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**The "European integration paradox": comparing EU practice and discourse on the role of parliaments in the EU in the Assemblée nationale and the Bundestag across time**

Anja Thomas

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# The 'European Integration Paradox'

*Comparing EU Practice and Discourse on the Role of Parliaments in  
the EU in the Assemblée nationale and the Bundestag Across Time*

Volume 1

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*Meinen Eltern  
À Gaël et Anais*

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## Abstract

This thesis argues that neo-institutionalisms currently prevalent in EU studies are inadequate for understanding the institutionalisation processes at work in national parliaments with increasing EU legislation. Integrating elements of practice theory into theoretical reflections, which are based on the work of social-constructivists Peter L. Berger and Thomas Luckmann and the 'old' institutionalism of Max Weber, the author demonstrates the presence of an *Integration Paradox*: Members of Parliaments' rising experience in EU participation has led to an increasing importance of domestic roles for MPs' 'word and deed' in EU affairs in the Assemblée nationale and the Bundestag from 1979 to 2013.

EU practice is analysed through 'thick description,' which is based on primary and secondary interview evidence with current and historical parliamentary actors as well as the study of documents and secondary literature. Assessments of discourse on the role of parliaments are conducted through a systematic deductive-inductive analysis of debates on selected EU treaty changes.

While agency and action in EU affairs were regularly changing and 'arbitrary' (Berger and Luckmann) until the end of the 1990s, only from the beginning of 2000 onwards did both chambers begin to *perform* specific 'typical' roles in European affairs. Because MPs on the micro-level seek 'competent' action with reference to domestic practices, these action patterns are increasingly becoming *functional equivalents* of roles at the domestic level.

Consequently, this evolution has influenced the discourse of MPs on the role of parliaments in the EU, as is understood through Max Weber's notion of changing 'motives for action' in institutionalisation processes. Due to a low experience of 'doing EU', the ideas conveyed depend on the ideological stance of MPs regarding the future shape of European integration. With rising experience of 'doing EU', Members of Parliament evaluate the role of parliaments in the EU less on the basis of a priori considerations but depending of their day-to-day practice.

This thesis concludes that, paradoxically, the *institutionalisation of Europe* in the parliaments is leading to increasingly differentiated ways of 'doing and debating' representative democracy in the EU. This poses serious difficulties for the prospects of inter-parliamentary co-operation in the EU and questions the empirical limits of the concept of 'democracy' (Nicolaidis).

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## List of abbreviations

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AN: Assemblée nationale

BBV: Bundestags-Bundesregierungs-Vereinbarung (Germany)

BT: Bundestag

C: Groupe Communiste

CDSP: Common Foreign Security and Defence Policy

CDU: Christlich-Demokratische Union

CFSP: Common Foreign Security and Policy

COSAC: Conférence des Organes Parlementaires Spécialisés dans les Affaires de l'Union des Parlements de l'Union Européenne

COREPER: Comité des Représentants Permanents

CSU: Christlich-Soziale Union Deutschlands

DL: Die Linke

EAC: European Affairs Committee

EC: European Community / Communities

ECJ: European Court of Justice

EELV: Europe Ecologie Les Verts

EMU: Economic and Monetary Union

EP: European Parliament

EU: European Union

EUZBBG: Gesetz über die Zusammenarbeit von Bundesregierung und Deutschem Bundestag in Angelegenheiten der Europäischen Union (Germany)

EWM: Early Warning Mechanism

FDP: Freie Demokratische Partei

GDR: Groupe de la Gauche Démocrate et Républicaine

MEP: Member of the European Parliament

MP: Member of Parliament

na: non affiliated

NC: Nouveau Centre

PA1: Unit PA 1 – Europe

PDS: Partei des Demokratischen Sozialismus

PPG: Parliamentary Party Group

PS: Parti Socialiste

QMV: Qualified Majority Voting

RPR: Rassemblement Pour la République

SGAE: Secrétariat Général des Affaires Européennes

SGCI: Secrétariat Général du Comité Interministériel pour les questions de coopération économique européenne

SOC: Groupe Socialiste

SPD: Sozialdemokratische Partei Deutschlands

SRC: Groupe Socialiste, Républicain et Citoyen

UDC: Union Démocratique du Centre

UDF: Union pour la Démocratie Française

UMP: Union pour un Mouvement Populaire

TEU: Treaty on European Union

TFEU: Treaty on the Functioning of the European Union

TSCG: Treaty on Stability, Coordination and Governance

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# INTRODUCTION

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The origin of this PhD thesis lies in a puzzling observation. Intuitively, one should think that the Europeanisation of domestic institutions would lead to more ‘convergence’ in the handling of European Union (EU) affairs. The increased exchange between different national actors on EU issues should therefore eventually enhance the common understanding of EU institutions and procedures throughout all layers of EU decision-making and the ‘norms’ on which they are based (Habermas 1981). However, when interviewing Members of Parliament (MPs) in France and Germany about their participation in EU decision-making over some time, the impression was quite the contrary: other national parliaments are becoming more (instead of less) difficult to understand. This is all the more surprising as the actors are apparently satisfied as far as the improvement of their own participation in EU affairs is concerned – even in parliaments notoriously qualified as ‘weak’ in the literature such as the *Assemblée nationale*.<sup>1</sup> The discrepancy between this growing satisfaction with the participation in EU affairs and the increasing lack of understanding of actors in other national parliaments was intriguing.

The important difficulties of national parliaments to agree on forms of interparliamentary cooperation and to actually ‘invest’ such institutions more than 30 years after the end of the ‘organic’ link between the European Parliament and national parliaments are another case in point – be they the Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union (COSAC) or the most recent Inter-Parliamentary Conference for Economic and Financial Governance.

This thesis investigates this puzzle and finds an evolution that the author calls the ‘European Integration Paradox’: The Europeanisation of national parliaments does not lead to greater convergences of ‘word and deed’ linked to EU decision-making, but is on the contrary at the roots of diverging action patterns and discursive practices about European parliamentary democracy. With an increasing experience of ‘doing EU’, the MPs evaluate the role of

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<sup>1</sup> This does not mean that they were necessarily satisfied with their participation at present, but there was at least a sense of having (much) improved when looking at the past.

parliaments in the EU less on the basis of *a priori* reflections about the future of European integration, but on their day-to-day domestic practices.

This thesis examines the EU participation of the Assemblée nationale and the Bundestag since 1979 through a ‘thick description’ (Geertz 1973) and compares MPs’ discourse about the role of parliaments in the EU across time. It shows that with the growing experience in EU legislation, ‘doing EU’ is increasingly institutionalised and *typical* (i.e. the chambers are starting to perform distinct ordered practices or functions), but differs more fundamentally *between* the chambers. New action patterns reinterpret the dominant parliamentary functions in the domestic political system for EU affairs. The growing institutionalisation of ‘doing EU’ leads thus paradoxically to an increasing importance of domestic practices for MPs’ discourse about representative democracy in the EU.

Europeanisation in is understood as the institutionalisation of European affairs as ‘ordered’ practices. Such practices are in their minimal sense ‘embodied, materially mediated arrays of human activity centrally organised around shared practical understanding’ (Schatzki, Knorr-Cetina, and Savigny 2001, 11). This study takes a perspective that is based on the assumption that one cannot understand a ‘social form [...] without paying attention to the actual doings in and on the world’ (Pouliot 2016 quoted in Adler-Nissen 2016, 88), which shape it. It is thus necessary to abandon a too narrow focus on formal rules and organisation and to ‘give a say to the actors’ (Lequesne 2015, 352) about what they do. The building of formal rules is itself a result of such a social interaction.

This thesis examines why MPs only exhibit so little common understanding in their discourse about the role of parliaments in the EU, almost 25 years after the coming into force of the Treaty of Maastricht and its fundamental ‘reshaping of EU treaties and practice’ (Wessels 2008, 90), which had significant impact on national parliaments’ capacities to legitimise authoritative decision-making for the citizens they represent.

In this context, two sets of questions must be answered. The first set refers to how the processes can be understood through which EU affairs are institutionalised (or not) in the chambers with increasing EU legislation. It questions if and how ‘doing EU’ stabilises into ordered practices and arrays of activity in relation to the dense net of practices or ‘ways of doing things’ in the parliamentary chambers. The second set of questions refers to whether such processes of patterning actions related to EU affairs are in turn linked to the ideas MPs convey

in the discourse about the role of parliaments in the EU, and how such a potential link can be understood.

The questions outlined above are analysed through a comparative analysis of the practice of EU affairs in two parliaments, which are diametrically opposite in terms of domestic parliamentary institutionalised practices and functions for their respective political systems: the French Assemblée Nationale and the German Bundestag. The Assemblée nationale is paradigmatic for a ‘talking’ parliament, whose dominant action patterns essentially serve the *responsiveness* to voter concerns, while the Bundestag is paradigmatic for a ‘working parliament’, in which MPs’ aggregated action patterns tend towards *legislative control*. The changes in both chambers are investigated by means of synchronic and diachronic comparison – dividing parliamentary participation in EU affairs since 1979 into two periods, according to the impact of EU decision-making after a major increase of binding EU legislation at the end of the 1990s in the follow-up of the Maastricht Treaty. The evolution of MPs’ ideas on role models for national parliaments is analysed through a comparison of the debates on the treaties of Maastricht and Lisbon, i.e. the two major treaty changes – each of which is representative of one period with low (Maastricht) and with comparatively high and more patterned parliamentary participation in EU affairs (Lisbon).

To grasp ‘Europeanisation’ for the purpose of this study, this thesis is fundamentally concerned with institutionalisation processes in their sociological sense. As neo-institutionalism only provides few tools to understand change, this thesis revisits the classical writings of the social constructivists Berger and Luckmann and the ‘old’ institutionalism of Max Weber. Berger and Luckmann’s institutionalism allows conceptualising the processes through which new ‘ordered’ practices come about in the course of increasing typification of agency and action. Weber helps to understand how actors may change their *motives of action* in the course of an institutionalisation process, i.e. why domestic parliamentary institutions and the shared practical experience of the actors enshrined in them may paradoxically play a stronger role later in the European integration process than they did when MPs had little experience in ‘doing EU’.



## ***A - Political and academic relevance***

The legitimacy of the EU has been under discussion for a long time in political and academic circles. In particular its democratic legitimacy (see e.g. Kohler-Koch and Rittberger 2007) and a certain dissonance between the perceptions of citizens of EU Member States and Europeanised or internationalised political and economic EU elites<sup>2</sup> about the objectives and scope of European integration have been important in the public and academic discourse for at least the last 25 years. In political science the end of what is commonly called the ‘permissive consensus’ (Lindberg and Scheingold 1970) to European integration is conceptualised in very different ways from citizens’ ‘indifference’ (Ingelgom and Throssell 2014) to the advent of a new ‘constraining dissensus’ (Hooghe and Marks 2009).

In the political debate, the successful referendum on the British departure from the EU might be a powerful illustration of the latter. Even if the hypothesis of the appearance of a ‘constraining dissensus’ was not true for the rest of the EU, European integration has become ever more differentiated in recent years – with member states participating in common policies to different extents (Schimmelfennig 2016). Differentiated integration adds a further difficulty to the already ardent problems related to the legitimation of decision-making in the EU through representative democracy at the European level. It is difficult to reach congruence between the representatives in the European Parliament (EP) and those represented, when not all 28 member states participate in all policies and instruments.

National parliaments have for quite some time come to the fore to add indirect parliamentary legitimacy to decision-making in the EU (Rittberger 2012; Rittberger 2005). They are mentioned for the first time in the Maastricht Treaty in 1992. European initiatives and political discourse have increasingly linked the question of the democratic legitimacy of the EU to the role of national parliaments. The issue gradually gained importance in what at the time was called the ‘constitutional process’. After the failure of the ‘Constitutional Treaty’, the Treaty of Lisbon for the first time attributed ‘rights and duties’ (Fischer 2010) to national parliaments and provided them with a direct role in EU legislative decision-making.

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<sup>2</sup> (see for an investigation into the sociology of the borderless society of the European Union Adrian Favell 2008).

The consequences of the participation of national parliaments in EU decision-making for the EU ‘constitution’ (see e.g. Groen and Christiansen 2015) and the latter’s institutional and motivational capacity (see Heffler et al. 2015) for the provision of legitimacy to the EU have been controversial among academics, political actors and parliamentarians themselves.

### ***B - Contribution to current research***

This thesis relates to these debates and links to three fields of current research: Firstly, this thesis contributes to the literature on EU activity in national parliaments, by putting the spotlight on different functions national parliaments play in practice for the decision-making in EU polity over time. The existing literature is often inspired by legislative studies and rational choice delegation models. Because of their largely data-driven nature, studies often compare parliamentary prerogatives and activities synchronically. They are only marginally interested in the more theoretical questions of the evolution of EU representative democracy and the EU as a polity – and parliaments’ role therein.

Many recent studies on national parliaments in the EU focus on ‘scope, timing, management and impact of parliamentary scrutiny of EU affairs’ (Auel 2007, 489). There have been a number of attempts in recent years to rank the ‘strength’ of parliamentary participation in EU affairs, without much discussion of the fact that not only the *legislative* function is important for parliaments on the domestic level; in fact it might be weakly developed in many of them. Consequently, there is not much discussion about the fact that parliaments cannot be expected to be more ardent scrutinisers of the governments in EU affairs than they are in domestic policy areas (Auel 2007, 489).

For a long time, studies have focused on the evolution of prerogatives, the organisation of the chambers in EU affairs (Winzen 2012) or the Europeanisation of legislation (Brouard, Costa, and König 2012; König, Dannwolf, and Luetgert 2012). More recently the whole range of the chambers’ activity is the subject of large transeuropean research projects and networks (OPAL 2010; PADEMIA 2014), with impressive data output both qualitatively and quantitatively, also attempting to rank parliamentary activity (Auel, Rozenberg, and Tacea 2015; Karlas 2011). Large scale comparisons however still suffer from the fact that formal and informal parliamentary tools do not necessarily have the same *meaning* and *function* in

parliamentary practice in different chambers. The same problem is inherent in studies that aim at measuring the ‘impact’ of national parliamentary activity on decision-making in the Council (Auel, Rozenberg, and Thomas 2012).

Large book projects have presented a more qualitative and contextualised view on all facets of parliamentary participation. After a pioneering comparative book, asking whether national parliaments were ‘losers or latecomers’ (Maurer and Wessels 2001) in EU integration, and comparing the activities of chambers in the then EU 15, a recent collective book project has compared EU activities of national chambers in the 28 member states of the EU (Hefftlar et al. 2015). Despite their important contribution to the classification of national parliaments and the latter’s role in the EU multi-level system, collective book projects are necessarily limited as regards the in-depth comparison of the cases (as each one is analysed by a different specialist).

In recent years, a more sociological approach has permitted a further in-depth look at the entire scope of MPs’ activities in EU affairs. The legislative roles of individual MPs have been examined in EU studies in order to shed light on the link between MPs’ attitudes and behaviour (Blomgren and Rozenberg 2012, 19–21). Most studies have focused on the EP to find factors explaining why MPs adopt various roles (see e.g. Katz and Weßels 1999; Navarro 2009). Rozenberg argued that the motivational roles of the chairmen of the European Affairs Committees (EACs) in the *Assemblée nationale* and the House of Lords explain the type of parliamentary involvement (Rozenberg 2009). Auel and Rittberger identified different ‘styles’ of EU participation (Auel and Rittberger 2006).

Finally, Bernhard Weßels argued that domestic role orientations of MPs have an influence on how they see parliamentary participation in the EU (Weßels 2005). He arrives at the result that ‘weaker parliaments’ favour direct participation in EU decision-making, while ‘stronger parliaments’ have trust in the EP – a result highly counter-intuitive which might rather relate to the MPs’ little experience in day-to-day decision-making at the moment of the data gathering (1996).<sup>3</sup>

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<sup>3</sup> This result is contradicted in this study. It is argued here that the result must be understood as a problem of the wrong timing of the data gathering (1996). This will be further discussed in Chapter II.

Time is still underresearched as a factor of variance of parliamentary practices and MPs' attitudes. This is mainly due to the difficulties in producing comparable data over time, and establishing concrete links between observations and different stages and timing of EU integration. As this study will show, the evolution of the EU system in relation to domestic practices plays a role in the prominence of either interest-related, idea-related or institutional motives.

Studies on the 'Europeanisation' of single parliamentary chambers adopt a longer-term perspective but are mostly restricted to single country case studies (Stanat 2006), or examine the Europeanisation of political systems as a whole on a more general level (Beichelt 2009; Sturm and Pehle 2006).

Secondly, this thesis contributes to the literature on the Europeanisation of national institutions, which has been analysed searching for 'convergences', i.e. the outcomes of 'the downstream effects of EU policy implementation on national bureaucratic structures' (A. Favell and Guiraudon 2009, 552). Studies have analysed how domestic institutions and policy-makers adapt in different ways to the impact of EU decision-making (Börzel 1999). By focusing the analytical lens on a distinct process and outcome in terms of formal rules, studies are blind for the 'totality of institutional, strategic and normative adaptation processes which may be induced by the European construction' (Palier and Surel 2007, 39).

This may even lead to a misinterpretation of similar 'labels' of legal prerogatives and organisational features as indicators of 'convergences', without asking how these tools are used and which differential *functions* they may have and what they may mean for the actors. Sprungk concludes that the Bundestag and the Assemblée nationale have strongly converged after the reforms of parliamentary prerogatives negotiated with the ratification of the Treaty of Maastricht and the introduction of new prerogatives for the control of the negotiations in the Council of Ministers (Sprungk 2007). When reviewing the real activity patterns, this result is questionable (Neuhold and Smith 2015).

Radaelli's definition of Europeanisation is certainly one of the most widely accepted, as it neither narrows down the process to top-down effects (Saurugger 2009, 258–59), nor prescribes what outcomes should look like (Palier and Surel 2007, 37). He conceives Europeanisation in a circular way as being both the influence of domestic factors on the European integration process ('uploading') and in turn the latter's effects on the domestic level:

for him Europeanisation is a process ‘of (a) construction (b) diffusion (c) institutionalisation of formal and informal rules, procedures, policy paradigms, styles, “ways of doing things” and shared beliefs and norms which are first defined and consolidated in the making of EU public policy and then incorporated in the logic of domestic discourse, identities, political structures and public policies’ (Radaelli 2000, 110).

This definition on the one hand delivers the important elements to analyse evolutions linked to European integration at the micro-level of the actors, and on the other hand puts the spotlight on an important dimension of the Europeanisation process: Europeanisation processes are ‘institutionalisation processes’. The definition of what these processes mean however remains strangely cryptic. There are so far only very few reflections upon what institutionalisation means on the macro level of the actors in the context of the process of European integration, and how it can be analysed.

This study argues that this lacuna is mainly due to the importance of neo-institutionalist approaches in EU studies with their inherent problem in modelling change. These approaches can only with difficulty grasp the time dimension necessary to analyse ‘institutionalisation processes’, and how the interests, ideas and institutional motives for the evaluation of the new institution might change in the course of the process (for a discussion see Chapter I). To remedy this problem, this thesis revisits the ‘old’ institutionalism of Max Weber.

Furthermore, this thesis brings some further empirical evidence for the literature on the European Union as a polity and its democratic quality, which is dominated by theoretical and normative reflections about transnational democracy and its standards (Fossum 2015). The social constructivist empirical analysis to this question usually compares discourse on the European Union across different arenas. This strand of research increasingly focuses on national parliaments as sole arenas that intermediate EU issues with all aspects of policy and polity on the domestic level (Lord 2007) or as important intermediating agents with the wider public in the member states (Closa and Maatsch 2014).

Recently a number of studies in the latter sub-field have focused on parliamentary debates linked to the financial crisis and the bailout instruments (see e.g. Puntischer Riekmann and Wydra 2013). Studies are recently focusing more broadly on the (de)legitimizing function of parliamentary discourse for the politics and policies of the EU and European integration. The studies address the politicisation of parliamentary debates and the contestation of policy and

polity aspects of European integration (de Wilde 2014; Wendler 2016). A new branch of studies focuses on the evolution of representation in the European Union through representative ‘claims’ by MPs in parliamentary debates (de Wilde 2014) and other legitimacy aspects of parliamentary debates, both on the domestic and the European level (Lord 2008).

The literature is mostly focussed on discourse without further analysis of the *practice* of ‘doing democracy in the European Union’. This may lead to results that are more interesting in terms of theoretical debates than results that reflect the empirical reality. The fact that this study embeds the comparison of discourse over time allows bringing to light the link between the growing EU experience of MPs and their discourse about the role of parliaments in the EU.

### ***C - Theoretical framework, hypotheses, methods and data***

The theoretical part of this thesis revisits the classical writings of the social constructivists Berger and Luckmann and the ‘old’ institutionalism of Max Weber, and includes insights from practice theory (Adler and Pouliot 2011; Adler-Nissen 2016; Schatzki, Knorr-Cetina, and Savigny 2001). The theoretical reflections provide a framework to grasp processes of institutionalisation of EU practices on the micro-level of the actors – and to understand how increasingly ‘doing EU’ interacts with the ideas conveyed by MPs about parliamentary democracy in the EU.

Two hypotheses are developed on the basis of these reflections, which guide the empirical analysis of this study. The first hypothesis assumes that the increasing experience of ‘doing EU’ in the chambers leads to stabilised action patterns that slowly reproduce the *functions* the parliamentary chamber fulfils at the domestic level (i.e. responsiveness, legislation, control, information and deliberation). This can be explained by the fact that the more ‘incompetent’ attempts for participation in EU decision-making there are, the more MPs will acquire EU expertise; EU affairs bodies will take up typical functions of committees in the chambers and EU experts will become typical *agents of (the) change* of formal prerogatives and organisational solutions for the dealings with EU affairs.

## 1. Institutionalisation Hypothesis (*Typification of Actors and Action*)

With increasing EU legislation, MPs acquire knowledge and experience in ‘doing EU’, and EU related action is increasingly carried out by typical actors (i.e. EU experts and European affairs bodies); moreover, communities of practitioners are increasingly successful actors in the reforms of formal frameworks of EU participation. As a consequence, EU related action is more and more patterned; as MPs try to find ‘competent’ participation modes in EU affairs regarding ‘ways of doing things’ in the chambers, the resulting stable action patterns *functional equivalents* to practices or parliamentary functions at the domestic level.

This hypothesis is investigated in Chapter III+IV. To investigate almost thirty years of parliamentary practice is an unpromising endeavour. It is impossible to find systematic data. The method chosen to access parliamentary practice was as a consequence ‘think description’ (Geertz 1973) of evolutions based on interview evidence, document analysis and secondary literature. The author carried out interviews with current and ‘historic’ parliamentary actors, partly in the framework of the project OPAL (OPAL 2010). Other interviews from this project could be used as background information. For the French case the author had access to an important set of interviews with MPs from the Assemblée nationale carried out by Olivier Rozenberg between 1999-2003 and provided by the *Banque d'enquêtes qualitatives en sciences humaines et sociales* (BeQuali 2016) of the *Centre de données sociopolitiques* de Sciences Po. In the German case ‘historic’ interview material was missing; hence the author interviewed actors who had been MP in the Bundestag in the 80s and 90s. In order to gain this breadth of interview evidence in two countries, some methodological trade-offs were unavoidable (e.g. on the heterogeneity of interview data), but each interview was cross-checked with other sources and secondary literature if available. Overall, the institutionalisation of EU affairs in the chambers was analysed with the help of 48 interviews with MPs and clerks from different time periods in both chambers.

The *second hypothesis* assumes that the more ‘doing EU’ is patterned in the chambers, the more MPs’ day-to-day practice has an impact on the way they see parliamentary democracy in the EU. This draws on Max Weber’s idea that the *motives for action* change in the course of an institutionalisation process. ‘Institutional’ motives are more important in the later stages of a habituation process than ‘doing EU’.

## **2. European Integration Paradox Hypothesis (Growing importance of domestic institutions as *motives for action*)**

With an increasing patterning of EU affairs, the ideas MPs convey about the role of parliaments in the EU depend stronger on domestic institutions.

