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SPREMEMBA VLOGE NACIONALNEGA PARLAMENTA PO VSTOPU V EVROPSKO UNIJO – PRIMER ŠVEDSKEGA PARLAMENTA

THE ROLE OF THE NATIONAL PARLIAMENT AFTER EUROPEAN UNION MEMBERSHIP – THE CASE OF THE SWEDISH PARLIAMENT

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LIST OF ABBREVIATIONS

COREPER	Committée des Representatifs Permanentes (Committee of Permanent Representatives)
COSAC	Conférence des organes specialisés dans les affaires Communitaires (Conference of European Affairs Committees)
EC	European Community
ECJ	European Court of Justice
EP	European Parliament
EU	European Union
IG	Instrument of Government (Swedish Constitution)
IGC	Intergovernmental Conference
MEP	Member of European Parliament
RA	Riksdag Act (Swedish Constitution)
TEC	Treaty Establishing the European Community
TEU	Treaty on European Union

POVZETEK V SLOVENSKEM JEZIKU

V diplomskem delu so obravnana vprašanja o vlogi nacionalnih parlamentov v Evropski Uniji (EU). Naloga prikaže vidike demokratičnega primanjkljaja in išče odgovore na vprašanja, kakšna naj bi bila vloga nacionalnih parlamentov pri njegovem zmanjševanju, če že ne odpravljanju. Hkrati avtorica analizira organiziranost švedskega nacionalnega parlamenta (*Riksdag*) po članstvu v EU. Skozi nalogo se potrjuje hipoteza, da se je po vstopu Kraljevine Švedske v EU švedski parlament aktivno vključil v nadzor procesov odločanja v EU.

V prvem poglavju, po splošnem uvodu v diplomsko delo, je definiran demokratični proces. Poglavje se nadaljuje z definicijo demokratičnega primanjkljaja. Pri tem so navedeni avtorji in dela, ki so v veliki meri prisotni na švedskih javnih razpravah o demokratičnem primanjkljaju.

V drugem poglavju so obravnavane integracijske teorije, ki se zdijo relevantne za razpravo o vlogi nacionalnih parlamentov. Na začetku je predstavljena medvladna integracijska teorija kot celota, v nadaljevanju liberalna medvladna teorija, in na koncu še konsociativna teorija. V zaključku poglavja avtorica ugotavlja, da, vsaj kar se tiče vloge nacionalnih parlamentov, integracijske teorije ne pojasnjujejo fenomena nacionalnih parlamentov in njihove vloge v evropskem integracijskem procesu. Tudi če ne ponujajo jasnih odgovorov pa je vseeno mogoče medvladno teorijo uporabljati kot okvir za nadaljno obravnavo te vloge. To so storili nekateri avtorji, in njihove ugotovitve so obravnavane v naslednjih poglavjih. Liberalna medvladna teorija in predvsem pa konsociativna teorija pa kažeta tudi na prisotnost demokratičnega primanjkljaja in na njegov izvor.

V tretjem poglavju se obrne razprava na ključno vprašanje o možnostih nadzora nacionalnih parlamentov nad procesi odločanja v svetu ministrov. Izhodišče je ideja, da učinkovit nadzor pripomore k zmanjševanju demokratičnega primanjkljaja. Razprava se osredotoča na odnos nacionalnih parlamentov do svojih vlad, kjer je odgovornost ministrov in vlade do svojih volilcev preko nacionalnega parlamenta najbolj pomembna. Izdelan je bil model notranje odgovornosti, ki povezuje celotno razpravo v nalogi. Model notranje odgovornosti opisuje kako EU pridobiva demokratično legitimiteto s tem, da nacionalni parlamenti ratificirajo pogodbe EU, ter izvolijo vlade, katerih člani potem sprejemajo odločitve v svetu ministrov in evropskem svetu. Člani sveta ministrov in evropskega sveta so na ta način odgovorni svojemu parlamentu in s tem posredno tudi svojim volilcem. Obravnavano je tudi

medparlamentarno sodelovanje kot možna rešitev problemov. Zaključek prikaže, da imajo nacionalni parlamenti pomembno vlogo pri zmanjševanju demokratičnega primanjkljaja, hkrati pa je ta vloga je le delna, ker je potrebno več kakor samo učinkovito delovanje nacionalnih parlamentov za uspešno odpravo tega pojava.

Četrto poglavje se osredotoča na nacionalne parlamente in konvencijo o prihodnosti Evrope. V konvenciji je bila ustanovljena delovna skupina, ki se je ukvarjala posebej z vlogo nacionalnih parlamentov v EU. Obravnavane so razprave in posamezni zaključki te delovne skupine. V nadaljevanju se opiše rezultat te konvencije – Osnutek Pogodbe o Ustavi za Evropo – in način definiranja vloge nacionalnih parlamentov v EU v prihodnosti. Sledi kratka primerjava z določili predhodnih pogodb. Na koncu poglavja se potrdi, da je vloga nacionalnih parlamentov bolj priznana v novi pogodbi kot v predhodnih, še posebej v luči demokratičnosti EU in želje, da bi naredili EU bolj legitimno in transparentno.

V petem in zadnjem poglavju pred zaključkom je konkretno opisan primer Švedske. Obravnavane so ustavne spremembe potrebne za članstvo v EU. Sledita opis in evaluacija raznih ureditev v Riksdagu v zvezi z EU politiko. Največji poudarek je dan novemu telesu v parlamentu: Svetovalnemu odboru za zadeve EU. Nadaljuje se z opisom Riksdaga in demokratičnega primanjkljaja in vprašanja ali švedska ureditev pomaga pri zmanjševanju demokratičnega primanjkljaja. Podlaga za razpravo v tem poglavju so opravljeni intervjuji s člani švedskega parlamenta, ki sedijo v omenjenem odboru. Sledi zaključek, ki pokaže, da so švedske rešitve uspešne za dobro sodelovanje med vlado in parlamentom in da je parlament obdržal kontrolo nad svojo vlado, ko odloča na evropski ravni. Na ta način Riksdag prispeva k zmanjševanju demokratičnega primanjkljaja.

V zaključku so povzete ugotovite posameznih poglavij. Potrjena je hipoteza naloge, da je švedski parlament na nacionalni ravni aktivno vključen v nadzor procesov odločanja v EU zaradi težnje po odpravi demokratičnega primanjkljaja. Prav tako se potrdi, da je članom parlamenta uspelo obdržati nadzor nad ministri, ki v svetu ministrov sprejemajo odločitve. Položaj seveda ni idealen, kar pa je bolj posledica ureditve znotraj EU kakor znotraj švedskega političnega sistema. Zaključek vsebuje tudi trditev, da je mogoče zmanjševati demokratični primanjkljaj s pomočjo nacionalnih parlamentov, in da se lahko stori več na tem področju.

1. INTRODUCTION

European Union (EU) membership rocks the balance established between the different institutions in the democratic political system. It changes the processes of decision-making in the most profound ways. Many decisions that used to be taken at a national level, by the national parliament, are removed from this body's competence and are taken at the EU level, mainly by the members of the government in the Council of Ministers (hereafter the Council). In light of the democratic deficit the issue becomes a burning one. In liberal democratic systems, it is the national parliament that comprises the democratic institution with the strongest popular support. The national parliament is the alpha and omega of democracy. The governments role is supposedly limited to execution. How then does one make up for this transfer of decision-making competences?

In this thesis I deal with the question of what the national parliaments are able to do, in order to keep control over the decisions taken at the EU level. The theme is extremely relevant, as the EU is entering a new phase in its history, intending to increase the use of majority voting, and at the same time seeking stronger democratic legitimacy. The debate focusing on creating a more transparent and democratic EU has been circulating primarily in the context of the Convention on the Future of Europe. In the drafting of the Convention, a special working group dealt with how to (re-) define the role of national parliaments in the future EU. The Convention produced a Draft Treaty Establishing a Constitution for Europe. The Draft Treaty includes a protocol on the role of national parliaments that goes further than its forerunners (declarations and protocols to the Treaties). As a consequence the role of the national parliaments is gaining ground, and I will in this thesis show in which ways.

When investigating the problem, I looked at Sweden as an example of how EU membership has affected the national parliament (the Riksdag). The Riksdag does not have the strictest controlling mechanism over its government when acting at the EU level, nor does it have the weakest. The system presented later in this text is what I would call a 'middle way'. What I try to show is that the system is effective even though not following the strictest criteria of control.

The hypothesis I operate within is that the Swedish Parliament has, since EU membership as a step towards diminishing the democratic deficit, put active control of the EU decision-making processes into practice at the national level. This was necessary since EU membership produces a shift in the powers of a state. The role of the government is enhanced

and there is a need for the national parliament to retain control over decision-making taking place in the Council of Ministers. To be able to provide an answer to this hypothesis I work with related questions throughout the text, widening the discussion by taking into account the role of national parliaments in the EU in general. I briefly examine relevant integration theories. I follow up with theories connecting the role of national parliaments to the problem of the democratic deficit. Here I make conclusions as to how the national parliaments could play a role in improving upon the democratic deficit. I then move onto describing the most recent developments in the field, namely Convention on the Future of Europe, the findings of the Working Group on the role of national parliaments, and the Draft Treaty Establishing a Constitution for Europe. The last section is devoted to Sweden, the constitutional and institutional changes that have been undertaken in the parliament, summaries of the interviews I conducted with the members of the Riksdag, and finally some concluding thoughts.

In the thesis, I focus primarily on the relationship between the Council and the national parliaments, and between the national parliaments and their governments. The issue at stake is whether and in which forms the ministers acting in the Council are held accountable by their respective parliaments. The question is framed around the debate of the democratic deficit, mostly focused around one element of this debate, namely the issue of accountability.

Such a discussion can be exhaustive, therefore my thesis is limited to exclusively handling the issues at hand from an intergovernmental perspective, thereby avoiding the supranational aspects and suggested solutions to the problem of the democratic deficit. With focus on the national parliaments, the answers offered by supranational streams are virtually of no or very little interest. I shall mention them only where I deem it absolutely necessary. The other limitation placed on this thesis is that I have chosen not to deal with the principle of subsidiarity, even though the role of national parliaments in ensuring compliance with this principle and monitoring its application is fundamental. The reason, again, is that I intend to focus on the interplay between national parliaments and their government when dealing with EU matters.

Throughout the text, it will become obvious that I have taken on an essentially Swedish perspective. This is certainly the case when studying Swedish arrangements in the Riksdag, but I have also put a Swedish angle to the other parts of the text. This is especially true when discussing the democratic deficit. I hope to thereby give a presentation of the Swedish debate, to draw attention to some of its main features in this field, as well as to make the text coherent throughout. As will be evident when looking at the sources used in the

research, a large amount constitute Swedish authors, if not Swedish, then authors whose work is widely used in the Swedish debate.

The methods I use are both empirical and non-empirical. The empirical method was applied when conducting the interviews. There were six interviews with members or substitute members of the EU Advisory Committee in the Swedish Riksdag, all the members interviewed were from different political parties. The questions put were half-open, and the answers provided were of a yes/no character with a following explanation or discussion. In this way the interviews were structured but they also left room for broader discussion and the expression of individual experiences of the members of parliament on their work, as well as their vision on the EU. Non-empirical methods were used for the rest of the work on the thesis. The text contains analysis of primary sources – different declarations and protocols to respective EU Treaties concerned with the role of national parliaments, the Swedish Constitution, as well as other relevant documents. There is wide analysis and interpretation of secondary sources dealing with the issue. The research conducted in the field has been limited so far, and it has been difficult to find comprehensive documentation focusing on this aspect. All translations from Swedish to English, which are essential for the quotations are made by me, unless otherwise stated in the text.

I will start by defining two essential terms, the understanding of which is imperative for the following text. The two terms are 'democratic process' and 'democratic deficit', and I have defined them in connection to each other.

1.1. A Democratic Process

I begin by taking account of the democratic process as defined by Kaufmann (1996: 94-95). He recognizes four central notions together with four principles regarding the possibilities and limitations of the development of democracy on a trans-boundary level. The four notions are: a) citizen, b) identity, c) popular sovereignty, d) publicity. Kaufman connects these to four principles: a) self-determination, b) community, c) reconsideration, d) responsibility.

When discussing democracy the most important aspect of the notion "citizen" is respect for political rights, regardless the level; regional, national or transnational. The possibilities of political participation are decisive for how the self-determination principle is respected. This principle means that the persons who are participating in taking a decision are the very same persons that are affected by it. This is the absolute most important cornerstone

of democracy, namely government *by* the people. "Everyone subject to the binding decision of a political system should have the right to influence the making of said decisions" (Karlsson 2001: 33). This differentiates democracy from dictatorships that claim to be democratic on the basis that they govern in the interest of the people, therefore *for* the people and not, in opposition to the above mentioned, *by* the people[1]. If there are larger groups of people who are affected by a decision but who are not participating in the decision-process, the first principle of democracy falls. "In a world with many trans-boundary questions and problems the self-determination principle naturally poses special demands on the new political institutions"(Kaufmann 1996: 94).

From a democratic perspective the notion of collective identity is of certain interest. It comes into existence by community action. Individuals share the belief that their common action can have binding consequences for everyone, and the action is therefore connected with the principle of community. The citizens feel a common connection on a certain level, be it the municipality, the region, the nation or the whole continent. Collective identities built on community action are then a prerequisite for the principle of a community (which is especially interesting when considering institutions on a transnational level).

Popular sovereignty needs to be separated from the notion of national sovereignty. Popular sovereignty means that a body of people can take decisions that are mistaken and that such bodies of people can go through collective processes of learning. National sovereignty "partly – from a Christian tradition – has pretensions of being infallible" (Kaufmann 1996: 94). Political decisions are from a democratic perspective perceived as "not forever valid truths, but as an interplay between different interests and convictions"(*ibid.)*. There must be a possibility of reconsideration of democratic decisions. This is the content of the principle of reconsideration.

Free access to information is needed in a democracy as much as "we need air to breath" (Kaufmann 1996: 94). To be able, as an individual, to take part in the exercise of power it has to be transparent and open. The notion of publicity is a prerequisite for the principle of responsibility. If we do not know what a representative has done and how he did it, it is difficult to demand responsibility from him/her. It is often stated that democracy on a trans-boundary basis in transnational structures is impossible because there is no principle of publicity and thereby no clear way of demanding responsibility from the decision-makers.

[1] "Governance in the Union could be seen as 'government for the people'" (Höreth 2002: 8).

Dahl has identified a fully democratic process. This definition is of particular interest here, since it is the one often used in the Swedish debate on democracy (Lundström 1998: 46). According to Dahl a fully democratic process must satisfy the following five criteria: 1) equality in voting: in making collective binding decisions, the expressed preference of each citizen ought to be taken equally into account in determining the final solution; 2) effective participation: throughout the process of collective decision-making, including the stage of putting matters on the agenda, each citizen ought to have adequate and equal opportunities for expressing his or her preferences as to the final outcome; 3) enlightened understanding: in the time permitted to reach a decision, each citizen ought to have adequate and equal opportunities for arriving at his or her considered judgement as to the most desirable outcome; 4) final control over the agenda: the body of citizens (the *demos*) should have the exclusive authority to determine which matters are or are not to be decided by means of process that satisfy the first three criteria; 5) inclusion: the *demos* ought to include all adults subject to its laws, except transients (Dahl 1982: 6). This definition is adequate because it is closely connected to the established meaning of democracy as government by the people, at the same time allowing a comprehensive analysis of different aspects of the EU system. These criteria constitute what he calls an ideal democratic process, but this does not mean that any political system fulfilling them is in existence today, nor that such a system has ever existed - they constitute the parts of an ideal.

1.2. The Democratic Deficit

If the EU was to apply for membership in itself, it would not be accepted. This is a well known statement which vigorously describes one of the most important criticisms of the EU today. It is a rather uncontested fact that the EU does not ensure the same level of democracy as it propagates, therefore it is said to have a democratic deficit. Now, when operating with a term such as the 'democratic deficit', one needs to know exactly what is meant by it. There is no simple definition of this concept.

De Búrca and Craig (1998: 155-157) give an account developed from Joseph Weiler's summary of the democratic deficit,[2] which in six arguments describes what is usually meant when using this term. The first argument is the 'executive dominance issue'

[2] J. Weiler, U. Haltern, and F. Mayer, 'European Democracy and its Critique', in *The Crisis of Representation in Europe*, ed. J. Hayward (Frank Cass, 1995), 32-3; J. Weiler, 'European Models: Polity, People and System', in *Lawmaking in the European Union*, ch. 1 (de Búrca and Craig 1998: 155).

meaning that the "transfer of competence to the Community enhances the power of the executive at the expense of Parliamentary bodies. This is because of the dominance of the Council[3] and European Council in the decision-making process of the EC, and the corresponding difficulty experienced by national parliamentary bodies in exercising any real control over the decisions made in the EC" (De Búrca and Craig 1998: 156).

The second argument is the 'by-passing of democracy argument', which applies to the operation of the EU's complex committee structure "known generally as Comitology. Many technical, but important, regulations are made by committees established pursuant to a delegation of power to the Commission. Technocrats and national interest groups dominate this sphere of decision-making to the exclusion of the more regular channels of democratic decision-making, such as the European Parliament and even the Council" (De Búrca and Craig 1998: 156).[4]

The third argument, the 'distance issue', means that matters are further removed from the citizen with the transfer of competence on many issues to Brussels and away from the nation State. The fourth argument is called the 'transparency and complexity issue', and takes into consideration that much of the decision-making of the Community, particularly that of the Council, takes place behind closed doors. Also, the very complexity of the legislative procedures has meant that it is virtually impossible for anyone, other than an expert, to understand them. The 'substantive imbalance issue' is brought forward by writers from the left, maintaining that "the democratic deficit should also encompass the imbalance between labour and capital which has been exacerbated by the freeing up of the European market" (De Búrca and Craig 1998: 156). Finally there is the sixth argument, called the 'weakening of judicial control issue' that springs from the supremacy of the EU law over national law.

