government. In terms of the quantity of the documents, the CEA disposes all the necessary information for the management of the scrutiny procedure. After the selection of the EU draft to be scrutinised in the Parliament, the CEA proposes the designation of the sectoral committee(s) (which gives its opinion) and invites the government to send its proposed negotiation position to be represented in the Council. According to general experience, the government provides sufficient information to the CEA in the proposed position; occasionally, however, the position of the government is expressed laconically, in a minimalist interpretation of the requirements. Moreover, the government position destined for the Council meetings is broader in content than the position sent to the Parliament. Consequently, in Hungary the information asymmetry between Parliament and government stems not from the quantity, but rather from the quality of the documents forwarded to the Parliament.

The ultimate aim of the scrutiny procedure is the adoption of a parliamentary standpoint on the selected EU draft and the related government position. The CEA is given a unique and unprecedented role in the parliamentary control of EU decision-making in Hungary: it adopts the standpoint in the name of the whole Parliament. In the standpoint the CEA takes into account the proposed government position, the hearing of the government representatives and the opinion of the parliamentary sectoral committee. The parliamentary standpoint identifies the most important elements of the EU draft in terms of the national interest and states whether it supports the government position or not. As the standpoint is classified as a confidential parliamentary document, it cannot be the object of wider public scrutiny or scientific analysis. The standpoint of the CEA is politically binding on government, i.e. the government must elaborate its final position on the basis of the standpoint and in a contrary case, give justification.

Although the scrutiny procedure is the most important parliamentary control mechanism concerning EU affairs, it functions at a low intensity. On average, only about seven drafts per parliamentary session (nearly half a year) have been examined by the CEA. The number of scrutiny procedures has been decreasing since 2009. Furthermore, the time management of the procedure is not always the most efficient. As the CEA does not convene meetings in parliamentary recess, the parliamentary control of government activity in EU affairs is entirely lacking in these periods. Besides, the

adoption of the parliamentary standpoint occurs just before the political decision in Council. Thereby the latter can be considered more a post facto control (approval) of what the government has represented in the Council working groups, rather than a real attempt to influence the government position.

The case study of the scrutiny procedure on the sugar sector reform has revealed that although the theoretically advantageous early control was not carried out, the CEA was able to follow the schedule of the EU decision-making. While the discussion in the sectoral committee was very technical in nature, the CEA placed more attention on the negotiation strategies and the conciliation between the different interests. However, even despite the expertise of the sectoral committee the parliamentary work was not able to anticipate the consequences of the policy change. The added value of the parliamentary standpoint cannot be easily demonstrated. It proved to be difficult for the MPs to find the 'national' interest despite the basic consensus between majority and opposition.

The CEA is entitled to conduct the subsidiarity check and initiate the adoption of a reasoned opinion by the plenary. Consequently, unlike with the standpoint in the scrutiny procedure, the CEA is not granted the right to adopt the reasoned opinion in the name of Parliament. One reason could have been the fact that the reasoned opinion is addressed directly to EU institutions, while the standpoint is addressed to the government. Since the entry into force of the Treaty of Lisbon, the CEA has relied on the new provisions to address a reasoned opinion to the EU institutions on only one occasion. The procedure completed in the Hungarian Parliament was very fast, proving that the eight week deadline available for subsidiarity control is long enough if there is sufficient political will to implement the procedure.

In the case of the *ex post* control of subsidiarity, the final parliamentary decision to initiate the introduction of an action before the CJEU is made not by the plenary but by the CEA. The government may decide to follow the CEA's initiative or refuse to take proceedings. In my view, the effectiveness of Article 8 of Protocol 2 would have been better provided for if the Hungarian rules had not left discretion for the government in the introduction of the action. In connection with the right of veto of national parliaments (*passerelle* clauses), the parliamentary procedure is similar to the one followed in subsidiarity control: the CEA submits a report to the plenary if it considers that an opposition should be raised.

In the framework of the political dialogue between the Commission and national parliaments the CEA is entitled to adopt an opinion and communicate it to the Commission. The CEA has had recourse to the political dialogue once. Consequently, the CEA does not take the opportunity to make its opinion heard at EU level: subsidiarity control and political dialogue is almost non-existent in practice. The Hungarian Parliament has not yet realised the potential of these mechanisms.