This second hypothesis is investigated in Chapter V through a qualitative-quantitative discourse analysis of key parliamentary debates in each of the two time periods identified (Maastricht period: 1979-1999 and Lisbon period: 2000-2013), one with a low degree of institutionalisation (Maastricht) and one with a higher degree of institutionalisation (Lisbon). The developed discourse-analytical method allowed for the systematic comparison of the importance of specific parliamentary roles in the discourse of MPs across time. The cleavages in the discourse served as indicators for the motives driving MPs' discursive action.

The motives for the evaluation of parliamentary prerogatives were analysed with the help of the contributions to the general debates (speakers enrolled in the speaker's lists) on constitutional amendments and ratification laws on the treaties of Maastricht and Lisbon in the Assemblée nationale and the Bundestag. Overall the sample comprised about 47 hours of parliamentary debate.

### ***D - Object of this study and central terminology***

The object of this study are practices. The latter are understood in their most basic sense as what actors do and what they say and how this may reflect their interests, their ideological convictions or what they consider as being *appropriate*.<sup>4</sup> Lequesne understands practice as 'patterns of action, which, in being performed by the agents, reflect not only their rational or material interest at the moment 't', but also their representation of an issue integrated as socially meaningful' (Lequesne 2015, 2).

While the term 'institution' is usually used in political science to indicate organisational structures and procedures, this thesis understands the term the way sociologists do – as both

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<sup>4</sup> The theoretical framework of this thesis assumes that the stronger behaviour is patterned, the more attitudes are patterned as well, and aggregate action patterns thus more and more reflect what actors consider as *appropriate*.



organisational rules and rule or norm systems (Rhodes 2008). Norm systems are the results of institutionalisation processes, which are themselves results of social interaction. When this thesis talks about ‘institutional’ motives for evaluation or action, it refers to deeply integrated rule-systems or the backdrop of institutionalised practices. In the heart of the understanding of ‘institution’ as it is used in this thesis lie what Berger and Luckmann call ‘usual ways of doing things’. The latter are ‘customary’ or ‘usual’ patterns of action. ‘Usual ways of doing things’ do not correspond to ‘unwritten rules’ because they also encompass the written rules actors use. However, ‘usual ways of doing things’ are opposed to ‘written rules which are not used’ (and thus remain void) because they do not correspond to habitual action patterns.

This thesis is not so much interested in the formal dimension of politics, but in real patterns of action and the micro-processes on actor level and patterns that *constitute* institutionalisation processes. It understands institutionalisation as processes of ‘reciprocal typification of habitualised actions by types of actors [...]’ (Berger and Luckmann, 1991, p. 72) in EU affairs in parliaments that lead to ‘ordered practices’. As an outcome of institutionalisation processes one can observe the emergence of *typical* actors in EU affairs in the chambers who carry out *typical* forms or patterns of parliamentary action.

In the terminology of social theory such *typical* forms of action are close to roles,<sup>5</sup> a concept from social theory used in legislative studies. In contrast to legislative studies, however, this thesis does not investigate the representative roles of individual MPs (for the state of the study of roles in legislatures see Blomgren and Rozenberg 2012). When this thesis refers to *roles or orientations*, it refers only to patterns as they shine through practice or discourse. Role is used in its sense in common speech and thus as a synonym for a *function* a parliament fulfils towards society or towards the government.<sup>6</sup>

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<sup>5</sup> Roles are situated at the interface of the micro and the macro level. They are ‘designed to explain how individuals who occupy particular social positions are expected to behave and how they expect others to behave’ (Hindin 2007).

<sup>6</sup> The term function needs some specification, because of the potential normative bias linked to the term and its close link to the functionalism of Talcott Parsons. This thesis refers to functions only in the sense of tasks carried out for the parliamentary system (e.g. responsiveness, legislation and initiative, information and deliberation, government creation and control, see (Patzelt, 2003, pp. 82–112). It does not entail any judgement about whether these functions are positive (e.g. for the democratic quality of the system) or complete.

This PhD thesis is thus about what parliamentarians *do* in EU affairs, how this relates to what they *say* in public discourse assuming that what they say (to their fellow MPs and in particular to the wider public) reveals underlying social forms. Discourses are understood as a form of practice carried out by agents.

### ***E - Thesis structure and chapter overview***

The first chapter (CHAPTER I) presents theoretical reflections for institutionalisation processes based on a *practice* perspective and Berger and Luckmann's and Weber's theory of institutionalisation processes. The chapter first discusses central problems of neo-institutionalisms to conceptualise change. Instead of measuring the institutionalisation of EU affairs through distinct formal and organisational features (that are difficult to establish *a priori*), the thesis focusses on actors involved in EU affairs in the chambers and what they do in practice. Formal and informal rules are analysed with reference to their *function* in the practice of the actors.

In the following the chapter (CHAPTER II) discusses Berger and Luckmann's concept of institutionalisation processes as processes of 'typification' (Berger and Luckmann 1991) of actors and action in EU affairs – drawing also on insights from practice theory. This allows modelling the impact of the increasing EU legislation on 'doing EU' in the chambers. These processes put actors with EU expertise to the fore of action in parliament as far as EU decision-making and polity-building is concerned. Changing patterns of parliamentary participation are seen as a search for *functional equivalents* to 'old ways of doing things' (Berger and Luckmann 1991) or prior institutionalised parliamentary practices in the chamber. Drawing on practice theory, one can assume that the experience of 'incompetence' in handling EU affairs in parliament, and increasing shared knowledge about 'doing EU' (Adler-Nissen 2016) as a day-to-day business by a 'community of practice' in the chambers, lead to a search for new action that can accommodate EU decision-making and parliamentary practice. The results of this evolution are action patterns that more and more reproduce the roles of the chambers on the domestic level reinterpreted for EU affairs. Roles are understood as aggregated action patterns or aggregated practices.

Finally, the chapter discusses Weber's idea of changing motives for action in the course of institutionalisation processes. This allows modelling the changing importance of domestic role models for discursive practices of MPs about the role of parliaments in the EU. While there may be many various motives for action when institutionalisation is low (in particular instrumental and ideological interest), with increasing institutionalisation actors will look for *appropriate* and *rightful* solutions for parliamentary participation in EU decision-making.

The following chapter lays the methodological basis for the comparison of the evolution of EU practice and discourse on the role of parliaments in the EU in the Assemblée nationale and the Bundestag. The chapter disusses the comparative framework that is designed as a spatial and temporal comparison of four cases. In order to not simply assume certain developments as 'historical', but to introduce time as a dimension of variance, it was subjected to the same methodological guidelines for comparison as those usually applied to synchronic comparative designs. The developments in the Bundestag and the Assemblée nationale are thus divided into two time periods. The first is called the 'Maastricht period' for the purposes of this study and starts in 1979 with the 'decoupling' of national parliaments from the EP through the latter's first direct elections. It ends in 1999 when the full effects of the substantial changes of the Maastricht Treaty and the ensuing 'jump' in EU legislation from the middle of the 1990s are assumed to be still weakly felt by MPs. The full impact is then investigated in the second time period which is called the 'Lisbon period' and runs from 2000 to 2013. In order to investigate the discursive practices of MPs on the role of parliaments in the EU, the EU treaty change publicly considered most far-reaching for the *de jure* constitution of the EU was chosen in each period to compare the parliamentary debates linked to those treaties, i.e. the Treaty of Maastricht and the Treaty of Lisbon.

The comparison across time is designed as a most similar system comparison of developments in each chamber; different outcomes in the chambers in terms of dealing with EU affairs can be explained by the temporal variance. The comparison across space is designed as a most different case design, comparing developments in the two chambers to find common outcomes.

The methodological chapter proceeds by operationalising the theoretical reflections of Chapter I. *Hypothesis 1* assumes the typifications of actors and action with growing EU experience. Indicators for the increasing typification of actors are the roles of the European

affairs committees and EU experts in the chambers, and the growing importance of a ‘community of practice’ sharing EU experience and knowledge for the adaptation of formal rules for EU participation. The increasing typification of action in EU affairs is indicated by the patterning of the use of EU linked formal and informal instruments and the interaction with EU transnational actors.

This growing institutionalisation of the EU as an ‘ordered practice’ is in turn supposed to have an impact on the discursive practices of MPs on the role of parliaments in the EU. This was formulated in *Hypothesis 2*. The cleavages of the debates are indicators for the motives underlying them. If the debates are cleaved along a line running between MPs from the government majority and the opposition, discursive practice can be assumed to depend on political interests of (re)election. If ideas about the role of parliaments are distinct between groups of clearly identifiable convictions about the future scope of European integration, then ideological motives prevail. Finally, if ideas are fundamentally cleaved between MPs from different parliamentary institutions, then motives are domestic parliamentary institutions. The following subchapter describes the methods applied and the methodology used for the interviews, and describes the development of the discourse analytic method.

The third and fourth chapter investigate *Hypothesis 1*. In the Maastricht period (CHAPTER III) one could indeed find similarities between the Bundestag and the Assemblée nationale as far as action on EU affairs is concerned. In both chambers there was still no clearly defined agency for EU affairs; central actors on EU related issues varied, but were rarely experts on parliamentary day-to-day dealings with EU affairs. In the Assemblée nationale the European affairs body was subject to changes in membership and scope. As a technical body, it lacked the political representativeness to carry out functions similar to the committees during most of the period. EU expertise was limited and few MP were interested in EU affairs. Agents of change of formal rules for the chamber’s participation in EU affairs were often Eurosceptic MPs, pushing through their ideas about the parliament’s role as a controller of the government’s EU policy. In the Bundestag the European affairs body was subject to multiple changes. In practice it never fulfilled its function of coordinating the work of the standing committees, which was supported by EU politicians in the chamber as it did not correspond to the BT’s usual practice of sharing work between the committees. Despite their pro-integrationist stance, there were only few MPs in the BT who were experts in EU day-to-day decision-making. Successful agents pushing through their proposals for the reform of formal rules for the

participation in EU affairs were mostly powerful MPs in the parliamentary party groups and federal parties either defending fiefdoms in parliament or the BT's position in the federal structure of Germany as a response to increased EU participation claimed by the Länder.

Action in EU affairs was not patterned; neither in the *Assemblée nationale* nor in the BT. In both chambers real EU participation and interaction with transnational EU actors was limited, and dissatisfaction with EU participation was high. In the *Assemblée nationale* there was no agreement between central actors as to whether EU participation should focus on control of the government, or on the representation of French voters' interests and information of the wider public. In the Bundestag there was an agreement on the fact that EU participation should take place earlier in the EU policy-cycle, but the solutions to reach this were strongly contested. The *Assemblée nationale* only weakly interacted with EU institutions, but many actors would have liked to foster interparliamentary cooperation. According to their strong pro-integrationist stance, members of the BT mostly interacted with the EP among the EU institutions.

In the Lisbon period (Chapter IV) the most similar system comparison across time indeed shows differences within both parliaments, which can be linked to the increasing EU legislative output. In the cross country comparison one can identify similar evolutions in both chambers despite their differences. In both chambers the agencies on EU affairs were more clearly defined than in the Maastricht period, and reforms of formal frameworks were pushed through by a 'community of practice' sharing knowledge about and experience of day-to-day parliamentary EU participation. In the *Assemblée nationale* the European affairs body started to fulfil functions similar to those of the standing committees. Successful agents of change for formal rules were concentrated in the EAC, which comprised most of the EU expertise. The parliamentary expertise in EU affairs increased. In the Bundestag the European affairs body also developed into a 'typical' committee. In strong contrast to the *Assemblée nationale*, this meant that it lost its coordination function and developed into a 'sectoral committee' responsible for institutional matters of the European Union, mirroring the Chancellery according to the usual organisation of the Bundestag. EU expertise strongly increased, but was disseminated throughout the Bundestag. Successful agents of change for formal rules were a cross-party group of EU experts who used 'windows of opportunity' to push through successive reforms of formal participation rights, mostly concerning information.

In both chambers action was more clearly patterned in the course of the period, and reproduced the functions of both parliaments at a domestic level. In both parliaments actors were more satisfied with what had been achieved at the end of the Lisbon period, even if they remained critical. In the *Assemblée nationale* control of the government no longer played much of a role. MPs mainly implemented actions that helped them to regain their major functions on a domestic level, i.e. to ensure input legitimacy. They were not so much interested in the detailed control of the negotiations in the Council. Instead they nurtured a steady longer-term 'dialogue' with the government to raise its awareness about issues potentially difficult for French voters and MPs in the EAC, and tried to enhance the *Assemblée nationale*'s function of information and deliberation of the plenary through a policy of public committee meetings. The interaction with the EU level followed the same logic. In order to increase the role of interest representation of French voters MPs searched for fora to do so. French MPs considerably increased their interaction with French MEPs.

In the Bundestag however, MPs enhanced their expert and legislative control function on EU issues. They mainly strengthened their organisational capacities to come in early in the EU decision-making process and to control the government's negotiations in the Council. Their main concern was information about the concrete legal texts discussed. The interaction with EU transnational actors sustained this search for functional equivalents for domestic roles in the Lisbon period. Interaction increasingly concentrated on the European Commission, to get information early on in EU decision-making processes. The interaction with the EP decreased strongly.

The fifth chapter (CHAPTER V) changes perspectives to investigate the European Integration Paradox (*Hypothesis 2*). It analyses MPs' ideas on the role of parliaments, conveyed in debates on the Treaty of Maastricht and the Treaty of Lisbon. In the Lisbon debates, the domestic practices in EU affairs of the chambers played indeed an important role for the ideas about the role of parliaments in the EU. In the Maastricht debates they did not.

In the Maastricht period, ideological groups held the same ideas about the role of parliaments across chambers. In particular the French 'Centrists' and the German MPs from the established parliamentary party groups at that time (CDU/CSU, SPD, FDP) had the same ideas about the importance of the EP alongside the national parliaments for the legitimation of EU decision-making through representative democracy.

In contrast to this, in the Lisbon debates the increasing institutionalisation of EU affairs demonstrated before became decisive about the way the role of parliaments in the EU were depicted in discursive practice. There were strong differences in the priorities set for debating parliamentary prerogatives. MPs in the *Assemblée nationale* across all parliamentary party groups mainly debated about national parliaments' direct collective participation in EU decision-making (eventually through a sort of virtual third chamber) and the strengthened prerogatives of the EP. In contrast to this, MPs in the *Bundestag* across all parliamentary party groups mainly debated about parliaments' role as a 'domestic control body', i.e. about prerogatives that enhance the individual national parliaments' capacity of controlling EU decision-making. The growing – and parallel – institutionalisation of EU affairs in both chambers at hand thus paradoxically led to an increasing divergence of ideas about what 'doing European representative democracy' should look like.

The conclusion summarises and discusses the main findings about the Europeanisation of the chambers and its paradoxical effects for the discourse about the role of parliaments in the EU. It discusses the results in the light of existing research, as well as their implications for further research. Finally, it discusses the significance of the European Integration Paradox for the EU polity.

## CHAPTER I Theory - ‘Europeanisation’ as institutionalisation processes

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This first chapter provides the theoretical framework for the analysis of the evolution of practice and discourse in the Assemblée nationale (AN) and the Bundestag (BT) in the course of EU integration.

The first section of this chapter discusses how studies of the Europeanisation of domestic institutions based on neo-institutionalisms are often ‘focused on the institutional and regulatory dimension of the EU system’ (Adler-Nissen 2016, 89). Studies focus on classical political science spaces and do not pay attention to the ‘quotidian’ of the actors on the micro-level. Neo-institutionalism has difficulty grasping the discretion of actors and therefore modelling institutionalisation processes.

On this basis, the second and third section of this chapter present theoretical reflections regarding how Europeanisation can be understood as the institutionalisation of EU-linked practices in parliamentary chambers. To this end, the chapter revisits Max Weber’s ‘old institutionalism’ as well as the classical writers of social constructivism Berger and Luckmann. Furthermore, it relates to the recent ‘practice turn’ in social sciences in general and in EU studies in particular (Adler-Nissen 2016). Practices ‘reverse the classic question of institutionalism’ (Lequesne 2015, 14) by showing that institutions are not the fruit of ‘a priori ideas’ but of ‘doing or performing Europe’, because interactions at the micro-level ‘stabilise social structures and fix ideas and subjectivities in people’s minds’ (Adler and Pouliot 2011, 20).

To draw lessons from Berger and Luckmann’s social constructivism helps to identify what institutionalisation processes are about at the micro-level of the actors, thereby highlighting the growing importance of specific *types* of actors and patterning of action. On the other hand, drawing on Max Weber’s idea of the change of *motives for action* in the course of institutionalisation processes helps to understand why domestic institutions may play a stronger role in later stages of European integration than they did in earlier stages. The last section summarises and introduces the hypotheses that will guide the empirical analysis in Chapters III to V.



## ***A - The institutionalisation of ‘doing EU’***

The following sub-chapter examines the difficulty of grasping the impact of European integration on national parliaments. The chapter discusses the missing conceptualisation of processes of institutionalisation on the micro-level of the actors. It then addresses the often-debated difficulty of neo-institutionalisms to conceive of change because of their reduced notion of institution. Finally, the sub-chapter argues that a focus on practices may help to start from the actors’ micro-level without losing out-of-sight macro-processes.

### **1) Europeanisation and institutionalisation**

In the field of studies on parliaments in the EU, ‘Europe’ is usually defined at the macro-level as the totality of institutional rules on the EU level (treaties and declarations, accessions, summits, and material EU institutions) (Auel 2005). Others emphasise the evolution of the EP (Winzen, Roederer-Rynning, and Schimmelfennig 2015). Benz conceptualised ‘Europe’ or the ‘EU’ as a new ‘opportunity structure’ (Benz 2004) for national MPs, but there is only little discussion regarding what this implies for MPs on the micro-level and how the social forms of ‘doing parliamentary democracy’ can in turn be understood. Studies of the Europeanisation of domestic institutions often search for convergences of formal rules to describe macro-evolutions.

In other fields – in particular in the field of studies on the Europeanisation of policies – the mechanisms through which actors on the micro-level make ‘use’ (Jacquot and Woll 2004) in practice of Europe have been more broadly investigated. Authors have proposed sequential causal explanations for different mechanisms through which the interaction between domestic and EU actors have changed preferences, motivations, or beliefs (Palier and Surel 2007, 40–41).

One of the most widely accepted definitions of Europeanisation is Claudio Radaelli’s. He defines the phenomenon as the ‘processes of (a) construction (b) diffusion (c) institutionalisation of formal and informal rules, procedures, policy paradigms, styles, “ways of doing things” and shared beliefs and norms which are first defined and consolidated in the making of EU decisions and then incorporated in the logic of domestic discourse, identities, political structures and public policies’ (Radaelli 2000, 110).

In contrast to approaches focusing on distinct outcomes (Börzel 1999), this definition distinguishes the process of Europeanisation from its outcome and emphasises the processes of social interaction in the course of European integration (Palier and Surel 2007, 36–41). This helps to put the analytical lens on the fact that processes are not necessarily linear and that the outcomes cannot necessarily be grasped as ‘convergence’ of formal rules or organisational structures, for example.

On the one hand, the definition delivers the important elements with which to analyse evolutions linked to European integration at the micro-level of the actors, and it highlights an important dimension for the study of Europeanisation of domestic institutions: Europeanisation processes are ‘institutionalisation processes’. However, Radaelli remained strangely cryptic about what these processes mean. There are so far only few theoretical reflections regarding what institutionalisation in the context of the process of European integration means for domestic institutions, and how it can be analysed.

Without a theoretical reflection about what EU-linked institutionalisation as a process means and how one can recognise the outcome at the level of the actors without predefining it from the outset, the researcher struggles to explain different degrees of the ‘institutionalisation of Europe’, and his work tends to lose sight of common longer-term effects of European integration on domestic institutions that might not occur in easily recognisable effects such as convergence or institutional transfer.

Researchers have indicated that timing might play a crucial role for processes of Europeanisation (Goetz and Meyer-Sahling 2008, 19). This has in particular played a role in policy analysis (Palier and Surel 2005). However, to date studies are based on the analytical frameworks of neo-institutionalism, with its difficulty of conceiving of change.

## **2) The new institutionalisms and their bloodless actors**

How can one recognise evolutions of domestic parliaments in European integration without predefining what their outcomes are? Here the major issue is that the political science versions of neo-institutionalism that are used in many Europeanisation studies have a problem in their approach to institutional change. They were conceived in the 80s principally in opposition to behaviourism (Saurugger 2009, 193). Their main focus was thus on explaining

how institutions impact actor behaviour, either by providing opportunities for their interests in the rational choice version, structuring appropriate behaviour in the sociological institutionalist version, or perpetuating institutional pathways over time in the historical institutionalist version, which is a mix using causal explanations of both, i.e. they have been conceived to take institutions as an independent variable. The historical institutionalism is not different in nature here. Even if it was developed as a corrective to ‘ahistorical tendencies in the predominantly rational choice perspective of American political science’ (Bulmer 2009, 308), most of the researchers associated with it ‘have generally been more explicit on discussing the “institutional” dimensions of their framework than the historical elements which constitute their explanatory framework’ (Pierson 2004, 8).

Thus, it is little wonder that neo-institutionalism (at least in political science) conceives of change either as marginal and at best slow and incremental within existing institutional frameworks, or as a result of shocks external to the institutional system (Hoeffler, Ledoux, and Prat 2014). For Charles E. Lindblom, change is only introduced at the margins as a consequence of learning and compromises between different actors. For Pierson, the pathways that public policies have taken in the past reduce their capacity to deviate from them in the future. Change is therefore only possible at moments of critical junctures during which factors exogenous to the governance system open up the possibility to take new pathways (Hoeffler, Ledoux, and Prat 2014).

On the basis of a wave of studies introducing the role of ideas and discourse into all three types of institutionalism commonly distinguished in political science (Hall, Taylor, and Taylor 1996), Vivien E. Schmidt and others tried to theorise a ‘fourth “new institutionalism”’ (Vivien A. Schmidt 2010). This new ‘discursive institutionalism’ has the explicit aim of tackling the problem of change in the new institutionalisms without giving up the insights from the other three institutionalisms on interests, institutional conventions, and historical pathways.

The merit of discursive institutionalism is that it highlights processes and the interactions between actor and structure, and that it tries to remedy the partial ‘absence’ of actors in the classical neo-institutional accounts. Schmidt argued that if studies take actors into account using neo-institutionalist approaches, actors are largely fixed in terms of preferences or in terms of norms (Vivien A. Schmidt 2008).

For discursive institutionalism, institutions are both given ('the context in which agents act, think or speak') and contingent ('the results of agents' thoughts, words and actions' (Vivien A. Schmidt 2008, 337). Action for discursive institutionalists is not a product of rationally calculated, path-dependent or norm appropriate rule-following, but a process in which agents create and maintain institutions using their 'background ideational abilities', with the help of which they assess the sense of a given context, and their 'foreground discursive abilities', with which they can deliberate about institutional rules and maintain or change them (Vivien A. Schmidt 2008, 337).

The contribution of discursive institutionalists is to be interested in discursive *processes* rather than the substantial content of the ideas, as well as to open up the possibility of assessing *processes of social interaction*. However, there are two problems with discursive institutionalism. First, it places much emphasis on agency and strategic innovative discourse by actors to explain the 'unique events and the unexpected' (Schmidt 2008) caused by discourse of individuals or specific 'logics of communication', but change is still thought of as being radical and exceptional. Discursive institutionalism thus situates itself in the tradition of the neo-institutionalisms that conceive of the world first and above all as a world of temporarily stable institutions. Change and 'new ways of thinking' (Adler and Pouliot 2011, 18) emerging from the quotidian and unconscious 'play of practice', are not thought of in discursive institutionalism.

The second problem with discursive institutionalism is that the fine-tuned models for *types* of discourse and factors for successful discourse help to understand what endogenous causes for radical change could be, but it is still not entirely clear how the actors manage to deviate from frames or pathways fixed in their 'background ideational abilities' and how they succeed in creating a new and convincing discourse, i.e. how the transition works from structure to actor. Max Weber proposes a convincing solution for the problem of actor discretion, which is discussed below.