Lord (1998: 11) points out the features of the EU's political system that are said to constitute the democratic deficit: "the unelected character of the European Commission,[5] the alleged weakness of the European Parliament, the withdrawal of the powers from national parliaments, lack of a European political identity or 'demos', low voter participation in

[3] Council of Ministers

[4] Hix (1999: 41) shows that the Commission is not completely free in performing its executive tasks: "The Council has designed an elaborate system of committees, known as 'comitology', where 'national experts' issue opinions on the Commission's proposed implementation measures. Under some procedures, comitology provides for a separation of powers where the legislator (the governments) can scrutinize the executive (the Commission); under other procedures, however, comitology has created a fusion of powers where the member governments enforce their wishes on the Commission, and hence exercise both legislative and executive authority".

[5] To put it differently: "When viewed with the conventional lenses of the separation of powers in national Western political systems, the Commission is an anomaly. It is neither an executor of government policy nor a government accountable to parliament" (Haaland Maltláry 1998: 65).

European elections, the absence of strong democratic intermediaries such as political parties, the remoteness and obscurity of the Union's decision-making procedures".

Karlsson (2001) and others have made use of the criteria that Dahl uses to define a fully democratic process (see above) to define the democratic deficit. Even though the criteria are part of an ideal, they still offer a clearly defined frame for the evaluation of the democratic quality of states and international institutions like the EU. I will highlight the criteria of interest for the present text.

The degree to which the criteria of equality in voting is met in the EU depends amongst other issues on the extent to which citizens can hold decision-makers accountable for their actions at the final stage (Karlsson 2001: 93).[6] When evaluating the real possibilities of holding a decision-maker accountable for his/her actions, one should look at whether the decision-maker is an elected politician or an appointed official, how long the chains of delegation are (number of intermediaries between citizens and decision-makers), the openness of the system, and the organization of the party system.

In the EU many decisions are made by appointed rather than elected officials, and some officials are also at the far end of long chains of delegated authority. "For one thing, the members of the Council – who are the most important decision-makers at the final stage of policy-making – are not elected directly by the citizens of the EU. They are representatives of the national governments, and only indirectly of the citizens of the member states" (Karlsson 2001: 96). Even though recent developments have improved the situation, it is still a striking fact that the EU is seriously lacking in openness. The committee system is "still notoriously closed to the public /…/ it is impossible to determine exactly who did what. The Council for its part has become more open, and the new rules on the publication of voting results /…/ has certainly improved the situation. However, there is still room for considerable improvement where the transparency of Council decision-making is concerned" (Karlsson 2001: 98-99).

So, the possibilities for holding representatives accountable at the EU level turns out to be quite limited, due to the fact that authority in the EU has been delegated and due to

[6] The other issues are: the extent of the opportunities enjoyed by citizens to make decisions directly through referenda, and the degree to which citizens are equally represented. In the EU the smaller states are widely over represented in the EP as well as in the Council and in practice a minority the population in the EU can constitute a majority for the making of a final decision. In the EP there are 626 seats of which Germany is accorded 99 seats, Belgium 25, and Luxembourg 6. When making an account of the number of the populations in these three countries divided with the seats granted, this example shows that the number of citizens per seat is: 826,000 for Germany; 404,000 for Belgium; and 67,000 for Luxembourg. In the Council the citizens per vote in millions for these three countries is: 8,2 for Germany with its 10 votes in the Council; 2,0 for Belgium with its 5 votes in the Council; and 0,2 for Luxembourg with its 2 votes in the Council (Karlsson 2001: 93-95, tables 3.1 and 3.2).

the system being very closed. In the EU there are three sets of relevant actors for the decision-making process that need to be examined. These are the representatives of national governments in the Council; the directly elected Members of the European Parliament (MEPs); and the appointed national officials on the comitology committees. According to the above stated, the citizens can hold none of these actors effectively accountable for their actions. "Add to this the unequal system of representation, and we can only draw the conclusion that the criterion of equality in voting is poorly met within the EU" (Karlsson 2001: 99).

To make enlightened understanding or deliberation possible, citizens must have access to relevant information, everyone on an equal basis. Moreover, the existence of a public sphere which provides a forum for discussion with access for everyone is imperative. Facts have to be interpreted and different interpretations tested against each other in this forum. Without these prerequisites enlightened understanding can hardly be achieved (Karlsson 2001: 62-63). The political process within the Union suffers from a lack of openness and transparency that makes it difficult for the citizen of the Union to acquire reliable and accurate information. Most importantly, the difficulty of obtaining documents from EU institutions undermines the possibility of a free exchange of views and information. First of all, in the EU there are no strong provisions like the ones in the Chapter on the public nature of official documents included in the Swedish Constitution under The Freedom of the Press Act.[7] There are provisions in Article 255 of the Treaty Establishing the European Community (TEC) (ex Article 191a), which hold that "/a/ny citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to European Parliament, Council and Commission documents" but that general principles and limits on ground of public or private interest governing the right of access to documents shall be determined by the Council, and that each institution shall elaborate in its own Rules of procedures specific provisions regarding access to its documents, and so paving the way for the possibility to put limitations to access. Also, EU officials are explicitly

[7] Article 1 of the Chapter 2 On the public nature of official documents state that: "To encourage the free exchange of opinion and availability of comprehensive information, every Swedish citizen shall be entitled to have free access to official documents." Article 12 further states that: "An official document /…/ shall be made available on request forthwith, or as soon as possible, at the place where it is held, and free of charge, to any person wishing to examine it, in such form that it can be read, listened to, or otherwise comprehended. A document may also be copied, reproduced, or used for sound transmission. /…/" Article 14 states: "/…/ No public authority shall be permitted to inquire into a person's identity on account of a request to examine an official document, or inquire into the purpose of his request /…/" (The Constitution of Sweden).

required not to disclose information.[8] Secondly there is no such thing as rules forcing the institutions of the Union to keep public registers of all relevant documents (Karlsson 2001: 69). As for the existence of a European public sphere, it is highly absent due to the fact that the mass media is still mainly national in character. One may then conclude, that "the current situation does not provide citizens of the Union with opportunities that are either adequate or equal to form well-founded opinions on public matters" (Karlsson 2001: 75).

The most common form of agenda-control is when authority to decide upon the subject for a decision by the democratic process has been delegated to representatives of the people, in practice usually to the members of the Legislative or Executive. Within the EU, agenda-control has been delegated to non-representatives (that is people that are neither members of the Legislative, nor of the Executive): to experts in the Commission. The important question to be asked in this case though, is if the agenda-control can be retrieved. If it cannot, there is an "alienation of agenda-control" (Karlsson 2001: 49). "/T/he Commission is charged with the responsibility of proposing measures that are likely to advance the development of the EU. Where legislation is envisaged, the power to propose is exclusive to the Commission" (Nugent 1999: 117). This is stated in the TEC, Article 251 (ex Article 189b), establishing the procedure for the adoption of an act: "2. The Commission shall submit a proposal to the European Parliament and the Council". There are now two clashing states of matters regarding the Commission as an agenda-setter. First of all the Commission is the closest thing to an Executive within the EU. On the other hand the commissioners stand above the national level and do not act in the role of representatives of their states but in the general interest of the EU.

> The fact that the right of initiative is placed in the hands of appointed officials has important repercussion for the opportunities of citizens to exercise indirect control over the agenda. If agenda-setting is entrusted to directly elected institution, it will be possible for citizens to exercise indirect control through the electoral contest /…/ The Commissioners, however, are appointed officials nominated by member state governments; as a result, citizens are deprived of the ability to force future agenda-setters to compete for power. The indirectness of the route whereby citizens can hold the Commissioners responsible /…/ naturally allows for a very low degree of indirect control (Karlsson 2001: 51).

[8] Article 287 (ex Article 214) TEC states: "The members of the institutions of the Community, the members of committees, and the officials and other servants of the Community shall be required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components."

As seen (and expected) the EU does not meet the criteria for a full democratic process perfectly. I say expected, since the criteria brought forward by Dahl serves as more of an ideal than of a realistic picture of how it ought to be. Nevertheless this description gives a good picture of where the key factors contributing to the democratic deficit lay, as well as a clear account for what is meant by the term. The democratic deficit is a problem with many faces. The question that follows here is: what role can be played by national parliaments to lessen the impact of this negative feature of the EU? There are a few areas where a strong role of national parliaments can make a difference. Taking the Executive dominance issue into account, the national parliaments have an essential role to play in holding the Executives accountable, and thereby decreasing their dominance in the decision-making process. To this end the issue of transparency is crucial – whether the national parliamentarians deem themselves to have access to sufficient information, and if they have access, do they have enough time to participate considering the extra workload that comes with EU membership? Alienation of agenda control is another important aspect when re-thinking the role of the national parliaments after EU membership, since national parliaments cannot put things on the EU agenda. Bearing this in mind, I shall in the following chapters try to evaluate what role the national parliaments can and do play in the EU, especially with regard to the democratic deficit.

2. NATIONAL PARLIAMENTS IN DOMESTIC AND INTERNATIONAL ARENA – THEORETICAL PERSPECTIVES

Beginning from a theoretical perspective on the role of national parliaments in an international arena (more specifically the European arena), I have focused on intergovernmental theory. This is the only theory that can be relevant when discussing the role of national parliaments, since it is the only theory within integration theory that has states and state institutions at its core, and offers an analysis of the interaction between them. I try to evaluate the role of national parliaments in influencing decision-making at the EU-level, indirectly through their governments, which according to intergovernmental theories are the most important institutions in the EU.

2.1. Intergovernmental Theory in the EU Context

Intergovernmental theory has its origins within the realist tradition of international relations theory. The nation states are key actors and national governments form political relations between states. Realism "does not accord much importance to the influence of supranational or transnational actors and only limited importance to non-governmental actors within states" (Nugent 1999: 509). In intergovernmental theory national sovereignty is not directly undermined since participating states have control over the extent and nature to which they wish to cooperate. Cooperation takes place in areas of common interest (Nugent 1999: 502).

So, what are the distinctions of intergovernmental theory as applied within integration theory? I would like to begin by mentioning that intergovernmental theorists of European integration tend to downplay the role played by the supranational actors (the European Commission, the European Parliament and the European Court of Justice), claiming that although they may exercise some influence, predominantly the representatives of the governments of the member states, meeting in the Council of Ministers and in the European Council are the most important actors in European integration (Nugent 1999: 95). "/O/ther actors, both within and beyond states, can exercise some influence on development, but not a crucial, and certainly not a controlling, influence" (Nugent 1999: 509). So the focus is put on the Council of Ministers and the European Council, since this is where the final say in most decisions evolves, as well as the formation of the overall direction of European integration. Intergovernmentalism thus refers to the supremacy of national governments in the integration process over supranational and other actors (Dinan 2000: 297).

There are some outstanding features of state-centric models (such as intergovernmentalism) that are directly applicable to the EU. The system rests primarily on nation states that have come together to co-operate for certain specified purposes. The main channels of communication between EU member states are the national governments that also control the overall direction and pace of EU decision-making. No governments, and therefore no states, are obliged to accept decisions on major issues to which they are opposed. This is why supranational actors do not have significant independent powers in their own right, but function essentially as agents and facilitators of the collective will of the national governments (Nugent 1999: 497-498). Following from this, one can recognize three principal intergovernmental features of the EU. Firstly, decisions are still mainly taken at the national level in most areas of public policy. Secondly, all major decisions on the general direction and

policy priorities of the EU are taken by Heads of Governments in the European Council. These decisions are only rarely taken by majority vote. Besides, all important decisions on EU legislation need the approval of the Council,[9] where, even if qualified majority voting is permissible, "attempts are always made to reach a consensus if a state makes it clear that it believes it has important national interests at stake".[10] Thirdly and finally, the Commission and the European Parliament (EP) do not have the power to impose policies that the representatives of member states do not want (Nugent 1999: 504).

Now in all this, can we see any role prescribed to the national parliaments? So far there has only been talk of national governments. Rosamond (2000: 201) would add to the above that "/i/ntergovernmentalism is distinguishable from *realism* and *neorealism* because of its recognition of both the significance of institutionalization in international politics and the impact of processes of domestic politics upon governmental preferences". I will give an account of some theories within intergovernmental tradition that have sought to incorporate the national level, namely: liberal intergovernmentalism (as brought forward by Andrew Moravcsik), and consociational theory. I will discuss in which way they can contribute to the understanding of the role of national parliaments in the European integration.

2.2. Liberal Intergovernmentalism

What is liberal intergovernmentalism and in what way does it differ from classical intergovernmentalism? In defining the term, Rosamond (2000: 201) states that it is a variant of intergovernmentalism where "/d/emands for integration arise within processes of domestic politics whereas integration outcomes are supplied as consequence of intergovernmental negotiations". The liberal intergovernmental approach as developed by Andrew Moravcsik offers a model consisting of a liberal theory of national preference formation and an intergovernmentalist account of strategic bargaining between states which represents a departure from classic intergovernmentalism, which sees national interest arising

[9] Council of Ministers.

[10] The so called Luxembourg Compromise came into existence following a crisis in 1965 involving the French President de Gaulle. The Commission had put forward a package deal that had increasing supranational implications (more majority voting in the Council), to which France opposed by simply not attending decision-making institutions (the policy of the empty chair). Six months later (in 1966) the French government came to a deal at a special Council meeting in Luxembourg. Although the compromise agreed at that meeting has no constitutional status, point II of the communiqué issued came to profoundly affect decision-making in the Council. It is interpreted as meaning that any state has the right to exercise a veto on questions that affects its vital national interests, and the states themselves determine when such interests are at stake. Following from this event, decisions in the Council are customarily made by unanimous agreement even where the treaties allow for majority voting (Nugent 1999: 167-169).

in the context of the sovereign states perception of its relative position in the state system (Rosamond 2000: 136-137).

Moravcsik's liberal intergovernmentalism has three core assumptions (the second of which is the most interesting here). First, we have the assumption of rational state behaviour, meaning that the actors in politics are "rational, autonomous individuals and groups which interact on the basis of self-interest and risk-aversion" (Rosamond 2000: 142). Second, there is a liberal theory of national preference formation which draws on a domestic politics approach to explain how state goals can be shaped by domestic pressures and interactions, which in turn are often conditioned by the constraints and opportunities that derive from economic interdependence (Nugent 1999: 509). Governments represent domestic society, whose interests constrain the interests and identities of states internationally. Third, "state behaviour and patterns of conflict and co-operation reflect the nature and configuration of state interest" (Rosamond 2000: 142). This can be seen as a classic intergovernmentalist interpretation of inter-state relations, emphasizing the key role of governments in determining the relations between states and seeing the outcome of negotiations between governments as essentially determined by their relative bargaining powers (Nugent 1999: 509).

For Moravcsik, national interests are consequences of state-society interaction, where national interests emerge through domestic political conflict as societal groups compete for political influence, national and transnational coalitions form and new policy alternatives are recognized by governments. "An understanding of domestic politics is a precondition for, not a supplement to, the analysis of strategic interaction among states" (Rosamond 2000: 137). European integration is primarily a means of achieving specific domestic goals. He recognizes that the primary interest of governments is to maintain themselves in office, and to this end there is a requirement of "the support of a coalition of domestic voters, parties, interest groups and bureaucracies, whose views are transmitted, directly or indirectly, through domestic institutions and practices of political representation" (*ibid.)*. In this way rational state behaviour does not emerge from fixed preferences, but from dynamic political processes in the domestic polity.

The source of the underlying national preferences is either economic interest or geopolitical interests, where the latter reflect perceived threats to national sovereignty, and the former reflect the imperatives induced by interdependence and exogenous increase in opportunities for profitable cross-border trade and capital movements. Regarding geopolitical interest, economic integration is seen as a means to manipulate high politics, thus generating positive geopolitical externalities (Moravcsik 1998: 26-28). The political economy

perspective suggests that integration is a means to secure commercial advantages for producer groups (agricultural, industry and service sectors). Governments seek multilateral trade liberalization when it is no longer possible to realize producer interests unilaterally, and in this sense international co-operation may also provide them political legitimacy and support (Moravcsik 1998: 38). Governments engage in policy coordination on an international level either "to influence the economic externalities of the policies conducted by foreign governments /…/ or to impose domestic reform seen as desirable to the maintenance of international competitiveness" (Dinan 2000: 281). Non-producers, however, "generally impose a tighter constraint on policy coordination if the unilateral policies in question take the form of regulatory standards rather than 'at the border' measures /…/" (Moravcsik 1998: 40). Such negotiations may mobilize not only producers but organized public interest groups and parties that favour particular environmental, consumer, or health and safety regulations.

Moravcsik (1998: 68) also asks the question why sovereign governments choose to pool and delegate decision-making powers to authoritative international institutions, which have voting procedures other than unanimity. One answer is that majority voting, Commission initiative and third-party enforcement spring from relational contracts among member states. These are binding agreements that do not specify detailed plans but commit governments or delegate authorities to common sets of principles, norms, and decision-making and dispute-resolution procedures. Pooling and delegation may be used to commit states to decisions before the costs and benefits become clear enough to generate opposition. Governments are likely to make use of this as a means to ensure that other governments will accept agreed legislation and enforcement, to signal their own credibility, or to lock in future decisions against domestic opposition. Another answer as to why sovereign governments choose to pool and delegate decision-making powers holds that EU institutions are linked in the public mind with desirable outcomes such as trade liberalization and postwar peace. Exclusion from any policy is viewed in some countries with great suspicion. Such ideological linkages permit the EU to be employed as a scapegoat in countries where it is a popular organization. Ideological support may permit national politicians to reduce the political costs of unpopular policies by scapegoating these international institutions or foreign governments.

The third answer is a credibility explanation. The idea is to ensure future promulgation or implementation of rules despite national opposition. This requires a measure of autonomy of the governments, who subsequently limit political risk by nesting smaller and more specific decisions inside a set of larger decisions reached by unanimity. Moreover, to enhance credibility yet maintain control, arrangements tend to be taken away from democratic

control and are strictly limited by governmental oversight, resulting in a democratic deficit (Moravcsik 1998: 73-76). Moravcsik also points at the way in which the process of intergovernmental bargaining at the European level strengthens states *vis-à-vis* their home polities: "National governments are able to take initiatives and reach bargains in Council negotiations with relatively little constraint. The EC provides information to governments that is not generally available … National leaders undermine potential opposition by reaching bargains in Brussels first and presenting domestic groups with an 'up or down' choice" (Rosamond 2000: 138). Thus, membership in the EU enhances the autonomy of governments. This is because domestic constitutional arrangements "generally treat EU policy making as a matter not of domestic but of foreign policy, in which executives enjoy a stronger initiating role, relatively autonomous decisional powers, direct sources of information, and an unequaled ability to link issues to legitimating ideologies, both 'national' and 'European'" (*ibid.)*. Executives use these powers to lock in their institutional advantages. This helps to explain the existence of the democratic deficit, which according to Moravcsik is not an unintended consequence of integration, but a deliberate strategy (Dinan 2000: 287).

