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National parliaments fighting back? Institutional engineering as a successful means to become active actors in EU affairs

by

Diane Fromage*

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Abstract

The European integration process has long been characterised by the predominance of national executive powers. National parliaments were recognised as European actors after several decades only, in the Maastricht Treaty first and to an even larger extent in the Lisbon Treaty. Parliaments were hence long dependent on national constitutional, legal and administrative arrangements to be able to participate in EU affairs. This paper analyses how national parliaments (and their members) have reacted to the challenge the European integration process has represented for them while it also takes due account of the role other institutions, such as constitutional courts, have played in this field. It is argued that while these arrangements may have been successful in allowing national parliaments to play a greater role in this field, they should remain temporary for they are characterised by uncertainty and instability and make it generally difficult for citizens to follow up on national parliaments' actions and to be fully informed.

Key-words

national parliaments, European Union, institutional engineering

1. Introduction

As is well known, national parliaments were long absent from the European Communities (and then Union) Treaties. Indeed, they were mentioned for the first time in a (non-binding) Declaration annexed to the Treaty of Maastricht[I] (1992) and, although their status was improved in the Treaty of Amsterdam (1997) where they were the object of a legally-binding protocol,[II] it is only in the Treaty of Lisbon (2009) that they were (eventually) granted special importance in the European Treaties. Since then, they are actually one of the two pillars on which democracy within the EU is based (art. 10 Treaty of the European Union (TEU)) and are deemed to 'contribute actively to the good functioning of the Union' (art. 12 TEU). To this end, the Treaties themselves confer numerous rights of information and participation to national parliaments, most of which are contained in the same article 12 TEU.

On the other hand, this absence of any mention of national parliaments in the original European Communities (EC) Treaties can be explained by the general conception of them as 'classical' Treaties of international law which explains why it was logical that the Member States, i.e. their governments, alone were the addressees of it. Additionally, the European parliamentary assembly (later: European Parliament) was composed of representatives of national parliaments until 1979 when the first European direct elections took place so that *de facto* national parliaments were not totally absent of the European integration institutional game.

Moreover, this does not mean that national parliaments were not involved at all in EU affairs until then in their capacities as national institutions: their assent was most commonly required for Treaty ratification and national provisions could grant them rights of information and of influence. In fact, this participation in daily EU matters was possible on different grounds: because statutes recognising certain rights to parliament (or one chamber thereof) were approved or because parliamentary standing orders granted them certain capacities. The reason for approving these measures and their initiators differ(ed) too: they can (could) be the fruit of government's initiative, of parliamentary amendments

introduced during the course of the approval of the ratification or implementation laws or an informal practice, among others.

Against this background, this paper seeks to analyse why and how national parliaments have empowered themselves through institutional engineering over time. To this end, institutional engineering is understood as the way in which parliaments have made use of the means they had at their disposal to improve their own position in EU matters until their importance in this framework was actually formally recognised at EU level and in their respective constitutions, in legal norms or in their parliamentary standing orders.[III]

In order to study these different dynamics and their evolution, four Member States have been chosen on the basis of their different forms of adaptation to this need for 'self-empowerment': France, Germany, Italy and Spain. These case studies shall first serve to show the factors that led to a need for 'self-empowerment' for national parliaments (2) and, second, to observe how these four national parliaments did empower themselves – or not (3).

2. Reasons for this need of self-empowerment of national parliaments

This second section shall analyse the reasons that led some national parliaments to be obliged to empower themselves whereas other national parliaments were not confronted to the same challenges. This is mainly linked to the absence of reform of the constitution and of the legal norms defining the role of parliament in EU affairs, and to the dispositions of the parliamentary standing orders themselves. National parliaments' need to make an extensive use of all the instruments they had at their disposal can be mainly traced back to institutional features of the Member States (2.1) and to the existence of judicial protection regarding parliamentary prerogatives in EU affairs or the absence thereof (2.2).