### **3) Bringing social interaction *and* genuine institutions back in**

The problematic point about all new institutionalisms is that they conceive of institutions in principle as given and stable until they change for different reasons. They do not

provide the tools to analyse parallel and perpetual processes of institutionalisation and deinstitutionalisation of Europe as a practice.

Even sociological institutionalism does not provide the possibility to analyse the social processes that lead to particular rule systems, or those that lead to their change and disappearance: ‘Institutions are the structure in which social interaction – as opposed to random encounters – take place; they tend to pattern behaviour in particular ways ...institutions make purposive action possible by providing individuals with a framework of shared expectations’ (Stone Sweet, Fligstein, and Sandholtz 2001, 7).

Sociological institutionalism simply does not put the analytical lens on those processes. Instead, contemporary sociological institutionalism examines institutions as if these were the results of ‘finalised’ institutionalisation processes, i.e. as if the world on day x were a picture of norm structures that can in turn explain behaviour. Actors become strangely void creatures without any agency, as is shown by discursive institutionalism (Vivien A. Schmidt 2008).

This is why this thesis revisits Berger and Luckmann and introduces their insight regarding the development of institutions into the theoretical framework of this study. Berger and Luckmann have provided a conceptual framework that makes it possible to conceive of institutionalisation as a dynamic process without forgetting that ‘once established, institutionalized rules become taken for granted, legitimate and hard to change’ (Hirsch and Boal, 2000, p. 256).

Furthermore, to return to the thicker Weberian notion of institutions as prescriptive rules with a ‘constitutive point of reference’ makes it possible to ask for different degrees of importance of *appropriate* behaviour in the course of an institutionalisation process. When neo-institutionalism renewed institutionalism, it rejected the normative-prescriptive notion of institution of the old institutionalisms that were important for the works of classic sociological thinkers such as Durkheim and Weber. This notion was important again for the works of Talcott Parsons (Stachura 2009, 8).

Neo-institutionalism rejects this notion because of its normative and legalistic foundations (Rhodes 2008). Instead, both the rational choice and sociological institutionalism (at least as they are usually employed in political science) operate with a *reduced* notion of institution. Rational choice institutionalism, first employed in economic research, reduced institutions to their *instrumental* element, while the sociological institutionalist version reduced

institutions to their *cognitive* elements, such as ‘scripts’, ‘frames’, or ‘mental schemes’ (Stachura 2009, 8). This reduction to structures external to subjects as explicative variable leads to the incapacity of the neo-institutionalist literature to grasp the full breadth of the institutionalisation processes linked to the EU and their consequences.

#### **4) ‘Doing EU’ as an ‘ordered practice’**

In recent years, sociological approaches to the EU have tried to put ‘actors up front’ (Saurugger 2016, 71) again to analyse them in their social context, and to take them neither as ‘pure profit maximisers’ nor as ‘purely embedded in a logic of appropriateness whereby their social context determines their preferences’ (Saurugger 2016, 71). Studies have so far mainly focused on evolutions in European society, the political sociology of EU actors, and the building of EU institutions and public policies (Saurugger 2016, 71). In particular, the recent renewal of studies focusing on practices following the import of the ‘practice turn’ in social theory (Schatzki, Knorr-Cetina, and Savigny 2001) helps to better understand the evolutions taking place in national parliaments in the course of European integration.

Focusing on the routines and habits of actors and taking their practices as a unit of analysis (Adler-Nissen 2016) provides theoretical and methodological tools to invert the ‘relationship between practices and rule-making’ (Lequesne 2015, 1) and to link a micro-sociological approach to questions of macro-evolutions. Put together, practices can provide the ‘big picture’ (Adler-Pouliot, 1) of the nature of the EU governance system.

Adler and Pouliot defined a practice as a particular type of action that is a ‘competent performance’ (Adler and Pouliot 2011, 1). Practices are ‘socially meaningful patterns of action, which in being performed more or less competently, simultaneously embody, act out, and possibly reify background knowledge and discourse in and on the material world’ (Adler and Pouliot 2011, 4). Behaviour, action, and practice are distinct from each other in their degree of specificity. Behaviour is the ‘material dimension of doing’, action has an ideational layer and points at the ‘meaningfulness of the deed’, and practice indicates the ‘patterned nature of deeds in socially organised contexts’, i.e. specific types of action socially developed through learning and training (Adler and Pouliot 2011, 5).

Weaved into practices is the actor's 'background'. Not every meaning spoken by an actor is a background. Background must be shared intersubjectively. It is not necessarily conscious and spoken: it can also be unspoken and tacit. Background knowledge comprises 'intersubjective expectations and dispositions' and the 'dominant interpretive background which sets the terms of the interaction' (Adler and Pouliot 2011, 7). The notion of background goes back to Searle and is akin to Bourdieu's habitus, in as much as it is often unspoken and only 'learned in and through practice' (Adler and Pouliot 2011, 18). The habitus is an 'unconscious overtaking of rules, values and dispositions gained from individual and collective history. The habitus functions like the materialisation of collective memory and is a disposition to act, perceive and think in a particular way in conformity with the field throughout time' (Adler-Nissen 2008, 669).

This conceptualisation of practice is different from representations or other verbal and intentional forms of thinking, but there are some similarities with the concept of roles often employed in legislative studies, insofar as the both link agency to structure and patterns of behaviour to patterns of attitudes. 'Role' is a sociological concept with particular importance for legislative studies to study 'comprehensive patterns of attitudes and/or behaviour shared by MPs [...]' (Blomgren and Rozenberg 2012, 8), i.e. patterns of interpretation of what an MP's work entails and patterns of concretely accomplished activity.<sup>7</sup>

In legislative studies, roles are often studied at the individual level of the MPs. Roles of parliaments, as the term is used in the rest of this thesis, are understood as the aggregated sum of practices. Roles do not refer to MPs' self-perceptions, but to distinct functions that parliaments fulfil in the political system, such as *responsiveness* to voters' concerns, legislation,

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<sup>7</sup> There is a lively academic debate in legislative studies regarding whether roles are only constituted of attitudes or whether they also include behaviour (Blomgren and Rozenberg 2012). For Wahlke, roles are distinguished from behaviour. A role for any individual legislator refers to a coherent set of 'norms' of behavior that are thought by those involved in the interactions being viewed to apply to all persons who occupy the position of legislator (expectations of others). Strøm excluded behaviour as well. For him roles are behavioural strategies conditioned by the institutional framework in which parliamentarians operate. On the other hand, Searing developed the concept of motivational roles that includes behaviour. For him, roles are particular patterns of interrelated goals, attitudes, and behaviours that are characteristic of people in particular positions. Finally, Andeweg considered that the concept of role cannot entail behaviour for the purposes of modelling: if behaviour is part of the role, then roles can no longer explain MPs' behaviour (Andeweg 2014).

information, or control of the government (Patzelt 2003). Such functions do not entail judgements about the quality of the action carried out for the system, for example about whether the practice of carrying out a particular action is positively functional for the democratic quality of the political system.

Neither the concept of role as it is used here nor the concept of practice refers to conscious interpretations; instead, they refer to an ‘unarticulated *sens pratique*’ (Adler-Nissen 2008, 670). The inarticulate ‘ways of doing things’ (Berger and Luckmann 1991) in a ‘field’ or social system consists ‘of a patterned set of practices, which suggest competent action in conformity with rules and roles’ (Adler-Nissen 2008, 668).

This does not mean that people do not reflect on their practices. ‘Practice does not trump reflexivity, judgement and expectations’ (Adler and Pouliot 2011, 17). Backgrounds are formed through performing action, but individuals have the capacity to recover them reflexively and to judge their ‘validity’ (Stachura 2009). This study is interested in the recovering processes of inarticulate background knowledge and their link to ‘institutional *motives for action* in the course of the institutionalisation of a practice.

Background knowledge is shared in communities of practice. Practices develop, diffuse, and become institutionalised in such communities. Moreover, these communities consist of ‘like-minded’ people. They share, develop, and maintain the knowledge. Members of a community of practice have a sense of ‘shared enterprise’ and relationships of mutual engagements (Adler and Pouliot 2011). Communities of practice are not created by a priori rational calculus, but by ‘doing’ Europe.

All in all, the added value of the practice approach is to provide conceptual tools for recognising the *process* of institutionalisation as ‘patterning’ and the *outcome* of this process as ‘ordered practices’. Furthermore, the approach draws the researcher’s attention to the importance of experience for the formation of dispositions, in contrast to the *a priori* rationality of rationalists or the ‘extra-subjective structures’ of post-structuralists (Bueger and Gadinger 2014, 451). It is through distinct forms of human interaction that social structures are stabilised and ideas are fixed in people’s minds. Practice theory leads to historicising the creation of a new institution (Lequesne 2015, 2).

However, practice theory only provides few answers to the question of how one imagines the processes through which a new practice is institutionalised, i.e. how social



structures ('consisting of shared background knowledge') are stabilised, 'thought and language' are 'congealed' into 'regular patterns of performance', and 'contexts or structures' are turned into 'agents' dispositions and expectations' (Adler and Pouliot 2011, 22) in an already highly institutionalised social setting such as national parliaments. To model institutionalisation as a process, it is necessary to revisit classic sociological thought about institutionalisation processes: Berger and Luckmann's 'The Social Construction of Reality' and Max Weber's 'old' institutionalism.

## ***B - Revisiting Berger and Luckmann: Typification of actors and action***

Central concepts from Berger and Luckmann's 'The Social Construction of Reality' (Berger and Luckmann 1991) help to build a framework to model the institutionalisation of 'doing EU' on the level of the actors and their action in national parliaments.

### **1) Institutionalisation of a new social order**

According to the two central writers of social constructivism, Berger and Luckmann, 'emergence, maintenance and transmission of a social order' (Berger and Luckmann, 1991, p. 70) can only be understood through a theory of institutionalisation.

Berger and Luckmann conceived of institutionalisation as processes of 'reciprocal typification of habitualized actions by types of actors [...] Any such typification is an institution' (Berger and Luckmann, 1991, p. 72). According to the authors, 'all human activity is subject to habitualization' (Berger and Luckmann 1991, 70).

When reproduced frequently, even the simplest action will always be executed with the same patterns in order to spare effort. This standardisation of doing things also happens in non-social contexts, i.e. when a human individual is alone. Habitualisation narrows down the arrow of choices for the individual. However, for Berger and Luckmann, it is only the '[o]rigin of [i]nstitutionalisation' (Berger and Luckmann 1991, 70). Social interaction is needed to make a process of institutionalisation out of a process of habitualisation. Only when there is social

interaction between two individuals or more can the institutionalisation of habituation take place.

Furthermore, habituated actions by types of actors must be reciprocally typified if institutionalisation is to occur. This means that not only the action but also the *types* of actors must be typified (Berger and Luckmann 1991, 72). For example, the institution of higher education posits that only those who have successfully participated in secondary education are allowed access. Successful access is always measured through specific actions (usually exams), and organised and evaluated by the same types of actors (teachers habilitated to secondary education having certain defined ways of acquiring this status).

To transform this process of institutionalisation into an institution, the *typifications* must be built in the course of a shared history, and cannot appear instantaneously.

## **2) Parliaments as ‘permanent’ solutions to ‘permanent’ problems**

National parliaments in their respective parliamentary systems can be seen as ‘ways’ that a given society has found to resolve the problem of democratic rule-setting. They are rule systems that Berger and Luckmann would define as “‘permanent’ solutions to a ‘permanent’ problem of the given collectivity’ (Berger and Luckmann 1991, 87).

The ‘given collectivity’ is the nation-state, which in the course of the building of modern democracy has created and recreated rules through material or immaterial constitutions and legal frameworks and their putting into practice. The ‘problem’ posed to the collectivity is how to define ‘good’ or rightful procedures of decision-making. In modern western societies, good decision-making is decision-making that corresponds to ‘socially acceptable beliefs’ (Beetham and Lord 1998) about how ‘democratic’ rule-setting should take place. These beliefs are deeply enshrined in the background knowledge of parliamentary actors when ‘doing’ parliamentary democracy.

The definition of the way in which democratic decision-making should take place, the formulation and amendment of constitutional rules, and the according legal frameworks has greatly evolved in modern democratic history and has been subject to important processes of redefinition and reform. New rules have had to be tried out *in practice* and have led to partial redefinitions of rules regarding how elections were to be carried out, how presidents were to be

elected, and how government was to be controlled by parliament. The French V<sup>th</sup> Republic of 1958 underwent 24 constitutional revisions (Conseil Constitutionnel 2008), while the German Federal Republic has adopted 23 laws revising the Fundamental Law since 1990 alone (Deutscher Bundestag 2013). Some of these revisions are due to external influences such as international law or European integration, but the majority are due to redefinitions within the domestic space of how democracy should work, sometimes following the impulse of the jurisdiction of the Constitutional Court. National parliaments have accordingly seen their prerogatives changed and their rules of procedure reformed.

Even if established institutions continue to be subject to institutional change (Patzelt 2003, 82–112), these processes of definition and practice, and of definition and redefinition have led *over time* to the settlement of a – seemingly – relatively coherent core of rules for parliamentary practice or of ‘ways of doing parliamentary democracy’, or ‘ordered practices’ in the given parliamentary system that constitute the background knowledge of agents about how to ‘do’ parliamentary democracy. They consciously and unconsciously define the questions that are to be asked in the course of parliamentary participation to authoritative decision-making, and prefigure the answers in terms of formal and informal rules. This is why Berger and Luckmann discuss “‘permanent’ solutions to ‘permanent’ problems’ and put the adjective into quotation marks. In the view of parliamentary actors, the institutional world around them seems to be ‘objective’, as something permanent that has been created to solve the permanent problems that collective decision-making creates.

Parliamentary institutions have been developing into the institutions of representative democracy that they are today since the 19<sup>th</sup> and 20<sup>th</sup> centuries. Structures and functions of parliaments have evolved in exchange with the governance system in which they are, the society they represent, and the political culture. The long processes of institutionalisation and deinstitutionalisation that have accompanied the coming about of modern parliamentary institutions have provided them with ‘institutional historicity’ (Göhler 1997, 15). Rules and roles have become timeless ‘ways of doing things’. Today’s parliamentary actors no longer individually remember who fought the first institutional conflicts over the creation of the institutions. They learn about those conflicts through historical accounts and narratives. Rules for those parliamentary institutions are ‘sedimented’ (Berger and Luckmann 1991, 85) in tradition and passed down to them through language and text, for example through constitutions and other legal frameworks.

While parliamentary actors initially knew the fact that the institutions had been created by men, the transmission of the parliamentary institution to future generations of MPs and citizens has diminished the knowledge about the founding conflicts of parliamentary creation and the fights about ideas and interests for appropriate instruments of government control and parliamentary prerogatives. When processes of habitualisation and institutionalisation are transmitted to future generation, they are objectivated. ‘Institutions [...] are experienced as existing over and beyond the individuals who “happen to” embody them at the moment’ (Berger and Luckmann 1991, 76).

Parliamentary institutions start to be experienced as existing independently of human action. The transmission of parliamentary institutions to future generations thus also considerably diminishes the consciousness of the potential of (important) change of parliamentary institutions, i.e. the agents’ reflexivity (Adler and Pouliot 2011) about the institutionalised field of practices in which they move. They become timeless ‘ways of doing’ democracy. They seem to be an objective part of the individual in the same way as the physical world is ruled by the ‘laws of nature around us’ (Berger and Luckmann 1991, 77).

### **3) Old and new ‘ways of doing things’ in national parliaments**

How should the beginnings of institutionalisation be imagined? When actors have to carry out a new action, in the beginning they will not have any experience with this new task. In the case of European integration, MPs have to become used to new documents coming in, new timings, and new executive actors steering the decision-making process.

Following Berger and Luckmann, the new action is first executed ‘randomly’, i.e. through trial and error. A new practice comes into place through ‘learning by doing’ (Adler and Pouliot 2011). In initial stages, actors execute deeds, but they do not do so in a socially meaningful way because no such social meaning exists yet. To spare effort, the action is always executed with the same pattern. This patterning and ‘reduction of complexity’ is what Berger and Luckmann called ‘habitualization’ and what they considered to be at ‘[o]rigin of [i]nstitutionalisation’ (Berger and Luckmann 1991, 70). According to them, ‘all human activity is subject to habitualization’ (Berger and Luckmann 1991, 70). Once established, it narrows down an individual’s arrow of choices.

Institutionalisation in Berger and Luckmann's sense can only happen once there is an interaction between two or more actors. In the case of parliamentary actors, one should think of at least a group of MPs who always act according to the same standard ways of doing things when they deal with EU issues. As was shown earlier, practice theory labels such groups as 'communities of practice'. If actions are then always performed by the same *type* of actors who share know-how, one can observe a process of *typification of actors*. Berger and Luckmann conceived of institutionalisation as processes of 'reciprocal typification of habitualized actions by types of actors [...] Any such typification is an institution' (Berger and Luckmann 1991, 72).

However, parliamentary participation in EU affairs does not take place in an institutional vacuum. As has already been seen, parliaments have established 'ways of doing things' that are carried out by 'types of actors' who are (in parts) objectivated and seemingly timeless. Inside parliament, one thus finds a well-institutionalised system of informal and formal rules, laid down in simple parliamentary customs or in rules of procedure, and organised through a complex committee and office system, or within the parliamentary party groups. This rule system is the result of a continuous process of exchange and modulation between parliamentary practice and its codification in standing orders and rules of procedure. Parliamentary actors know the rules of this parliamentary 'collectivity' and they are socialised into it when they take up their mandate.

In the beginning, MPs do not have any experience with the decision-making procedures of the political order that today is called the EU. This is especially true as parliaments used to be weak multi-level players (Maurer and Wessels 2001) when they lost their institutional link to the EP with the latter's direct election in 1979. This does not mean that actors do not have any knowledge about how the decision-making processes work. It simply means that their knowledge is thoroughly *theoretical*. Even if they might have a precise idea about how things might work, they have no practical *experience* with how exactly EU decision-making procedures work in the policy fields in which they are interested, or with how potential parliamentary participation could look. At the same time, there is no tradition or sedimented and objectivated knowledge of how things *should* work. Actors are unambiguously aware of the fact that this new political order, the EU, is also a recent creature that they have or might come across.

When creating new structures to deal with new EU-related tasks, actors are not blind executors of the ‘ways they always did’ parliamentary participation in legislation, i.e. of old practices. Actors reflect on their practices and think about how to perform new tasks. They actively interpret the new tasks that they will have and the interests that are at stake for them when parts of the legislative work are shifted to Brussels. Parliamentary actors from the majority and opposition reflect upon which structures might be the most adequate to follow the executive’s work in Brussels.

However, they do this by interpreting the EU policy-process through *a priori* calculations. They do not have a practice of parliamentary participation in EU decision-making processes. A ‘community of practice’ of parliamentary EU affairs does not exist. Such a ‘community’ cannot be created by a priori rational calculus (Adler and Pouliot 2011, 22). Parliamentary actors have thorough practical experience with domestic legislative procedures and political forces. They have practical experience with how the government deals with parliament in matters of foreign affairs, but they do not have much experience with how EU decision-making will play out in *practice*, with how EU timing might clash with the timing of plenary sessions, and in particular with the effects that EU legislation and policy-making will have *in fine* on their voters.

New structures and instruments to cope with new tasks in EU affairs are thus created in an extremely dense and ‘timeless’ frame of ‘ways of doing things’ or – in the words of practice theory – of existing strongly institutionalised domestic parliamentary ‘practices’ that provide “‘permanent” solutions’ (Berger and Luckmann 1991, 87) to the problems of how to ‘do’ democratic decision-making, i.e. that provide the ‘systems of durable, transposable dispositions that constitute people’s thought and practices’ (Bourdieu 1990, 53) for ‘doing’ democracy. At the same time, the actors concerned are clearly aware of the fact that they are creating the structures that are not ‘timeless ways of doing things’ (Berger and Luckmann 1991, 76–80).

#### **4) The search for *functional equivalents* to domestic roles**

With the growing degree of policy-making, national parliamentary actors start to gain experience in ‘doing EU’. This may initially cause conflicts with ‘ways of doing things’ in the

chambers because the dealing with EU affairs is carried ‘arbitrarily’ and not ‘competently’ regarding domestic practices.

With a low level of affected domestic legislation, this may not immediately be perceived as a problem. Modern parliamentary systems are characterised by an important level of interconnection between the parliamentary majority and the executive, which negotiates for the member state in the Council of the EU. The executive (or a part of it in ‘semi-presidential’ systems (Duverger 1977)) is elected by the parliamentary majority in most of the parliamentary systems of the EU. Members of the government are usually recruited from the majority party in government or from the governing coalition. This government/parliamentary majority ‘conjunction’ might in principle assure the information and implication of the major players of domestic parliaments.

Only repeated experience of incompetent action with domestic practices leads MPs to search for more ‘competent’ solutions, as EU practitioners may increasingly share knowledge and experience of what went wrong. Existing formal proceedings may not prove to be useful.

These major conflicts are all linked to the functions or roles of national parliaments in one way or another. Most of the literature on the Europeanisation of national parliaments starts from the (implicit) assumption that those conflicts arise automatically with a growing amount of ‘EU-induced’ legislation (Brouard, Costa, and König 2012; Fekl and Platt 2010) or an increasing amount of documents submitted to parliamentary committees (Wonka and Rittberger 2014). This is not necessarily the case. Even if the famous ‘Delors legend’ of 80% of domestic legislation in the area of markets and enterprises was true, this would not necessarily mean that there would be a conflict. MPs might share the objectives of the policies agreed upon or they might consider that the negotiation of such legislation is exclusively a task of the executive.

Parliaments carry out highly different functions in parliamentary democracies. The *type* of conflict that arises from the new decision-making mode on the EU level depends on how things used to be done regarding parliamentary participation. In a parliament where the majority of MPs mostly focus their activity on representation and interest-intermediation (and not so much on the writing of the law), conflict may arise once MPs realise that they are not able to fulfil interest representation properly. This could mean a situation in which there is a finalised legislative act stemming from Brussels that harms the interests of citizens or enterprises in the MP’s constituency, and the MP has not been able to inform or to try to alert the government

nor the stakeholders in his or her constituency about the issue as he or she usually does. In this *type* of parliament, MPs do not necessarily experience institutional conflicts because they have not been associated to the concrete negotiations in the Council.

In other parliaments where the ‘way of doing parliamentary democracy’ implies a more direct involvement of the national MPs in the concrete formulation of legislation in committee work (i.e. legislation or oversight (Weßels 2005, 449)), MPs may experience such institutional conflicts on other occasions. As they are usually actively involved in the writing of the law in the decision-making phase of the policy cycle, they may already perceive the lack of active possibilities to influence the government position or at least to follow the negotiations in the Council in detail to be a major conflict.

If Berger and Luckmanns’s assumptions are further developed, one should expect attempts to put things ‘in order’ again as a reaction to this new practice of policy-making.

Therefore, MPs will increasingly search for ways to integrate the new ways in which things happen with the traditional ‘ways of doing things’. They will try to reform and remodel the new action to be carried out in order to make it fit with parliamentary functions on the domestic level. Such *functional equivalents* to old ways of ‘doing’ parliamentary democracy are new rules, action patterns, and practices necessary to be able to correspond to the ‘dominant interpretative backdrop which sets the terms of interaction’ (Adler and Pouliot 2011, 17) at the domestic level.