2.3. Consociationalism

Consociationalism is a term referring to a political system achieving governing stability despite deep divisions in society. The idea of a consociation was developed by Lijphart to explain how and why some nations can maintain democratic peace and stability in spite of being deeply divided by cleavages in society (Urwin 1997: 113). The term cleavages does not mean only political and social differences and diversity, but divisions which are deep and lasting "along religious, ideological, linguistic, cultural, ethnic, or racial lines into virtually separate subsocieties with their own political parties, interest groups, and media of communication".[11] Lijphart shows how the development of a consensual political culture among elites could be a sufficient condition for the successful governance of societies with deep sub-cultural divisions.

Nugent (1999: 498-499) provides an account of the main features of consociational states:

- There is societal segmentation and several politically significant lines of division.

[11] Arend Lijphart, *Democracy in Plural Societies: A Comparative Exploration* (Yale University Press, 1977). In Lijphart, Rogowski and Weaver (1993: 303).

- The various segments are represented in decision-making forums on a proportional basis, though with the possibility of minorities sometimes being over-represented.
- Political elites of the segments dominate decision-making processes. Interactions between these elites are intense and almost constant.
- Decisions are taken on the basis of compromise and consensus. The majoritarian principle is not normally employed, especially when major or sensitive issues are involved. Decisional processes are characterised by bargaining and exchanges, whilst decisional outcomes are marked by compromise and are frequently little more than the lowest common denominator.
- The interactions between the segments can be both positive and negative in promoting solidarity. Links are established and community-wide attitudes can be fostered, on the other hand the very rationale of consociationalism is the preservation of segmented autonomy within a cooperative system. Segments may be tempted to over-emphasise their distinctiveness and moves towards over-centralisation may become occasions for resentment and unease within the segments.

Consociationalism encourages bargaining between elites and is likely to be more efficient if cleavage lines are less fluid, if there is not so much rivalry between leaders of individual cleavage segments, and if masses in each segment are willing to give elite leaders leeway to bargain in their interest and are willing to accept bargains once made (Lijphart, Rogowski and Weaver 1993: 305). Lijphart etd. (1993: 332) also argue that consensus mechanisms are better suited to cleavage societies than majoritarian mechanisms, and that elites from each segment must be able to act with some autonomy from their followers to be successful.

> /The/ model of consociational decision-making anticipates government by 'grand coalition' (rather than by majority) and the existence of veto powers for each of the constituent elites. Power should be distributed amongst the governing elites in proportion to the size of the population they represent. /…/ /S/ociety has to be divided, with minimal communication between the separate segments. This means that the predominant lines of communication are between societies and elites on the one hand and between respective elites on the other (Rosamond 2000:149).

Even though the model was worked out originally for democratic states in general, parallels have been drawn with the EU: member states representing the different communities and their governments the political elites. Taylor is the best known analyst of consociationalism in the EU context. He uses the theory to explain the nature of the balance between fragmentation and cooperation/integration needed for the maintenance of stability in the EU. In this symbiosis he sees the costs of fragmentation being overcome while the power and authority of both segments (the consociation – the member states, and the collectivity of the consociation – EU structures and frameworks) are being preserved and strengthened. This means that the "EU member states do not loose significant power or authority by virtue of their membership" (Nugent 1999: 499), or put in Taylor's own words (1990: 176): "integration in the sense of the strengthening of the regional functional system systems may help to sharpen rather than soften the cleavages in the existing society of nations". The distinct features of consociationalism used within the application of this theoretical framework to the EU are, above all, the consensus requirement, where all the political elites have the right to veto decisions that they disapprove of;[12] and the law of proportionality, meaning that the various segments of the population have proportionate representation in the major institutions, with the minority safeguarded from the dictatorship of the majority (Taylor 1990: 174). Taylor (1990: 176-177) also points out that elites may become more determined to strengthen controls over their own segments as integration proceeds, leading to the situation where integration might reinforce anti-democratic tendencies, where the worst scenario could be that a conspiracy of elites rise to promote their own interests even when they conflict with those of the segments which they nominally serve. Lord (1998: 46) agrees that the EU clearly contains elements of consociational practice.[13]

[12] "The theory suggests that in this context members of the élite cartel will become more inclined to insist that they retain an ultimate veto on decisions of which they disapprove and more resistant to decision-taking on the basis of majorities. /…/ At first sight the Single European Act seems to evidence against the proposition that this is true of the European Community, but the informed reader will at least entertain a rather cynical view about its terms regarding majority voting. On the whole the states have reserved the right, either explicitly in the Act or in terms of stated intentions, to veto anything which affects their vital interests. Further it appears to have been generally accepted that the Act did not supersede, but only circumscribe, the Luxembourg Accord of 1966, which allowed the veto" (Taylor 1990: 179).

[13] "/P/articipation of each national government in all final and authoritative decision-making; strict proportionality between nationalities in allocation of political and official appointments; the retention of certain veto rights which would protect Member States from majoritarian impositions and allow them to put limits on their integration into the collective; and autonomy in the protection and reproduction of national political culture – for example, in educational policy and the choice of domestic systems of representation". He also points out that the Council has "informal norms of /…/ bargaining" which "emphasize decision-making by consensus, even where majority voting is available" (Lord 1998: 47).

One other key element of consociational democracy is that which Dahrendorf has termed a 'cartel of elites'. What he means by this term is that political elites from the different segments are involved in some way on a continuous basis in the decision-making process and decisions are the product of agreements and coalitions among the members of that cartel. No agents or parties are placed in the ranks of the opposition (as for example in the event of defeat in an election), as would be the case with a system that makes use of majority voting (Taylor 1990: 173).

> Consociational theorists seek to show how, in all successful consociational democracies, normal traditional political fora were bypassed, and substituted by fora in which the leaders of all social segments participated, and compacts were arrived at, disregarding the principle of majority rule and using instead consensual politics. /…/ Consociationalism stipulates two further conditions for successful functioning: the elites must be able to carry their own segments along; there should be widespread approval of the principle of government by elite cartel. /…/ The democratic justification of consociationalism begins from the acceptance of deep and permanent fragmentation in the polity (Weiler 1995: 29).

In this aspect Lord (1998: 51) shows concern about consociationalism in as much as it "contains dangers of an oligarchic or cartelised politics in which the governments collude to manage the system in their own interest, rather than represent the people". This is due to the fact that consociationalism is a model in which the public not only trust their national governments to represent them at the Union level but also provide them with "substantial leeway" in this task. Most importantly, it is a model in which the public refrain from transnational links with democratic actors in other Member States, whether through cross-border debate or coalition-building. Quoting Lijphart, he continues that

> /t/ransnational democratic debate and coalition-building need /…/ to be avoided because the 'internal cohesion of the subcultures… and widespread approval of the principle of government by elite cartel'… are 'vital to the success of consociational democracy… elites have to be able to cooperate and compromise without fear of losing the support of their own rank and file' /…/ The involvement of democratic non-state actors – parties, interests, parliaments and public opinion – in patterns of cross-border coalition-building or deliberation is to be avoided, even as a mean of *supplementing* the process of representation by national governments.

He ends his argument by expressing fear that a consociational democracy constituted around the EU would break the rules of liberal democracy: the national Executive

power could constitute itself as a mixed Legislative-Executive authority in the European arena, and then have the power to decide on the level at which a particular problem is to be handled (Lord 1998: 52). The national Executives may use their exclusive access to the European arena as a political resource, reducing the control and challenge by others in domestic politics. The democratic problems of consociationalism, and hence of the Union when operating in a consociational fashion, are as a consequence grave:

> It will often be discovered that some elites, within the consociational cartel of elites, have very deficient internal democratic structures of control and accountability. Even a facile comparison among the structures which exist within the various member states to control their governments is sufficient to illustrate this point.[14] Even more troubling, consociationalism might actually act as a retardant to internal democratisation, because the 'external' context both empowers the representing elite (executive branch of government) and may even create a mobilising ethos of 'national interest' which justifies sacrificing calls for transparency and accountability. These calls can be, and usually are, presented as 'weakening' the ability of the elite to represent effectively in the external context /…/ /C/onsociational power-sharing is favourable to 'status' social forces, those whose elites participate in the cartel. It excludes social forces which are not so recognized. 'New' minorities are typically disfavoured by consociational regimes. /…/ Consociationalism can be seen as weakening true representative and responsive government. /…/ /C/onsociational politics typically favour the social status quo and, while mediating the problems of deeply fragmented societies, also are instrumental in maintaining those very fragments (Weiler 1995: 30-31).

2.4. Does Theory Help Explain the Role of National Parliaments?

I have provided a short account of some theories that seem as though they should at least in some way, give a description of, or answer to, the question of the role of national parliaments within the EU. Unfortunately, I have come to the conclusion that they do not do so adequately.

Pure intergovernmentalism, as expected, surely contains no provisions of the role of national parliaments in the EU, since its focus is on the interaction of national governments only. Liberal intergovernmentalism is perhaps a bit better in this regard, since it seeks to incorporate the national level in the formation of preferences. On the other hand the

[14] "People from countries where democracy has performed well (Scandinavian countries) are more likely to regard consociational approaches as the most appropriate at Union level, because they are reluctant to lose the benefit of their own domestic institutions. In contrast, a supranational democracy may be regarded as a welcome substitute for national institutions that have failed to produce good governance (Italy)" (Beetham and Lord 1998: 86).

liberal theory of national preference formation does not actually have much to do with national parliaments as such, but more with societal forces in general, and above all, with economic interest. Moreover the theory does have some important implications as to the interaction between the Executive and Legislative branch of government. In this regard, Moravcsik shows how the Executives enjoy a strong position, and how they make use of the EU framework to retain it. This leads us to presuppose a parallel reduction in the role of national parliaments as a consequence of EU membership. Although this is not explicitly mentioned in the literature, I believe it is a conclusion that can be drawn.

Consociational theory is helpful in explaining how national parliaments are bypassed in the EU process. Especially in the work of Taylor and Lord can one find provisions to prove this point – with the wide trust given to governments, the leeway they have in dealing with EU matters, as well as in the fact that transnational debate, links and coalition-building on a lower level than elite-level need to be avoided for the effective functioning of the system. They both also give expression to a concern about the democratic legitimacy of the consociational system as applied to the EU.

What these theories have in common then, is that they all prove how national parliaments are bypassed, their role diminished, by emphasizing the Executive dominance and the existence of the democratic deficit. This is not what I set out to find. What I would like to show is the exact role of national parliaments within the EU, as I am convinced they hold a valuable function especially regarding the control of the Executive. As established integration theories provide no significant answers per se, there is a need to look to other sources. In the following chapter I focus upon discussions on the relationship between the national parliaments and governments, which draw on intergovernmentalism, but which at the same time extend beyond the theory in order to provide further answers.

3. THE DEMOCRATIC DEFICIT; CAN NATIONAL PARLIAMENTS DIMINISH IT?

"/D/emocratic accountability is best arranged under the intergovernmental model where national parliaments hold their governments responsible for their decisions on the Council of Ministers, and voters use national elections as a check on the handling of EU issues by their own government and parliament" *(Beetham and Lord 1998: 71)*

In this chapter I will address the question of what national parliaments can and actually do to retain control over decision-making in the Council. I will point out those aspects, which are most interesting for the present discussion – intergovernmental aspects revolving around the interplay of national parliaments and their governments. Accountability is the most relevant issue, namely how to hold ministers in the Council accountable to their electorate through national parliaments. A model of domestic accountability has been worked out, and I will analyse it here.

3.1. A Transformed Relationship Between the Legislative and the Executive

The balance between the Executive and Legislative organs of government is effectively altered with the EU membership. This is because the Council is the principal legislative body in the EU, and this renders the ministers of the member states the main legislators. The national parliaments are presumed to aim at controlling their governments. However, the volume, complexity and timing of the EU decisional process make national parliamentary control more an illusion than a reality. Moreover, in a majority decision environment, the power of national parliaments to affect outcomes in the Council is further reduced (Weiler 1995: 7).

As mentioned earlier on, in Moravcsik's view the democratic deficit is not an unintended consequence of integration, but a deliberate strategy. Present EU arrangements could be said to widely benefit the governments. This is not only because of the legislative role of the Council, but also because domestic constitutional arrangements generally treat the EU policymaking as a matter of foreign policy, in which the Executives enjoy a stronger initiating role, relatively autonomous decisional powers, direct sources of information, and an unequalled ability to link issues to legitimating ideologies. "Executives exploit these powers to construct international institutions that 'lock in' their institutional advantages" (Dinan 2000: 287).

Lord (1998: 16-19) in his discussion on democratic authorization of the structure of the EU power relations also takes up the issue of treaty change, stressing that the EU treaty changes do not involve a simple transfer of powers from national to European level: they entail a parallel shift within domestic arenas – Executive discretion is greatly increased at the expense of political control by the public and its representatives. "As executives have a substantial presence in West European parliaments – many of which are often said to be 'executive-dominated' – the problem with parliamentary ratification of Union Treaty changes

is that it effectively puts national executives in a position to approve extensions to their own powers." The argument continues that "the devil is in their [the Treaties] subsequent application and they leave a great deal of room for the exercise of discretionary power" (Lord 1998: 23; Beetham and Lord 1998: 62).

3.1.1. Accountability

In the discussion on the relationship between national parliaments and governments in the EU,[15] the accountability issue is the most relevant. How can ministers be held accountable to their respective parliaments for decisions taken at the Council?

> A feature of the democratic process within the member states /…/ is that government is, at least formally, subject to parliamentary accountability. In particular, when policy requires legislation, parliamentary approval is needed. /…/ The argument is that Community and Union governance, and Community institutions, harm these principal democratic processes within the member states and within the Union itself (Weiler 1995: 7).

Democratic accountability requires that parliaments hold political leaders accountable on a continuous basis.[16] This essentially means that the Executive power has to be transparent to the people's representatives, representatives must have the power to investigate Executive decisions, and they need to be able to assert political control without themselves taking up the reins of governance. Lord (1998: 86-87) denotes transparency as a hopeless cause at the EU level amongst others because "the Council is a process of government by permanent negotiation in which the legislative process is difficult to disentangle from the legitimate rights of actors to protect the secrecy of their bargaining hands". Investigation of Executive decisions poses problems in a system of multi-level governance such as the EU, since it splits authoritative policy-making between several levels

[15] Some authors have argued, using supranational presumptions, that accountability only can be assured if the European democracy was a regime with a public realm of its own where the citizenry as a whole could ensure the accountability through the competition and cooperation of its representatives entitled to "make and implement those decisions that are binding on all members" and this would demand "the negotiating, drafting and ratifying of an explicit European Constitution" (Schmitter 1998: 22-23). I will focus here though on how accountability can be assured in an intergovernmental manner, so arguments of the supranational kind are therefore left out.

[16] As well as: "*administrative accountability* of bureaucracies to political leaders; /…/ *electoral accountability* based on a radical simplification of voter choice by democratic intermediaries, such as political parties, and on opportunities for the public to sanction their political leaders, notably by removing them from office; and a system of *judicial accountability* that any citizen can access with a complaint that power-holders are seeking to evade or distort the rules by which they are themselves brought to account" (Lord 1998: 80).

of governance and offers opportunity for blame-shifting, "whereby governments use the European framework precisely because it allows them to deny political responsibility and to disguise choices and constraints" (Lord 1998: 90). Thus, the opacity of the present political system of the EU raises immediate doubts about its legitimacy (Føllesdal 1998: 7).[17]

With the Single European Act a new legislative procedure called the 'cooperation procedure' was introduced. The cooperation procedure had clear supranational tendencies, strengthening the role of the EP and introducing qualified majority voting in the Council. When making use of the majority voting, members of government cannot individually be held accountable for decisions taken at the EU level by the Council as a whole (Lord 1998: 98). This has thus further limited the scope of indirect influence by national parliaments. If a parliament persuaded or mandated a minister to take a particular position, that position could be rejected by the Council and another position adopted, one that the minister alone would be unable to veto. "The Act thus rendered the European Parliament less marginal in EC law making while apparently having the effect of further marginalizing national parliaments" (Norton 1996a: 6-7).

> /Q/ualified majority voting /…/ had an important consequence for the Community's theoretical lines of accountability. Previously, with *de facto*, across-the-board unanimity the general rule, national ministers could be considered accountable to their respective national parliaments for all decisions emanating from 'Brussels'. /…/ The SEA created the possibility for national ministers to be out-voted – the normative question then rose as to how, under those circumstances, such outvoted ministers could be considered accountable for such decisions before their national parliaments (Westlake 1996: 167).[18]

The fact is that national parliaments within their own states exert only limited control over their national Executives, which has been acknowledged by the Danish

[17] Nonetheless, the Commission and the Council have reached an inter-institutional agreement on the conditions under which documents would be publicly available (where both institutions have accepted that it is also important to give reason for their decisions, as well as details). There have been problems with these arrangements though, since the "Council seems to have interpreted rights to information far more restrictively than either the Commission or Member States /which/ was illustrated perfectly when Swedish journalists requested documents relating to a particular decision both from the Council and from their own government. The Swedish government offered up all but 2 out of 20 texts, while the Council withheld 16" (Lord 1998: 87).

[18] On the other hand, the Single European Act spurred national parliaments to adapt their procedures to deal with EC affairs, since they could not rely solely on the EP to scrutinise EC documents and hold the Commission and Council to account. There was a need for national parliaments to get involved and the result has been that national parliaments have exhibited, from the mid-1980s onwards, three distinct characteristics: "(i) greater specialisation, (ii) greater activity, and (iii) some attempts to integrate MEPs into their activities." These features suggest that national parliaments have adapted to moves towards greater European integration and are seeking to play a more active role in that process (Norton 1996b: 179).

government stating that: "'a considerable part of what is known as the democratic shortfall is attributable to the fact that apparently not all national parliaments have an adequate say at Community level' The 'problem' of the 'democratic deficit' is thus best conceived not at the European 'level' but as a *universal problem* of how parliaments *sui generis* hold executives to account" (Judge 1995: 81).