2.1. National parliaments constrained to use 'institutional engineering' because of Member States' institutional features

A first reason that explains why all national parliaments were not, originally, granted means of participation in EU affairs – and here reference is made to the Founding States – is that the impact the European process would have, and the importance it would take, simply could not be grasped when the Founding Treaties were adopted. As already

mentioned in the introduction, at the time, the EC were conceived in the form of an ordinary treaty of international law and there was no particular reason why Member States' parliaments should have been granted any active right of participation at all in this domain; informing them was sufficient.[IV]

A second explanation for this state of facts lies in the general pro-European attitude of Member States and their MPs: during several decades, in the Member States analysed here at least, whatever was decided at EU level was not called into question (on Germany (Mangold 2011: 332); on Italy and Spain (Fasone and Fromage 2016)). The output (economic growth, wealth and peace) was sufficient to legitimate the actions pursued in the framework of the European integration process (output legitimacy) (on input, output, throughput legitimacy: Schmidt 2013). Additionally, originally and up until 1979, the European parliamentary assembly was composed of delegates from Member States' national parliaments so that national parliaments were indeed participatory to this process in a certain manner, although at the time the parliamentary assembly had almost exclusively advisory powers. This relates to the question of the actual interest of MPs for EU affairs: This was especially the case in Italy and in Spain where, on the whole, EU matters were the *domaine réservé* of groups of 'happy few' interested by these questions, though in France and in Germany the situation was only slightly better.[V]

Finally, another factor that influenced, and still influences, the role of a particular parliament in EU affairs is its position in the national institutional system. The French and Spanish parliaments for example are weak in any case, also in internal affairs. In France, this is mostly due to the role left to Parliament in the Vth Republic: after the instability experienced during the IVth Republic (1946-1958), the French parliament was marginalised and disempowered in the constitution of the Vth Republic (Chantebout 2012: 400 and Gicquel and Gicquel 2012: 522). This is visible for example in the fact that, until 2008, the only means of influence or control that parliament had in domestic affairs was the motion of censorship as parliamentary resolutions had been prohibited by the Constitutional Council.[VI] This silence of the assemblies was brought to an end only in 2008 when article 34-1 Constitution was added, although resolutions in EU matters ('European resolution') already existed since 1992. In any case, there was – and still is – no possibility for the French parliament, i.e. for neither of its two Chambers, to mandate the government in its negotiations at EU level.

The French parliament is further affected, in its European prerogatives, by another national weakness of Parliament. The provision of the Constitution regulating the relationship between the President and the Parliament (art. 18) reads as follows: 'The President of the Republic shall communicate with the two Houses of Parliament by messages which he shall cause to be read aloud and which shall not give rise to any debate. He may take the floor before Parliament convened in Congress for this purpose. His statement may give rise, in his absence, to a debate without vote'. That is to say that the President may not enter in any of the parliamentary chambers which, in turn, cannot in any way hold the President directly accountable for the position he/she defended in the European Council. Even the possibility to hold a debate in parliament with the President being present does not exist. Furthermore, the French Parliament can be relatively easily – and is, in fact, relatively often – domesticated by the government that can force it to adopt the law it wishes by engaging its responsibility (art. 49-3 Constitution). This means that where a law is not adopted by Parliament the government is automatically dismissed. The constitutional reform adopted in 2008 nevertheless limited the use of this mechanism which the government can now resort to only twice per year: Once for the finance or Social security bill and a second time for another bill. This governmental power of constraint is more limited than in the past but it is frequently used to pass important and controversial bill, such as the reform of the Labour law in 2016 (Law 1088/2016.) The government additionally also long defined the Assemblies' agendas almost exclusively.[VII]

In Spain, the Parliament is also in a weak position in internal affairs. The Government can, for instance, adopt decree-laws that parliament can then only either approve or reject in their entirety within thirty days as foreseen in article 86-2 Constitution. The party system has also traditionally been particularly strong (Kölling and Molina 2012: 2) which led the Chambers to be, generally, willing to act uncritically in accordance to the government's wishes. The political crisis Spain is currently living may however affect this unity and quasi subordination of Parliament to the Government, in particular since the governing party, *partido popular* (right-wing) does not have an absolute majority. This represents in any event an important change with regard to the situation that has prevailed since Spain regained democracy in 1978.

Yet, this need for national parliaments to empower themselves in EU affairs does not only derive from the institutional features mentioned; it can be also traced back to the absence of judicial protection of national parliaments' prerogative at national level.[VIII]

2.2. A necessity of self-empowerment linked to the absence of judicial protection of national parliaments' prerogatives

The safeguard of national parliaments' prerogatives in EU affairs, or even their having capacities to participate in this domain, can be linked as well to the existence of a strong judicial protection of the parliament's prerogatives or the absence thereof.