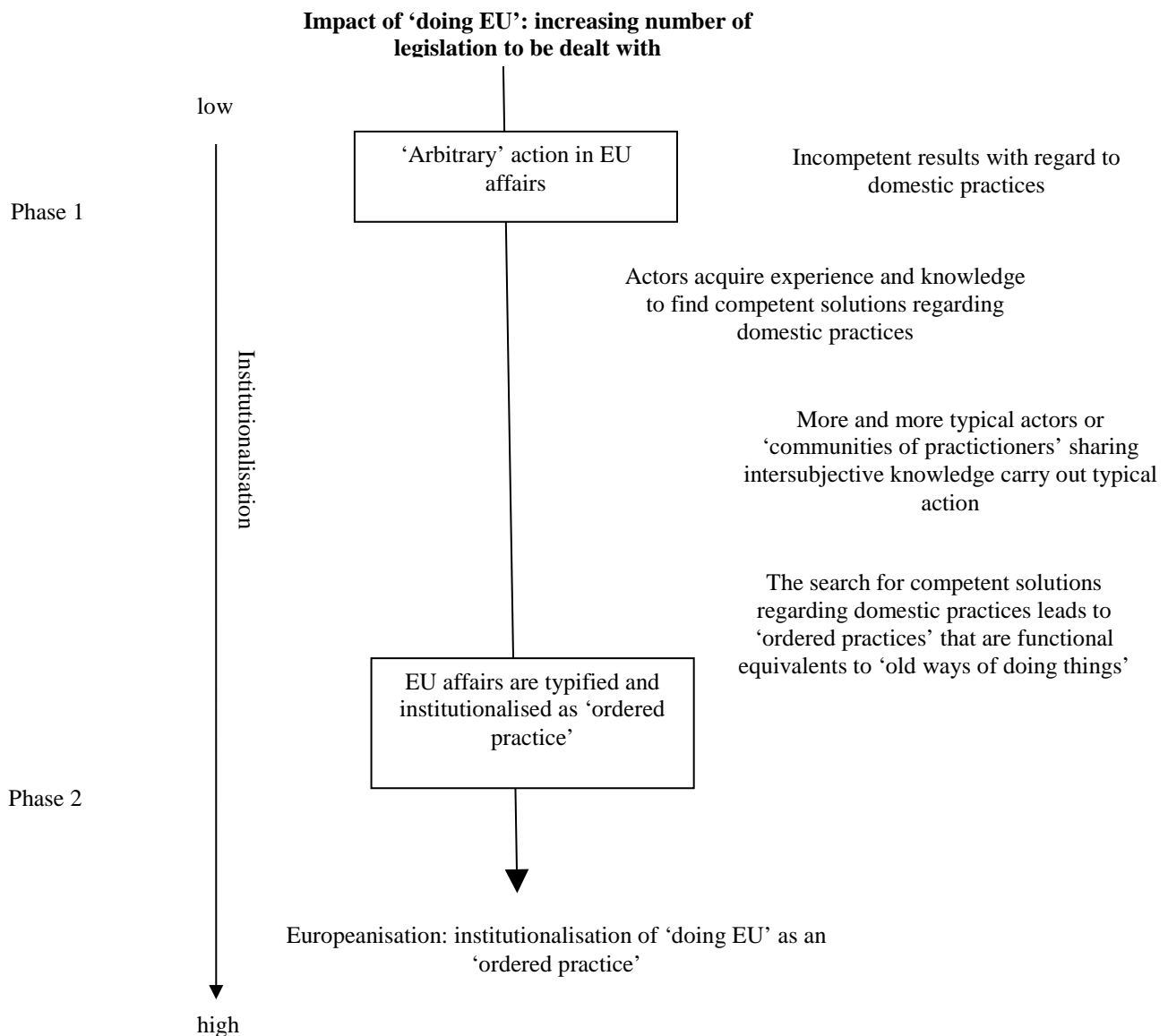
This is especially true as participation of national parliaments in EU affairs fundamentally takes place on the national level between the parliament and the government. This occurs despite succeeding reforms, in particular in the Treaty of Lisbon, which attempt to create a more intense direct exchange between the domestic parliaments and the European institutions.



<b>Interparliamentary fora</b>	<b>Domestic parliamentary practice</b>
Loose 'action'	Institutionalised 'practices' and roles
Contemporary creation	Timeless 'ways of doing things'

Furthermore, this is also true despite the interparliamentary fora that have been created in the course of European integration but that are not sufficiently dense, stabilised, and timeless to be a new 'field' or social setting for national MPs, requiring some form of 'competent' action (Adler-Nissen 2008). Only incentives for extremely dense new behaviour and action in EU decision-making on the EU level could let completely new 'ways of doing things' or practices emerge that are not functionally equivalent to the old 'ways of doing things'.

Figure 1: Institutionalisation of the practice of 'doing EU' in national parliaments



### ***C - Revisiting Max Weber's 'old' institutionalism: Motives for action***

Berger and Luckmann shed light on the historicity of institutions. The need for new types of action brings about new practice and a new need for the reduction of complexity. New action may become habitualised and typified, and new types of actors may emerge who carry out the new required action. All of this happens in an already highly institutionalised environment, which has an impact on new institutionalisation processes.

However, by showing the link between human interaction, institutionalisation, and sedimentation of institutional rules, Berger and Luckmann did not account for the resolution of necessarily ensuing conflicts. For the theorist of institutions M. Rainer Lepsius, on the other hand, these 'battles' of institutions and interests are the fundamental 'spindle' of institutionalisation processes (Stachura 2009).

Berger and Luckmann's actors internalise new 'ways of doing things' that come to them either through processes of direct habitualisation, or through intergenerational transmission of those processes of *typification* (through language). If Berger and Luckmann's conceptualisation of institutionalisation is strictly followed, important changes of institutions can only happen through a sort of blind conformism or in a process of involuntary institutional isomorphism.

Central elements of Weber's institution theory provide elements to model the differing degrees of importance of the background of 'ways of doing parliamentary democracy' when attributing meaning to the role of parliaments in the EU in the course of the institutionalisation of 'doing EU' in parliamentary chambers. His concepts of 'constitutive value' and of different 'motives for action' are central to the evolution of the meaning that the actors give to their own action in the EU. Weber assumed that values are constitutive of institutions, but that the latter do not (necessarily) determine the actor's behaviour.

Weber assumed instead that institutionalisation is a process in which attitudes become increasingly congruent with action. Actors have a capacity for discretion between different *motives for action* (material or ideational interest, appropriate behaviour). However, in the course of an institutionalisation process, an actor's propensity to act appropriately regarding the constitutive norms of a rule increases.

## 1) Weberian actors and their ability for discretion

For Weber institutions are prescriptive rules that also have a constitutive *value of reference* ('Wert-Bezug' in the original text [comment by author]). These prescriptive rules ('Norm-Maximen' (Weber 1973, 334)) formulate a norm for action: 'you have to do q' or, if there is a condition, 'when condition p is fulfilled, you have to do q'. This also means that they are different from instrumental rules, which do not formulate an objective condition for action, but a *subjective purpose* as a condition for action (Stachura 2009, 10).

At first sight, the constitutive reference of the prescriptive rule makes the Weberian institution theory appear closely linked to the concept of institution in the new sociological institutionalism. However, there is a fundamental difference: for the new sociological institutionalism institutions *are* constitutive rules. They are *taken for granted*. This means that (social) rules do not aim to regulate action, but that they *enable* or *define* action. Constitutive rules are 'Spielregeln' ['rules of the game', translation by author] (Stachura 2009, 10). They *constitute* specific social action:

'One cannot decide to get a divorce in a new manner, or to play chess by different rules, or opt out of paying taxes. Organisation theorists prefer models not of choice but of taken-for-granted expectations.' (Powell and DiMaggio 1991, 10)

The rules of the game of parliamentary participation define what parliamentary democracy is. Not to follow these rules simply means not to *be* in a parliamentary democracy. One cannot take decisions without parliamentary participation and without playing the game of parliamentary democracy.

For Weber, in contrast, institutions are in the first place prescriptive rules – because they are usually expressed in the form of imperatives. Regarding parliamentary institutions, this means that constitutions and standing orders prescribe when parliament must obtain the EU draft legislative act for examination, how much time it has to adopt a resolution to inform the government about its point of view, and in which cases ministers have to follow the parliamentary point of view when negotiating in the Council. Unwritten rules of interaction between members of the same party in government may define in which case an MP having an issue with an EU related dossier is received by the minister and in which he is not.

While it does not make *sense* logically to break a *constitutive* rule, it can be useful for actors to deviate from a *prescriptive* one. Prescriptive rules are in the first place regulative.

However, for Weber, prescriptive rules have a constitutive nature. What does this mean? First, the correct implementation of the prescriptive rule will generate a value judgement. As seen in the example above, it is ‘good’ to apply the rule. It is ‘right’ to follow the rules of procedure. Second, prescriptive rules have a constitutive relationship to values (Stachura 2009, 12–13). Following the prescriptive rule of informing parliament about the negotiations in the Council *corresponds* to fulfilling the higher-ranking value of parliamentary democracy.

Prescriptive rules are thus elements of higher-ranking constitutive rules, which define the type of concrete action through which a specific value, in this case ‘parliamentary democracy’, is realised. By prescribing specific actions, prescriptive rules produce or constitute opportunities for the realisation of values. M. Rainer Lepsius put the same idea differently when he wrote that institutions have the function of formulating values in a way that allows them to become maxims for action in day-to-day life (Stachura 2009, 13).

This is where some blood returns to the actors’ veins. In the Weberian sense, institutions are in the first place only *external* constraints to human action. They are not internal to the actors, as new sociological or discursive institutionalism would assume (March and Olsen 1984; Vivien A. Schmidt 2008). If institutions are defined in the most minimal sense possible as ‘rules which claim validity’ (Esser 2003), then one can state that for Weberian actors, rules acquire their validity not because they have internalised them, but because they judge it as ‘right’ to follow them.

The institutions are not valid because they are objectively true, but because actors *acknowledge* them as such. In the Weberian perspective, human beings thus do not only have the capacity of ‘cognition’ but also of normative interpretation and ‘evaluation’. This is what practice theorists call the actor’s capacity for ‘reflexivity, judgement, and expectations’ (Adler and Pouliot 2011, 17). Actors are capable of developing normative standards (Stachura 2009, 17).<sup>8</sup>

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<sup>8</sup> If we read rational choice institutionalism in this perspective, institutions are valid because they are efficient. Once they start to lose their efficiency, actors will try to find a new institutional balance that they believe to be efficient. Institutions in this perspective are not valid because they are right or because they provide sense, but because they are presumed to be efficient instruments of interests (Schwinn 2009, 14).

In the Weberian perspective, institutions are thus both prescriptive rules that human beings can evaluate and from which they can decide to deviate, and their constitutive point of reference, which has developed in processes of institutionalisation, i.e. of *typification* and habituation in historical processes. Following the prescriptive rules corresponds to realising the value embedded in the institution. However, human beings have the discretionary power to not follow the rule if they do not reject the validity of the constitutive value. The fact that an actor consciously takes a decision that is contrary to the Constitution does not mean that he or she does not believe in the validity of constitutional democracy.

Weberian actors act out of different *motives* – of which the judgement regarding the validity of the rule is only one possible option. *Motives* may be ideational interests, material interests, fear of sanctions... However, the latter may not be the *substantial* motivation of the action. For Weber, the fact that at least a part of the actors also judge the social order as exemplary or binding increases the probability that the action will be carried out according to the institutional rules that constitute the social order (Schwinn 2009, 19):

‘However, the fact that the social order also seems valid or binding to a part of the actors naturally increases the chances that the action will be oriented according to this order’ (Weber 2002)<sup>9</sup>

For this study’s analysis of the evolution of parliamentary participation as an institution in the EU, the following aspect is highly important: the motivation of action through judgements about institutional validity is not steady. Weber showed this when comparing the economic ethics of world religions, for example (Stachura 2009, 20).

With increasing institutionalisation, the importance of validity judgements as a motivation to follow prescriptive rules increases. As a consequence, with a low level of institutionalisation of a social or political order, there is a low probability of an important impact of the institutional validity judgement on the *motives for action*. This probability increases with the degree of institutionalisation of a social or political order.

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<sup>9</sup> ‘Aber der Umstand, daß neben den anderen Motiven die Ordnung mindestens einem Teil der Handelnden auch als vorbildlich, oder verbindlich und also gelten sollend vorschwebt, steigert naturgemäß die Chance, dass das Handeln an ihr orientiert wird, und zwar oft in sehr bedeutendem Maße.’

## 2) Democracy as constitutive value of parliamentary institutions

What does Max Weber's theory of institutions indicate about the evolution of the importance of the 'interpretive backdrop' (Adler and Pouliot 2011) or the timeless ways of doing things in the course of institutionalisation processes in national parliaments?

The first fundamental point is that the constitutive *value* of political institutions in the modern nation-state is *democracy*. In the course of the evolution of the modern democratic state, this value of reference has been 'specified' (Bachmann 2009, 72) to the modern prescriptive rules in the constitutional democracies known today. In the language of practice theory, democracy has become the 'interpretative background', the 'habitus', and the 'embodied stock of unspoken know-how learned in and through practice' for political decisions. Processes of revolution, change, and reform have formulated the value of democracy in a way that has allowed it to become concrete rules or patterns for day-to-day political decision-making. The prescriptive rules that realise the value of democracy today are laid down in constitutions and constitutional law (or equivalent) and the legislation implementing it. However, they are also laid down in informal rules about which actors participate how in the establishment of authoritative rules in a given collectivity.

Representative parliamentary democracy has probably been the most powerful prescriptive rule for the concrete realisation of democracy in a Weberian sense. Representative parliamentary democracy is the most widely spread form of democratic constitution. Even in democratic systems in which other elected institutions are in a competitive relationship with the parliamentary chamber for democratic legitimacy, parliamentary assemblies are the centrepiece of the process of 'democratic' decision-making. They have become a value in themselves. This makes parliamentary assemblies important agents of democratic legitimacy and providers of meaning, i.e. democratic legitimacy, to decision-making processes.

This means that actors in modern parliamentary democracies may follow the rules laid down in constitutions, legislation, and standing orders of institutions because they fear immediate sanctions if they do not do so, but they also have an important chance of doing so because they believe these rules are 'right'. They may have a multitude of *motives* for following the rules, but they also fundamentally believe that by adopting a law on the basis of these rules they fulfil the value of democracy.

### 3) 'Ideological' and 'instrumental' *motives for action*

What is the consequence for the institutionalisation processes that take place in the course of European integration in the parliamentary arena? Weber wrote that actors have an autonomous capacity of evaluation and are therefore able to take decisions to follow rules out of different *motives*, which may be material, ideational interest, or 'institutional', i.e. the feeling that a rule is 'right' in the actor's political order. Furthermore, Weber assumes that with growing institutionalisation of a social order, the actor's predisposition to fundamentally orient action (or judgement) at valid rules within this social order increases.

Through the lens of Berger and Luckmann's theory of institutionalisation, it can be assumed that in the beginning of European integration, members of national parliaments have little *experience* in 'doing EU'. Habitualisation processes have not started yet. EU affairs are still weakly typified, and *types* of actors are not associated with specific tasks. Because the level of EU legislation is still low, there is little potential for conflict with the way parliamentary democracy works on the national level. The EU is still weakly *institutionalised* as a practice for the MPs. Any reflection on the ways in which institutions *should* work in the EU is abstract and *theoretical*.

Following Max Weber's theory, this means that in the beginning of parliamentary participation in decision-making, actors' *motives* for evaluating how this participation should look are likelier to be diffuse than in later stages of European integration. Above all, *motives for action* for discursive practice on the role of parliaments in the EU are not likely to be 'institutional', i.e. 'in order' with constitutive values for the 'rightfulness' of decision-making that are the backdrop of domestic practices.

One should assume that with little experience in 'doing EU' in the national parliamentary arena, there are instead other *motives* that could be more important. Two other major *motives* can play a role: instrumental and ideational interest (fear of sanctions is highly unlikely to play a role here). National members of parliament's instrumental interests in the evaluation of procedural rules of parliamentary participation in EU decision-making processes can mainly be defined as the search for influence on 'policy, office or votes' (Müller and Strøm 1999) – and as a consequence the political battle between the majority and opposition groups in parliament.



Ideational *motives* are likely to be linked to the project of European integration itself. Actors can be assumed to judge the role of national parliaments in the European Community / European Union (EC/EU) from their perspective of how the ‘grand design of European integration’ should look in the future.

Two main types (or rather poles) of such ‘grand designs’ dominated the European (or at least the continental European) academic debates until at least the late 80s (Wiener and Diez 2004, 7). These types coined the political debate from the early years of European integration until the present day in such a way that they even structured the ‘historiography’ of the EU (Dinan 2006): the idea of an intergovernmental EU in which competences remain with the nation-state versus the idea of a federal or at least supranational Union in which major competences are transferred to the European level and exercised autonomously by common institutions.

In the ideal-typical intergovernmental ‘grand design’ for European integration, European institutions are ‘agents’ of national governments, which are their ‘principals’ (Pollack 2001). They have been created to increase the efficiency of intergovernmental bargains and to reduce transaction costs (Moravcsik 1998). Transfer of competences remains limited and serves the ‘rescue of the nation-state’ (Milward, Brennan, and Romero 2000) and the increase of its authority, and not to overcome it. Democratic legitimacy in the intergovernmental grand design is guaranteed as long as competence transfer is limited, revisable, and tightly constrained by ‘constitutional’ checks and balances, and as long as the EU performs only a limited set of regulative functions, such as for example ‘central banking, constitutional adjudication, civil prosecution, economic diplomacy and technical administration’ (Moravcsik 2002, 603).

In the ideal-typical supranational (or in a more state-building perspective: federal) grand design for the EU, European institutions have the power to act autonomously without mandate of the governments of the nation states. Competences have been transferred durably to the European level. The European polity is composed of two constituent elements: the states and the peoples or citizens of the EU, which come together in a ‘voluntary union’ (Burgess 2004, 30). While the representatives of the national governments represent the states at the central level, the EP represents the citizens at the EU level.

Both scenarios have distinct implications for the evaluation of the role of parliaments in the governance system resulting from European integration. In the intergovernmental scenario,

parliaments are an element of the decision-making process within the state. Their usual counterpart to discuss European issues is the national government. Their first objective is to control all types of negotiations conducted by the government in the EU's intergovernmental institutions. In case they interact directly with EU institutions, they (or at least the MPs of the parliamentary majority) are part of the diplomatic representation network of the national government to the European decision-making processes, which are concentrated in the Council and the European Council. This network also includes the national representatives to the other EU institutions and the MEPs stemming from the respective state.

In the supranational or federal scenario, on the other hand, national parliaments are part of a multi-level parliamentary system, with the EP as parliament of the central or federal level. While the majority and opposition in national parliaments control the national governments in those areas in which competences have been shifted to Brussels, the EP is responsible for the control of the decisions taken in the European Council and the Council of Ministers.

Linking these reflections to the previous theoretical reflections, one should assume that in the case of a weak day-to-day practice of the EU, instrumental and ideational interests are dominant in MPs' evaluation of the role of national parliaments in EU governance.

In case of instrumental or strategic *motives* of office or vote seeking, MPs from the government majority should have different arguments for the role of national parliaments than MPs from the opposition. There should also be perceivable cleavages between the role for national parliaments promoted by parliamentary groups that participate regularly in the formation of governments, and the role promoted by those that are excluded from executive office.

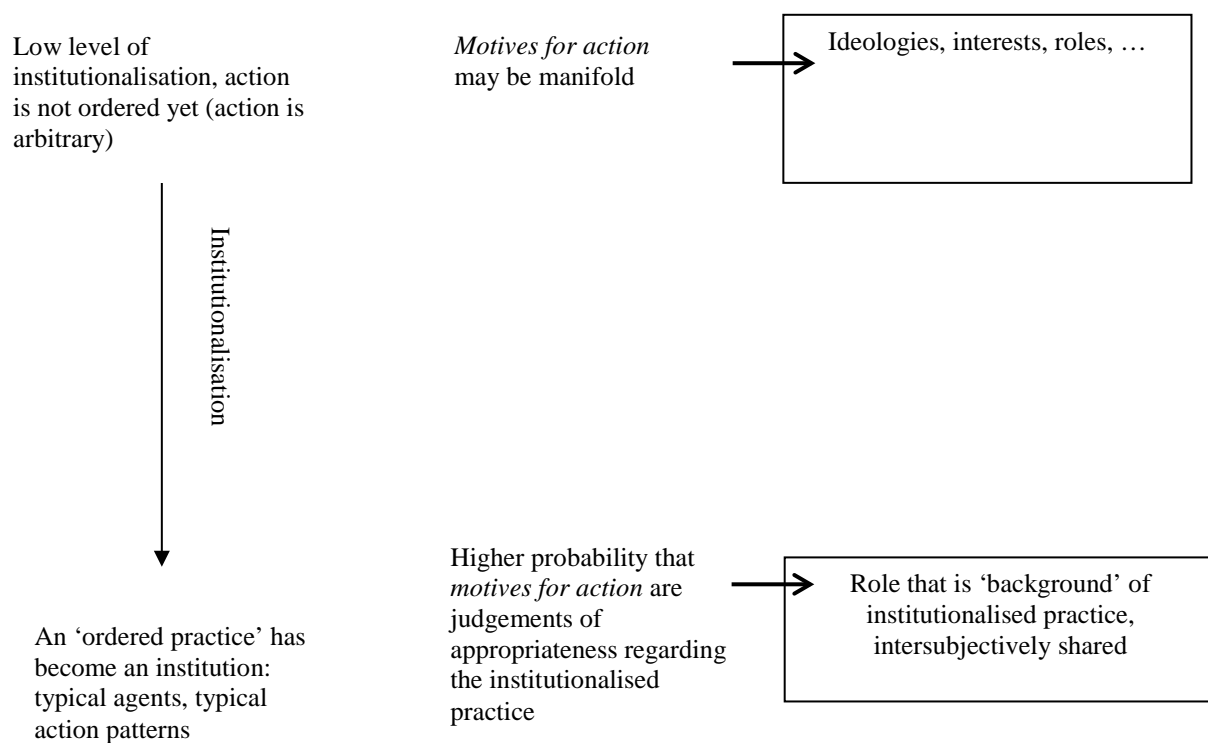
Regarding ideational interests about European integration, roles put forward should be cleaved between parliamentary groups that have differing programmatic ideas about European integration. In most of the member states of the EU, however, cleavages about the objectives and form of European integration run across party lines. This means that there should be certain identifiable groups of MPs that hold the same programmatic point of view on European integration as well as the same view on the role of parliamentary institutions in the EU.

#### **4) Institutionalisation and ‘institutional’ *motives for action***

It is clear that in the course of increasing European integration, the instrumental or ideological *motives for action* and evaluation of rules that were discussed above will not disappear, even in a Weberian perspective. However, as ‘doing EU’ becomes increasingly institutionalised, the probability increases that judgements about appropriateness with EU parliamentary practice on domestic level will become increasingly important as a guiding *motive* for how MPs debate the role of national parliaments in the EU.

MPs increasingly judge the prescriptive rules for parliamentary participation in decision-making in the EU according to the constitutive value that they suppose the former should realise, i.e. the parliamentary democracy. While in the beginning MPs may have judged parliamentary institutions in the EU according to their own interests (to convince voters, to provoke a change of government, to enhance influence on policy-making, to pursue their idea about the ‘grand design of European integration’), in later stages of the institutionalisation of ‘doing EU’, MPs are more likely to be influenced in their evaluation by judgements about democratic ‘validity’ or ‘rightfulness’ of EU parliamentary institutions. MPs have become habituated to being part of forms of parliamentary institutions in the EU. The more the EU is institutionalised as a framework for action, the more the forms of parliamentary participation in EU affairs (on the national level and on the EU level) will be judged through the lens of their coherence with the MPs’ background regarding democracy enshrined in domestic practices.

Figure 2: Institutionalisation and motives for action



With a growing level of institutionalisation of the EU as an 'ordered practice', members of national parliaments are likely to increasingly evaluate parliamentary institutions in the EU according to rules and roles on the domestic level or according to domestic 'ways of doing things'.

## ***D - Conclusion***

This chapter proposed theoretical reflections to answer this study's question: how can one explain the increasing divergence of ideas that MPs convey about the role of parliaments in the EU? To answer this question, this chapter proposed to integrate sociological reflections on institutionalisation processes into the study of the Europeanisation of parliamentary chambers.