3.2. National Parliaments – Solution to the Democratic Deficit?

The Treaty on the European Union (TEU) introduced two declarations on the role of national parliaments.[19] This was the first time in the history of the European integration process that heads of governments made some reference to the role of national parliaments. It encouraged greater involvement of national parliaments in the activities of the EU, and the exchange of information between the EP and national parliaments. It also invited the Conference of Parliaments to meet when necessary to be consulted on the main features of the Union. The two declarations, however, "encouraged greater involvement by national parliaments, both individually and collectively, though conferring no powers on the parliaments nor on the Conference of the Parliaments" (Norton 1996a: 7-8). The Amsterdam Treaty went further than its forerunner, adding a Protocol on the role of national parliaments in the EU.[20] The Protocol seeks to further improve the flow of information to national parliaments, and sets a six-week period that must elapse between the deposition of draft legislation by the Commission and its consideration by the Council. In the Protocol, the Conference of European Affairs Committees (COSAC) is also recognised for the first time in treaty form (Duff 1997: 176). The Treaty of Nice initiated the debate on the future of the EU, and asked for the role of the national parliaments in the European architecture to be addressed with a view to improving and monitoring the democratic legitimacy and transparency of the EU.[21]

There are two levels at which the national parliaments should operate to decrease the democratic deficit. One is the individual level, which means essentially that each national parliament becomes more active in relation to the national government, in essence scrutinising and acting as a potential constraint on government. The other is the collective level, which entails national parliaments collaborating in order to be more involved in

[19] See Annex 1.
[20] See Annex 2.
[21] See Annex 3.

scrutiny and, potentially, providing constraint at the supranational level (Norton 1996b: 183). I will now proceed to look at those two perspectives.

3.2.1. Domestic Arenas of Authorisation and Accountability

The intergovernmental model will favour domestic arenas of accountability (Weiler 1995: 28). In this perspective, the best way of giving democratic legitimacy to the Union is through the ratification of the EU Treaties by the democratic institutions of each member state and the election of national governments, whose members then go on to serve on the European Council and Council of Ministers. This is called domestic authorization (Beetham and Lord 1998: 61-62) and is the system in practice today. Since national parliaments have the possibility to appoint and dismiss the members of the Council, they are "potentially important sites of political control over the use of Union power. /…/ national parliaments offer the public an incomparable window on the political process: their procedures are broadly familiar; they are subject to intense media coverage; and their affairs are (in most cases) conducted in a single national language" (Lord 1998: 55).[22]

The answer offered by intergovernmentalists to the question of how to legitimise the EU is focused on two basic processes. In both ways it is up to national democracies to do the job. We have national parliaments and electorates, firstly, "ratifying, and periodically up-dating, the Treaties", and secondly, "forming and dismissing the governments that make up the European Council and the Council of Ministers" (Beetham and Lord 1998: 59).

[22] The problem with domestic authorization though is that the national governments who make up the Council are only individually elected in the domestic arena. They are not collectively authorized to act at the EU level, which is a crucial distinction since the Council is "far more than the sum of its parts" (Beetham and Lord 1998: 63).

Table 1: The Legitimacy Claims of the Intergovernmental Approach to the Democratisation of the EU

Best means of authorising political leadership	Best way of making EU governance representative	Best means of making EU governance accountable
1. Treaty ratifications 2. Domestic election of members of European Council and Council of Ministers	1. Representation of national governments through Council and European Council 2. National allocations of Commissioners and MEPs	Need for members of the European Council and Council of Ministers to account to national parliaments and electorates

Source: Rearranged from Beetham and Lord (1998: 60).

National parliaments enjoy several opportunities to represent the public in the EU affairs:

> /T/hey can influence the negotiation positions of their governments in advance of meetings of the Council of Ministers; they can scrutinize draft Union legislation, which, under the Amsterdam Treaty, will have to be circulated to each national parliament in its own language at least six weeks before it can be considered in the Council /…/; and they have a margin of discretion in determining the detail of how Union legislation is to be transposed into law, since directives only oblige Member States to achieve certain results, without specifying the methods to be employed (Lord 1998: 54-55).

However, there are some obstacles, facing national parliaments to represent the public at the European level. Apart from the difficulties arising from majority voting in the Council and the supremacy of European law, there are difficulties concerning expertise and information, and there are limits to the attention that national parliaments can give to EU issues. Another difficulty is that the national parliaments of Western Europe are already characterized by Executive domination and "may only become more so as a result of European integration" (Lord 1998: 57). The foreign policy method argument holds that foreign policy methods have been applied to the EU, while the EU is mostly concerned with a domestic agenda. In this way the "governments have extended executive privilege to the core of democratic politics and subjected them to a bargaining format that requires secrecy rather than transparency" (*ibid.*). To take his argument further: "the power of national parliaments to

check and balance their governments by denying them law-making authority is compromised by the power of executives to constitute themselves as legislatures in the Council of Ministers of the EU" (Lord 1998: 98-99; Beetham and Lord 1998: 73-75).

The domestic accountability model holds that the domestic arena could be used to hold the EU to account, since mechanisms of political responsibility are comparably well developed in the domestic arena but problematic in the European. Lord offers a critique of this model, claiming that its central flaw

> lies in the assumption that the Union can somehow 'take out time-share' on institutions of domestic accountability, when, in all probability, the direction of causation could well be the other way around: domestic democratic institutions are likely to be weakened by attempts to maintain the fiction that they can be used to render two very different political systems accountable (Lord 1998: 97-99).

The situation is worsened due to the fact that the intergovernmental model has been impossible to apply in its pure form; compromises with supranationalism have had to be made for the sake of performance (namely majority voting and the supremacy of the EU law). His argument ends with the statement that "the intergovernmental model may even lead to the *de*-democratization of the state rather than the democratization of the Union" since it produces an adverse shift in the balance of power from parliaments to Executives, "as the latter are inherently better placed to organize at European level and, then, to use this as a political resource in domestic politics" (Lord 1998: 98-99; Beetham and Lord 1998: 73-75).[23]

3.2.2. Interparliamentary Co-operation

The idea of interparliamentary cooperation has been brought forward by a number of authors as a possible solution to the problem of the under-representation of national parliaments in the EU. Lord (1998: 58-59) presents the idea, claiming that many difficulties could be remedied if

[23] "Even if this were not the case, there would probably be real limits to how far one political system (the European Union) can be democratised through the institution of another (the nation-state). These include: - problems of workload and access to information and expertise; - the likelihood that voters and their representatives would want to align differently in relation to the two arenas, yet be frustrated from doing so by the dependence of Union institutions on domestic ones; - the desirability of having at least some element of publicly inclusive deliberation and contestation at the level of the EU political system itself; - logically insoluble difficulties arising from the non-congruence of the two political systems, such as the impossibility of any one parliament or electorate ever being in a position to bring the whole of the Union's political leadership to account" (Lord 1998: 125-126).

> national parliaments and the European Parliament where able to 'mix their instruments' in an effective pattern of interparliamentary cooperation. The powers of each to exert control over one half of the Union's executive authority could be coordinated. /…/ The superior ability of national parliaments to engage public attention and debate could be coupled with the powers of the EP to extract information from the other EU institutions and evaluate Union policy.

Returning to the consociational theory, which seems particularly applicable here, and by widening one of its core assumptions – that there are no links between levels lower than the elite level – one can see that the transnational involvement of national parliaments in the EU policy-making could have the effect that "governments would cease to have complete discretion in the process of political accommodation at the European level" (Lord 1998: 54). "An effective model of national parliamentary participation could well have to be surprisingly *transnational* in nature, requiring certain channels of communication between the various parliaments of the Union" (*ibid.*).

There has been some moves made in this direction. As part of the preparations for the Maastricht Intergovernmental Conference, in 1990 so called 'assises' were held between national parliaments and the EP in Rome. The initial proposal for the assises was initiated by the Martin I Report which recommended that "a conference of parliamentarians should be held *before* national governments convened Intergovernmental Conferences to discuss further EC treaty amendment. /…/ Corbett concluded that the *Assises* was a 'remarkable event' in that 'never before had the parliaments who would be called upon to ratify a Treaty met jointly to discuss its possible contents before their respective governments embarked on the negotiations'" (Judge 1995: 98-90).

Another example is COSAC, where national parliamentarians and members of the EP meet to "provide a continuing review of the overall pattern of representation in relation to the Union". Members of the EP and national parliaments also frequently attend and speak at one another's committees. A system of communication between the two sets of parliaments is also offered by the fact that MEPs are recruited and elected by national parties. Other proposals have been made for the creation of a second chamber to the EP, consisting of representatives of national parliaments (Lord 1998: 58).

3.2.2.1. A Second Chamber?

The proposals considering the creation of a second chamber consisting of representatives of national parliaments share the commonality that national parliaments should be bound by some form of institutionalised mechanism for the review of Community legislation. [24]

Maurice Duverger drafted a resolution which was adopted in the EP in July 1990, in which he summed up the arguments against the creation of such a body. The first is that "the experience of the European Parliament prior to direct elections showed the limitations of any appointed or delegated body" claiming that "delegated institutions /…/ have only the weakest of consultative powers". The second is that "the Community institutions already include a body representing the electorate directly. They also include a body representing the regions, and a body representing economic and social interests. Do the national parliaments need to represent themselves in a similar fashion and, if so, is a second chamber the most appropriate way?". The third argument and the most compelling is that "decision-taking would be even more complex and, therefore, less transparent" (Westlake 1996: 173-174).

I would very much like to agree with the last criticism to the second chamber solution. Especially from the viewpoint of the democratic deficit, increasing the complexity of the EU structure together with the transparency problem does not seem an appropriate solution. This, as we shall see, is also the conclusion reached by the Working Group on the role of national parliaments to the Convention dealt with later on in this thesis.

3.2.2.2. COSAC

COSAC was established in 1989 and comprises members from the European Affairs Committees of the national parliaments. It meets twice a year and may make any contribution it deems appropriate for the attention of the EU institutions, in particular on the

[24] Michael Heseltine proposed, in 1989 "the creation of a European Senate, which would be composed of delegated national parliamentarians. In 1993, the European Policy Forum proposed a 'two-chamber parliamentary review process with delegates of national parliaments introduced as a formal element into procedures for legislative review'. In 1994, Philipe Seguin (Speaker of the French National Assembly) proposed that the European Parliament should become a senate, and that a lower chamber, composed of delegated national parliamentarians, be created. Most recently, Sir Leon Brittan has proposed the creation of a Committee of Parliaments, also composed of national parliamentarians and charged with specific tasks" (Westlake 1996: 173).

basis of certain legislative proposals. COSAC is not an independent body, and statements by the members are not binding on anyone (Hegeland and Mattson 1997: 92).

Through the COSAC network, national parliaments have linked up with each other and the EP, to exchange information and assessment (Beetham and Lord 1998: 71). In this regard, the body is deemed very useful by some of the parliamentarians I interviewed. It is very good for making contacts between different parliaments, and an important forum where parliamentarians work towards common positions.[25] "In the foreseeable future it will surely play an important role as a meeting point."[26]

But COSAC is also a good example of the problems inherent in the EU. Meetings are said to be disorganized, since all the countries have different routines. Also, the continuity of the meetings is damaged because different people attend the meetings every time. "COSAC needs to be attended to in the future. It needs to be organised. A few weeks before the summits COSAC has a chance to exert influence, but if we cannot unite and work out a strong document, well then we have missed the opportunity. And I think opportunities have been missed".[27] To some it seems that COSAC is not very good for strengthening the role of national parliaments since "COSAC does not seem to make a great impact".[28]

> It has turned out that COSAC is of great interest for the parliaments that have a bad control over their governments. They look for an instrument of control and influence through COSAC, while we (Sweden) don't have great confidence in COSAC. It is a good place to meet and discuss with our colleagues from other Member States, but it is no place for handling current issues. A good place for net-working, and good for discussing certain themes, but that is it.[29]

So here we have it, a good meeting point for discussion, hardly anything more. To put it more in the context of the democratic deficit: "Even though COSAC may serve a useful purpose, we are not too optimistic about its possible contribution to openness and influence /…/. The EU does not need more complicated decision making rules, rather it should try to simplify those that do exist" (Hegeland and Mattson 1997: 92).

[25] Interview with Carlström, 16th May 2002.
[26] Interview with Biörsmarck, 17th May 2002.
[27] Interview with Carlström, 16th May 2002.
[28] Interview with Andreasson, 16th May 2002.
[29] Interview with Gustavsson, 22nd May 2002.

3.3. A Partial Role to Play?

There are some limitations to the role that national parliaments could play in the EU. First of all, the different national constitutions have different norms and provisions, where some have facilitated the integration of the state into supranational processes and others have created difficulties. Besides, the European Treaties have accorded no formal role to the national parliaments. The declarations appended to the treaties are "pale into insignificance alongside the power shifts effected by the Single European Act and Maastricht Treaty" (Norton 1996b: 187). Moreover, the extension of qualified majority voting in the Council limits the capacity for the national parliaments to have an impact on outcomes. Even if the role of the national parliaments is strengthened in relation to national governments, the national governments are now themselves limited in their capacity to prevent undesired outcomes (*ibid.*).

Secondly, procedures and workloads of the national parliaments vary from one parliament to another. In some parliaments, responsibility for consideration of EU documents lies with subject-specific committees, with the European Affairs Committee acting as a co-ordinating body rather than as the lead committee for discussing such documents. There are procedural differences that mean that there is no standard 'European Affairs Committee' in the parliaments of the Member States. These differences, then, limit the capacity for collective action and influence by the national parliaments. "To talk of European Affairs committees is to convey an impression of a uniformity that does not exist" (Norton 1996b: 187-189). The existing workload of some parliaments means that it will be difficult for them to be more involved in the EU affairs. "Constitutional and procedural variables combine, then, to limit the capacity of national parliaments to have a significant impact on EU affairs" (*ibid.*). Norton (1996b: 192) concludes his argument that:

> If national parliaments are to contribute to remedying the deficit /…/ then it is far from clear what they can do in order to achieve that. They lack any formal role in the process and there is no obvious means by which they can achieve that role, even if they want to.

Regardless of this critical standpoint, I would continue to state that national parliaments have an important role to play in diminishing the democratic deficit. It is only partially possible for this set of bodies to help out, but definitely their role is very important. I believe the remedy of the democratic deficit has to come from many different stances, the

national parliaments not being an unimportant one, especially when fulfilling the role set out in intergovernmental theory, according to the domestic accountability model, as outlined in this chapter.

The role of the national parliaments have become a matter of great interest in the last few years, only to peak in the Convention on the Future of Europe, and the drafting of the Draft Treaty Establishing a Constitution for Europe. I will turn to these events in the following chapter. As we shall see, the arguments and proposals brought forward by the Working Group on the role of national parliaments heavily draw on the domestic accountability model discussed in this chapter.

4. NATIONAL PARLIAMENTS AND THE CONVENTION ON THE FUTURE OF EUROPE

"How can they regain some of their lost powers?"

(Maurer, WG IV – WD 8: 3)

4.1. The Initial Phase and the Laeken Declaration

One of the aims of the Treaty of Amsterdam was to enhance the democratic legitimacy of the EU. The EU would become more transparent by publishing voting results from the Council, and by making documents of the EP, Council and Commission available to the citizens of the EU. It also increased the role of the EP in decision-making procedures. The Treaty includes a special protocol on the role of the national parliaments,[30] which states that parliaments should receive better information in a timely fashion ahead of different EU-decisions. It sets as a guiding principle an elapse of six weeks from when the proposed legislation is made available by the Commission, to when the proposal is put on the agenda of the Council.[31]

The institutional changes inherent in the Amsterdam Treaty were not deemed sufficient for the forthcoming enlargement of the EU. Therefore it was agreed that an Intergovernmental Conference (IGC) would be held to deal with 'the leftovers from Amsterdam' before the European Council in Nice in December 2000. The result of the Conference was the Treaty of Nice, which includes provisions to adapt decision-making

[30] See Annex 2.
[31] *EUSVAR – frågor och svar om EU*, http://www2.riksdagen.se/Internet/EUsvar.nsf (23rd October 2003).

procedures and the EU institutions to an enlarged EU. For example, the use of a qualified majority voting in the Council was extended significantly at the expense of unanimity. In a declaration to the Treaty of Nice[32] a continuation of the debate on the future of the EU is initiated, as a preparation for a new IGC. The Swedish and Belgian Presidencies encouraged wide-ranging discussions with representatives of the national parliaments and all those reflecting public opinion, namely political, economic and university circles, as well as representatives of civil society, etc. The goal was to stimulate a debate on the future of the EU with a view of monitoring and increasing its democratic legitimacy and openness. A step in that direction would be to establish a European Convention on the Future of the EU (hereafter the Convention).[33]

On the 15th December 2001 the Laeken European Council decided to assemble the Convention to pave the way for an IGC (scheduled for 2004) with the goal to revise the EU Treaties. The Laeken Declaration on the Future of the European Union, adopted by Heads of State and Government at this European Council meeting, also set the agenda for the drafting of the Convention in the form of a series of questions. The task of the Convention is to identify the key issues arising for the Union's future development, and to provide various possible answers (CONTRIB 10, CONV 27/02, 10.4.02: 3). The Laeken declaration is concerned with the democratic challenge facing Europe, stating that the Union must be brought closer to its citizens. Citizens often feel that deals are "all too often cut out of their sight" and that "they want more democratic scrutiny". "In short, citizens are calling for a clear, open, effective, democratically controlled Community approach" (Laeken declaration on the Future of the European Union 2001: 20-21).

The European Council, both at Nice and at Laeken, decided that the role of the national parliaments is one of the main issues to be treated by the Convention and subsequently by the next IGC. The future role of the national parliaments in the EU architecture is being discussed with a view of increasing the democratic legitimacy of the EU. In this spirit, the Laeken declaration states that the national parliaments contribute to the legitimacy of the European project, and stresses the need to examine their role in European integration. Convinced that the democratic legitimacy and transparency of the present institutions can be increased with the help of the national parliaments, seeking a thorough examination of the ways to achieve this goal, the following three questions are put forward in the declaration:

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[32] See Annex 3.

[33] *EUSVAR – frågor och svar om EU,* http://www2.riksdagen.se/Internet/EUsvar.nsf (23rd October 2003).