Parliamentary sectoral committees do not dedicate much attention to what is happening in the EU and how the government represents Hungarian interests or implements EU law. They participate in the scrutiny procedure, and can organize hearings on EU matters, although they are not particularly eager to do so. Furthermore the number of EU-related hearings in sectoral committees is decreasing.

Quantitative analysis of EU affairs on the parliamentary agenda has not identified unambiguous trends in parliamentary EU scrutiny. It was expected that the intensity of scrutiny would increase with time, but this assumption cannot be confirmed. What is more, the CEA's commitment to the scrutiny procedure has decreased over the last few years. I have not found sufficient evidence of the effect of government composition on the intensity on EU scrutiny, although some trends (e.g. less frequent scrutiny procedure) may be explained by the comfortable majority of the coalition in parliament. On the other hand, trends in EU scrutiny do not necessarily reflect strategic choices, but may be justified by other reasons (e.g. excessive parliamentary workload).

Finally, the case study on the CJEU proved that the case law is present in the debates of the Hungarian Parliament and MPs are aware of the power of the CJEU. Reliance on the lack of compliance of bills with the jurisprudence of the CJEU has proved to be a regularly used tool for the opposition MPs in their argumentation. Future (possible) rulings have also had an anticipatory effect on legislative behaviour. On the other hand, the control of the government in connection with the Hungarian cases before the CJEU in the CEA is not systematic and is quite superficial.

CLOSING OBSERVATIONS

The initial hypothesis was that in the Hungarian National Assembly there is a discrepancy between the legal possibilities available for the control of government activities in European affairs and direct participation in the European decision making

on the one hand, and the actual use of parliamentary powers on the other. This hypothesis can be confirmed since it has been demonstrated that legal and institutional Europeanization has taken place in the Hungarian Parliament, but the performance of the national legislature is poor in contributing to the European Union decision-making procedures. The reasons of the low intensity of the scrutiny of EU affairs may be various: e.g. comfortable majority of the government parties in parliament, a lack of capacity or expertise, a lack of political interest, a lack of the feeling that national MPs or one national parliament can have any influence on EU decision-making. It is also true that the disappointing performance is not exclusively peculiar to the Hungarian Parliament, but to the Hungarian public administration as a whole. As Varju and Várnay observes 'the value of expertise, professional independence, inquisitiveness, willingness to learn, and reflexiveness in the operation of the key institutions, did not seem to have taken sufficiently firm root in law and administration in Hungary'.[700]

The functioning of the EU must be learnt by both the national political elites and society. In Hungary, before the accession there were no domestic fora to discuss the advantages and disadvantages of Hungary's accession to the EU, to identify who would be the losers and winners, and why, how, and to what extent.[701] Much has still to be done in this respect. Parliamentary debates show that in some cases meaningful discussion on EU affairs has emerged, but it is doubtful whether this would be enough to provide a better understanding of the domestic implications of EU measures, added value in the articulation of the national interest and real political alternatives for citizens.

Nonetheless, investing resources in the parliamentary scrutiny of EU affairs should not be meaningless. Legal opportunities must not be wasted, but should be translated into the 'power to influence'.[702] The Hungarian National Assembly has to better find its place in the system of EU decision-making and in the formulation and representation of the national interest, as well as provide a forum for public debate on EU matters in order to communicate policy alternatives, inform citizens and contribute to the enhancement of the democratic legitimacy of the EU.

[700] VARJU, Márton and VÁRNAY, Ernő, The law of the European Union in Hungary: institutions, processes and the law, in VARJU, Márton and VÁRNAY, Ernő (eds.), *The Law of the European Union in Hungary: Institutions, Processes and the Law*, HVG-ORAC, Budapest, 2014, pp. 21-31 at p. 27.
[701] ÁGH, Europeanization and Democratization, op. cit. p. 451.
[702] Expression used by AUEL and BENZ, The politics of adaptation, op. cit. p. 389.

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