The chapter discussed how the 'thin' notion of 'institution' used by the new institutionalisms as well as the focus on the formal and authoritative dimension of EU decision-making lead to an inability to theorise the Europeanisation of domestic institutions as processes of institutionalisation and deinstitutionalisation.

To conceptualise institutionalisation as a process and outcome without predefining the latter in terms of distinct forms of formal rules, this theoretical chapter related to the recent 'practice turn' in EU studies and revisited Berger and Luckmann's social-constructivist reflections and Max Weber's 'old' institutionalism.

Practice theory helps to put the focus of the analysis of processes and effects of European integration on MPs' routines, and habits, and quotidian doings. Practices are understood as a type of action that is a 'competent performance' (Adler and Pouliot 2011, 1). Such competent performances are carried out by 'communities of practice', sharing the same ideas and knowledge about 'doing EU'. On the basis of reflections on the nature of practices and the relationship between agency and structure entailed in them, the chapter proposed to conceive of the outcome of a Europeanisation process as the patterning of 'doing EU' as an 'ordered practice', i.e. a situation in which *typical actors* perform *typical action* in EU matters in national parliaments.

The latter terms stem from Berger and Luckmann's 'The Social Construction of Reality'. Drawing on their definition of an institutionalisation process as a process of 'reciprocal typification of habitualized actions by types of actors [...]' (Berger and Luckmann, 1991, p. 72), the patterning of 'word and deed' in EU matters in national parliaments is thus conceived of as a process of *typification*, i.e. of the reduction of actors' choices and of the emergence of typical agency. Berger and Luckmann also wrote about the historicity of the process. As 'doing' EU in national parliaments is carried out in an extremely dense network of 'timeless ways of doing things' or timelessly institutionalised practices of 'doing democracy' on the domestic

level, with growing experience in EU decision-making, MPs increasingly search for competent action for EU affairs regarding domestic practices. Change of informal ‘ways of doing’ or formal frameworks is thus increasingly motivated by a search for *functional equivalents* to institutionalised action patterns on the domestic level and the role orientations enshrined in them.

The final part of this chapter drew on Max Weber’s ‘old’ institutionalism to reflect on the question of which impact a potential institutionalisation of ‘doing’ EU in national parliaments might in turn have on how MPs conceive of the role of parliaments in the EU. For Weber, institutions are not constitutive rules of the game that the actors take for granted, as is often assumed in sociological neo-institutionalism. Instead, they are prescriptive rules that have a ‘constitutive point of reference’. In the case of national parliamentary actors, this ‘point of reference’ is MPs’ ‘background’ regarding how parliamentary democracy works. However, norms can be followed without the actor having internalised them, and they may be broken despite the actor’s adherence to the ‘constitutive value’. Weber theorised a causal link between growing institutionalisation and an actor’s propensity for appropriate rule-following. Applied to national parliaments, one might therefore assume a growing importance of ‘institutional’ *motives* for MPs for evaluating the role of parliaments in the EU in the course of the process of *typification* of ‘doing EU’ in the chambers, i.e. a paradoxically growing importance of domestic roles for the way in which MPs discuss the role of parliaments in the EU. With a low level of *typification* of ‘doing EU’ in the chambers, MPs’ *motives* for discursive action may be manifold. They might draw on visions about the future scope of European integration, such as federalist or intergovernmentalist ideas, or they might be based on strategic interest regarding the electorate.

The following chapter presents the methodological reflections on which the empirical analysis in Chapters III-V is built. It discusses how the comparative method can be used to analyse institutionalisation processes across time with some generalisability through an additional comparison across space. It then develops two hypotheses for the evolution of EU practice and discourse in the Assemblée nationale and the Bundestag based on the theoretical reflections in Chapter I, and introduces the indicators that were used to analyse them in this study. Finally, it discusses which methods were necessary to put into place to assess the indicators.

## CHAPTER II Methodology – A comparison of practice and discourse across time and space

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This chapter presents the methodological reflections that are the basis of the empirical analysis. The first section presents the comparative framework for a comparison of practices<sup>10</sup> across time and space (sub-chapter A). It explains why the Assemblée nationale and the Bundestag have been chosen as cases for a most distant systems design. It presents the reflections that led to the distinction of two time periods (the ‘Maastricht’ and ‘Lisbon’ periods) for the analysis across time. The second section develops two guiding hypotheses from the theoretical reflections in Chapter I. It then proceeds by operationalising the idea of Europeanisation as the institutionalisation of ‘doing EU’ as ‘ordered practice’ in national parliamentary chambers by presenting the indicators for *typifications of actors and action* and the parallel changes of *motives for action* (sub-chapter B). The final sub-chapter demonstrates how this study tackles the problem of assessing parliamentary practice over time (sub-chapter C).

### *A - A comparative framework with four cases*

The theoretical chapter formulates theoretical reflections to explain the paradoxical outcomes of the institutionalisation of ‘doing EU’ on the basis of social constructivist, (old) institutionalist, and practice theoretical assumptions. This thesis does not test the hypotheses with the formulation of counter-hypotheses, but instead attempts to show their value and generalisability through a careful contextualised comparison across space and time of four cases. This proceeding makes it possible to investigate the problem in sufficient detail to develop and specify the theoretical reflections in the course of the study and to test their probability (see for a similar approach Goetze and Rittberger 2010).

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<sup>10</sup> Discourse is seen as one form of practice. Language is understood as ‘conduit of meaning’, and language is ‘doing in the form of “discursive practices”’ (Foucault quoted in Adler and Pouliot 2011, 7).

## 1) Better generalisability through diachronic *and* synchronic comparison

To answer the question of whether a greater institutionalisation of the EU leads to an increase in institutional *motives* for MPs' judgement of the role of national parliaments in the EU, it is inevitably necessary to include *time* as a factor in the research design. However, time as a factor is astonishingly rarely thought through in empirical research about evolutions over time.

Europeanisation studies suffer from this problem as well. Either they do not include the factor of time in a systematic methodologically reflected way, or they focus on comparison across time but only in one case. This causes two problems. First, in single case studies, comparisons between distinct periods are sometimes well reflected and argued, but the potential for generalisation from a single case is highly limited – even if it may be especially fruitful for developing new hypotheses because of the researcher's ability to control or have knowledge of other potential independent variables (Della Porta 2008, 218). Second, in most of the research designs that undertake cross-case comparisons, time is not introduced as a variable. Even if most case studies explore 'several properties of a single unit over a certain period of time' (Bartolini, 1993, p. 141), they do not account for the fact that this makes them *comparative studies across time*. Bartolini suggests calling them 'developmental case studies' (Bartolini 1993, 141) to account for this cross-time dimension. And even if the studies make important reference to history (Della Porta 2008, 217), the time dimension is usually not reflected either. In reality, this second type is based on a research design observing the variance across cases only *synchronically*. The variance of the variables across time is not 'explicitly subjected to the methodological guidelines of the comparative method' (Bartolini 1993, 141). The 'historicity' of the event in the past is only assumed (Della Porta 2008, 218).

The missing reflection on which periods should systematically be compared may lead to important biases in the analysis, especially for so-called 'path-dependent' developments based on assumptions about 'historical' properties, i.e. in historical institutionalism. This problem is especially virulent in studies of European integration and its effects. European integration is still a young phenomenon. Analysis over long time spans of 100 or 200 years, which would eliminate some of the problems of choosing the wrong important events (because



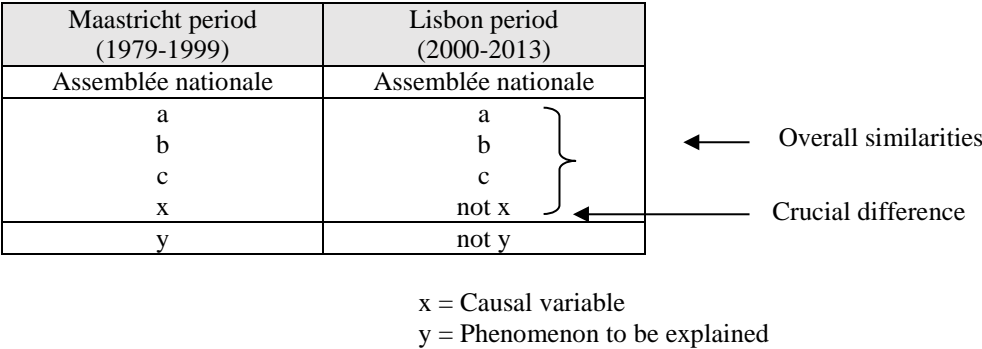
there is more security about the final outcomes or macro-trends), is not possible. To infer general regularities from the wrong events or time spans in the history of European integration may fatally lead to finding no or wrong results, because developments have not yet had the time to evolve in the arena at stake, or because single events are simply over-stretched.

This study therefore argues that it is necessary to undertake both a synchronic comparison of spatial cases and a parallel diachronic comparison of two different phases in parliamentary history in European integration. This makes it possible to combine a fine-grained comparison of each case across time and a more generalisable test of the hypotheses at stake across space.

This proceeding allows John Stuart Mill’s two classic methods of logical reasoning to be combined for scientific investigation: the ‘method of difference’ and the ‘method of agreement’ (Mill 2001).

The *diachronic* comparison is designed according to the logic of Mill’s method of difference: two temporal cases (Parliament *PI* in phase p1 compared to Parliament *PI* in phase p2) that have important similar properties are compared. Different outcomes (i.e. *motives* for the evaluation of the role of parliaments in the EC/EU) can then only be explained by the ‘temporal variance’ (Bartolini 1993, 147) of some of the properties caused by the impact of the increasing practice of EU decision-making across time.

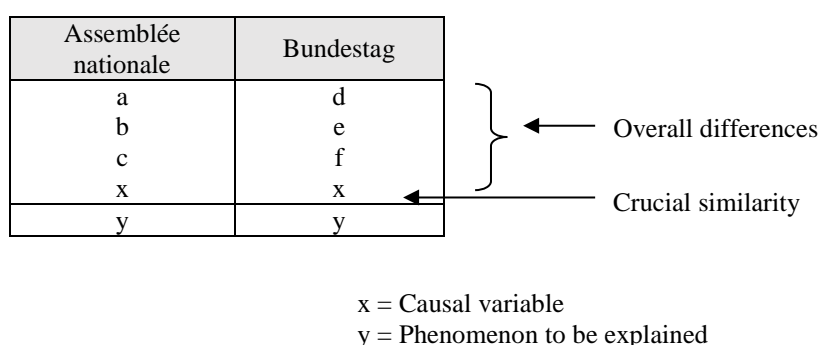
Figure 3: Mill's method of difference (diachronic comparison)



Source: Adaptation by the author on the basis of (Skocpol 1984, 379).

The *synchronic* comparison across space is designed according to Mill's method of agreement in order to determine whether results are generalisable across space. Two cases (Parliament 1 and Parliament 2) that have different properties and only the impact of European integration in common show a similar outcome; typifications of actors in EU affairs would be such an outcome.

Figure 4: Mill's method of agreement (synchronic comparison)



Source: Adaptation by the author on the basis of (Skocpol 1984, 379).

## 2) Parameters for the selection of the cases

While the comparison across the temporal units is built according to a most similar systems design, the spatial comparison on which this study is based is a most distant systems design. This has already been discussed above. The research strategy pursued in this study therefore necessitates a careful selection of cases both on the temporal and on the spatial dimension.

A text analysis of a large corpus is conducted as a second step of this study. To ensure the feasibility of this analysis, the number of spatial cases had to be kept moderate, all the more as each case had to be doubled into two periods of examination.

Another reason to keep the number of cases low is the main objective of this study: the presentation of a theoretical reflection and the specification of its hypotheses. One-case studies are especially useful for the specification of such new hypotheses (Lijphart 1975). However, they encounter serious difficulties regarding the generalisability of their results.

The most adequate design is thus to complete the diachronic comparison with a synchronic one with another spatial unit that tests the generalisability of the results for other units. Bartolini even advocates such a diachronic and synchronic comparative strategy, or ‘developmental comparison’, which links cross-temporal with cross-spatial variance ‘as the safest way...in order to control for the validity of empirical generalisations’ (Bartolini 1993, 140). Although his argument that research designs should always try ‘to observe both types of variance’ is certainly ambitious and does not correspond to all research objectives, his arguments about validity of observations is perfectly true for the type of study at hand.

#### **a) Two temporal cases: the Maastricht and Lisbon periods**

Time is taken in this analysis as a simple *dimension of variation across time* and not as ‘historical dimension’. This is because a variation over short time spans such as those analysed in this study would probably not qualify as history in the eyes of a historian: for Thrupp, research is ‘present minded ... if it is conducted within a time perspective of some 60 years’ (quoted in Bartolini 1993, 142) – even if there is a multitude of studies that analyse evolutions with the lens of ‘historical’ institutionalism.

The more important reason for this use of time is methodological. There is no reason a priori to give events that take place earlier in time the credit of ‘historicity’ or any kind of special historical significance. Doing so can even lead to important biases when events are traced from a given ‘significant’ past to the present. If something happening earlier has an impact on an event occurring later, this must still be proven and this can only be done if time is taken as a dimension of variance.

Taking time as a *neutral dimension of variance* allows the use of methods analogical to those that have been developed for spatial comparison. Accordingly, Bartolini regrets the ‘almost absolute deficiency of methodological guidance in the “historical” approaches in the social sciences’ (Bartolini 1993, 138).

However, time in this study still has an explanatory dimension and is not simply ‘unit defining’ (Bartolini 1993, 145). The question is which impact the increasing EU decision-making has had on the institutionalisation of ‘doing EU’ in the chambers and how this in turn

impacts the *motives* for the evaluation by MPs in public discourse of the role of parliaments in the EU.

This proceeding must be distinguished from the ahistorical comparative method used by a number of comparatists. Lijphard, for example, proposes that the number of cases be increased by dividing the country cases into different time periods, thereby avoiding extending the number of variables necessary to control. This strategy has since been regularly used in comparative politics. Time is not a dimension of variance here, but serves instead to improve the number of cases that are then treated like spatial units.

How should temporal cases be selected, i.e. how should temporal variance be created? The important temporal dimension for a study of institutionalisation of the EU is the process of European integration defined in a broad sense, which is structured most obviously by different intervals of accession of new members and treaty changes, but also by different phases of institutional development, political cycles, and policy-making activity at the EU and national levels. There are only few objective criteria for the choice of temporal units, even if the logic for this choice is at least as complex as for the choice of spatial units (Bartolini 1993, 147).

The basic distinction is the one between comparing single time points or longer time periods. To study how ‘doing EU’ has been institutionalised in the parliamentary arena, it does not make much sense to examine different time points. Evolutions in national parliaments may be slow and they are unlikely to have happened in parallel – either on the European and the national level, or in different member states. This is of course a major problem for those studies that define the independent variable ‘European integration’ with specific treaty or institutional developments on the European level.

There is, however, one major event on the European level that is likely to have been a major caesura for national parliaments: the Treaty of Maastricht. It has been written elsewhere that the period from the Treaty of Maastricht to the Treaty of Lisbon is the period of ‘most important strengthening of national parliamentary prerogatives’ (Winzen 2012). The reality is rather the reverse: it is the period of the most important stress on traditional parliamentary powers because of increasing EU decision-making – a pressure that continues after the Treaty of Lisbon because of Eurozone crisis instruments and a reinforced budgetary control through the Commission.

The scope of the Treaty of Maastricht on the polity, but primarily on the policy dimension has an important impact on parliamentary practice on the domestic level. It introduces the co-decision procedure and substantially extends Qualified Majority Voting (QMV). Even if the Maastricht provisions still allow the Council to outvote the EP in the co-decision procedure, its introduction forms the basis for a substantial power shift towards the EP in EU decision-making processes. The extension of QMV means a possible loss of power for national parliaments because their governments can potentially be outvoted. In addition, the competencies of the European Commission are strengthened.

Treaty provisions, however, do not have an impact on national parliaments when they are not used. This thesis assumes (without investigating this directly) that the impact of ‘Brussels’ on domestic legislatures stems from EU (legislative) decision-making and the conflicts with role and practices on the domestic level that they may produce. A comprehensive use of the Maastricht provisions only slowly shows its fruits in terms of adopted directives, regulations, and decisions from the middle of the 90s onwards.

The number of regulations and decisions steeply increases from 1995 onwards, which is explained by the increased competencies of the European Commission in the Treaty of Maastricht (König, Dannwolf, and Luetgert 2012, 25). Directives already peaked from 1988 to 1993 as a consequence of the completion of the internal market, and remained relatively stable until 2007 (König, Dannwolf, and Luetgert 2012, 25). König argues that directives ‘are the most direct measure for the impact of EU legislative activities on domestic legislatures, because they must be directly transposed and enforced under domestic law – either by domestic legislative or by executive measure’ (König, Dannwolf, and Luetgert 2012, 24). This argument implicitly reduces parliamentary functions to *legislation*. Transposition or direct participation in the EU decision-making process is only one aspect of parliamentary participation in EU affairs. Parliaments’ functions towards society (for a presentation of parliamentary functions see the section starting on page 70) are more varied and are also affected by the outcome of EU decision-making, which does not transition directly through parliament before its execution.

Conversely, regulations are even a powerful indicator for the disempowerment of national legislatures. Executives push the European Commission for the use of this legal

instrument<sup>11</sup> in order to circumvent long transposition procedures in parliament. The fact that the share of directives of the overall amount of binding legal acts has decreased since the slow awakening of national parliaments since the Treaty of Maastricht might even be an indicator for this evolution.

As a consequence of these reflections, this thesis distinguishes between two phases. In the first phase, the important consequences of the Treaty of Maastricht have not materialised yet in terms of concrete EU decision-making. This period runs from the first direct elections to the EP in 1979 until 1999. The debates on the Treaty of Maastricht can be considered as exemplary of this period. During these debates, the changes of the treaty have not yet materialised in practice. MPs evaluate the treaty on the basis of the experience that they had before the coming into force of the Treaty of Maastricht. As a consequence, and for the purposes of a clear distinction, this phase is titled the ‘Maastricht period’.

In the second phase, the described increase in EU legislative output in the mid-90s is assumed to have had time to have an impact in the parliamentary chambers. This second phase is called the ‘Lisbon period’ and ends in 2013 with the last major reform of the legislation steering the participation of EU affairs in the Bundestag to date. The Treaty of Lisbon is chosen for the discourse analysis of parliamentary debates because it is the most far-reaching treaty change in this period – or at least it has been discussed as such in public.

The analytical chapter will describe the two periods concretely in both of the chambers at stake. It is possible that the impact of Maastricht is not felt exactly simultaneously in both chambers. To distinguish between these two periods from the outset (instead of simply tracing the evolutions over time) makes it possible to draw causal inferences from temporal trends. It allows temporal generalisations to be made. Events can happen *earlier* or *later* on the established time dimension. A property may have a value at point ‘t’ which one might have expected earlier or later (Bartolini 1993, 153).

Aside from time lags of legislative and regulatory production on the European level, evolutions in parliaments are usually slow: negotiations to implement changes to standing orders, for example, can take years to be finalised because of political cycles on the domestic

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<sup>11</sup> Interview with German government official, Ministry for Agriculture, November 2005.

level. To renegotiate the rules of procedure in the parliamentary arena may also take a long time, as actors may try to use the opening up of the rules to push for other reforms than those immediately at stake. Different role orientations may cause conflicts to appear earlier or later.

#### **b) Two spatial cases: the Assemblée nationale and the Bundestag**

A selection of cases for a most distant systems design in the field of European integration studies must be subject to previous reflection. Random sampling among groups of different parliamentary systems – as would for example be preferred by a probabilistic methodology – does not make sense for a number of reasons. Because the number of overall cases is already small (41 parliamentary chambers in the current EU 28), one would be in danger of missing out on the most important ones (Della Porta 2008, 211). Moreover, because of the different features linked to EU membership of individual member states, the comparability of cases could happen to be highly limited.

There are two dimensions along which the selection of two most distant systems must take place. The first is the type of the parliamentary system, which should be as different as possible on the functions carried out by parliaments to ensure variance in potential (institutional) *motives* for MPs' evaluation of the role of parliaments in the EU in their discursive practices. The second regards the attributes of the member countries in the political system of the EU, which should be as similar as possible.

In relation to European integration, the chosen parliamentary cases must reflect a comparability (Gerring 2012) on a number of dimensions, of which the most important one is the duration of the country's membership in the EU. In order to see developmental trends linked to European integration, the parliamentary chambers at stake should belong to countries that have approximately the same duration of membership to the EU.

Furthermore, in order to investigate institutionalisation processes, it is useful to choose between the parliaments of member states that have belonged to the EC/EU for a long time. The relationship between national parliaments and the European level was profoundly altered after the first direct elections to the EP in 1979 (national parliaments no longer had an institutional link to the European level). Given this fact, the parliaments of the three countries of the first enlargement of the then European Communities in 1973 (Denmark, Ireland and the

United Kingdom (UK)) can be added to the parliaments of the six countries that were already founding members of the European Coal and Steel Community (Belgium, France, Germany, Italy, Luxembourg and the Netherlands).

Ideally, the parliaments should stem from countries with equal power in EU institutions to control for an influence of this variable on the role for national parliaments supported by MPs. On the basis of their institutional power, their voting rights in QMV, and their number of MEPs, France, Germany, Italy, and the UK are singled out. This means that one can control for MPs' motives potentially driven by differences in the power structure within the EU governance system.

All parliaments of the latter countries are bi-cameral and approximately range in the same categories in terms of citizens represented by MPs (between 100,000 and 140,000 citizens per MP) and size of the legislature (Rozenberg and Heffler 2015). As higher chambers are highly different in composition and competences, the focus is on lower chambers.

According to the Legislative Power Survey, France has a special position among the four remaining countries, as it has by far the weakest position in terms of the 32 items of the index that tests legislature's influence over the executive, its institutional autonomy, its authority in specific areas, and its institutional capacity (Fish and Kroenig 2011).

Therefore, France is identified as a case for a most distant comparison. For a comparison, there are then three candidates with widely different properties: the parliaments of the UK, of Italy, and of Germany. The Italian parliament is eliminated for endogenous reasons: due to a major constitutional change in 1994, which had important implications for the electoral system and the still-fluctuating evolutions in its parliamentary system, it would substantially increase the number of other variables to control.

Of the remaining two, the German parliament is the best case for comparison. This is because it is not only 'stronger' in terms of formal prerogatives; it also represents an opposite type of interaction between government and parliament: according to the German Basic Law, the German parliament 'co-governs' with the German federal government (*Staatsleitung zur gemeinsamen Hand*).

The German Bundestag is a 'working parliament', in the sense of Shepsle's classical classification of 'working' and 'talking' parliaments (Shepsle 1988), while the French



parliament could be classified as talking parliament. Although this classification might be simplistic, it is important because it points towards different parliamentary patterns of behaviour (which can potentially be linked to different roles and functions), instead of putting the focus solely on the policy-making function as if this was the only function that parliaments have in political systems.

In the German literature on parliaments, a relatively stable catalogue of functions for parliaments is often referred to, usually distinguishing between functions for society (*responsiveness, deliberation, legislation, and initiative*) and functions in the political system (*government creation and control*) according to the addressees of parliamentary activity (Patzelt 2003, 22–48). In the international literature, there is no such agreement about parliamentary functions. The reason is mainly that parliaments fulfil different functions within different political systems. This leads to Loewenberg's conclusion that a parliament 'cannot be identified by the particular functions it performs in political systems' (Loewenberg 1971, 4). If catalogues of parliamentary functions are not beneficial in describing the 'usual' functions of parliaments in political systems, they are highly useful in comparing aggregated action patterns of parliaments across different political systems.