> *- Should they (the national parliaments) be represented in a new institution, alongside the Council and the European Parliament?*
> *- Should they have a role in areas of European action in which the European Parliament has no competence?*
> *- Should they focus on the division of competence between Union and Member States, for example through preliminary checking of compliance with the principle of subsidiarity?* (Laeken declaration on the Future of the European Union 2001: 22-23)

The Working Group on the role of the national parliaments (hereafter the Working Group) has sought to provide answers to these questions in its final report, working papers leading up to the final report, as well as in various contributions supplied by different authors.[34] The final document of the Convention is the Draft Treaty Establishing a Constitution for Europe (hereafter Draft Treaty), and it was presented to the European Council in Thessaloniki in June 2003. I will in this chapter give an account of the conclusions made by the Working Group, and their justifications, as well as an account of the provisions regarding the role of the national parliaments included in the Draft Treaty.

As we shall see, the suggestions brought forward by the Working Group are typically intergovernmental in character, thereby providing a counterweight to the White Paper on European Governance given by the Commission before the Laeken European Council, initiating the debate. The White Paper suggests a more efficient and democratic governance of the Union by strengthening supranational institutions, such the European Parliament and the Commission, promoting the so called 'Community method'.[35] In this way it states that "/t/he European Parliament should play a prominent role" and later that "the involvement of national parliaments /…/ could also be encouraged" (COM (2001) 428 final: 16-17).[36] This point is further emphasized in the Communication issued shortly before the convening of the Laeken summit, where the Commission accounts for the role of the national parliaments in present arrangements as being quite sufficient, stresses that the role of national parliaments cannot be studied without taking into account the democratic balance between the

[34] Partly, the issue has also been discussed by the Working Group on the Principle of Subsidiarity. *WORKING GROUP I Subsidiarity*, http://european-convention.eu.int/doc_register.asp?lang=EN&Content=WGI (4th December 2003).
[35] "The Community method guarantees both the diversity and effectiveness of the Union. /…/ It provides a means to arbitrate between different interests by passing them through two successive filters: the general interest at the level of the Commission; and democratic representation, European and national, at the level of the Council and European Parliament, together the Union's legislature. /…/ The use of qualified majority voting in the Council is an essential element in ensuring the effectiveness of this method" (COM (2001) 428 final: 8).
[36] I would like, by giving account for these sentences, to show the different strength in formulation regarding the role wished for to be played by these separate set of bodies.

common institutions at the EU level, and continues to state (as is commonly done by this body) the importance of effectiveness in decision-making processes and the need to extend the scope of majority voting to this end.[37] In this spirit it ends by stating that the Community method has moved away from intergovernmental frameworks (COM (2001) 727 final: 7-8).

> /I/nstead of also trying to strengthen the relations with /…/ elected and therefore democratically legitimated governmental authorities, the Commission wants more intense partnership relations with non-governmental organisations which, as 'actors most concerned', should take responsibility for the preparation and enforcement of rules (Höreth 2002: 13-14).

4.2. The Role of National Parliaments Evaluated

Perhaps it is possible to claim that national parliaments already play a significant role in the EU affairs, since they have obtained an indirect role in the EU governance through national institutional reforms and new treaty provisions (the Maasticht declaration, the Amsterdam Protocol and the Nice declaration).[38] At the individual level, this involves the exercise of parliamentary control on the governments during the scrutiny process in the field of the EU affairs, and the harmonisation of the national legislation with the *acquis communitaire*; at the collective level by playing a consultative role in the form of interparliamentary cooperation (COSAC and other interparliamentary forum) (WG IV – WD 26: 2). But since there seems to be a general agreement that the role is still not significant enough, the Working Group has sought to come up with suggestions as to how this role can be further strengthened and amplified, so as to make sure that national parliaments will not be bypassed in future EU development.

Starting out from the conviction that national parliaments, strong in relation to their governments, are in the interest of the EU, one can make some assumptions. For example, it has been claimed (WG IV – WD 18: 3) that ministers can negotiate with more confidence if backed by parliamentary support for the general directions of negotiations, and it is only with the backing of the national parliament that the government can be a trustworthy partner to an agreement. Furthermore, a strong role for the national parliaments in the EU means that the EU can be brought closer to the citizens since the citizens are familiar with

[37] Effectiveness is very often used in the literature as a possible counter-argument to greater involvement by national parliaments in EU decision-making, since it is widely presumed that this involvement would hamper the process in different ways.
[38] See Annex 1-3.

their parliament and know how to follow the issues that are discussed there. If the national parliaments follow EU matters throughout the decision-making process, and debate the issues in public, the chances that the citizens feel that they are part of the EU process increase. "/A/ large part of the task of shaping our citizens' view of the European Union lies in the hands of national parliamentarians" (CONTRIB 135, CONV 390/02: 3).

An interesting argument brought forward in the debate was, that national parliaments could and should play much more of a role in (co-) shaping the political agenda of the EU, which would encourage a sense of shared ownership in the European project. One suggestion of this kind is the inclusion of the national parliaments in the election of the President of the Commission, whose position would thereby be legitimised further. To this end a congress consisting of the whole EP and an equal number of national parliamentarians would meet every five years, immediately following the EP elections, to elect the new President of the Commission (WG IV – WD 4: 4-5).[39] Two other proposals regarding the setting of the agenda were brought forward by Ms. Danuta Hübner (member of the Convention), (CONTRIB 135, CONV 390/02: 4), namely that representatives of the national parliaments be invited to annual debates on the strategic agenda for the EU; and that they should influence policy-making in the EU through a constitutional review mechanism that would need to be set up in the forthcoming Treaty.

Regarding the importance of the national parliaments as a source of legitimacy for the EU, the Working Group suggested that the role of the national parliaments should be explicitly recognised in the constitutional Treaty resulting from the work of the Convention. "The new constitutional treaty could recognise and describe, using appropriate wording, the role national parliaments have in the EU institutional system" (WG IV- WD 30: 2). Or: "The role of national parliaments in relation to ensuring democracy in Europe should be mentioned in the *preamble to the new Treaty or be inserted into it in some other way*" (CONTRIB 241, CONV 552/03: 5).

The Working Group made, in its final report, some general observations and recommendations regarding the role of the national parliaments in the EU. It underlines that the role of the national parliaments should not be one of competition with the EP, since these two bodies are complementary and share the same objective, which is "bringing the EU closer to citizens and thus contributing to enhancing the democratic legitimacy of the Union". The Working Group stresses further that a future Constitutional Treaty of the EU should contain a

[39] The precise details of the proposal is formulated by Sören Lekberg (CONTRIB 203, CONV 500/03).

clear recognition of the active involvement of the national parliaments in the activities of the EU (as mentioned above), especially in ensuring the scrutiny of governments' action in the Council, including the monitoring of the respect of the principles of subsidiarity and proportionality. National parliaments should use all their possibilities to influence the Council through their governments, to which end more openness and transparency in the work of the Council is required. Finally it recommends that records of Council proceedings should be sent within ten days to the EP and the national parliaments, parallel to the transmission to governments (WG IV 17, CONV 353/02: 2-4).

There are three basic headings under which the Working Group departmentalised its work. These are: the role of the national parliaments in scrutinizing governments (national scrutiny systems); the role of the national parliaments in monitoring the application of the principle of subsidiarity, and; the role and function of multilateral networks or mechanisms involving the national parliaments at the European level (WG IV 17, CONV 353/02: 2). I will hereby give an account for the first and third headings, leaving out the second since it falls out of the scope of the present paper.

4.2.1. National Scrutiny Systems

In the Final Report of the Working Group, it was agreed that national scrutiny systems are the most important aspect of the involvement of the national parliaments in the EU system. This is understandable regarding "the relatively large margin for manoeuvre enjoyed by the governments in EU affairs" (CONTRIB 135, CONV 390/02: 3). However, no general recommendations were made. This is because there was recognition that the different systems for the national parliamentary scrutiny reflected "different arrangements for the relations between governments and national parliaments in conformity with constitutional requirements in individual Member States, and that it would not be appropriate to prescribe at European level how the scrutiny should be organised" (WG IV 17, CONV 353/02: 4). In the debate foregoing the final report, it was brought forward by one member of the Convention (Ms. Eduarda Azevedo) that, regarding the parliamentary control of the respective Executives

> there are different systems, some more 'efficient and systematic' than others, which were already subject of studies and comparisons. It is a question that should be left to the internal organisation of each State. /…/ Both the exchange of information carried out in several interparliamentary meetings and the protocols provided for in the Treaties were very useful; however, Parliaments

> cannot be forced to systematically appraise each and every European decision. The effort, justified by the struggle against the European democratic deficit, may be regarded as an implied criticism to a smaller democracy of the States wherein Parliaments are less involved, but this criticism should be avoided (WG IV – WD 25: 2).

This statement clearly indicates how delicate the issue of internal organisation of national scrutiny is. Presumably it is due to such protests that no stronger recipe in this area could be prescribed, regardless of the obvious importance of the issue, and this is why formulations such as: "this role of national parliaments in the process of scrutiny should be played in the way and through the methods each national parliament considers more suitable and effective and according to the constitutional, procedural, ideological and cultural conditions prevailing in each country" (WG IV – WD 26: 3) seem to have been strongly preferred in the debate.

It was however considered useful to look at different national systems to try to identify best practice, and the Working Group recognised a number of basic factors that have an impact on the effectiveness of scrutiny: the timeliness, scope and quality of information, covering all activities of the Union; the possibility of a national parliament to formulate its position with regard to a proposal for a EU legislative measure or action; regular contacts and hearings with Ministers before and after Council meetings, as well as European Council meetings; active involvement of sectoral/standing committees in the scrutiny process; regular contacts between national parliamentarians and MEPs; availability of supporting staff, including the possibility of a representative office in Brussels (WG IV 17, CONV 353/02: 4-5).

The role of COSAC was emphasized as a possible means of a more systematic form of exchange of information about methods and experiences, since this would presumably increase the knowledge and awareness of EU affairs, and improve the efficiency of the national parliamentary scrutiny. To this end, COSAC could draft guidelines or a code of conduct for national parliaments, setting out desirable minimum standards (WG IV 17, CONV 353/02: 5) (CONTRIB 135, CONV 390/02: 3).

The Working Group would also like to see that consultative and legislative documents from the Commission (green papers, white papers and communications) be transmitted directly to the national parliaments simultaneously as to the national governments (although the primary responsibility in passing these documents on should rest with the governments), to further strengthen the national parliaments' access to information. This is to increase the ability of the national parliaments to react to proposals at an early stage, since, as

the arrangements stand today, this is not fully exploited (WG IV 17, CONV 353/02: 6). The Commission feels that it has no problem with transmitting these documents to the national parliaments directly if "Member States are content that this is consistent with each country's constitutional relationship between governments and national parliaments" (WG IV – WD 9: 4). The Commission already gives open access to all documentation via the Internet (which is not the same thing).

The six-week period that elapses between the commencement of proposals for adoption and the date when it is placed on the Council agenda, prescribed in the Protocol on the role of national parliaments annexed to the Treaty of Amsterdam, is seen as sufficient. However, the Working Group still express concern regarding the possibility of preliminary agreements being reached in Council Working Groups within the six-week period, before the national parliaments have been able to make their views known to their government. Therefore the Working Group considered that no such preliminary agreements should be acknowledged in the Council, including Working Groups and Committee of Permanent Representatives (COREPER), in the course of this six-week period (WG IV 17, CONV 353/02: 7).

In the debate foregoing the Final Report, it was emphasized that decisions taken at the EU level must often be implemented and carried out in the Member States through the national parliaments. It is easier for the parliaments to make the necessary decisions if they are familiar with the issues and have a chance to influence the decisions – thereby it is less likely that the final EU decisions will be in conflict with the national legislation. One reason for the Scandinavian Member States being successful in implementing directives within the given time limits, is that the directives are already well known to the parliaments, since they have followed them during the EU decision-making process (WG IV – WD 18: 3).

4.2.2. Mechanisms Involving National Parliaments at the European Level

> /N/ational parliaments acting alone, and only at the national level, are not able effectively to control governments which, for their part, work together within the Council. National parliaments must be able to co-operate, to be made aware of each other's positions, to exchange information and best practices, and, when the need arises, to express their common concerns (CONTRIB 205, CONV 503/03: 3).

It seems obvious that enhanced cooperation between the national parliaments on the one hand, and between the national parliament and the EP on the other, is an essential factor to strengthen the role of national legislatures within the EU. In this respect, COSAC was and is a widely discussed issue in the debate foregoing and following the final report. The main lines of this discussion concern first and foremost how to improve or reform the role of COSAC.

There were some other suggestions brought forward in this respect, amongst them that a permanent Secretariat should be established to facilitate "greater continuity and better efficiency". The Secretariat would ensure the strengthening of contacts between the EP and the national parliaments and would be a practical step in the direction of promoting the role of this body (CONTRIB 205, CONV 503/03: 4). The Secretariat would also ensure exchange of information and experience among the national parliaments, distribute proposals and opinions of COSAC to the EU institutions, and organise regular meetings between specialised committees of the national parliaments on EU issues (CONTRIB 75, CONV 220/02: 5). Moreover it was stated that "COSAC could act as a means of ensuring the legitimacy of the decisions in those areas in which the /EP/ does not have competence" (WG IV – WD 26: 4). It was further demanded that the reform of COSAC be incorporated into the new Treaty (CONTRIB 241, CONV 552/03: 4).

In the final report, there was a recognition of the importance of networking and regular contacts between national parliaments as well as between national parliaments and the EP, for the exchange of information and experience and to foster a greater understanding and involvement of national parliaments in the activities of the EU (WG IV 17, CONV 353/02: 12). The exchange of information between parliaments, including best practice exchange and benchmarking in national scrutiny is instrumental in improving the capacity of the national parliaments to deal with the EU issues and strengthening the link with the citizens. The mechanisms already established for exchange are not used to their full potential. Therefore the mandate of COSAC should be clarified, so as to strengthen its role as an interparliamentary consultative mechanism and making it more efficient and focused. In addition to enabling contacts between European Affairs Committees, COSAC could also provide a platform for contacts between sectoral standing committees of the national parliaments and the EP (WG IV 17, CONV 353/02: 13). The provision of the Amsterdam Treaty Protocol state that COSAC may make any contribution it deems appropriate for the attention of the institutions of the

EU,[40] but the Working Group also considered that these institutions should be obliged to react to such contributions. For example COSAC could invite a Member of the European Commission or a representative of one of the institutions to a hearing, or the institution could reply in writing (WG IV 17, CONV 353/02: 14).

Many suggestions were brought forward, describing the advantages of a creation of a new body, a Second Chamber to the EP, or a Congress consisting of members of national parliaments (CONTRIB 1, CONV 12/02; CONTRIB 40, CONV 84/02). Although this can be considered an interesting line of thought, the Working Group did not agree this to be an appropriate solution, due to the fact that one of the main issues in the democratisation debate is how to simplify the process of EU decision-making. Furthermore, the Working Group found it difficult to see how the creation of any new institution could assist in the process of simplification (WG IV 17, CONV 353/02: 12). As expressed by some Members of the Convention (CONTRIB 75, CONV 220/02: 5): "it would complicate the already cumbersome EU structure and decision-making system and cause unnecessary competition between the two chambers. Moreover, parliamentarians would not have enough time to duly perform their duties in the second EP chamber and in the home parliament at the same time".

To complement regular contacts, the Working Group found that there were grounds for other contacts between the national parliamentarians and the MEPs on specific issues on an *ad hoc* basis. In this respect the Working Group would welcome *ad hoc* interparliamentary conferences on sectoral issues where the gap between national positions block agreement at the EU level (WG IV 17, CONV 353/02: 14).

An EU-wide European week was suggested to be scheduled at the same time as the presentation of the Commission's annual policy strategy, so as to "create a common window for debates in the national parliaments, involving Members of the European Parliament, and possibly also Members of the European Commission as well as representatives of national governments, thus raising national awareness of the activities of the European Union" (WG IV 17, CONV 353/02: 15).

[40] See Annex 2.

4.3. The Recommendations Made by Working Group IV and the Draft Treaty Establishing a Constitution for Europe

The Working Group came to a several conclusions, or rather, formulated a few recommendations. I will first consider them, and then focus on those recommendations, which were actually taken account for in the Draft Treaty.

The Working Group found that it is important that the national parliaments have the possibility to formulate their own positions on all proposals for the EU legislative measures and actions. For that purpose an amended version of the Amsterdam Treaty Protocol on the role of the national parliaments in the European Union should include provisions stating that:

- The Amsterdam Treaty Protocol should be strictly observed, including the six-week period, with exceptions on the grounds of urgency as set out in the Protocol.
- Council Working Groups and COREPER should not acknowledge preliminary agreements on proposals covered by the six-week period of the Protocol until the end of that period, with exceptions on the grounds of urgency as set out in the Protocol.
- Parliamentary scrutiny reserves should be given a clearer status within the Council's rules of procedure. Such reserves should furthermore have a specified time limit, so as not to unnecessarily block the decision procedure.
- The Council's rules of procedure allow a clear week to elapse between a legislative item being considered at COREPER and the Council.
- The Commission should transmit all legislative proposals and consultative documents simultaneously to national parliaments, the EP and the Council.
- The Commission should transmit the Annual Policy Strategy and annual legislative and work programme simultaneously to the national parliaments, the EP and the Council.
- The Court of Auditors should transmit its annual report simultaneously to the national parliaments, the EP and the Council (CONV 353/02, WG IV 17).

Regarding the role of the national parliaments at the EU level, the Working Group concluded that COSAC could consider drafting guidelines and/or a code of conduct for

national parliaments (setting out desirable minimum standards for effective national parliamentary scrutiny), and provide the platform for a regular exchange of information, best practice and benchmarking of national scrutiny mechanisms. A mechanism should be set up to allow national parliaments to convey early on in the legislative process their views on the compliance of a legislative proposal with the principle of subsidiarity. Such a mechanism should be process-based and it should not hinder or delay the legislative process. The mandate of COSAC should be clarified to strengthen its role as an interparliamentary mechanism. It could act usefully as a platform for a regular exchange of information and best practices, not only between European Affairs Committees, but also between sectoral standing committees. It should become a stronger network for exchange between parliaments; interparliamentary conferences on specific issues could be convened as the need arises. Moreover, a European Week should be organised each year to create a common window for EU-wide debates on European issues in every Member State (CONV 353/02, WG IV 17).