For sure, the paradigmatic example in this framework is Germany. The Federal Constitutional Court has been protecting the German parliament's prerogatives in the European integration process since its famous *Maastricht decision*[IX] and it emphasized further the importance of parliamentary sovereignty in its more recent *Lisbon judgment* in which it attributed a 'responsibility for integration' to Parliament.[X]

In contrast to the German situation, in Italy the Constitutional Court has not been particularly protective of the Parliament but this is not due to a lack of willingness. The two possibilities to access the Court are too narrow to allow for this kind of review: only regions or national governments on state-regions conflicts of competences can access the court and it can further be led to examine the constitutionality of a law by means of preliminary reference of constitutionality by any judge. Hence, no *ex ante* control is possible, the constitutionality of laws can only be controlled *ex post*. Additionally, there is neither a *saisine parlementaire* nor an individual right for MPs to challenge the constitutionality of a norm. This lack of involvement of the Constitutional Court may additionally explain why Italy adopted the law that implemented the novelties introduced by the Treaty of Lisbon only in 2012 (Fasone and Lupo forthcoming).

As regards Spain, the Constitutional Court has also been led to pronounce itself on the compatibility of EU Treaties with the Constitution but it is bond to answer to the question it is asked and cannot elaborate any further than that. The individual access to the Court for a breach of a fundamental right (*recurso de amparo*) has been very rarely used in this field contrary to Germany.

Finally, in France on the other hand although the Constitutional Council was required to pronounce itself on the compatibility of the European Treaties with the Constitution in

several occasions, in none of them did it seek to enhance the role of Parliament directly, although it required the constitutionalisation of the powers granted to the French Parliament by the Treaty of Lisbon as it considered them to fall outside of what the constitutional framework in vigour at the time could allow.[XI] That is to say that the Constitutional Court declared in several occasions that the Constitution had to be reformed before France could ratify a European Treaty – Treaty of Maastricht and Treaty of Lisbon for instance – but in none of these occasions has it contemporarily also insisted on Parliament's role or attributed a 'responsibility for integration' to it as it happened in Germany.

It can thus be concluded that of the four Member States analysed here only in Germany Parliament has benefitted from the Constitutional Court's activism in its favour. In the other three States, it is rather the absence of such protection that has contributed to national parliaments being forced to resort to 'institutional engineering' – and hence self-empowerment – to be able to participate in the EU integration process. As stated however, this situation may be linked to organic constraints in the courts' capacities and is not necessarily automatically attributable to courts' unwillingness to protect national parliaments or anything similar to this.

Having seen some of the factors that contributed to the existence of a need for these parliaments to empower themselves (or not, as in the case of Germany), in the third part we will observe how national parliaments have then actually proceeded to their 'self-empowerment'.

3. How national parliaments empowered themselves

As mentioned in the introduction, national parliaments did not remain indifferent to their status and have made use of a variety of means at their disposal to actually empower themselves so as to be able to participate in EU affairs even at times when this was not foreseen neither by the European Treaties nor by their constitutions, their legal norms or their standing orders. Interestingly, and as could arguably be expected since the institutional cultures and traditions vary from one parliament to the other, not all of the national parliaments have used the same instruments in this context. The French parliament has for instance used its capacities as a legislator (3.1) whereas the German and

the Italian parliaments used their parliamentary autonomy (3.2). Besides, many of these arrangements simply took place on an informal basis (3.3).