On the basis of the European Members of Parliaments Study surveying MPs in 11 lower chambers of the EU 12 (Weßels et al. 1999), Bernhard Weßels indeed found a dichotomy of MPs' attitudes that corresponds to the distinction between talking and working parliaments. A factor analysis of four functions for parliaments (legislation, oversight, interest intermediation, representation of individual citizens) shows a two-dimensional structure of attitudes. The two poles are parliaments in which legislation and oversight are more important for MPs ('governance factor') and parliaments in which MPs give a higher priority to interest intermediation and representation ('representation factor'). The study found that in most parliaments, MP had a preference for the governance factor, but in France, Ireland, Portugal, and Sweden representation functions were more relevant in MPs' attitudes. German MPs attached twice as much importance to government functions than their French counterparts did (Weßels 2005, 450).

*Assemblée nationale: weak legislator with high responsiveness*

Because of its low policy-making function, the French parliamentary system has been characterised as 'semi-parlementarisme' (von Beyme), 'parlementarisme maîtrisé' (Karl

Loewenstein), and ‘parlementarisme “partiel”’ (Duverger) (all quoted in Kimmel 1991, 25). As a conclusion to his detailed analysis of the roles and functions of the Assemblée nationale, Adolf Kimmel wrote in 1991 that the latter had been largely excluded from major political decisions (Kimmel 1991, 360).

This political marginalisation of the French parliamentary chambers is probably one of the reasons why for a long time, or more precisely from the beginning of the 80s, French political science was not particularly interested in the French parliament (Nay 2003; Rozenberg and Kerrouche 2009, 497).<sup>12</sup> This is also illustrated in Christian Lequesne’s 1993 work based on his thesis, which is the only comprehensive analysis of the domestic coordination of France’s EU policy to date (Lequesne 1993): the French parliament does not have its own chapter in this work. Scholarship on the French parliament in general and the Assemblée nationale in particular has focused either on an analysis of the chamber from the perspective of constitutional law (Parodi 1972) or on the socio-economic profiles of the parliamentary elite (Rozenberg and Kerrouche 2009, 397; see e.g. Ysmal, Cayrol, and Parodi 1970).

Considerable interest in the policy-making functions and the roles of MPs in the Assemblée nationale has come from non-French researchers, explaining for example how France’s ‘rationalised parliamentarism’ shaped the bargaining strategies of political parties (Huber 1996) or which motivational incentives drove the activities of French MPs (Woshinsky 1973), or giving a comprehensive picture of the internal life of the chamber, investigating the whole breadth of functions of the Assemblée nationale for democracy in France (Kimmel 1991).

Some interest in the Assemblée nationale has stemmed from researchers from other disciplines than political science or law: namely historians, ethnologists, and anthropologists (Abélès 2000; Gardey 2015; Garrigues and Anceau 2007). The traditional importance of the deliberative function of the French parliament has materialised in studies about parliament as public space from a perspective of the sociology of law (Heurtin 1999) and the history of parliamentary debates (Roussellier 1997).

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<sup>12</sup> Other reasons are, for example, a difficult relationship with the study of ‘Institutions’ because of the dominance of post-structuralist and bourdieusian approaches in political science from the 60s onwards (Rozenberg and Kerrouche 2009, 398).

Only recently has there been a growing interest from political science and political sociology in the policy-making dimension of the Assemblée and the more complex roles of MPs and functions of the chamber for France's political system (Kerrouche 2006; Rozenberg and Kerrouche 2009). Costa and Kerrouche investigated the different roles of French MPs and their quotidian parliamentary activities and roles (Costa, Kerrouche, and Magnette 2004; Costa and Kerrouche 2009; Costa and Kerrouche 2007). A recent research project investigated MPs' different representative roles and their function for the legitimation of national political systems and the supranational governance (LEGIPAR 2016); a collective book project examined the legitimating function of parliamentary plenary debates (Galembert et al. 2013). From a law perspective, Türk analysed the control function of the French parliament (Türk 2011).

Finally, there is also a growing interest in the European dimension of the activities of the Assemblée nationale. Rozenberg investigated the importance of a sociology of the parliamentary mobilisation – focusing on motivational roles – to explain the EU activities of MPs in the Assemblée nationale (Rozenberg 2009; Rozenberg 2005). The latter's EU prerogatives and activities were analysed as part of collective books (Szukala and Rozenberg 2001; Thomas and Tacea 2015) or from a law perspective, or more generally with regard to questioning representative democracy in the EU (Rozenberg and Surel 2003).

The French parliament can be characterised with some caution as a talking parliament because the plenary debate is at least one centre of the parliamentary work (Oertzen 2006, 274), even if there is regular complaint about the low participation in the latter. In the plenary, the public orchestration of the important visible politics of the Assemblée takes place to fulfil parts of the Assemblée's function of representation and interest intermediation (Costa and Kerrouche 2007, 153). The plenary is likewise the location where most of the legislative work is conducted, even after the constitutional reform of 2008:

'For the parliamentary psyche the legislative work is without any doubt the work of the plenary. Amendments are tabled there. Ideas are confronted with those of friends and the opposition. MPs try to convince and then they proceed to the vote'<sup>13</sup> (Gicquel 2011, 7).

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<sup>13</sup> 'Pour la "psyché parlementaire" le travail législatif est incontestablement un travail d'hémicycle. On dépose des amendements. On confronte ses idées avec ses propres amis et avec l'opposition. On tente de convaincre et on passe au vote.'

Studies about the practices of French MPs and the way they see their work conclude that MPs consider their effective influence on the legislative function of the Assemblée to be low, even if they are attached to this role and sometimes frustrated about the low outcome of their efforts in terms of draft amendments (Costa and Kerrouche 2007, 153–61). The high number of amendments on individual laws seems to be an expression of this low level of real influence of MPs on the final content of the laws.

Amendments often do not serve the function of law-making but are instead instruments to serve the MPs' *public functions*. They publicly display the MPs' effort to represent individual interests of their constituency and to intermediate interests for the plenary as a whole (Kimmel 1991). Only the parliamentary rapporteur seems to have some influence on the writing of the law, comparably to the ordinary MP in the Bundestag who has been characterised in the literature as a 'sectoral expert' (Oertzen 2006). However, this position is relatively rare in comparison to the number of MPs (Costa and Kerrouche 2007, 157).

With regard to the legislative function in France, there is an important autonomy of the government towards its majority, which is the result of the choice of the ministers outside parliament and the separation of government posts and parliamentary mandates (Kimmel 1991, 365) – a fact widely accepted by the French MPs. Furthermore, there is no communication between the executive and the government majority in the drafting phase of a legislative act, except some sporadic consultations with the chairmen of the committees (Kimmel 1991, 361). This rigid separation of powers between the executive and the legislative is a response to the 'gouvernement d'assemblée' or the regime of parties before the Vth Republic.

As already seen, French MPs' major function is the one of *responsiveness* – a function only lowly developed for the German Bundestag (Oertzen 2006). They represent individual interests from their circumscriptions towards the government and play a fundamental function in accompanying the citizens in their relationship with the administration (Costa and Kerrouche 2007, 151). Already in 1991, Alfred Kimmel asserted that the representation and articulation of individual interests of the circumscription is a highly important mission for the French MPs. They use much of their time as MPs to fulfil this function through intensive contact with ministers and their administration. Kimmel saw this role of 'assistant social' (Kimmel 1991, 365) as one of the central roles of French MPs, sometimes to the detriment of their *control* role

because of the support that they from ministers and administration to cater to the individual interests in their constituency (Kimmel 1991, 365).

Costa and Kerrouche confirm this assessment. The control of the administration is an activity that is only lowly developed because it does not pay off well. Instead, most MPs' control activity is inscribed into their *responsiveness* role. An important part of the questions that MPs pose to the government stem from citizens in their circumscriptions (Costa and Kerrouche 2007, 168).

The French Assemblée nationale fulfils an important role concerning the *legitimation* of the French political system, because it incarnates the 'nation' and supports the action of the executive. An important function of the French Assemblée nationale is its capacity to put issues on the agenda for debate (Costa and Kerrouche 2007, 169). This function serves both control and information. While restricted in their legislative function, French MPs feel relatively free to launch debates or to express criticism towards the government, even if they are members of the governing majority.

The aforementioned orientations are reproduced on the working level of parliament. In the French Assemblée nationale, the parliamentary committees' main function is to reassure the information of the Assemblée nationale as a whole (Kimmel 1991, 362), and to help MPs fulfil their role as interest intermediators.

Committees do not have an important role regarding the content of legislative decision-making. Even after the constitutional revision of 2008, both the amendments of the opposition and those of the parliamentary majority that have not been taken up into the final draft that the committee submits to the plenary – de facto elaborated by only the rapporteur and the majority (mostly in the meeting of the parliamentary party group) – are again presented in the plenary.<sup>14</sup>

An important function of the committees, however, is their function of 'fossoyeur' ('gravedigger') (Kimmel 1991, 96), or filter of legislative initiatives stemming from MPs. From the multitude of legislative proposals, they choose those that will be submitted to the conference

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<sup>14</sup> After the constitutional revision, they may be presented in either the committee or the plenary (Gicquel 2011).

of presidents to have them inscribed into the complementary agenda or the priority agenda (Kimmel 1991, 96).

This has to be seen again as the framework of the MPs' function of representatives of their circumscription. A majority of legislative initiatives are therefore only destined to justify their activity in the eyes of their voters (Kimmel 1991, 96).

*Table 1: Comparison of parliamentary functions on the domestic level potentially important for EU affairs (Assemblée nationale / Bundestag)*

	<b>Assemblée nationale</b>	<b>Bundestag</b>
<b>Legislative function</b>	Low	<b>Moderate (in combination with control)</b>
<b>Responsiveness</b>	<b>High</b>	Low
<b>Control</b>	Low	<b>Moderate to high</b>
<b>Deliberation and information</b>	<b>Moderate</b>	Low

*Bundestag: High legislative control, weak responsiveness*

The Bundestag takes part in the writing or control of the legislation in a complex committee system that mirrors the federal ministries and has a low oral activity. In contrast to the Assemblée nationale, there is a long tradition of research on the internal life of the Bundestag<sup>15</sup>. However much of the scholarship concentrates either on issues concerning the steering bodies of the chambers or on the juridical aspects of the parliamentary chambers (Oertzen 2006, 14). The practice of parliamentary life and the patterns of activities of ordinary MPs have only occasionally received attention.

There are some exceptions. Schüttemeyer investigated the importance of parliamentary party groups for the choice of candidate for the Chancellery (Schüttemeyer 1998). Other studies have analysed the opposition and its relationship with the government majority (Helms 1999), the public relations of small parliamentary party groups (Kranenpohl 1999), and informal procedures of parliamentary decision-making (Wasner 1998). Schwarzmeier investigated the

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<sup>15</sup> The journal of reference for research on the German Bundestag is the *Zeitschrift für Parlamentsfragen* published by the Deutsche Vereinigung für Parlamentsfragen (German Union for Parliamentary Issues).

role of majority parliamentary party groups towards the government (Schwarzmeier 2001), while Lemke-Müller studied the parliamentary ‘culture’ of the Bundestag (Lemke-Müller 1999). More recently, two studies have investigated the day-to-day activities of the Bundestag. Oertzen analysed the roles of MPs in the German Bundestag and in the parliament of Saxony (Oertzen 2006), and Schöne the quotidian in the German Bundestag (Schöne 2010).

For a long time, research on the Bundestag’s participation in EU affairs focused on the development of the Bundestag’s legal rights for participation or on the Europeanisation of legislation in Germany (see e.g. Höhlscheidt 2001). Exceptions focused on the decision-making processes in the European Affairs Committee (EAC) (Töller 1995) or on MPs’ strategic adaptation in their relation with the executive to the loss of a direct grasp on policy-making (Auel and Benz 2005). Overall, for many years the literature concluded that the Bundestag suffered from the reduction of its policy-making power (Saalfeld 2003; see e.g. Schüttemeyer 1978; Sturm and Pehle 2006). Only recently, authors have come to the conclusion that the Bundestag has recovered ‘space lost’ (Beichelt 2015; Beichelt 2012; Calliess and Beichelt 2015; Höing 2015b; Höing 2015a).

The Bundestag has been classified as a working parliament or as a mixed form between a working and talking parliament (Steffani 1965, 19). However, recent scholarship on the activities of ordinary MPs unambiguously classifies the Bundestag into the category of a working parliament. If one defines the capacity of a parliament to provide transformation to the legislative draft acts tabled by the government, then the Bundestag must be classified as a working parliament (Oertzen 2006). In the German Bundestag this legislative work happens in particular in the different working bodies of the parliamentary party groups. In contrast to this, the plenary debate is only the ‘dot on the i’ of the parliamentary work. The person having done the work on the content of the amendments of the legislative draft act will be selected as a speaker. Being ‘speaker’ in the plenary debate is not among the important roles of the MPs in the Bundestag (Oertzen 2006, 274–75).

The jurisdiction of the Federal Constitutional Court asserts that the parliament must take all substantial decisions (Grimmer 1996, 180). In the case of the Bundestag this is mainly carried out by the parliamentary majority. The jurisdiction reflects the reality of the legislative function in the Bundestag. The main part of this work is conducted in the working groups

(*Arbeitskreise*) of the parliamentary party groups. This work is more important for the individual MP than the work for the committee or for the plenary is.

The filtering of legislative initiatives and amendments is done by the chairmen of the working groups (Oertzen 2006, 255). The parliamentary party groups of the governing coalition thus hold the policy-making function. Reporting to the working groups is more important for MPs than reporting to the committee is. There is only little space for compromise with the opposition (Oertzen 2006, 274). The government or its administration already takes up demands and criticism from members of the government majority in the phase of the drafting of the law (von Oertzen 280). The committee chairman is not powerful, in contrast to what is written in the literature and in contrast to the chairman in the *Assemblée* (Oertzen 2006, 268). He simply has a procedural role for the committee.

MPs in the Bundestag see themselves as *legislators* or better *legislative controllers* in the literal sense, and they consider themselves to develop into experts of narrowly defined issue areas in the working groups of their parliamentary party groups. The longer they stay in the Bundestag, the more sectorally specialised they become (Oertzen 2006, 254–55).

This is why, in contrast to the *Assemblée nationale*, the Bundestag has a deficit of *responsiveness*. The situation is the opposite of the situation in the *Assemblée*. Even if the MPs in the Bundestag are attached to this role, they only fulfil it partially and do not consider it to be as important as their legislative function. Input stemming from the circumscriptions can only be effective if it coincidentally matches with the expertise of the MP. A single MP is autonomous in the parliamentary party group in his or her area of expertise but does not have much influence in other issue areas. Furthermore, the ordinary MP loses knowledge about the overall transcending issues, and therefore the capacity of interest intermediation (Schüttemeyer 1998, 295 quoted in Oertzen, p. 288).

The Bundestag's control function is intrinsically linked to its role as legislator, because *legislation* is mainly realised as *control* (Thaysen 1984, 238). The reason is that the Bundestag's legislative function is carried out in a close and confidential complex of cooperation between the MPs of the governing parliamentary party groups, the government ministers, and their administration, mostly in the working groups of the parliamentary party groups (Oertzen 2006, 279). MPs of the governing coalition can thus exercise a controlling of the legislation through



all of its phases because, in contrast to the MPs in the *Assemblée nationale*, they participate in all stages.

Finally, the Bundestag's *deliberative function* is low. MPs do not see their role as speakers as an important one. In comparison, there are even three times fewer plenary debates in the Bundestag than in the United States (US), congress which is usually considered as a model for a working parliament (Oertzen 2006, 275).

Summing up, *Assemblée nationale* and Bundestag are fundamentally different in terms of practices and aggregated functions or action patterns which they fulfil on the domestic level. They make up for excellent cases for a most distant systems design across space. The following sub-chapter discusses how the previous theoretical reflections can be operationalised for this comparison.

## ***B - Operationalising the institutionalisation of 'doing EU'***

This thesis proposed to define the impact of 'Europe' as the institutionalisation of 'doing EU' as an 'ordered practice' that is traceable through distinct *typical* forms of agency and patterns of action becoming *typical* as well. 'Institutionalisation' thus comes about in social interaction. This makes it possible to link micro-processes on the level of the actors to macro-processes of the transformation of the EU as a social order.

To date, concrete driving forces remain strangely cryptic 'processes'<sup>16</sup> in the Europeanisation literature. In Ladrech's classical definition, Europeanisation is 'an incremental *process* reorienting the direction and shape of politics to the degree that EC political and economic dynamics become part of the organizational logic of national politics and policy-making'. Goetz and Hix, on the other hand, consider European integration to be the independent variable that causes Europeanisation as an *outcome*. They define the latter as a 'process' of change in policy-making styles and institutions on the domestic level (Hix and Goetz, 2000).

The same is true for those definitions that conceptualise Europeanisation as the creation of a new institutional centre without specifying what this means for the national level: 'The

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<sup>16</sup> Irrespectively of whether approaches define Europeanisation as a cause or effect.

emergence and development at the European level of distinct structures of governance, that is, of political, legal and social institutions, associated with political problem-solving that formalise interactions among the actors, and of policy networks specialising in the creation of authoritative rules' (Cowles, Caporaso, and Risse-Kappen 2001, 3).

Radaelli's definition of Europeanisation as '[p]rocesses of (a) construction (b) diffusion and (c) institutionalisation of formal and informal rules, procedures, policy paradigms, styles, "ways of doing things" and shared beliefs and norms which are first defined and consolidated in the making of EU decisions and then incorporated in the logic of domestic discourse, identities, political structures and public policies' (Radaelli 2003, 30) tries to more concretely detail what could be meant, but still lacks a conceptualisation of how these 'processes' of 'a) construction, b) diffusion and c) institutionalisation' take place and what they mean in *practice*.

### 1) 'Europe' as a process: potential pitfalls

The main problem with conceiving 'Europe' as an external process that impacts domestic policies, institutions, and strategies is that its existence is often simply assumed, and it is often forgotten to define what this process is in *practice* (and what it is not). In the literature, Europeanisation as an independent variable is usually assumed to be an influential force for change, but 'at times we find it difficult to conclude with any certainty that Europeanisation actually exists (dependent variable)' (Buller and Gamble 2002, 14).

Buller and Gamble illustrated their argument by analysing an article by Tanja Börzel on the different ways in which the EU regional policy has impacted the strategies of regional governments in Germany and Spain (Börzel 1999). Börzel found an adaptation of the Spanish regional authorities' strategy to that of the German Länder, because the latter's co-operative federalism proved to be more successful. What is certain is that these findings indicate without ambiguity that there has been a reproduction of a strategy from one country to another. However, should this result in fact be qualified as Europeanisation (Buller and Gamble 2002, 15)? Buller and Gamble argued that in order to truly be able to see what Europeanisation is, it might be necessary to develop a sort of model or ideal type for it, which seems to be highly difficult (Buller and Gamble 2002, 17).

## **2) Grasping the process from a practice perspective at the actors' micro level**

'Europe' as an independent variable cannot be defined solely as either impact stemming from decisions taken collectively in the course of European integration, or exclusively as a domestic process. Practice theory provides the necessary focus here. To identify institutionalisation processes necessarily intermediated between the macro and the micro levels of the actors, the unit of analysis must be practices, i.e. socially meaningful patterns of action (Adler-Nissen 2016, 88). To focus on practices helps to momentarily put aside the debate about the dichotomy of agent and structure and to focus on MPs' everyday practices in EU affairs in the chambers. This helps to model the 'ingredients' of an institutionalisation process: the coming about of an increasingly identifiable group of collective agents or a 'community of practice', with sharing knowledge and expertise becoming *typical* agents in EU affairs and the patterning of action becoming *typical* action.

## **3) Hypotheses and indicators**

Drawing on Chapter I, the following develops the hypotheses for the empirical analysis in Chapters III-V. Two hypotheses may be deduced from the theoretical reflections. The first one draws on Practice Theory and Berger and Luckmann's institutionalisation theory. It formulates assumptions about how EU affairs become institutionalised in the chambers once the EU legislation increases in the mid-90s.

This first hypothesis is called the 'Institutionalisation Hypothesis'. With the increasing necessity to carry out action in EU affairs, MPs acquire knowledge and experience in 'doing EU'. As the process is driven by the feeling of incompetent handling of EU affairs in relation to domestic practices and roles, the new practices that emerge for EU affairs are functional equivalents for the 'ways of doing' parliamentary affairs on the domestic level, i.e. of the role models enshrined in national institutions.

## **1. Institutionalisation Hypothesis (*Typification of Actors and Action*)**

With increasing EU legislation, MPs acquire knowledge and experience in ‘doing EU’, and EU related action is increasingly carried out by typical actors (i.e. EU experts and European affairs bodies); moreover, communities of practitioners are increasingly successful actors in the reforms of formal frameworks of EU participation. As a consequence, EU related action is more and more patterned; as MPs try to find ‘competent’ participation modes in EU affairs regarding ‘ways of doing things’ in the chambers, the resulting stable action patterns *functional equivalents* to practices or parliamentary functions at the domestic level.

The second hypothesis is called the ‘European Integration Paradox Hypothesis’. Based on Max Weber’s institutionalisation theory, one can hypothesise the existence of what this thesis calls the *Integration Paradox*. With the increasing institutionalisation of the EU as an ‘ordered practice’ in the chambers, one can observe an increasing importance of domestic role models for MPs’ discursive practices about the role of parliaments in the EU as well. According to Max Weber’s theory, in the course of an institutionalisation process the *motives for action* change, and the rightfulness or appropriateness of a rule with its constitutive value becomes increasingly important for the actor’s decision to follow the rule. For MPs, this means that with increasing institutionalisation of ‘doing EU’ in the chambers, i.e. an increasing patterning of the dealing with EU affairs in order to find functional equivalents for domestic role models, the MPs’ propensity increases to judge the role of parliaments in the EU more according to the domestic practice, i.e. equivalent to domestic role orientations.

## **2. European Integration Paradox Hypothesis (Growing importance of domestic institutions as *motives for action*)**

With an increasing patterning of EU affairs, the ideas MPs convey about the role of parliaments in the EU depend stronger on domestic institutions.

In the following, the central elements of the hypotheses are operationalised through the introduction of indicators for the different elements which help to recognise the institutionalisation processes and their outcomes, i.e. in particular *the typification of actors and the typification of action* and the changing *motives for action* in the course of an institutionalisation process.

### **a) Indicators for the *typification of types of actors***

As was discussed in the theoretical chapter, the institutionalisation of the EU in parliamentary chambers implies that specific ‘types of actors’ take care of EU affairs. In the terms of practice theory, ‘agents’ are constituted and ‘communities of practice’ come about. This typification happens step by step in the course of the institutionalisation process. Such communities of practice share the same knowledge and epistemic interpretations regarding how ‘doing EU’ should be institutionalised in the chambers. They play an important role in socially constructing the new traditions for the handling of EU affairs in the chambers, and are constituted of actors who have both EU and parliamentary experience.

#### *‘Normalisation’ of EACs and EC/EU expertise in the chambers*

The specialised bodies on European affairs in the parliamentary chambers are important, even if they are not the sole locations of EU knowledge and expertise. These bodies have been created in widely differing forms and at different points in time in all parliamentary chambers of the EU. Their aim is to cope with the increasing decision-making in the Council and with the decoupling of national parliaments and the EP after the latter’s first direct elections in 1979.

Most of those bodies were initially created without a clear definition of their function within parliament, and often as bodies with statute and prerogatives different from the established committees. Their role was contested within the chambers, often politically, ideologically, and because of conflicts and competition from the established committees and their hierarchies. MPs who were members of these committees used to have a shorter parliamentary career than in other committees on average (see for the German case Töller 1995) and to have either less parliamentary or less EU expertise.

The first indicator for the institutionalisation of the EU as an ‘ordered practice’ in the national parliaments is thus the end of the contestation of the tasks and nature of the EACs. European affairs bodies evolve into the direction of parliamentary committees, fulfilling functions not significantly different from other committees for the whole of the chamber. This means that EACs must have acquired a status comparable to ‘usual ways of doing so’ and the practice of committee business. The working style of European affairs bodies must be more similar to that of the sectoral committees.