In the Draft Treaty there is a protocol on the role of the national parliaments in the European Union,[41] which is a proposed amended version of the protocol to the Amsterdam Treaty. It provides for all legislative proposals to be sent to the national parliaments simultaneously as to the Council and the EP. The Commission shall forward consultation documents, annual legislative programme and any other instrument of legislative planning or policy strategy directly to the national parliaments at the same time as to the Council and the EP. A six-week period is set forth to elapse between a legislative proposal is being made available by the Commission and the date when it is placed on the agenda of the Council for adoption (with the only exceptions on the ground of emergency, the reasons for which must be stated in the act or position of the Council). Moreover, ten days must elapse between a proposal being placed on the agenda and its adoption. The agendas for, and the outcomes (including the minutes) of, meetings where the Council is deliberating on legislative proposals, must be transmitted directly to the national parliaments as well as to the governments. The Court of Auditors is to send its annual report to the national parliaments for information at the same time as to the EP and the Council. In case of bicameral national parliaments, the provisions accounted for above will apply to both chambers (Draft Treaty Establishing a Constitution for Europe 2003: 109-111).

Regarding interparliamentary co-operation, it is stated in the Draft Treaty (2003: 111-112) that the EP and the national parliaments shall determine how interparliamentary co-

[41] See Annex 4.

operation is to be organised and promoted within the EU. Regarding COSAC, the Draft Treaty says that it may submit any contribution it deems appropriate for the attention of the EP, the Council and the Commission. COSAC should also promote the exchange of information and best practice between the national parliaments, the EP as well as between special committees. It may also organise Interparliamentary Conferences. However, contributions from COSAC should in no way bind the national parliaments or prejudge their positions.

4.4. Conclusions

"An increased role for national parliaments would help to make the Union more democratic and bring it closer to the citizens" (CONTRIB 205, CONV 503/03: 3). This statement concisely sums up the underlying lines of thought of the whole debate on the role of the national parliaments in the EU. The popular demand for greater democracy, more openness and transparency in the EU has increased partly because increasingly decisions at the EU level have consequences for the individual citizen's everyday life. There is a heightened "need of the individual citizen to be able to understand the purpose of and the underlying decision-making process for the decision on the part of the EU. It follows that there is a natural desire for joint influence on, participation in and information on the debate that is a normal part of any democratically based decision" (CONTRIB 241, CONV 552/03: 3). The national parliaments will continue, for the foreseeable future, to be the main representatives of the political sovereignty and democratic identity of the peoples of the member states (CONTRIB 38, CONV 82/02: 4).

Regarding the recommendations made by the Working Group, and the outcome of the Convention – the Draft Treaty – we can conclude that to a large extent, the recommendations made by the Working Group were taken account for. The Draft Treaty could be said to include a revised version of the Protocol from the Amsterdam Treaty, and the protocol is far-reaching in defining the role of the national parliaments in the EU structure in a positive way (meaning increasing the opportunity for involvement of the national parliaments in EU decision-making through the application of the domestic accountability model). This is a step ahead from the current state of matters, where the national parliaments surely have some recognition in the treaties, however not formulated very strongly or in detail.

In the next chapter I intend to extend the debate by studying a specific case of parliamentary scrutiny and domestic accountability, namely the Riksdag. I am to investigate

how well the system established in Sweden functions, and to seek opinion of those people in the Riksdag mostly involved with EU matters (the members of the EU Advisory Committee).

5. SWEDEN, THE RIKSDAG AND THE EU MEMBERSHIP

"The fundamental problem can be stated as a question: how can institutions be designed to grant governmental agents the discretion and ability needed to act efficiently in the interest of all citizens and yet impede those agents from pursuing their own interests at the expense of the citizens?" *(Hegeland and Mattson 2000: 81)*

In 1990, the Social Democratic government announced that a Swedish membership in the EU, together with a preserved policy of neutrality, was in the national interest of Sweden. The Riksdag stood behind the government's position, all the four main political parties being in favour of membership.[42] Only the Left Party and the Green Party opposed membership.

Sweden applied for membership on 1st July 1991 and negotiations were initiated on 1st February 1993 and concluded in April 1994. The Treaty was signed on 24th June 1994 in Corfu. On 13th November the same year Sweden held a referendum; 52,3% voted in favour of Swedish membership, 46,8% against, and 0,9% empty votes were received. The participation was the highest ever in a Swedish referendum – 83,3% (Algotsson 2000: 34-35).

On 1st January 1995 Sweden became a member of the EU. This historical event in the history of Sweden was preceded by long and exhaustive debates, many of them circulating around the burning issue of how to deal with membership whilst avoiding the dissolution of large portions of national sovereignty, and how to retain the democratic political system that Sweden had gained worldwide recognition for.

5.1. Constitutional Change

The Swedish accession to the EU produced constitutional changes, namely provisions regarding the elections to the EP written in the Instrument of Government (hereafter IG) 8:4; provisions regarding the transfer of decision-making powers to the European Communities in IG 10:5; and a new chapter in the Riksdag Act (hereafter RA),

[42] The Moderate Party (Swedish Conservative), the Liberal Party, the Centre Party, and the Social Democratic Party.

chapter 10, regarding the Conduct of European Union business in the Riksdag. I will attend to the last two changes.

5.1.1. Changing the Instrument of Government

In Sweden, rule-making and other public law-functions may be performed only by bodies whose competence has direct support in fundamental law. Therefore delegation of decision-making competence to a foreign or international body presupposes express support in the fundamental laws (Holmberg and Stjernquist 2000: 37-38). Obviously, the EU-membership creates a delegation of decision-making competencies, and a change of the fundamental laws was necessary to make accession legally possible.

In 1991, a parliamentary investigation was launched to consider which constitutional changes would have to be undertaken to make Swedish EU membership possible. The chairman of the committee in charge of the investigation was Olof Ruin (thus the name 'the Ruin-Committee'), professor of political sciences. In 1993, a report was issued by the investigation. Two changes in the IG were suggested.

The first proposal was that IG 10:5 be changed by adding a new passage. Accordingly, a right of decision-making could be transferred to the EU if three quarters of the voting supported the transfer. Alternatively, a decision of the kind could be taken in the same way as an enactment of a fundamental law (Algotsson 2000: 35).[43]

The second proposal was the victim of considerable controversy. It suggested a change in the first chapter of the IG, regarding the basic principles of the form of government, by adding a new paragraph in the form of a 'general clause'. The general clause contained provisions stating that, through Swedish membership and the decision by the Riksdag to transfer the right of decision-making to the EU, the obligations following from the accession would remain in force regardless of that prescribed in fundamental law or any other law (Algotsson 2000: 35). Thus, the suggestion was to put wording into the Swedish Constitution underlining the supremacy of EU law over national. This was unpopular and therefore the proposal was rejected.

Before EU-membership, Chapter 10:5 of IG consisted of today's 2-4th passages.[44] In these passages the transfer of a right of decision-making to an international

[43] See Annex 5.

[44] The new passage (1st passage) states that the Riksdag may transfer a right of decision-making to the European Communities so long as the Communities have protection for rights and freedoms corresponding to the IG and

organisation is made possible only to a limited extent. The Ruin-committee considered that the transfer of such decision-making rights that comes with EU membership could not be labelled limited. This could be the situation if unanimity was the exclusive voting arrangement in the Council; then every Member State would retain control over how to use the delegated decision-making. But qualified majority voting in the Council changes that. Member states can be outvoted at the Council, but the new laws are still applicable to all members. This surely means a limitation to national sovereignty. The suggestion to change Chapter 10 in the IG by adding a passage was deemed an appropriate solution, and was subsequently accepted by the Riksdag (Algotsson 2000: 274-277).

5.1.2. Changing the Riksdag Act

With EU membership, domestic politics are to some extent made foreign politics, for reasons accounted for earlier in this thesis (decision-making held mainly in the hands of the Executive, advisory role of the national parliaments, lack of transparency and secrecy in the decision-making process which is necessary when conducting negotiations on an international level). This is why the question of the interaction between parliament and government is of special interest when focusing on the EU. So how did they formulate the co-operation of the Riksdag in matters dealt with by the EU institutions?

The regulations regarding the Riksdag's co-operation with the government in EU-matters is now collected in a special chapter (nr 10) in the RA.[45] Before agreeing to a solution, there were three alternative solutions discussed. Some argued that the Advisory Committee on Foreign Affairs should deal with EU-related matters, but this solution was soon abandoned due to the fact that the workload would be too heavy on this committee. Others argued in favour of letting the standing committees deal with EU matters within their respective fields of competence. In this way, the whole Riksdag would naturally integrate into the work of the EU. But there were three arguments against this proposal: The standing committees are not councils for consultations – their primary role is the preparation of draft legislation; their workload would be too heavy having to deal with EU matters as well; moreover, the Riksdag would lack a body that has an over-arching review of EU politics, a review that could be deemed very useful (Algotsson 2000: 282-283).

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the European Convention for the Protection of Human Rights and Freedoms. The Riksdag authorizes such transfer with the support of at least three quarters of those voting, or according to the procedure prescribed for the enactment of fundamental law (The Constitution of Sweden, Instrument of Government, Chap. 10 Art. 5.).

[45] See Annex 6.

Sten Heckscher was the chairman of an investigation dealing with the forms of co-operation between the government and Riksdag regarding EU-matters. The investigation (just like the Ruin-led investigation) suggested the creation of a special committee for EU-matters, an EU Advisory Committee. The government would be obliged to keep this committee informed on all matters dealt with in the Council, as well as holding consultations with it before taking significant decisions on the Council (Algotsson 2000: 36). This solution was deemed the most appropriate and was subsequently accepted by the Riksdag.

5.1.3. Constitutional Change and Democracy

The question I now turn to is how we can view the change of constitution described above from a democratic perspective. One issue at stake for Sweden, as for all member states, was the matter of democratic process versus efficiency. In this perspective, the loss of sovereign decision-making at home is made up for a greater influence in decision-making at the EU level. The so called 'sovereignty calculation', brought forward in the proposition for the EU membership in 1994 (Prop. 1994/95:19) under the chapter called "Democracy and Influence", states that Sweden's capability to make decisions on its own in areas covered by the Treaties will formally weaken. However, the actual power of decisions will be enhanced. Through "the enhanced power of decisions that we will enjoy together with other States in the EU, who are, like us, strongly anchored in the western democracy, we will also strengthen the grounds for our own democracy". This paradoxical relationship is due to the connection to international development, and the fact that national self-determination is diminishing because of the difficulties sometimes occurring in realizing decisions made at home by democratic institutions. "The weakening of Swedish decision-making power and thereby democracy in our country can be compensated for by gaining a vote in Europe" (Algotsson 2000: 37).

Clearly, in the line of argument brought forward in the 'sovereignty calculation', the central notion is efficiency, whereas democracy as a process is absent. It is not mentioned whether the process, through which the supposedly enhanced influence is to be exercised, is democratic. It is political outcome that counts. Another matter of interest in the argument above is the western democracy-argument. It is one thing if the member states have democratic forms of government, another if the EU is democratic, or rather, if it has a democratic decision-making procedure.

What is brought forward as an argument in favour of the democratic legitimacy of the EU is the domestic ratification of the Treaties by democratic institutions (as I have mentioned earlier on). Here Sverker Gustavsson offers an analysis; his point is that one has to differentiate between the origins of the EU and the EU's constitutional character. Now, the Swedish government and Riksdag tried to show, in their rallying for the EU membership, both that the transfer of the right of decision-making would be limited, and that the EU is democratic (Algotsson 2000: 44). It is clear however, that the transfer of the right of decision-making as realised with the constitutional changes described above, was not limited, meaning that what really happened was that a new division of powers was introduced into the Swedish political system. Moreover – a transfer of the right of decision-making was made to a body, whose democratic character of decision-making procedures is highly disputed (the Council).

5.2. The EU Advisory Committee and Other Arrangements

Using Denmark as an example, an Advisory Committee on European Union Affairs was established in the Swedish Riksdag to confer with the government on an ongoing basis. Ministers are able, at regular meetings, to keep members informed and solicit their views. The Advisory Committee cannot issue binding instructions for Swedish action at the Council (Holmberg and Stjernquist 2000: 41).

The purpose of the establishment of the EU Advisory Committee was to allow the Riksdag to maintain control over how the different members of government act and vote at the Council. To this end, the government has to consult the Advisory Committee on all important issues that are to be decided by the Council. The government also has to consult the Advisory Committee on all issues that the Committee decides. The denomination 'Advisory Committee' denotes that this organ is not authorised to prepare or draft proposals, unlike the standing committees, but that it acts as a consultation body.

The EU Advisory Committee consists of seventeen members, like all other standing committees in the Riksdag, and every party is represented in proportion to its share of the Riksdag mandate. After a proposal has been worked out by the European Commission, the ambassadors in COREPER meet to deal with the issues. After COREPER has worked on the proposal, it is put on the agenda of the Council. But before a decision can be taken there, the Swedish standpoint has to gain the support of the Riksdag. This is done in the EU Advisory Committee, in consultation with the respective representatives of the government and the members of the Committee. On the Friday of the week before a decision is to be taken

at the Council, the Committee meet. The member of the cabinet gives an account for the Swedish position on the proposals, as decided by the government. The representatives of the different parties can then give their opinions and a discussion takes place. The discussion can lead to a modification of or a complement to the standpoint originally presented by the government. The discussion closes with the chairman of the Committee concluding that there is a majority in favour of the government standpoint, or that the government has a majority against it. It rarely happens that there is an outright rejection of a negotiation strategy worked out by the government. This does not mean, however, that the Committee has a weak influence on the positions agreed upon.

In preparation for the meetings, the members of the Committee receive written background information in advance. The Committee can also demand information and consultation with the government in questions that are not ready to be dealt with in the Council, which is a very important right, since the possibility to influence a proposal is much greater in the earlier stages of discussion. The work of the Committee extends to all areas of co-operation within the EU, which means that in practice matters as different as foreign policy, agriculture, police co-operation and communications, can all be dealt with at one single meeting.

In addition to these arrangements, the standing committees are obliged to follow up the work of the EU within their areas of competence. The representatives of the government inform the standing committees on matters that fall within their respective fields. The standing committees also receive written information from the government on proposals that concern them. Besides, most of the members in the EU Advisory Committee are also members of at least another standing committee, which facilitates the exchange of information between the standing committees and the EU Advisory Committee. There is further information sharing with the Chamber. The government has to continuously inform the whole Riksdag on the work within the EU. This takes the form of answers to questions or in debates. Every year it also has to give a written report on the activity of the EU. In connection with the filing of this report, the Riksdag can make statements on how it wishes to conduct the co-operation within the EU.[46]

[46] *Sverige i EU, Sveriges Riksdag* http://www.riksdagen.se/eu/EUblad/08.htm; *EU-nämnden, Sveriges Riksdag* http://www.riksdagen.se/eu/riksdagen/eunamnd.htm (4th November 2001). The Danish Folketing has to a large extent the same formal arrangements with its European Affairs Committee as Sweden with its EU Advisory Committee. The distinction might be that the mandate given by the Danish Committee is stronger in as much as it is clearly stated that it is the Committee that gives the mandate, even if the government formulates it and has responsibility for negotiations in the Council. If the minister does not follow the mandate he/she will face serious

5.3. The Riksdag and the Democratic Deficit

My basic presumption is that the national parliaments have a role to play in lessening the democratic deficit through controlling their respective governments. I will try to determine if the Swedish arrangements, described above, fulfil this task. I have accounted for the arrangements in the Riksdag regarding EU matters as they are stated in the fundamental laws, and for the formal rules. I will now turn to other sources in order to provide a more complete picture.

5.3.1. Foreign Domestic Politics

According to the Swedish parliamentarian praxis, it was only in foreign politics that the co-operation between the Riksdag and the government took the form of consultations. The traditional form of consultations over foreign politics in Sweden served as a model for the creation of the EU Advisory Committee (Bergman 1997:44). Through the creation of an EU Advisory Committee, important questions of domestic politics were in some ways transferred to the domain of foreign politics. The proposal of the creation of the Advisory Committee was met with critics in a particular consideration from the Faculty Board for Political Sciences at Uppsala University, which stated that the EU Advisory Committee was an expression of "the relative de-parliamentisation, which generally characterizes the European Union" (Algotsson 2000: 283).

Lindgren (2000: 3-4) argues that the EU Advisory Committee is something in between an ordinary standing committee and the Foreign Affairs Advisory Council. The EU Advisory Committee is bigger than the Foreign Affairs Advisory Committee, but it lacks preparatory assignment. The EU Advisory Committee is a functional middle category between foreign and domestic politics, and also an attempt to avoid Swedish domestic politics from becoming foreign politics, through EU membership.

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trouble by risking a debate in a plenary session and subsequently a motion of censure, and then he/she has to resign (Sidenius, Einersen and Sørensen 1997: 13).

5.3.2. Standing Committees – a Better Solution?

The Faculty Board from Uppsala (mentioned above) suggested that the government's position should be formed in co-operation with the already established standing committees instead of with the Advisory Committee. The work of the Council is to a great extent divided into different sectors, and the EU is essentially a co-operation between the governments divided into sectors. Therefore it would make sense to deal with EU matters in the Riksdag in the committees concerned. The Faculty Board was also highlighting the way the Riksdag has been working so far, meaning that a continuation of the old mode of working was preferable. Moreover, it could be easier for ministers to gain support for positions, worked out by the ministries and the government in a committee not consisting of specialists, than if they would have to confront the different standing committees. Members of the parliament, who are not specialized in the specific field discussed, might be unable to critically evaluate the government position. The Faculty Board meant that a preparation in the standing committees was preferable both with regard to democracy and efficiency – using the standing committees would accomplish democratic support of standpoints and expertise (Algotsson 2000: 283-284).

Hegeland and Mattson (1997: 93) reject such a solution as preferable. They argue that the standing committees in the Riksdag would not reach positions other than those of the EU Advisory Committee, were they deliberating with the government prior to meetings in the Council. Ohly stated that the EU Advisory Committee is needed, because it has the consolidated overview of the EU politics, and there are questions that don't fall directly within the sphere of any standing committee. However, the standing committees should have a more active role in preparations before the EU Advisory Committee meetings: "We very rarely get any statements from the standing committees, because they simply don't have time or don't follow the planning".[47] Bill stresses that there is an advantage to having a broad overview of the EU matters, which can be achieved by treating all those matters in one committee. [48] It is felt by some, although realizing the obstacles, that there is more possibility to influence a decision through the work in the standing committees: "I think issues should perhaps be treated in the standing committees, but I see the problem, there would be too many issues for them to deal with".[49]

[47] Interview with Ohly, 22nd May 2002.
[48] Inteview with Bill, 17th May 2002.
[49] Interview with Andreasson, 16th May 2002.