3.1. Use of the capacities as legislator: the French example

As underlined above, whereas the German parliament saw its prerogatives reinforced as a consequence of the decisions of the Federal Constitutional Court and, hence, did not need to fight for its prerogatives – at least after the *Maastricht decision* –, the same does not hold true of the French parliament. As a matter of fact, the French parliament was particularly weak in EU affairs until 1992[XII] when it made good use for itself of the fact that the Constitutional Court had declared that a constitutional revision was required before the Treaty of Maastricht could be ratified (Nuttens 2001: 26f)[XIII] In 1992 indeed, France's participation in the European integration process was (finally) constitutionalised with the introduction of Title XIV (today Title XV). As regards Parliament, the most powerful instrument was the possibility it had from then onwards to approve 'European resolutions' (art. 88-4 Constitution). As highlighted above, this change was all the more remarkable as the French parliamentary chambers did not otherwise have the possibility to approve any resolution addressed to the Government. The impact of this innovation should not of course be overestimated: these resolutions were – and still are – non binding beyond their possible political consequences if the Government does not follow Parliament's indications. Additionally, the material scope of these resolutions was particularly limited for they could only concern European legislative proposals affecting the French *domaine de la loi,* that is the area within which Parliament may legislate by contrast with the *domaine réglementaire* in whose framework the Government has to intervene. Only the Community legislative proposals were transmitted to Parliament which, consequently, could not adopt any resolution on proposals affecting the Second and the Third Pillars. In these areas, like had been the case until 1992, the *Delegations* for the EC, that preceded the EU Affairs Committees created in 2008, could only adopt conclusions. When Parliament had another opportunity to empower itself as the law defining the status of its Delegations for the EC was reformed, it did not take it (Fuchs-Cessot 2004: 247-248). A later reform performed in 1994 aimed at opening up the *Delegations* for the EC's domain of competence to the II and III Pillars by changing their name from Delegations for the EC to Delegations for the EU. At that point however, the empowerment of the French parliament was also linked to the

introduction of a legally-binding protocol on national parliaments in the Treaties which guaranteed all national parliaments would have a minimum period of six weeks to scrutinise European legislative proposals as they could not be examined by the Council before this period had elapsed.[XIV]

In sum, even if this is more true of 1992 than of 1997, it appears clearly that the French chambers have known to use the necessary reforms required by the Constitutional Court when the Treaties of Maastricht and of Amsterdam were approved to reinforce their prerogatives in EU affairs at the same time.

3.2. Use of their parliamentary autonomy

Another means of 'self-empowerment' for national parliaments has consisted in their use of their parliamentary autonomy, visible in their individual capacity to create committees for instance, as illustrated by the German and the Italian examples.

As is well-known and as has been reminded, the German parliament is strongly protected by the Federal Constitutional Court at present. Yet, this has not always been the case and, actually, the *Bundestag* made use of its parliamentary autonomy in order to become a participant in the EU integration process before the 'Article Europe' (art. 23 Basic Law) was introduced in the German Basic Law (Constitution) in 1992.[XV] Indeed, in Germany more than in other Member States the question of the termination of the organic relationship between the European and the national legislatures that existed until MEPs started to be directly elected in 1979 was subject to concern. The question as to how the relationship between the European Parliament (EP) and the *Bundestag* could be maintained was an object of debate (Schoof 1982) and consequently a 'Commission Europe', that had the status of an enquiry committee, was created in 1983. It remained in place during three years only (Sturm and Pehle 2005: 66), it was never institutionalised as a committee – despite its attempt in this sense – (Janowski 2004: 75) and had only a limited role as it was dependent on the permanent committees that had to adopt its conclusions or its recommendations for them to have any effect at all (Fuchs 2003). As a result, it was never able to attract the other MPs' attention onto EU matters (Weber-Panariello 1995: 259). A second committee was subsequently created in 1987, the sub-Committee of the external affairs committee for the question of the European Community, but this attempt failed as well as it depended on the External affairs committee to receive EC documents – and not

all of them were transmitted to it – (Sturm and Pehle 2005: 67) and it had no right to vote or to make proposals. A third initiative was taken in 1991 in the form of the EC-Committee and, although it did represent an improvement of the *Bundestag*'s scrutiny of EU affairs, (Fuchs 2003: 6) it could never fulfil the expectations its creation had awaken (ibid).

It is thus considered that the *Bundestag* 'left itself time until the 1990s to react properly to the changes to the framework of its legislative prerogatives provoked by the European integration' (Mangold 2011: 69). However, even if it were never successful, the *Bundestag* did use the margin of action it had internally to try and enhance its capacity of scrutiny of EU affairs even in the absence of any reform of the constitutional and legal frameworks. By contrast, the *Bundesrat* was more successful. It introduced an Internal market and free trade area Committee as early as 1957 but it could not participate in EU affairs efficiently during the period that preceded the adoption of the Single European Act (1986) (Grünhage 2007: 188). This is why it made use of its power and conditioned its assent to the law authorising the ratification of the Single European Act to larger possibilities of participation in EU affairs.