The second indicator is the EU expertise in the chambers. This expertise may be concentrated in the European affairs body or distributed across sectoral committees, depending on the working modes of the chambers. In the beginning there are only very few EU experts in the chambers. MPs who know the EU's institutions and procedures well do not have experience in how EU participation works in practice. With increasing EU legislation, more MPs acquire knowledge about EU institutions and procedures if this is necessary to fulfil their roles.

→ EACs are increasingly 'normal' committees

→ Increasing EU expertise

Period	Indicator
<b>Maastricht period (1979-1999)</b>	Non-existent or contested role of EAC (in terms of function and role) Little knowledge about EU proceedings in parliament
<b>Lisbon period (2000-2013)</b>	Committee with stabilised and uncontested functions taking up roles in accordance with the 'usual' domestic roles of committees in the chamber Increased knowledge about EU institutions and procedures depending on roles

### *Agents of change of formal rules*

Practices can also be traced through the agents who constitute them. In the course of the institutionalisation process, members of the community sharing the same interpretations and knowledge about 'doing EU' in the parliamentary setting increasingly become agents of change for the formal frames that rule the parliamentary participation of EU affairs.

A further indicator for the *typification* of actors in the course of the institutionalisation of the EU as an 'ordered practice' is thus the *type* of actor who plays a significant role in initiatives for the reform of parliamentary rules and procedures framing EU participation. In the beginning, ideas about how 'doing EU' might work are mainly theoretical, and driving forces from inside the parliament for such reforms may be various. They may stem from backbenchers in the government parties who request more participation rights for the domestic chambers, or they may be the parliamentary party groups in the opposition who launch a large public debate to put pressure on the government in EU affairs.

With the institutionalisation of the EU as a larger political framework, there are more and more actors in parliament who know both EU institutions and procedures as well as the workings of parliament. Such actors increasingly constitute a community of practice, sharing ideas for the reform of the formal frameworks of parliamentary participation. One should expect to an increasingly clearly identifiable group of experts in EU affairs pursuing the aim of changing formal rights and prerogatives in these affairs in the chambers. Political contestation of such reforms should decrease. Parliamentary party groups need experts who have known the practice of EU affairs in parliament well for a longer time.

→ EU experts are increasingly the agents of change for the revision of formal participation rules

Period	Indicator
<b>Maastricht period (1979-1999)</b>	Actors pushing for change of formal rules are various (often groups holding specific ideological positions or pursuing specific power interests, less often parliamentary EU experts)
<b>Lisbon period (2000-2013)</b>	Collective agents of change of formal rules are a clearly identifiable group of EU and parliamentary experts, a 'community of practice' sharing knowledge and ideas about parliamentary participation across parties

### **b) Indicators for the *typification of action***

The second indicator for the institutionalisation of the EU as an 'ordered practice' is the presence of patterned action. In order to be able to speak of institutionalisation, the *typical* actors must increasingly perform uncontested patterns of action, i.e. deeds linked to EU affairs must have become patterned behaviour with an additional layer of meaning<sup>17</sup> (Adler and Pouliot 2011). In Berger and Luckmann's terminology, they must have developed typical 'actions' to which they are accustomed with reference to the new framework.

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<sup>17</sup> Action is behaviour with an additional layer of meaning (Adler and Pouliot 2011).

## *Use and meaning of participation instruments*

In the beginning, MPs have little experience in following EC/EU decision-making in a way that is most effective in terms of roles. However, they learn step by step which type of control or mandating of the government is most suitable for the role they feel is appropriate to play, as well as which share of work within the parliament is most adequate. The same is true for the administrative staff.

Dominating types of participation of MPs in a parliamentary chamber in EC/EU decision-making slowly emerge. These types have developed over the course of the various conflicts that the new institutionalisation process produces with the already firmly institutionalised ‘ways of doing things’ in the domestic political context.

More and more MPs in domestic parliamentary chambers are concerned by the growing amount of EU legislation, and specific types of activity in EC/EU affairs emerge. As there is an increasing amount of conflicts with domestic institutions and practices, MPs try to find more ‘competent’ solutions to deal with EU affairs. A chamber such as the *Assemblée nationale*, in which the majority of MPs see their major function on the domestic level as ‘interest intermediation and representation’ (Weßels 2005), is likely to develop increasingly specific activities to inform the MPs’ stakeholders about decisions in the pipeline in Brussels (to be able to alert the government in case of conflicts with particular interests) that are potentially interesting (or dangerous) for them.

In a parliament in which the majority of MPs sees the influence on the concrete legislative text as their main role (Weßels 2005), such as the *Bundestag*, MPs will increasingly develop activities that allow them to bring their expertise into the positions that the government defends in Brussels, or at least to neatly control these detailed government positions. MPs from the government majority who usually carry out this control work on the legislation on the domestic level will try to show to the opposition that they are informed and able to effectively control the government negotiations. The same is true for specific organisational adaptations. They will increasingly be adapted to support what MPs see as the adequate way of parliamentary participation.



→ An increasingly patterned use of formal and informal instruments and of the meanings that actors attribute to this use

Period	Indicator
<b>Maastricht period (1979-1999)</b>	The use of formal and informal instruments in EU affairs is in continuous change and contestation, often depending on agendas of specific (groups of) people, not necessarily being EU experts  New formal frameworks remain 'void letters'
<b>Lisbon period (2000-2013)</b>	The use and meaning of formal and informal instruments is increasingly stabilised, uncontested and shared by actors; practices that are <i>functional equivalents</i> to domestic role models are increasingly the 'focal point' of action  New formal frameworks strengthen the role that the parliament plays in EU affairs

### *Interaction with EU transnational actors*

With the institutionalisation of the EU as an 'ordered practice', one observes an increasing attention of MPs to actors in EU institutions that help most to fulfil tasks 'competently' in the framework of domestic practices.

This contact can take the form of individual direct exchanges with members of the European Commission, the latter's civil servants, MEPs in the EP, and MPs in other national parliaments, but also more formal exchanges between the national parliament's committees and those in the EP, the hearing of MEPs in national parliaments' committee meetings, or the formal exchanges in the multilateral parliamentary assemblies that develop from the end of the 80s onwards.

This contact will not only increase with the increasing need for it in order to competently fulfil the role of an MP: it is also likely to be structured according to the types of contact that best serves the roles that MPs see for themselves. MPs who see their role more in 'interest intermediation and representation' will be interested in contacts that provide them with supplementary channels to present their stakeholders wishes and to express their political positions, e.g. through the 'political dialogue' with the European Commission.

MPs who consider their primary role to be in co-governance will be especially interested in the types of contact that allow them early on to obtain the possibility to control (or even

influence) draft acts in the pipeline, e.g. through early direct contact with the European Commission and the civil servants elaborating the draft legislative acts, as well as through trying to obtain in-depth and timely information about the negotiations in the Council.

MPs in parliaments who mainly have a *responsiveness* function will be less interested in the detailed decision-making (which they leave to the government), but more interested in broader information about the impact that legislation might have on their constituencies. They will develop a close relationship with the EP as this is a means to hold exchanges about the political impact of certain policies and to sensitise MPs to the potential difficulties of their stakeholders. They will develop all channels for such a political dialogue, such as interparliamentary cooperation. According to their role on the domestic level, they will try to sensitise civil servants in the European Commission to the needs of the members of their constituencies.

→ An increasingly patterned interaction with transnational actors

Period	Indicator
<b>Maastricht period (1979-1999)</b>	No patterns, depending on individual actors, little contact
<b>Lisbon period (2000-2013)</b>	Increasing amount of contact; patterns are increasingly stabilised and contacts help to find <i>functional equivalents</i> to domestic role models

### c) Indicators for *motives for action*

How can one observe an increasing importance of domestic role models for discursive practices and the ideas enshrined in them about the role of parliaments in the EU? National parliamentary participation is a relatively recent phenomenon, and despite a number of theoretical reflections about the question (Crum and Fossum 2009; Eriksen and Fossum 2012; Lord 2007; Lord and Magette 2004) and empirical studies with data from the 90s (Katz and Weßels 1999; Schmitt and Thomassen 2007; Weßels 2005), as well as important classifications of recent parliamentary activities of all EU national parliamentary chambers (Neuhold and Smith 2015; Rozenberg and Wessels 2012), it is not clear how MPs' ideas about the role of parliaments might look, or whether and how they are linked to domestic role models over time.

Weber's writings offer a hint regarding how one can model the increasing importance of standards of 'rightfulness' or 'appropriateness' as *motives for action* in the course of an institutionalisation process. The central question here is how ideas about the role of national parliaments are cleaved and which communities of practice sustain them.

The theoretical chapter discussed Weber's distinction between different *motives* for action. According to Weber, actors may follow or break rules out of highly different *motives*. These may be *utilitarian interests*, i.e. serve their interest not to be sanctioned, for example, *ideational interests*, i.e. serve an abstract idea or political programmes that actors pursue, or *institutional*, i.e. the actors follow them because they judge them as 'valid' rules with reference to the value that these rules are supposed to realise.

In the theoretical chapter, three main *motives* for the evaluation of the role of parliaments in the EU were discussed. Each can be linked to one of the three different *motives* for evaluation: utilitarian, ideational, and institutional.

When MPs discuss the function of parliaments in the EC/EU, they may have utilitarian *motives* for the evaluation of how parliaments should participate in decision-making in the EU. The prime utilitarian *motive* for an MP is to convince voters in order to obtain votes and offices. For treaty debates, this means in the first place that members of government will try to defend the rules that the government has negotiated for the treaty at hand, while MPs from the opposition will try to attack them in order to show that the government's performance was not good.

MPs may also have ideational *motives* for the evaluation of the function of the EP and the national parliaments in EU governance. Such ideational *motives* are interests that are linked to the convictions that the MPs hold about how the 'grand design of European integration' should look in the future. Each idea or vision about the EU's future destiny, be it the creation of a European federal state or the loose cooperation of sovereign member states, to cite two classic poles that have lost much of their adhesiveness today, has its own implications for the type of parliamentary participation to choose – and especially the distribution of prerogatives between the national parliaments and the EP.

Finally, MPs may have institutional *motives* for the evaluation of parliamentarism in the EU. These institutional *motives* are evaluations about the validity of rules of parliamentary participation in the EU linked to the value of parliamentary democracy stemming from domestic practices. MPs in a talking parliament may make highly different judgements regarding how

concrete rules of parliamentary participation should look to validly realise the value of parliamentary democracy compared to MPs in working parliaments. MPs in parliaments with a mainly representative function may be highly favourable to representative solutions on the EU level, such as the ‘Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union’ (COSAC). On the other hand, MPs in more governance-oriented parliaments may find such institutional arrangements either superfluous or see in them a dangerous ‘fig leaf’ because COSAC does not provide the necessary hard tools for the control of the legislative work in the Council.

One major question remains. How can one analyse such *motives* for evaluations? The answer is that there is no possibility whatsoever to prove which reasons an MP uses either argument for or against either form of parliamentary participation. These *motives* cannot be filtered out through survey data. Guided interviews with participants in the treaty debates may be one solution that would at least make it possible to approach which of the dimensions might have motivated the evaluation of the role of parliaments in EU governance. The present author conducted a number of interviews to check the context of the debates. However, given the fact that the treaty debates took place long ago, there are serious methodological problems in such interpretations of interviews conducted today with the MPs of the time. Human memory is delusive. Interviewees may have rewritten their story for the interviewer without even being conscious of doing so, or they might simply not remember well.

However, there is another option to at least approach which *motives* may have – on a more aggregate level – driven the MPs to their evaluations. EU treaty debates are preserved in detail in parliamentary archives, together with all speakers, topics, and arguments. Through a systematic discourse analysis of the EU treaty debates at hand, it is possible to use different role models as indicators for the *cleavages* of the debates.

Table 2: Indicators for motives of action in discourses on the role of parliaments in the EU

Motive	Type of cleavage
Utilitarian	Government majority/opposition
Ideational	Groups with a specific identifiable stance on European integration
Institutional (practice and roles)	Chambers

From the types of cleavages that can be found and the groups constituting these cleavages, one can infer which *motives* may have been most important for the evaluation of the functions of parliaments in the EU at a point in time. The increasing importance of a cleavage between the chambers in the discourse about the role of parliaments in the EU thus indicates an increasing importance of domestic roles and practices and their *functional equivalents* for EU affairs for the MPs' discursive practices.

→ The increase in importance of a cleavage running between the chambers indicates an increased importance of domestic roles and practices in MPs' discourse

Period	Indicator
<b>Maastricht period (1979-1999)</b>	No clear discursive practice: Cross-chamber cleavages in discourse on the role of parliament depending of ideological interest (stance on the scope of European integration: i.e. federalists vs. intergovernmentalists), or material interest (vote or office seeking: government vs. opposition)
<b>Lisbon period (2000-2013)</b>	National parliament as 'community of discursive practice': Dominating cleavage of discourse on the role of parliaments between the chambers

### ***C - Methods for assessing parliamentary EU practice and discourse***

The institutionalisation of the EU as a larger political framework in the four cases at hand is analysed on the basis of a multitude of different sources, all of which are used to provide a 'thick description' (Geertz 1973; Ponterotto 2006) of each of them. Intense research has already been conducted on both the French and the German parliament regarding specific aspects in

EU affairs (for a discussion see above, starting with page 70). There are studies comparing the French and German parliaments on a limited number of aspects, in particular their role in the transposition of EU legislative acts, in a synchronic perspective (Sprungk 2013; Sprungk 2011; Sprungk 2007). Some of these studies deal with more than the two cases. However, no comparative study has taken a longer-term comparative perspective<sup>18</sup>. As longer-term comparative data are virtually impossible to find except for highly specific aspects, this thesis could not have been realised without drawing on the already existing body of literature.

This difficult data situation in combination with the fact that it is not possible to create new systematic data in particular for the Maastricht period makes thick description through interviews, archive material, and already existing secondary literature the method of choice for analysing long-term institutionalisation processes of EU affairs in national parliaments.

### **1) Interviewing actors: the method of choice and its limits**

The following sub-section discusses the interview methodology and describes the interview data.

#### **a) The method of choice for analysing parliamentary practice**

This study takes the perspective of the *practice* of the MPs. It assesses whether and how MPs in Assemblée nationale and the Bundestag have dealt in *practice* with EU affairs since the first direct elections to the EP. This point of view has been chosen not only because of the theoretical perspective, but also because it represents a gap in the literature, which so far has mainly concentrated either on institutional adaptation (often measured through abstract adaptations of legal frameworks and prerogatives or rules of procedures) or formal activities (Wonka and Rittberger 2014, 2). Most of MPs' quotidian activities, however, take place behind

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<sup>18</sup> With the exception of a longer-term comparison of EC/EU discourses in the two houses from the 50s up to the Treaty of Maastricht (Müller-Härlin 2008), neglecting, however, the institutional context.

closed doors through informal channels between the government majority and the government.<sup>19</sup>

To study parliamentary practice, it is necessary to employ a qualitative research strategy. Two methods are possible: interviewing and different forms of observation (including participant observation). Both types of research methods have their advantages and disadvantages (see for an exhaustive comparison Bryman 2008, 465–69). Interviews enable the researcher to focus on what is necessary to answer the research question. Participant observation, on the other hand, has more potential for the discovery of the unexpected, but the length of observation periods is limited.

For a longitudinal comparative study such as the one at hand (following parliamentary activities from the late 70s to current practice), interviews are the only way to reconstruct past events (Bryman 2008, 466) and to obtain access to issues that are often not directly observable. Semi-structured interviews are sufficiently focused to be mobilised to produce comparable data for the four cases. In interviews the researcher can ask for reasons behind actor behaviour. Thirdly, observations are not possible for past events.

‘Retrospective interviewing’ (Pettigrew 2011, 40) and archival analysis were necessary for this study. Interviewees could be asked to think back to past events and asked how certain events unfolded. This necessitated an analytical distance from the researcher, as well as a constant awareness of the limits of personal memory. Personal accounts were always contrasted with document and archive data (see for an excellent reflection on the use of actor memories Guisan 2012). Selective observations of current parliamentary proceedings complemented the interview data.

## **b) The interview corpus**

For the analysis of the evolution of parliamentary EU practice, 39 recent interviews with actors in the parliamentary chambers in both France and Germany were used. Half were

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<sup>19</sup> Some authors even argue that cleavages are much better understood as the ones between the political sphere of government politicians and MPs of the government majority on the one hand, and the civil servants of the administration on the other hand (Beichelt, 2009, pp. 245–296).

conducted with MPs and the other half with parliamentary clerks and assistants. The author conducted 26 interviews, while 13 were supplemented from a recently undertaken study on parliamentary activity in the framework of the research project ‘Observatory of national parliaments after the Treaty of Lisbon (OPAL)’ in which the author was involved (see Appendix 1).

The OPAL interviews could be used, as the questions that had been asked had a similar research focus on parliamentary practice as the present research project. Ten of the interviews were conducted in the higher chambers of both countries to provide a more general overview of features of the practice of EU affairs in the parliamentary system.

The mentioned OPAL interviews had initially been destined to cover the period after the Treaty of Lisbon to determine whether there had been important changes in parliamentary activity induced by the change of the formal rules after the treaty. This means that for the analysis, it must be kept in mind that the OPAL researchers targeted the period after the parliamentary debates on the ratification of the Treaty of Lisbon. Further caution was necessary as the period targeted by the interviews coincided with the Eurozone crisis and the putting into place of crisis solution mechanisms by European heads of state and government as well as European institutions, which had some impact on parliamentary prerogatives and might have had an impact on parliamentary activity. Studies show that this is not the case, however (Auel and Höing 2014).

The OPAL interviews provided precious information for the research framework at hand. They showed that actors in the chambers had a much more long-term view on the evolutions within the parliamentary chambers than could be provided by simple correlations with treaty changes on the European level. In both the *Assemblée nationale* and the *Bundestag*, an important share of the adaptations linked to the Treaty of Lisbon, for example, had already been implemented before its ratification (often as a result of the failed Constitutional Treaty and the debates preceding and following it). In the German case, there was an important enhancement of formal prerogatives in the course of and after the ratification of the Treaty of Lisbon under the influence of several rulings by the Constitutional Court. Changes in parliamentary practice are more attenuated, however, and if they have occurred, they are well distinguishable in the interview data.



### **c) Sampling**

The sampling was purposive and not a probability sampling. Even if it is in principle possible to mechanically define a population of MPs (e.g. from the 70s to the present), a systematic sampling approach analogous to the one used for the discourse analysis did not make sense for the research question at hand in terms of research economy. The danger of missing out on the central EU experts in both chambers was too high if the chosen population was too restricted or if the response rate was too small, which was probable as an important share of MPs interesting for this study had quit their mandate a long time ago and would likely have been beyond reach.

Interviewees were chosen in a strategic way to ensure that the ones selected were relevant to the research question and had something to say about parliamentary practice in EU affairs during their time in office, as well as to ensure that their positions were comparable in cross-country comparison (Surel 2015, 177). The most important point was to ensure persons interviewed had comparable functions in parliament and represented variety in the sample. The variety concerned in particular the affiliation to parliamentary party groups, the government or opposition membership, the level of hierarchy and the offices in parliament (chairman of a parliamentary committee or simple member, type of committee, MP or clerk...) and parliamentary party group (speaker, member of specific working groups, member of the board of the parliamentary party group, MP or assistant to an MP or to the parliamentary party group). The party hierarchy and the assistants to individual MPs and parliamentary party groups were more important as selection criteria in the Bundestag than in the Assemblée nationale, where the formal parliamentary hierarchies and especially the distinction between the chairmen of the committees and the simple members are more important.

With regard to the temporal cases, the time periods of the ratification of the Treaty of Maastricht and the Treaty of Lisbon were chosen as important periods for the comparison of parliamentary practice. This means that interviewees were selected with the priority on those who had important functions concerning parliamentary affairs when both treaties were negotiated and ratified on the domestic level. This selection criterion allowed actors in comparable situations in both identified temporal phases to be interviewed. Furthermore, it made it possible to additionally ask actors who had participated in the parliamentary debates analysed in part V about their context.

For the period around the ratification of the Treaty of Maastricht, it was no longer possible to identify relevant parliamentary clerks. Only MPs were interviewed. On the level of MPs, however, it was possible to interview key actors of EC/EU affairs and parliamentary negotiations of that period – in particular for the Bundestag. In France, on the other hand, access to actors of the period was more difficult: only three MPs who were direct participants in the debates on the Treaty of Maastricht could be interviewed. However, they stemmed from different political party groups and were members of both government and opposition.

#### **d) Semi-structured interviews and interview guide**

To explore parliamentary practice on the scale outlined above, structured interviews were not adequate: too many interesting and unexpected matters could have been lost. On the other hand, the comparative methodology across time and space required some form of comparability of the interviews.

Interviews were therefore not explorative but semi-structured, with a lists of topics to address and specific questions to further discussion. This allowed for flexibility in the order of questions to ask, and for interesting topics to be picked up (see e.g. Bryman 2008, 438–39).

The first part of the interview guide used some central questions from the interview guide used by OPAL to ensure the comparability of the interviews. Then, in the succeeding part questions were asked about the interviewee's parliamentary function(s) during the period in which either the Maastricht or the Lisbon debates had taken place, and about the context and preparation of contributions that the interviewee had made to the plenary debate analysed in chapter V. The following part investigated the context in parliament at the time of investigation (the ratification of the Treaty of Maastricht or of Lisbon), i.e. which points were particularly high on the agenda for MPs, which points caused particular conflicts, which points were discussed concerning the role of national parliaments, and how and in which fora such conflicts were solved.

Finally, the interviewee was asked about his or her personal point of view regarding the differences between the Maastricht and the Lisbon ratifications and constitutional amendments; about potential changes of MPs' perceptions of the role of national parliaments in the EU; and

about their personal evaluation of democracy in the EU and whether and how this perception had changed (for the interview guide see APPENDIX 1).

Interviews always began with an introduction of the interviewer and a presentation of the research project. Interviews usually took about 60 minutes, depending on the availability of the interviewee – which was unexpectedly high on average. The concrete duration of each interview was noted on the interview transcript or the interview summary.

Interviews with key MPs who had participated in the parliamentary plenary debates on the treaties under analysis were recorded, but interviewees were reassured that there would not be any direct quotation of what they said without prior authorisation if they so wished. All interviewees insisted on this point, which the author appraises as proof of the authenticity of answers given. Parliamentary clerks were assured anonymity as a principle.

## **2) Secondary analysis of archived interviews and survey data**

Two important data sets could be used for secondary analysis for the study at hand. In the French case, the project BeQuali (*Banques d'enquêtes qualitatives en sciences sociales*), hosted by the *Centre de Données Socio-Politiques* of Sciences Po Paris, provided a full data set of interview evidence from 42 interviews<sup>20</sup> with French MPs in office between 1993 and 2005 conducted by Olivier Rozenberg in the framework of his PhD thesis. The project BeQuali (BeQuali 2016) constitute a database of raw data from qualitative studies that is accompanied by a detailed report about the context of the collection of the data, detailed interview guides, and interviews with the researcher who conducted the initial data collection. The detailed documentation of the interview process, such as the description of the interviewer's observations when meeting the MPs, allowed for the interpretation of MPs' arguments, assessments, and statements in the context in which they were made (Surel 2015, 177). This was fundamental to the feasibility of the secondary analysis of the interviews.

The study by Olivier Rozenberg provides particularly precious interview information that it would not have been possible to gather otherwise. Given the age structure of the French

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<sup>20</sup> Of which eight interviews were used for the purposes of this study (see appendix 1).

Assemblée nationale in the beginning of the 90s, central actors were already deceased before the beginning of this study, or were in a highly advanced age, such as for example Robert Pandraud (chairman of the EC delegation from 1993 to 1997).

Rozenberg's study focuses on the roles that the chairmen of the EACs played over time. The author asked which impact their psychological roles had had on the activities of the Assemblée nationale (in comparison to other factors such as mandate and office seeking). However, a number of questions used were similar or identical to questions in the interview guide used for the present study. The interviews thus provided an excellent primary source to assess the transition from the Maastricht period to the Lisbon period, which is to be situated in both parliaments somewhere at the end of the 90s or at the beginning of the year 2000.