The system with the Advisory Committee does not exclude the standing committees in the work on EU matters. Since all the members of the Advisory Committee are members of other standing committees as well, there is a natural flow of information between the committees. It is however easier for larger political parties to cover all areas than for smaller parties, for the simple reason that the larger parties have a larger number of members and deputy members in the Advisory Committee than the smaller ones. "In the larger parties we cover all the main questions with our members and substitute members, who are also members in different standing committees. That way we have an automatic connection to our standing committees. The smaller parties cannot do that, which is due to the fact that they are small, not that there is something wrong with the system".[50]

5.3.3. Binding Mandate?

By binding the government to a certain position, we describe a situation where the government is obliged to follow a majority recommendation gained from the parliament or the organ for consultation (Bergman 1997: 45). Of course, all European national parliaments have the right to dismiss their governments, should the latter act against a position that a majority in the parliament has worked out. But only Germany and Austria have provisions in constitutional law that bind the government to a position worked out in an organ for consultation (such as the Advisory Committee), while Denmark has such a system in practice without being described in the constitution or in other law (Bergman 1997: 46). The Swedish EU Advisory Committee has, in comparison with corresponding arrangements in other member states, a relatively strong position in binding the government, even if the recommendations of the EU Advisory Committee are not formally binding. The position taken by the Advisory Committee is seen as something that the government is obliged to follow (Bergman 1997: 51-52).

When the EU Advisory Committee was created, there were different opinions on whether it should have the right to a formally binding vote on government negotiation positions, which the members of the government subsequently would not be allowed to veto when deciding in the Council. The obvious advantage would be that the Riksdag would thereby mark its position as the central organ in all legislative matters, and the government would have the clear role of an executive organ (Bergman 1997: 54). The problem is that

[50] Interview with Bill 17th May 2002.

since the Council is an arena for negotiations, flexibility is a must. Andreasson, however, thinks that a mandate should be more binding, moving beyond the creation of a loose negotiation ground for the ministers.[51]

The mandate given by the EU Advisory Committee is not legally binding on the government. The Riksdag can make a resolution on how it believes the government should act on a specific issue in the EU, but not even a decision of this kind is binding on the government. However, the Standing Committee on the Constitution has stated that a resolution by the Chamber implies a political obligation. The fundamental principle must be that the wishes expressed by the Riksdag should be fulfilled. However, if there are circumstances impeding such fulfilment or, if the government makes a different assessment than the Riksdag, the government must have the option of not taking the action necessary to fulfil the resolution. A prerequisite for this would be that the government reports its assessment back to the Riksdag (Hegeland and Mattson 1997: 87). The Standing Committee on the Constitution wanted to stress that it was the government that represented Sweden in the EU, not the Riksdag, and thereby acted with full political responsibility for its actions at Council meetings. An organ in the Riksdag (such as a committee) could not make statements binding upon the whole Riksdag – such statement would lack any formal constitutional status. The Committee on the Constitution meant that the EU Advisory Committee had gained real influence on the Swedish position in the Council, since it is presupposed that the government will not go against what has been agreed upon in the EU Advisory Committee (Algotsson 2000: 285; Hegeland and Mattson 1997: 87). "In politics it is like that, even if it might seem a bit vague, there is a strong ethical and moral duty of the government to follow the directives of the Riksdag".[52]

With a system where a minister is bound by a mandate, there is no bargaining room left when he/she goes to negotiate at the Council. Ohly recognizes that "it would then be impossible to find other solutions, or to let go of something to get something else. We would only fix a negotiation position that would be impossible to influence. That would not necessarily favour our interests, but instead make it more difficult to exert any influence".[53] Moreover, there is an element of surprise in the Council. One never knows what can happen,

[51] Interview with Andreasson, 16th May 2002.
[52] Interview with Gustavsson, 22nd May 2002.
[53] Ohly also thinks that the strong constitutional responsibility could be emphasized a bit more, and the EU Advisory Committee should be able to take a clearer position. "Sometimes a majority simply gives the government a majority without even really having any debate" (Interview with Ohly 22nd May 2002).

because the background material is not always complete.[54] Therefore a binding mandate would not be preferable.

One example from 1997 demonstrates how binding the mandate given by the Advisory Committee is in practice. The question concerned tourism, and all political parties except the Social Democrat Party (the governmental one) were of the opinion that Sweden should vote against the proposal. This meant that the government position had not gained a majority in the EU Advisory Committee. Leif Pagrotsky, the responsible minister for the question, regarded the question of no great interest for Sweden, and wished to avoid trouble in the Council. Reporting back to the Advisory Committee after the Council meeting, it became clear that Sweden had not voted against the proposal. A member of the Advisory Committee reported this to the Standing Committee on the Constitution, which in turn did not decide to take any drastic measures, but gave a very interesting remark. It stated that the government surely must have some flexibility at the Council, but if government representatives wish to depart from a mandate given in the Advisory Committee, there must be very strong reasons for doing so (in the example above, it was stated, there were no such reasons). This statement shows that the government is perceived as being bound to act in accordance with the EU Advisory Committee mandate, unless very strong reasons exists for non-compliance. If such reason exists, the government should report back defending its action at the Council to the Advisory Committee afterwards (Lindgren 2000: 13-14). The mandates thus have great significance, even though they lack constitutional weight.

5.3.4. Information and Openness

The information flow to the Riksdag of the EU documents goes as follows: The government delivers all new documents from the Commission to the Riksdag, and the Secretariat of the Chamber distributes the documents to the relevant standing committees. The EU Advisory Committee receives practically all documents that the Secretariat of the Chamber distributes. More important proposals from the Commission are accompanied by certain fact memoranda from the government. The memoranda give an account for the main content of the proposal, and how the Swedish rules are affected (Hegeland and Mattson 1997: 75-76). The government is also supposed, in the memoranda, to give a preliminary Swedish position regarding the proposal. The documents from the Commission together with the

[54] Interview with Carlström, 16th May 2002.

memoranda from the government make up the most important written sources of information on the EU for the Riksdag.[55] The most important forum for oral information is the consultations in the EU Advisory Committee.

The government has to report back to the EU Advisory Committee after each Council meeting. It is a standing point at the agenda: "We start all the meetings with the ministers giving an account of what happened at the last Council, so we know what has happened".[56] Moreover, the Advisory Committee gets written reports. The Advisory Committee always gets information about how Sweden has voted. "The problem is that certain things that are secret in the Council, so the Council can take a decision by majority voting, and Sweden is not allowed to publicly reveal which countries voted in favour and which voted against. This makes for an opaque, impenetrable system. Under the provision of professional secrecy, we are allowed to know who voted how. But since the protocols of the EU Advisory Committee are public, the ministers are trying to avoid giving that information, because they thereby risk its immediate public dissemination, and they then risk being criticised by the other member states".[57]

There is a provision in the RA granting the right to consultations with the government on EU matters if at least five members of the Committee demand it. This provision is called the minority protection. The standing committees also enjoy this right. The demand for a consultation can be dismissed, should a majority of the Committee find that the associated delay would result in serious detriment.

The meetings of the EU Advisory Committee are closed. According to the RA, only Committee members, substitutes and staff are allowed to be present at the proceedings, along with the invited ministers and their aides. Normally a person from the EU Secretariat of the Foreign Ministry is present, regardless of the subject to be deliberated. A record is kept of the meetings of the Advisory Committee, which shows, among other things, which ministers and representatives of the government have been present. A shorthand transcript is made of all statements made, which the government's representatives have the opportunity to comment on before the Advisory Committee confirms it (confirmation normally occurs after two weeks). The transcript is thereafter made public, although some information in the transcript

[55] In the initial state the memoranda got a lot of critics because they did not contain the government's position on the proposal. In that regard the memoranda have become better with time. But it is not quite clear at first glance what subject is being treated in the memoranda, which means that a large part has to be read through to get an idea. The language in the memoranda have also been criticised, a consequence of bad translations. It also takes a bit too long before the memoranda are being written and transferred (Lindgren 2000: 6-8).
[56] Interview with Carlström, 16th May 2002.
[57] Interview with Ohly, 22nd May 2002.

can be classified as secret (about Sweden's bargaining position or relations with other states) (Hegeland and Mattson 1997: 88-89). On the one hand, the transcripts can facilitate openness and democratic control, but on the other hand, the transcripts may make the representatives of the government less willing to inform the Advisory Committee about sensitive issues (Hegeland and Mattson 1997: 94). The Advisory Committee has the right to hold public sessions, although public sessions can only be held for information, and not for discussion with the government about the conduct of negotiations in the Council. According to RA, there must be strong grounds for holding an open session.

In the RA (10:8) there is a provision for professional secrecy in the work of the Advisory Committee.[58] This provision has substantial support, since the consultations are supposed to be intimate in nature, and no restraints that could damage the necessary flexibility in the negotiations should be disapproved. This provision has been met with criticism, however, as it reduces openness. Lindgren (2000: 9), who has made a thorough research of the shorthand transcripts made in 1998/1999, has concluded that the provision for professional secrecy does not pose a problem, since it is used rather rarely, and usually covers other countries' negotiation positions, or the Swedish second-best options. These can be made public after a decision has been reached at the Council. He also states that the government is relatively exhaustive and open when informing the EU Advisory Committee. The ministers usually give clear answers to questions received. The minority protection, although never used so far, gives the advisory Committee certain possibilities to influence the agenda.

One problem is that the national parliaments often participate too late in the decision-making process to be able to exert any real influence. This is also the case for the Swedish EU Advisory Committee, since consultations take place only on Friday the week before a Council of Ministers is to take place. Thereby the EU Advisory Committee only has time to make a standpoint on the basis of a proposal from the government, which has made significant preparations on the issue. For the members of the Committee, it is also difficult to keep track of which stage in the negotiation a question stands, at a certain point in time, since matters circulate several times before a decision is taken.[59]

Another problem is that the members of the Advisory Committee receive the information too late, or in a foreign language. "For example the Belgian presidency would often come with papers the day before the Council of Ministers was to be held, in French. We got it the minute the government got the papers, but that does not help if I don't speak French

[58] See Annex 6.
[59] Interview with Bill, 17th May 2002.

and only have a few hours to get familiar with an issue before going to take a decision on it".[60] However, this is not always the fault of the government, and if it is, a complaint by the members of the Committee is usually enough to remedy the situation. Biörsmarck, Gustavsson, and Andreasson all bring up the issue of overflow of information and documents, which makes the task very heavy for the Advisory Committee.[61] They get too many papers on short notice before holding meetings. It is impossible to take a standpoint on matters that they have not had the possibility to get acquainted with properly.

In 1997, a provision was put in the RA (10:3), obliging the standing committees to follow up on activities of the EU falling within their respective sphere of competence. This provision seems to have led to the standing committees becoming more active, for example the information flow from the government to the standing committees has become more systemised (Lindgren 2000: 10).

5.3.5. Opinions from Inside the Riksdag on the Democratic Deficit

In the interviews I conducted in May 2002 with six different members or substitute members of the EU Advisory Committee, I asked a few questions regarding their view on the democratic deficit and the Riksdag – whether the EU Advisory Committee was in any way helpful in retaining control over the government.

When asked whether they think that the Swedish Riksdag has succeeded in the task of retaining insight, influence and control over the government through the creation and functioning of the EU Advisory Committee, the answers were predominantly positive. Parliamentarians in the Advisory Committee are quite content with the co-operation with the government on EU matters. Ministers are good at appearing at meetings, giving their opinions and at anchoring their positions. When the Advisory Committee has called for other positions, the government has been willing to change it. Advisory Committee members are quite well informed and can follow up issues. Carlström admits that this can, in her case, be due to the fact that she belongs to the government party, which gives her a unique position; "We have possibilities that the other parties do not believe they have, direct contact with the ministers for example". She presumes that it is different from being in the opposition.[62] But Gustavsson,

[60] Interview with Ohly, 22nd May 2002.
[61] Interviews with Andreasson 16th May 2002, Biörsmarck 17th May 2002, and Gustavsson 22nd May 2002.
[62] Interview with Carlström, 16th May 2002.

member from an opposition party, says that the government is prepared to listen to the opposition as well.[63] "We get a lot of unnecessary criticism, it is actually better than what most people would think /…/ I think the Swedish Riksdag is exerting effective control over the government, if by Swedish Riksdag we mean the EU Advisory Committee".[64]

Not all people are completely content however. One problem brought forward is that the standing committees do not enter into the process early enough to offer expertise and opinions. This is an obstacle since it is important to be able to exert some real influence over the issue early in the process.[65] Another problem felt by some is that the members of the Advisory Committee cannot come with proposals, or even vote on proposals; "I don't call it control, what the Riksdag is exerting on the government".[66] Even if not everyone is content, it was stated by one critical member that in comparison with other countries, it is not worse in the Riksdag than elsewhere. "Since the Leif Pagrotsky affair, the ministers have become more concerned with actually having a majority in the Advisory Committee behind them when going to the Council. At some points we have had voting in the Committee, in which the Committee has gone against the government position, and in one such case, the minister came back with a new proposal. This shows that what a majority in the Committee said was taken seriously – the proposal was changed, and a new attempt to get support was made".[67]

On the issue of scrutiny, the opinions of the members of the Advisory Committee were less positive. Scrutiny has become more difficult, not due to arrangements in the Swedish system, but due to the system in the Council. This has to do with the secrecy of the information.

> It is difficult to scrutinize the way the government has handled an issue even if we know the Swedish position, since we don't know how the other member states have acted. We only know what arguments existed against the Swedish position. That makes it difficult to see what the Swedish government could have done differently. And that is the main task of scrutiny: What alternatives were there for the government? Could they have acted differently, and could they have reached another result? /…/ If one doesn't know which other results could have been reached, then it is not so easy to criticise the one who is responsible. The scrutiny of the

[63] Interview with Gustavsson, 22nd May 2002.
[64] Interview with Bill, 17th May 2002.
[65] Interview with Gustavsson, 22nd May 2002.
[66] Interview with Andreasson,16th May 2002.
[67] Interview with Ohly, 22nd May 2002.

> government has changed direction with EU membership. The opportunities for the Riksdag to hold the government to account on the EU level are much worse.[68]

On the other hand, since Leif Pagrotsky had problems with the Standing Committee on the Constitution, Bill claims that they have become over-informed; "They tell us too much, even what they had for lunch at the last meeting. Sometimes they sit and read long memoranda we have already received in advance, it becomes meaningless".[69] Carlström claims that there are great possibilities to scrutinize in the system established, but that they are not always being fully used.[70]

When asking for opinions on whether the members of the Advisory Committee think that the EU Advisory Committee is a step in the direction of eliminating the democratic deficit, there were very different answers. Here a clear line of division is obvious between the members from parties traditionally opposing the Swedish EU membership (the Left Party and the Green Party), and the ones content with the membership. In that sense a member from the Left Party thinks that the Swedish position should be discussed and established by the Riksdag and not only by the EU Advisory Committee. Discussion in the Chamber would give the EU matters complete publicity, and that would give an opportunity for interested parties to actually conduct a debate before a decision is being taken. Now they can only come and criticise a decision afterwards, and thereby reject the whole law that has been worked out, without having been able to influence the contents of the law in a public debate. "If the Riksdag could, at least in important principal questions, take decisions, it would be a victory for the voters, since they could hold the responsible to account. That possibility is quite small today".[71] The Green Party wants to scrap the EU, as it believes there is no form in which democracy could work in the EU in any good way; "The only way we see to solve the problem is to remove all questions that are not absolutely necessary for European co-operation. Only very necessary questions, like environmental ones, should be dealt with by the EU. The democratic deficit is within the EU, not in the Riksdag".[72]

Bill stresses that the Commission and the EP do not have the same democratic legitimacy as the national parliaments, which is why it is important to find common positions

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[68] *(ibid.)*.
[69] Interview with Bill, 17th May 2002.
[70] Interview with Carlström, 16th May 2002.
[71] Interview with Ohly 22nd May 2002.
[72] Interview with Andreasson, 16th May 2002.

at the national level and then bring them to Brussels.[73] "Regarding the Swedish arrangements, I think we have made the best of the situation".[74]

One interesting statement, coming from a parliamentarian from a national parliament, is that if a federal line was to be followed, there would be no democratic deficit. "There will always be a democratic deficit in a representative system. Where the lines are drawn is another question".[75]

5.4. Diminished Democratic Deficit?

EU membership implied a great change to the Swedish political system. It contained a transfer of the right of decision-making, which was not limited, and therefore constitutional change was needed. New specific procedures had to be worked out in order to deal with EU matters in the Chamber, the standing committees had to get involved, and a new body (the EU Advisory Committee) had to be established in the Riksdag. All these arrangements were undertaken to make sure that the Riksdag would not be by-passed when decisions were being taken at EU level.

Although having no legally binding mandate upon the government, the EU Advisory Committee has a strong influence. The mandate issued is to a large extent being respected, since it is politically binding on the members of the government. The Advisory Committee plays a role in the formation of standpoints for the government before going to the Council, and the members of government also report back to the Advisory Committee after each meeting at the Council, facilitating the process of scrutiny. The information flow to the Riksdag from the EU is abundant. The problem is that the amount of information distributed together with the short time-limit the parliamentarians have to deal with it makes for a difficult situation. Another problem is that the opacity of the Council makes it difficult for parliamentarians to evaluate the negotiation process and alternative outcomes in the Council, which has impact on the scrutiny of the government. Taken all together, the members of the Advisory Committee are quite content with the influence and control that they exert over the government, and they don't feel by-passed. The problem of the democratic deficit is seen as inherent in the EU structures, and not in the Swedish political structure at the national level.

[73] Interview with Bill, 17th May 2002.
[74] Interview with Biörsmarck, 17th May 2002.
[75] *(ibid.)*.