In Italy too, the use of its autonomy by the parliament was instrumental in its participation in EC affairs as until the approval of the Law Fabbri in 1987, no legal provision existed to this end. Despite this, the Italian Senate created its Committee for European Community affairs as early as 1968,[XVI] although its information in this domain was not guaranteed until 1987.

These examples from the German and the Italian parliaments show that parliaments in several occasions adapted their internal structures to the European integration process faster than the general legal framework for Member States participation was reformed. This illustrates parliamentary activism, and perhaps even a visionary attitude in the case of the Italian Senate and the German *Bundesrat*, and if these early attempts of parliaments to become more involved in the European integration process failed during several decades, it is at least partially due to the absence of adaptation of the overall framework that led for instance to the absence of transmission of EU documents or to decisions being taken at European level before parliaments were even finished with their scrutiny.

3.3. Informal arrangements

Finally, it should be noted that in addition to these formal arrangements, the informal adaptation of national parliaments has played an instrumental role in allowing them to be involved in the European integration process, in particular during its first decades but this is, to a certain extent, still true up until today. In numerous cases indeed, informal arrangements are made that allow parliaments to perform a certain function without any formal modification of their prerogatives at any level. This may, for example, be due to the need to obtain a super majority to reform parliamentary standing orders as informal arrangements also allows for more flexibility. It is also a means to test new procedures before they are formally anchored in standing orders or other legal documents. Interestingly, there is not always a will to formalise these procedures afterwards as they either are considered to function properly – this is the case in the Italian parliament with the subsidiarity check procedure since the Lisbon Treaty as detailed below – and/or because it is considered best to retain certain flexibility.

Such informal arrangements have for instance been used in order for parliaments to be able to control their governments: in Spain, until this practice was formalised in 1994, it was only according to a custom that a representative of the government came before the Congress of deputies to inform about the decisions taken during the previous meeting of the European Council, and that a debate was organised (Cienfuegos Mateo 1996: 90). In 1994, however, this practice was formalised in the Law regulating the functioning of the Joint Committee on EU affairs (Law 8/1994) and it is to the advantage of parliament as, until today, it does not simply depend on the government's will to come before it or on an agreement by the board of Chamber and on the Council of spokespersons for such a hearing to be organised; it can rely directly on Law 8/1994. Additionally, if debates before European Council meetings are possible today it is thanks to an informal practice according to which the Secretary of State for the European Union usually informs the Joint Committee on EU affairs (Fromage 2014: 157).

In France too, informal practice has been instrumental in allowing parliamentary control over representatives of the government when they sit in the European Council and in the Council of the EU as there is no legal basis for this. The latter is a very recent practice put into place during the Autumn 2014 according to which a representative of the government appears before the EU affairs Committee of the National Assembly before the

Council meetings take place. Yet, this practice is, until today, limited to the National Assembly only even if the Senate is considering introducing a similar one. As regards the control over European Council meetings, following the failure of the Constitutional Treaty, a practice has been established according to which a control by both Chambers is permitted *ex ante* and *ex post* (Wessels and Rozenberg 2013: 36).

In Italy, none of the Chambers has reformed its standing order in the view of their participation in the Early Warning System for the control of the respect of the principle of subsidiarity until today. Arguably, a legal basis for this control exists now in the law 234/2012 for the participation of Italy to the definition and the implementation of the norms and the policies of the European Union but these provisions have not been implemented accordingly in the Chambers' standing order. In the Chamber of deputies, the procedure is arguably defined in a quasi regulatory source as it is the Committee on the standing order that defined it in an opinion of 6 October 2009. This procedure was further refined and precised in a second opinion of the same Committee that had the task to review the first informal procedures and propose changes, which it did in an opinion of 14 July 2010. This assessment took place because, in this occasion as had already been the case in previous cases, it was decided that it would be best to try out the procedure on an informal basis before it is formalised (Esposito 2009: 1162). But this second step was never taken. In the Senate, a similar situation exists as the basis for this Chamber's participation in the Early Warning System lies in two letters of its President – that are, additionally, not even publicly available.

Although these informal arrangements in place in these three national parliaments may be particularly effective, they present several risks. Indeed, they can be volatile, especially where there is no written agreement between parliament and government and, perhaps more importantly, there exists a real lack of transparency towards the citizenry which is particularly problematic as the European integration process is already recurrently accused of being undemocratic and as national parliaments are supposed to ensure the democratic legitimacy of the EU as established by article 10 TEU. Hence, even if these arrangements have been instrumental in the speedy adaptation of national parliaments to the novelties introduced by the Treaty of Lisbon in particular, it remains that especially the informal arrangements raise the issue of the government's will: Without any formal protection of their prerogatives, parliaments remain at the mercy of their governments. This is not to say

that this is not the case when formal arrangements exist – at least when the Treaty of Lisbon first entered into force, it was not uncommon for the Spanish government not to transmit the subsidiarity assessments requested by the Joint Committee on EU affairs and this possibility is anchored in Law 24/2009 for example. But there is no doubt that the parliamentary prerogatives are even less protected if no formal recognition exist.

4. Conclusion

The preceding analysis has shown first that the need for parliaments to resort to institutional engineering often derives from particular features of each national institutional system. Besides, it appears that national constitutional courts also play or have played a decisive role in national parliaments' prerogatives being guaranteed or reinforced.

It results that, in several occasions, parliaments indeed had to fight for their prerogatives in EU affairs and, eventually, empower themselves the way they could. Reasons for this may have been Member States institutional constraints and the absence of protection by a Constitutional Court as indicated. National parliaments' response to these shortcomings in turn implied using their influence in the legislative procedure, making use of their parliamentary autonomy and also introducing changes informally.

Although this aspect was not developed at length in the preceding analysis, one additional aspect relates to the fact that all national parliaments had to adapt to the same challenges simultaneously. When this need became most pressing with the introduction of the Political Union in the Treaty of Maastricht, national parliaments were also increasingly cooperating under the auspice of COSAC which most certainly allowed for the exchange of best practices and for cross fertilisation among national parliaments.

On the other hand, the fact that a parliament did not have to fight for its prerogatives – as was largely the case of Germany after 1992 – it actually made use of the powers. Actually, during a very long time, German MPs were very reluctant to do so and a lack of institutional adaptation in order to make the prerogatives attributed to parliament effective was long the rule.[XVII]

The personality of the actors involved appears to be an important factor in this framework, together with the salience of the issues. It is not random that the Bundestag has begun to resort more frequently to its powers since the beginning of the economic and

financial crisis. Perhaps important factors in this regard are the institutional culture and also the political orientation of the MPs involved, i.e. whether they belong to the majority or to the opposition. Indeed, an MP who supports the government is more likely to try and exert influence outside of the formal channels. By contrast, upper chambers who are freer and usually have more time to devote to EU matters may be more vocal and view EU matters as a means to have an influence they lack in domestic affairs, as is arguably the case of the French Senate for example.

All in all, parliamentary engineering in order to empower parliaments in EU affairs appears to have (had) a great potential for it has allowed for an important degree of flexibility and for the compensation of the shortcomings of the national constitutional and legal frameworks. In this sense, it should be praised and may still be considered a useful tool. Nevertheless, a risk of instability exists and is particularly present in this field as governments have generally been – and still are – particularly reluctant to involve national parliaments and give them a say as was illustrated during the peak of the Euro crisis when intergovernmental arena played the most important role and parliaments were only marginally involved. Therefore, parliamentary engineering should rather be a temporary solution useful to adapt swiftly and to test procedures before they are formalised.

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* Diane Fromage is Assistant Professor in EU Law at Utrecht University, the Netherlands. Previously, she was Max Weber Postdoctoral Fellow in Law at the European University Institute of Florence (2014-2015) and Guest Professor at Pompeu Fabra University (Barcelona, Spain). Her research focuses on national and regional parliaments in the EU as well as on Independent Fiscal Institutions. Email address: d.b.fromage@uu.nl. This paper was presented during the Pademia Conference 'Strengthening Parliaments through Institutional Engineering' held at Sciences Po Paris on 3 and 4 December 2015; I thank all the participants for their useful comments.

[I] Declaration no. 13 on the role of national Parliaments in the European Union.

[II] Protocol on the role of national parliaments in the European Union.