6. CONCLUSIONS

In western democratic political systems, national parliaments are the institutions with the strongest democratic legitimacy. The EU lacks a strong democratic legitimacy of its own, comparable to the one enjoyed by the national parliaments. The question arises if the EU can be rendered more democratic through the national parliaments of the member states? The dominant position of the Executive is a problem in the EU; the role of the Executive has been enhanced at the expense of the national parliaments, since the Executive essentially takes on a legislative role in the EU structure. How do the national parliaments make up for that? These are the questions I have dealt with throughout my thesis. I have also dealt with a specific case, namely the Swedish Riksdag. We can recall the hypothesis I have operated within: The Swedish Parliament has, since EU membership, as a step towards diminishing the democratic deficit, put active control of the EU decision-making processes into practice at the national level.

To be able to provide a complete picture, I have dealt with related questions throughout the text. In that way I have broadened the perspective, and so I focus on the national parliaments and the EU in general.

I started by setting out to find a theoretical perspective on the role of the national parliaments in the EU. After studying existing integration theories, I came to the conclusion that intergovernmental theory is the only one, if any, that could provide any legitimate answers. I specifically focused on two streams within the theory, liberal intergovernmentalism and consociationalism, since those two incorporated the domestic level at least to some extent. But still, I had to conclude that integration theory, as developed so far, is poorly equipped to deal with the role of national parliaments in the EU. Thus I turned to other sources to seek answers. However, I retained the intergovernmental perspective throughout the text. Some authors, although not developing new comprehensive theories, have made use of intergovernmentalism to cast some light on the role of the national parliaments.

When it comes to the national parliaments and the democratic deficit, it is essentially the question of Executive dominance that is important. The balance between the Executive and the Legislative at the national level is distorted by the legislative powers that the members of the government enjoy in the EU. The problem that subsequently needs to be resolved is how to keep the Executive accountable. That is where the national parliaments retain their most important function. The question is if the national parliaments can effectively

hold the governments accountable? The answer is that they can, at least to some extent. I reach this conclusion due to the fact that national parliaments ratify Treaties of the EU, and that they form and dismiss the governments that constitute the Council. These are the two basic functions of accountability by the national parliaments. Of course there are obstacles to how the parliaments can fulfil these tasks, especially when it comes to controlling the members of the government in performing their decision-making function at the Council. Interparliamentary co-operation at the EU level is an important aspect of the accountability issue, but this co-operation still needs to develop to be able to effectively exert some influence on decision-making, and to be able to issue some control over the other institutions in the EU by joint efforts.

In the Convention on the future of Europe, the role of the national parliaments gained spotlight. The role of national parliaments was evaluated by a special Working Group with a view to providing answers to how to make sure these bodies would not be by-passed, and so increasing the democratic legitimacy of the EU. The role of the national parliaments was evaluated in two aspects, namely the national scrutiny systems and mechanisms involving the national parliaments at the EU level. The result of the Convention was the Draft Treaty Establishing a Constitution for Europe. The Draft Treaty includes a protocol on the role of the national parliaments in the EU, which is essentially a revised version of the protocol in the Amsterdam Treaty, going further than its forerunner, and being more specific in defining the role of the national parliaments in the EU. As it stands, the role of national parliaments in the EU has not been fully recognized. The different provisions in force now (declarations and protocols to different treaties) are not very forceful in comparison to the powers that are given away by the national parliaments when their states become members of the EU. This is why the Draft Treaty can be seen as a great achievement for the national parliaments in the EU structure.

In the chapter on Sweden and the Riksdag, I have finally found the answer to my hypothesis. To a large extent I have let the answer come from the members of the EU Advisory Committee themselves, since they are the ones mostly suited to evaluate their work and the quality of the system in Sweden.

With the establishment of an EU Advisory Committee, and through other arrangements in the Riksdag dealing with EU matters, the Swedish parliament has put active control of the decision-making processes in the EU into practice as a step towards diminishing the democratic deficit. The members of the national parliament in Sweden have managed to retain control over the ministers when approaching the Council making decisions. The

situation is not ideal, but this is due to arrangements in the EU rather than to arrangements in the Swedish political system.

So, can the EU be rendered more democratic through the national parliaments? The democratic deficit is a phenomenon with many faces, some of which can be remedied with the help of national parliaments. Their role is essential in some aspects of diminishing the democratic deficit, especially regarding the issuing of control over the members of the Council. The role goes along the lines of the domestic accountability model accounted for in the text. Through greater co-operation between member state's national parliaments when setting standards for domestic scrutiny, and a greater exchange of information and effective co-operation in a interparliamentary fashion through COSAC (or other possible bodies of that kind) the impact of national parliaments can be stronger. Thus, the EU can be rendered more democratic through the national parliaments. Even if great achievements have been made recently, more can be done, as the process has only just begun.

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ANNEXES

Annex 1
Maastricht Treaty Declarations on the Role of National Parliaments and the Conference of the Parliaments

Declaration on the Role of National Parliaments in the European Union

The Conference considers that it is important to encourage greater involvement of national parliaments in the activities of the European Union

To this end, the exchange of information between national parliaments and the European Parliament should be stepped up. In this context, the governments of the Member States will ensure, *inter alia*, that national parliaments receive Commission proposals for legislation in good time for information or possible examination.

Similarly, the Conference considers that it is important for contacts between the national parliaments and the European parliament to be stepped up, in particular through the granting of appropriate reciprocal facilities and regular meetings between members of Parliament interested in the same issues.

Declaration on the Conference of the Parliaments

The Conference invites the European Parliament and the national parliaments to met as necessary as a Conference of the Parliaments (or 'assises').

The Conference of the Parliaments will be consulted on the main features of the European Union, without prejudice to the powers of the European Parliament and the rights of the national parliaments. The President of the European Council and the President of the Commission will report to each session of the Conference of the Parliaments on the state of the Union.

Annex 2
Treaty of Amsterdam – Protocol on the role of national parliaments in the European Union

THE HIGH CONTRACTING PARTIES,

RECALLING that scrutiny by individual national parliaments of their own government in relation to the activities of the Union is a matter for the particular constitutional organisation and practice of each Member State,

DESIRING, however, to encourage greater involvement of national parliaments in the activities of the European Union and to enhance their ability to express their views on matters which may be of particular interest to them,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and the Treaties establishing the European Communities,

I. INFORMATION FOR NATIONAL PARLIAMENTS OF MEMBER STATES

1. All Commission consultation documents (green and white papers and communications) shall be promptly forwarded to national parliaments of the Member States.

2. Commission proposals for legislation as defined by the Council in accordance with Article 151(3) of the Treaty establishing the European Community, shall be made available in good time so that the government of each Member State may ensure that its own national parliament receives them as appropriate.

3. A six-week period shall elapse between a legislative proposal for a measure to be adopted under Title VI of the Treaty on European Union being made available in all languages to the European Parliament and the Council by the Commission and the date when it is placed on a Council agenda for decision either for the adoption of an act or for adoption of a common position pursuant to Article 189b or 189c of the Treaty establishing the European Community, subject to exceptions on grounds of urgency, the reasons for which shall be stated in the act or common position.

II. THE CONFERENCE OF EUROPEAN AFFAIRS COMMITTEES

4. The Conference of European Affairs Committees, hereinafter referred to as COSAC, established in Paris on 16-17 November 1989, may make any contribution it deems appropriate for the attention of the institutions of the European Union, in particular on the basis of draft legal texts which representatives of governments of the Member States may decide by common accord to forward to it, in view of the nature of their subject matter.

5. COSAC may examine any legislative proposal or initiative in relation to the establishment of an area of freedom, security and justice which might have a direct bearing on the rights and freedoms of individuals. The European Parliament, the Council and the Commission shall be informed of any contribution made by COSAC under this point.

6. COSAC may address to the European Parliament, the Council and the Commission any contribution which it deems appropriate on the legislative activities of the Union, notably in relation to the application of the principle of subsidiarity, the area of freedom, security and justice as well as questions regarding fundamental rights.

7. Contributions made by COSAC shall in no way bind national parliaments or prejudge their position.

Annex 3
Treaty of Nice – Declaration on the future of the Union

1. Important reforms have been decided in Nice. The Conference welcomes the successful conclusion of the Conference of Representatives of the Governments of the Member States and commits the Member States to pursue the early ratification of the Treaty of Nice

2. It agrees that the conclusion of the Conference of Representatives of the Governments of the Member States opens the way for enlargement of the European Union and underlines that, with ratification of the Treaty of Nice, the European Union will have completed the institutional changes necessary for the accession of new Member States.

3. Having thus opened the way to enlargement, the Conference calls for a deeper and wider debate about the future of the European Union. In 2001, the Swedish and Belgian Presidencies, in cooperation with the Commission and involving the European Parliament, will encourage wide-ranging discussions with all interested parties: representatives of national parliaments and all those reflecting public opinion, namely political, economic and university circles, representatives of civil society, etc. The candidate States will be associated in this process in ways to be defined.

4. Following a report to be drawn up for the European Council in Göteborg in June 2001, the European Council, at its meeting in Laeken/Brussels in December 2001, will agree on a declaration containing appropriate initiatives for the continuation of this process.

5. The process should address, inter alia, the following questions:

- how to establish and monitor a more precise delimitation of powers between the European Union and the Member States, reflecting the principle of subsidiarity;

- the status of the Charter of Fundamental Rights of the European Union, proclaimed in Nice, in accordance with the conclusions of the European Council in Cologne;

- a simplification of the Treaties with a view to making them clearer and better understood without changing the meaning;

- the role of national parliaments in the European architecture.

6. Addressing the abovementioned issues, the Conference recognises the need to improve and to monitor the democratic legitimacy and transparency of the Union and its institutions, in order to bring them closer to the citizens of the Member States.

7. After these preparatory steps, the Conference agrees that a new Conference of the Representatives of the Governments of the Member States will be convened in 2004, to address the abovementioned items with a view to making corresponding changes to the Treaties.

8. The Conference of Member States shall not constitute any form of obstacle or pre-condition to the enlargement process. Moreover, those candidate States which have concluded accession negotiations with the Union will be invited to participate in the Conference. Those candidate States which have not concluded their accession negotiations will be invited as observers.

Annex 4
Draft Treaty Establishing a Constitution for Europe – Protocol on the Role of National Parliaments in the European Union

THE HIGH CONTRACTING PARTIES,

RECALLING that the way in which individual national Parliaments scrutinise their own governments in relation to the activities of the Union is a matter for the particular constitutional organisation and practice of each Member State,

DESIRING, however, to encourage greater involvement of national Parliaments in the activities of the European Union and to enhance their ability to express their views on legislative proposals as well as on other matters which may be of particular interest to them,

HAVE AGREED UPON the following provisions, which shall be annexed to the Constitution:

I. INFORMATION FOR MEMBER STATES' NATIONAL PARLIAMENTS

1. All Commission consultation documents (green and white papers and communications) shall be forwarded directly by the Commission to Member States' national Parliaments upon publication. The Commission shall also send Member States' national Parliaments the annual legislative programme as well as any other instrument of legislative planning or policy strategy that it submits to the European Parliament and to the Council of Ministers, at the same time as to those institutions.

2. All legislative proposals sent to the European Parliament and to the Council of Ministers shall simultaneously be sent to Member States' national Parliaments.

3. Member States' national Parliaments may send to the Presidents of the European Parliament, the Council of Ministers and the Commission a reasoned opinion on whether a legislative proposal complies with the principle of subsidiarity, according to the procedure laid down in the Protocol on the application of the principles of subsidiarity and proportionality.

4. A six-week period shall elapse between a legislative proposal being made available by the Commission to the European Parliament, the Council of Ministers and the Member States' national Parliaments in the official languages of the European Union and the date when it is placed on an agenda for the Council of Ministers for its adoption or for adoption of a position under a legislative procedure, subject to exceptions on grounds of urgency, the reasons for which shall be stated in the act or position of the Council of Ministers. Save in urgent cases for which due reasons have been given, no agreement may be established on a legislative proposal during those six weeks. A ten-day period shall elapse between the placing of a proposal on the agenda for the Council of Ministers and the adoption of a position of the Council of Ministers.

5. The agendas for and the outcome of meetings of the Council of Minister**s,** including the minutes of meetings where the Council of Ministers is deliberating on legislative proposals, shall be transmitted directly to Member States' national Parliaments, at the same time as to Member States' governments.

6. When the European Council intends to make use of the provision of Article I-24(4), first subparagraph of the Constitution, national Parliaments shall be informed in advance. When the European Council intends to make use of the provision of Article I-24(4), second subparagraph of the Constitution, national Parliaments shall be informed at least four months before any decision is taken.

7. The Court of Auditors shall send its annual report to Member States' national Parliaments, for information, at the same time as to the European Parliament and to the Council of Ministers.

8. In the case of bicameral national Parliaments, these provisions shall apply to both chambers.

II. INTERPARLIAMENTARY COOPERATION

9. The European Parliament and the national Parliaments shall together determine how interparliamentary cooperation may be effectively and regularly organised and promoted within the European Union.

10. The Conference of European Affairs Committees may submit any contribution it deems appropriate for the attention of the European Parliament, the Council of Ministers and the Commission. That Conference shall in addition promote the exchange of information and best practice between Member States' Parliaments and the European Parliament, including their special committees. The Conference may also organise interparliamentary conferences on specific topics, in particular to debate matters of common foreign and security policy and of common security and defence policy. Contributions from the Conference shall in no way bind national Parliaments or prejudge their positions.

Annex 5
THE INSTRUMENT OF GOVERNMENT
Chapter 10. Relations with other states, Art. 5.

Art. 5. The Riksdag may transfer a right of decision-making to the European Communities so long as the Communities have protection for rights and freedoms corresponding to the protection provided under this Instrument of Government and the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Riksdag shall authorise such transfer in a decision which has the support of at least three quarters of those voting. The Riksdag may also take such a decision according to the procedure prescribed for the enactment of fundamental law.

In all other cases, a right of decision-making which is directly based on the present Instrument of Government and which purports at the laying down of provisions, the use of State property or the conclusion or denunciation of an international agreement or obligation, may be transferred, to a limited extent, to an international organisation for peaceful cooperation of which Sweden is a member, or is about to become a member, or to an international court of law. No right of decision-making relating to matters concerning the enactment, amendment or abrogation of fundamental law, the Riksdag Act or an act concerning elections for the Riksdag, or concerning restraints of any of the rights and freedoms referred to in Chapter 2 may be thus transferred. The provisions laid down for the enactment of fundamental law shall apply in respect of any decision concerning such transfer. If time does not permit a decision in accordance with these provisions, the Riksdag may approve a transfer of decision-making rights by means of decision in which at least five sixths of those voting and at least at least three quarters of members concur.

If it has been laid down in law that an international agreement shall have validity as Swedish law, the Riksdag may prescribe, by means of a decision taken in accordance with the procedure laid down in paragraph two, that any future amendment of the agreement binding upon the Realm shall apply also within the Realm. Such a decision shall relate only to a future amendment of limited extent.

Any judicial or administrative function not directly based on this Instrument of Government may be transferred, in a case other than a case under paragraph one, to another state, international organisation, or foreign or international institution or community by means of a decision of the Riksdag. The Riksdag may also in an act of law authorise the Government or other public authority to approve such transfer or functions in a particular case. Where the function concerned involves the exercise of public authority, the Riksdag's decision shall be approved by a majority of at least three quarters of those voting. The Riksdag's decision in the matter of such transfer may also be taken in accordance with the procedure prescribed for the enactment of fundamental law.

Annex 6
THE RIKSDAG ACT,
Chapter 10. Conduct of European Union business

Art. 1. The Government shall keep the Riksdag continuously informed of developments within the framework of European Union cooperation and submit a written communication to the Riksdag each year reporting on activities at the European Union.

Art. 2. The Government shall keep the Riksdag informed of its views concerning proposals put forward by the Commission of the European Communities which it deems significant

Art. 3. The committees of the Riksdag shall monitor European Union activities in the subject areas laid down for each committee in Chapter 4, Articles 4 to 6 and Supplementary provisions.

Provisions are set out in Chapter 4, Article 10, concerning the obligation of a State authority to furnish information to a committee.

Art. 4. The Riksdag shall appoint an Advisory Committee on European Union Affairs (the EU Advisory Committee) from among its members for each electoral period for the purpose of conferring with the Government on European Union matters.

The EU Advisory Committee shall compromise an odd number of members, but no fewer than fifteen.

Supplementary provision

10.4.1

The size of the EU Advisory Committee shall be determined by the Riksdag at a proposal from the Nominations Committee.

Art. 5. The Government shall inform the EU Advisory Committee of matters before the Council of the European Union. The Government shall also confer with the Advisory Committee regarding the conduct of negotiations in the Council prior to decisions which the Government deems significant, and on other matters which the Advisory Committee determines.

If at least five members of the EU Advisory Committee request consultations with the Government under paragraph one, the Advisory Committee shall make arrangements accordingly, unless it finds that associated delay would result in serious detriment.

Art. 6. State authorities other than the Government shall furnish information and deliver opinions on matters before the Council of the European Union when requested so to do by the EU Advisory Committee. Public authorities which are not authorities under the Riksdag may refer a request from the Advisory Committee to the Government for decision.

Art. 7. The EU Advisory Committee shall meet behind closed doors. The Advisory Committee may permit a person other than a member, deputy or official of the Advisory Committee to be present. Where exceptional grounds exist, the Advisory Committee may determine that a meeting shall be open to the public, in whole or in part, insofar as it relates to information-gathering.

A representative of a State authority shall not be obliged, during a public part of meeting, to disclose information which is subject to secrecy rules imposed by the authority.

Supplementary provisions

10.7.1

The EU Advisory Committee shall convene for the first time within two days from its election, at the summons of the Speaker. The Advisory Committee is convened thereafter by its chairman.

A personal summons shall be sent to all members and deputy members. A summon should be posted, if possible, in the premises of the Riksdag no later than 6 p.m. on the day prior to the meeting.

10.7.2

Pending the election of a chairman, that member from among those present who has been a member of the Riksdag longest shall preside at a meeting of the EU Advisory Committee. If two or more

members have been members of the Riksdag for the same length of time, the member who is senior in age takes precedence.

Art. 8. No member, deputy member, or official of the EU advisory Committee may disclose without an authority any matter which the Government, or the Advisory Committee, has determined shall be kept secret, having regard to the security of the Realm or for any other reason of exceptional importance arising out of relations with another state or international organisation.

Art. 9. A record shall be kept of meetings of the EU Advisory Committee.

A shorthand record shall be kept of statements made at meetings at which the Advisory Committee confers with the Government.