[III] In this sense, a parallel can be drawn to the definition used by Uwe Puetter in his analysis of CFSP in the post-Lisbon era where he states that 'The Lisbon Treaty is therefore understood as an attempt of institutional engineering in the sense that the new provisions are aimed at addressing dysfunctional aspects of the previously existing institutional framework without however changing the general character of the allocation of formal decision-making competences in this policy field.' (Puetter 2012: 21).

[IV] Perhaps an exception can be seen here in the existence of some isolated MPs that did have a visionary outlook and, most importantly, in the German Länder that, for some of them, sought to be implicated in this integration process as early as 1957. On this assimilation of EU affairs to international matters in Germany: (Obrecht 2006: 147); on Italy and the consequent lack of interest on the side of MPs: (Esposito 2009: 1158); on Spain: (Vila Ramos 2010: 299).

[V] Numerous studies show that even when the parliamentary assembly was indeed composed of delegated MPs, the knowledge diffusion and the implication of the rest of MPs were very limited. On Italy for instance: (Guizzi 1980: 144). In France, the French MPs representing the National assembly in the European parliamentary Assembly had to present a yearly report on the most important questions in relation to the European integration process before the Foreign affairs Committee but, in practice, such exchange only happened after 1970. (Saulnier 2002: 283).

This original implication of national parliaments in the parliamentary assembly also explains why some national parliaments at least – among which France, Germany and Italy – did not adapt their institutional structures during the first decades of the integration.

[VI] The original proposal to introduce parliamentary resolutions in the rules of Procedure of the chambers was censored by the Constitutional council as these measures would amount to means of control or influence from the parliament onto the government which went against the Constitution. See Decision 59-3 DC of 25 June 1959.

[VII] Up until the reform of 23 July 2008, article 48 Constitution foresaw that the Government's bills and the parliamentary bills it supported had priority. The only exceptions were the questions to the Government once a week and once a month when the Chambers could define their agenda freely. By contrast, since 2008 article 48 states '…the agenda shall be determined by each House. During two weeks of sittings out of four, priority shall be given, in the order determined by the Government, to the consideration of texts and to debates which it requests to be included on the agenda.' The situation that had prevailed between 1958 and 2008 has now been reversed and Parliament is, by default, in charge of defining its agenda.

[VIII] The European Court of Justice has, in certain instances, empowered national parliaments for example when it entrusted them with the control of the respect of the principle of subsidiarity. (Martinico 2011: 657-658). This also holds true of the Early Warning System in itself as it invites to a political control by parliaments (Goldoni 2014 and Russo 2012).

[IX] The *Bundestag*'s influence and role as an organ of control was reminded in several occasions in this decision, *inter alia* par. 113. BVerfGE 89, 155. The complaint was launched by an individual who claimed that the Treaty infringed a series of fundamental rights enshrined in the Basic Law. On this decision, for instance: (Tomuschat 1993: 489) and (Weiler 1994).

[X] Further on this protection of Parliament by the Court (Kiiver 2010) and on this judgment (Jancic 2010) (Thym 2009) and (Ziller 2010).

[XI] Decision DC-2007-560 DC of 20 December 2007 referring also to Decision DC-2004-505 of 19 November 2004 on the Treaty establishing a Constitution for Europe.

[XII] This does not mean that it was granted strong powers after that but its position was improved indeed.

[XIII] Also: addition by the National Assembly of an article foreseeing parliamentary scrutiny of EC draft legislative proposals during the debate in first lecture that preceded the amendment of the French Constitution. (French Senate 1992:37).

[XIV] Article 3, Protocol on the role of national parliaments in the European Union.

[XV] Arguably, the German Chambers had always had a guarantee in terms of information regarding EC affairs (art. 2 of the law on the ratification of the Treaties of Rome) but they were not guaranteed rights of participation and until 1992 even Treaty changes did not require a qualified majority in both Chambers. Hence, the attempts the Chambers made on their own initiative in order to be heard in this domain are also analysed here.

[XVI] By contrast, in the Italian Chamber of deputies no specific Committee was created until 1990, although a Permanent Committee for the Communitarian problems had been created within the Committee on foreign affairs before that.

[XVII] The EU Affairs Committee was for instance created only in 1994 despite its formal introduction in 1992.

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