Similar questions were as follows. 'What is the European dimension of the activities of your parliamentary committee?' 'Are you in contact with members of the European institutions?' 'What is your link with your party concerning European affairs?' 'How and how far can members of parliament influence the EC/EU policy of their government?' 'Which role should the Assemblée nationale have in EC/EU matters?' 'How did you become member of the European affairs delegation?' 'What do you think about the work of the European affairs delegation and what are your activities?' (the full questionnaire can be accessed on the website of BeQuali 2016).

For the German case, another set of raw data was available that covered approximately the same type of questions and period, even if comparability was unfortunately subject to contextual knowledge and interpretation because of a different research methodology. In 1996, Bernhard Weßels and his team conducted a 'European Members of Parliament' study funded by the Deutsche Forschungsgemeinschaft (DFG) in the context of the 'European Representation Study'. The study consisted of surveys with MPs in 11 member countries of the EC/EU, including the Assemblée nationale and the Bundestag.

In 2003 this study was complemented by the German Members of Parliament Study, in which German MPs were again interviewed with the same standardised questionnaire that had been used in 1996. The raw data of both surveys and detailed explanations of how the data were collected were available from the GESIS-Leibniz-Institute for the Social Sciences (Weßels et al. 1999; Weßels 2013).

### 3) Secondary literature, documents, and archive material

Despite the important amount of primary and secondary interview material and raw data, a long-term analysis of parliamentary practice in EC/EU matters cannot succeed without either revisiting and reanalysing the secondary literature accumulated over the decades on parliamentary practice in general and participation in EU affairs in particular, or the study of parliamentary documents accumulated over the years and archive material about parliamentary proceedings.

To revisit secondary literature and the data analysed in it, several pitfalls have to be taken into account. Data used in secondary literature have to be analysed and interpreted properly, and the goals and purposes of the original research must be taken into account. This is especially true as researchers have already oriented their research and may have omitted data that they considered to be less relevant.

With regard to parliamentary documents and reports, both parliaments provide a multitude of data to researchers and the general public. In the case of these documents, it was likewise necessary to take into account the method of data collection and analysis used by the different parliamentary services, as well as the public for which they had initially been provided. This was not always an easy task. The Assemblée provides much information and numerous activity reports, in particular its Committee for European Affairs (formerly Delegation for European Affairs) (Assemblée nationale 2015b; Commission des affaires européennes 2015). Furthermore, the parliamentary archives (which are partially accessible via Internet) provide precious information on offices, mandates, and biographies of MPs over time, such as for example the membership of committees and their chairmen (Assemblée nationale 2015b).

In the case of the Bundestag, the following were especially important. First, the *Datenhandbuch des Deutschen Bundestages* (Feldkamp 2010) provided essential – even if often unfortunately aggregated – data on committee membership, committee chairmen, proceedings of the committees,...

Furthermore, the Bundestag's *Dokumentations- and Informationssystem (dip)* provided all official publications (Drucksachen) and documents stemming from its parliamentary proceedings and the minutes of the plenary debates since 1976 (Deutscher Bundestag 2015).

The publication known as *Kürschners Volkshandbuch* provided useful information about the offices that MPs held in parliament and in the parliamentary party groups, as well as

their biographies. It covers all legislative periods interesting in this study (For the current legislative term see Holzapfel and Holzapfel 2015). The office of the archives of the German Bundestag was always helpful in providing information.

Finally, for the analysis of the context of the debates about the ratification and the constitutional amendments, archive material was accessed directly in the archive of the German Bundestag, as most committee meetings and their minutes are not public in the German parliament. The data about the Lisbon proceedings were disclosed in 2013.

#### **4) Assessing the link between domestic practices and role models for parliaments in the EU**

On the grounds of assumptions from the works of Max Weber, this thesis hypothesises that the institutionalisation of the EU as an ‘ordered practice’ occurs alongside a growing importance of institutional *motives* (as opposed to instrumental or ideational interests) for MPs’ evaluation of the role of national parliaments. The attribution of meaning to the role of national parliaments in the EU is traced through a systematic comparison of the debates on the Treaty of Maastricht and the Treaty of Lisbon in the Assemblée and the Bundestag.

##### **a) Preliminary reflections: Bernhard Weßels’s attempt to assess the link between domestic role orientations and MPs’ attitudes regarding the role of parliaments in the EU**

Bernhard Weßels made a first attempt to show links between MPs’ role orientations in the domestic arena (which are oriented towards institutions on the domestic level) and their ideas about the outlook of European parliamentary institutions (Weßels 2005). Using survey data from the 1996 European Members of Parliament Study (Weßels et al. 1999), which was part of a bigger European Representation Study also including MEPs (see e.g. Katz and Weßels 1999), Bernhard Weßels undertook a first explorative analysis of the data that had been collected in 11 member states (EU15 minus Austria, Great Britain, Denmark, and Finland).

His main conclusion was that ‘variation across countries clearly dominates convergence’ (Weßels 2005, 449). However, he seemingly found some regularities across groups of countries concerning the preferences that MPs have for the functions of national

parliaments in the EU. In those countries where there was a high priority for representation and interest intermediation among MPs on the domestic level (France, Ireland, Portugal, and Sweden), a higher proportion of MPs demanded stronger direct links for national parliaments with the EU (i.e. through joint committees with EU institutions, meetings with MEPs, or the introduction of a cabinet minister for European affairs) and supported a further reinforcement of the EP less. In those countries where MPs dominantly saw their role in legislation and oversight of the government's activities, MPs asked less for direct links with EU institutions and more strongly supported the strengthening of the EP.

This result is more than counter-intuitive. Why should MPs who have a preference for 'legislation and oversight' promote their own destitution through another institution, in this case the EP?

The reason given by Bernhard Weßels is that they 'seem to trust' in cooperation and co-decision with the EP (Weßels 2005, 453). He refers to other specialist literature in the field coming to similar results. That *institutional* role models or orientations should be the motor for this attitude does not make much sense. It is more probable that there are other factors (i.e. ideological *motives* of evaluation on the future course of European integration) that play a significant role here, i.e. ideas on European integration. Bernhard Weßels's article indeed briefly discusses this question. He asked MPs about their ideas about the 'grand design' of European integration (in his article roughly a supranational, intergovernmental, or hybrid multi-level model). However, he did not control for this factor when he calculated the correlations between role orientations on the national level and preferences for the functions of national parliaments in the EC/EU.

The assumption of a non-identified multicollinearity is reinforced by the percentages of MPs who prefer to base the legitimacy of the EU's institutional set-up either on national parliaments or on the EP. Bernhard Weßels again explained the results with parliamentary role orientations (representation vs. governance). Among those parliaments in which MPs give the national parliaments prominence, one finds member states with an important presence of advocates of intergovernmentalism in the political elite and population (such as France and Sweden, with the latter's particular 'twin faced' approach to European integration (Miles 2011)). Conversely, among those parliaments in which MPs favour putting the legitimacy of the EU on a strong EP, one finds mostly member states where a high percentage of members of

the political elite favoured supranational solutions for the institutional outlook of the EU, at least until the late 90s (such as Belgium, the Netherlands, Germany, Italy).

This first intuition upon seeing the data is confirmed later in the article, when Bernhard Weßels's results show that those countries that are against a parliamentarisation of the EU are those where a stronger proportion of MPs are either in favour of intergovernmentalism or a sort of multi-level model, while in those countries where MPs show a tendency to be in favour of a parliamentarisation of the EU (and/or of a multi-level model), MPs are strongly against intergovernmentalism (Weßels 2005, 456).

With minor exceptions, the countries where MPs have a tendency to favour a parliamentarisation of the EU coincide with those identified as countries where MPs favour 'governance and oversight', and those where MPs have a tendency to be against a parliamentarisation of the EU through a strong EP coincide with those where MPs favour the 'representation' function.

Bernhard Weßels's correlations between domestic role orientations and preferences for the function of national parliaments in the EU thus seem to be of a more coincidental nature or a non-identified multicollinearity. The explanatory variable is instead likely to be found in ideological motivations about the future of European integration.

Bernhard Weßels's study is a first step for the analysis of MPs' attitudes towards the functions of parliaments in EU governance with an impressive set of data. However, the study presents several severe problems that are partly directly linked to the quantitative research strategy employed and to the way it is applied. First, Bernhard Weßels's study – despite its important merits – clearly shows the pitfalls of 'descriptive-explorative' research strategies when they are based on quantitative data without in-depth knowledge about the individual cases at hand, and without a clear theoretical framework that could have oriented the data analysis. Second, as the study is a first explorative study, most of the results presented are simple correlations of which the explanatory character is not further verified. The study might thus be an example of the fact that in large-n comparative studies, the reliability and comparability of the data are not always guaranteed when knowledge of individual cases is low (Della Porta 2008, 210).

Third, the study aims to analyse a process (Europeanisation) but does not include an explicit comparison across time of the different attitudes about roles and preferences for EU



parliamentarism (even if there is a comparison across a short time span of some indicators on the organisational Europeanisation of the Bundestag).

Convergence is unsuccessfully used as an indicator for Europeanisation. There are probably two reasons for this: a) convergence might be a difficult indicator anyway, as discussed before; and b) the data on which the analysis is based date from 1996. Parliaments have only recently been awakened to the impact of European integration. It is highly probable that in 1996 many parliaments are still in a phase in which the concrete effects of Maastricht (if Maastricht is taken an important caesura, as was argued earlier) and of the important increase in EU legislation from 1995 onwards have not yet shown their full effect yet.

A more qualitative analysis with a lower number of cases compared over distinct time periods and knowledge of the context of each case might be necessary in order to learn more about how domestic practices and roles interact with MPs' ideas about the role of parliaments in the EU.

#### **b) Plenary debates about EU treaties as important moments for the evaluation of the role of parliaments**

Debates about EU treaties in national parliaments are important moments for examining how members of parliament judge institutional features and policies of the EU and its predecessors in general, and the role for parliaments in particular. In parliamentary debates, MPs do not only evaluate the treaty at hand, but also necessarily comment on how they have experienced the EU so far – or on how they interpret the prerogatives in the treaties to play out in practice.

EU treaty debates usually receive more media attention than other EU debates do. MPs are obliged to justify in front of their colleagues and a wider audience the vote that they will cast on the ratification instrument, and usually also on the legislation that accompanies these instruments to implement the necessary constitutional amendments.

EU treaty debates are more adequate than other types of EU debates in the chambers as sources for this PhD dissertation, because they have a high probability of containing many evaluations about institutional features of EU governance, i.e. there is a high probability of finding evaluations about the role of parliaments in the EU.

Furthermore, EU treaty debates are the only moments in which the full breadth of EU policies and polity aspects are systematically discussed in the light of domestic policy and polity issues (in many countries constitutional amendments are regularly necessary for the ratification of an EU treaty) and intermediated through domestic politics (Lord 2007, 139). This latter aspect means that in EU treaty debates, an important variety of different *motives* will be found for which MPs could make their arguments about the role of parliaments in the EU. These could be *utilitarian reflections* anticipating what the voters' point of view on the issue will be; *ideational motives*, because their preference for the future outlook of the EU fits better with one or the other function for parliaments in the EU; or finally what this thesis has termed *institutional motives*, because the rules foreseen for parliamentary participation in EU decision-making are in accordance or not with what an MP judges to be a valid rule for the realisation of the value of parliamentary democracy.

While the latter point is certainly the most important, there are some further advantages of EU treaty debates over other types of EU debates and other types of data. EU treaty debates take place throughout all national parliaments during approximately the same time periods, even if they may have a distance of several months. This renders the debates in different member states comparable in relationship to their occurrence regarding the 'EU integration timeline'. Certain phenomena in the debates can be compared across time, and the interference of EU-related events can be minimised. Furthermore, in contrast to survey data, for example, the exact domestic political context in which the debates took place is known, as are the individual MPs who took part in the debates.

This dissertation assumes that communication matters for social reality and that the structure of the communication in the debates can be analysed. The parliamentary debates at hand are understood as 'discourse' in its most basic definition, i.e. a planned and organised process of public discussion. In the present analysis, discourse is not used to signify a normative model for forms of communicative interaction with specific rules that are able to legitimate political decisions, such as in Habermas's discursive ethics (Habermas 1981). Instead, it is seen as one form of *practice* that can demonstrate some things about the world. Social reality can be assessed by analysing the communicative and argumentative processes of societal importance (Keller 2006, 7).

### **c) The ambiguities of treaty debates**

Treaty debates are particular debates. Treaties of the EU are highly complicated legal texts that are difficult to understand even for the EU specialists among national MPs. Stricto sensu, what has for the time being been called ‘EU treaty debate’ in the present text is a debate on the instrument authorising the ratification of a new EU treaty (or on the form of this authorisation, in case a referendum is possible), a debate on a constitutional amendment necessary before ratification or a debate on legislation that has been politically linked to the ratification of the treaty, such as for example the accompanying legislation that is negotiated between government and parliament on the domestic level to assure sufficient parliamentary control over EU legislation.

MPs usually use EU treaty debates to express their overall evaluation of EU polity and policies. They are not limited discussions about legal texts. On the one hand, they are political debates about the state of European integration, its impact on the domestic level, and its potential future trajectories. On the other hand, they are discussions about specific individual prerogatives of the EU treaties that have attracted MPs’ attention or that have been discussed in the wider public in the process of the negotiation of the treaty texts. From the array of topics in the treaty or on the EU agenda, MPs choose those topics that seem the most important to them. This importance is not the same for each individual MP, for each parliamentary party group or, on an even more aggregated level, for each chamber. MPs in different parliamentary chambers in different countries may paradoxically not talk about the same topics at all when debating the same treaty text.

### **d) Selecting adequate EU treaty debates: Maastricht and Lisbon**

For the comparison across time of the institutionalisation of ‘doing EU’, two periods were identified earlier: Maastricht and Lisbon. The Maastricht period runs until the end of the 90s because the impact of an important peak of EU legislation was only felt in the parliamentary chambers at this time.

For the comparison of *motives* for evaluation in EU treaty debates, it was necessary to choose adequate debates. They needed to be sufficiently far away from each other and they needed to be paradigmatic of each of the periods. For the Maastricht period, the debates on the

Treaty of Maastricht are – perhaps at first sight paradoxically – a good case in point. At the time of these debates, the important new prerogatives for national parliaments have still not been implemented. Instead, MPs can be expected to discuss how they imagine the new prerogatives to play out on the basis of their (little) experience with EU decision-making so far. The institutionalisation of the EU as a political framework for MPs can be expected to still be relatively low.

Paradigmatic for the Lisbon period are the parliamentary debates on the Treaty of Lisbon. The treaty is the last comprehensive treaty change to date. Furthermore, most of the parliaments have already seen important changes with the failed Constitutional Treaty, so that the Treaty of Lisbon does not bring about any major changes but can instead be seen as a first evaluation of this new practice.

The last partial treaty change concerning article 136 TFEU was a consequence of the Eurozone crisis and thus provoked highly focused debates in the parliamentary chambers. These debates do not ensure enough comparability with the Treaty of Maastricht debates, because they were focused on one specific policy field and thus were technical and not sufficiently broad.<sup>21</sup>

#### **e) Identifying role models through a deductive-inductive text analysis method**

For the analysis of the parliamentary debates, it was necessary to develop a discourse-analytical method that is able to fulfil two purposes. First, it needs to allow an explorative qualitative analysis on the basis of theoretical reflections in the literature about functions for parliaments in EU governance. Second, the method must allow a systematic and quantifiable comparison across time, space, and language.

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<sup>21</sup> The author of this study attended the debates of the French Assemblée nationale to authorise the simplified treaty revision necessary for the revision of article 136 TFEU.

## *A comparative text analysis across chambers and languages*

The coding scheme was elaborated in different steps, which involved several readings of the material. Its categories were elaborated in a deductive-inductive way, starting from the literature on the democratic deficit of the EU and parliamentary roles and developing categories and coding instructions while going through the debates.

The systematic comparison of debates across two countries (and languages) and two different points in time required extensive qualitative knowledge of the debates to develop a valid and useful coding scheme (Gerhards 2006, 340–41). For that same reason, categories needed to remain broad. This has the disadvantage of offering only a rough categorisation of the debates, but was judged to be sufficient for the purpose of this analysis.

For the coding scheme parliamentary prerogatives discussed in the debates were assigned to different parliamentary roles, which are discussed in the following.

### *The coding scheme for the text analysis*

Which roles can parliaments play for EU governance? Proposals for institutional solutions to the democratic deficit of the EU always have two dimensions: the evaluation of the nature and trajectory of the EU governance system, and the applied norms for democratic quality. The following roles have been identified deductively from the literature and inductively from the analysed treaty debates.

Regarding the numerous approaches to the EU's democratic legitimacy (see e.g. Eriksen and Fossum 2012; Lord 2007; Lord and Magnette 2004), Lord and Magnette presented a synthesis of the main legitimating principles for the European political order: *technocratic legitimacy*, i.e. its 'superior ability [...] to meet citizens needs' (Lord and Magnette 2004, 186); *procedural legitimacy*, i.e. guarantees for transparent procedures; *indirect legitimacy*, i.e. the representation of sovereign national demos on the EU level; and *parliamentary legitimacy*, i.e. the representation of a European demos through the EP. As in national political systems, they argued, the legitimacy of EU governance may be supported by several of these principles simultaneously (Lord and Magnette 2004, 184).

Parliaments play a substantial role for the EU's *indirect* and *parliamentary legitimacy*. This distinction refers to the classical opposition between an 'intergovernmental' and a

‘supranational’ model for the EU. In an ideal-typical intergovernmental model, the EP is little more than a symbolic ‘talking shop’. The Council and European Council are the centres of decision-making (with unanimous decision-making in principle) and they are controlled by national parliaments. In an ideal-typical supranational model of the EU, on the other hand, the EP is a fully fledged parliament with the right to select the government and full legislative powers (Weßels 2005, 455–56).

According to the first model, the role of national parliaments to provide democratic input can be threefold. First, they can be *Domestic Control Bodies* for the governments’ action on the EU level. Prerogatives that national parliaments exercise within the ‘black box’ of the nation-state reach from rights to be informed by their government about the negotiations in the Council to having the right to mandate the government. The role of national parliaments here is *individual*, and turned exclusively towards the government. In the Treaty of Lisbon this view is expressed in particular in article 10 of the Treaty on the European Union (TEU) (Cooper 2013, 532).

Second, the role of national parliaments can be to participate directly in EU decision-making processes, ideal-typically represented in a sort of *Third Chamber* on the EU level. Such *collective* forms of direct parliamentary participation have been proposed regularly since the de facto end of the secondment of national representatives to the EP. A famous example is Joschka Fischer’s proposal to introduce a [third] chamber on the EU level in the debate leading to the Convention for the Future of Europe. ‘Lighter’ forms of direct participation of national parliaments on the European level were already introduced with COSAC and other forms of parliamentary assemblies, usually under the participation of the EP. The most important recent innovation is the Early Warning System as a form of ‘virtual third chamber’ (Cooper 2013, 532).

There is also the possibility that national parliaments have little or even no role in European affairs. Particularly in political systems where the executive has extensive powers in matters of foreign policy-making, one might conceive of EU policies as executive matter. With the growing breadth of policy areas dealt with on the EU level, however, this view has increasingly lost importance.

Under the ‘supranational’ model, the EP guarantees *parliamentary legitimacy* for EU governance on the EU level, while national parliaments provide legitimacy for domestic political processes. This approach is closest to the traditional federal approaches to the EU, but

it also encloses multi-level parliamentarism or the ‘multi-level parliamentary field’ (Crum and Fossum 2009).

The role of parliaments in this perspective can be twofold. First, national parliaments may be a sort of *Sublevel Parliament* either in a partially federalised European political order with a division of governance activities between the centre and regional governments, or in a system of multi-level parliamentarism with different functions for the parliamentary chambers depending on areas of competences.

Second, one can also consider the possibility that the EP substitutes largely national parliaments and compensates, on the EU level, losses in legislative competences on the domestic level. Through successive treaty changes, the EP’s competences have been strongly extended in legislative and budgetary matters and have triggered fears of a deparliamentarisation of political processes on the domestic level (Vivien Ann Schmidt 2006).

### *Description of the corpus*

The analysis is based on the contributions to the general debates (speakers enrolled in the speakers lists) on constitutional amendments and ratification laws linked to the two treaties in the plenary debates (see APPENDIX 4). This has the advantage of better comparability, but excludes for example those dissenters who were not attributed speaking time by their groups and used prerogatives of the standing orders to speak. This was justifiable as the main focus lies on the comparison of differences and similarities.

The second round of the ratification process in 2009 in the Bundestag was not included in the sample to control for the influence of the German Constitutional Court’s Lisbon judgement. Statements of members of government were not counted. Overall, the sample comprised 156 contributions and about 47 hours of parliamentary debate in the original standardised format of the parliamentary minutes in order to allow for a systematic comparison of the length of passages of text.

### *Unit of analysis and coding instructions*

The analysis combined a qualitative analysis with a quantification of manifest and semantic features of the debates with the help of the software MAXQDA. The latter allowed for the access to coded pieces of text within their context at every stage of the analysis.

The basic unit of analysis was an MP's individual contribution to the general debates. For the analysis, individual contributions were regrouped into the parliamentary groups to which they belonged. No fixed text unit was defined, but each 'unit of meaning' ((parts of) sentences constituting propositions falling within the categories) could only be attributed to one frame, i.e. frames were not overlapping. Propositions that did not fall in one of the categories were not relevant (for the codebook see APPENDIX 2).

The four main categories are discursive categories or 'frames' corresponding to roles for parliaments in the EU. Extending Goffman's famous definition, Snow et al. define frames as 'schema of interpretation that enable individuals to locate, perceive, identify, and label occurrences within their life space and the world at large' (Snow et al. 1986, 464).

These 'role frames' do not directly entail positions about the 'state' of parliamentary prerogatives or concrete judgements about the treaty at hand (see also Gerhards 2006, 348). The propositions that were coded under a specific role frame could welcome new prerogatives, criticise them for not being far-reaching enough, or call for them to be introduced in the treaties in the future. In all of these cases, they referred to the same frame of reference for the role of parliaments. If the possibility of guaranteeing democracy in the EU through a specific role was denied, the frame was coded as negative.

Speaking time is a rare good for MPs. Within the limited time at their disposal, they try to communicate their core messages. They prioritise the speaking depending on the importance that they attribute to an issue. The speaking time dedicated to specific parliamentary roles or frames was used as an indicator for the importance attached to them. This speaking time was measured by counting the standardised rows of the minutes of the parliamentary debates for each 'unit of meaning'.

All statements that promoted more participation and control rights for the national parliament on the domestic level were coded under *Domestic Control Body*, such as more information rights by the government or rights for participation in the coordination of the national position in the Council negotiations. This category also concerned individual rights for national parliaments enshrined in the EU treaties but exercised on the domestic level, such as the action on the grounds of the infringement of the principle of subsidiarity before the European Court of Justice (ECJ) or the domestically implemented rights to veto simplified treaty revisions or the use of passerelle clauses. Furthermore, the sample included all statements



that alluded to any kind of limitation to the transfer of competences to the EU as a means of preserving parliamentary competences.

The code of *Third Chamber* was given to all statements that promoted institutionalised interparliamentary cooperation as a means to regain power in EU affairs, that alluded to the idea of establishing an assembly of representatives of national parliaments on the EU level, and that addressed all other types of collective direct participation of parliaments on the European level, i.e. the subsidiarity check and the joint parliamentary scrutiny of Europol.

The *Sublevel Parliament* was more difficult to define for the coding. National parliaments and the EP both needed to occur in one unit of meaning to fall into this category. To distinguish it from the previous role, propositions fell into this category when there was no explicit mention of direct participation of national parliaments on the EU level and when the object of the proposition was individual parliaments. It was important to distinguish this category from propositions that elaborated only on the EP, as it was particularly meaningful for the Maastricht debates. Finally, all propositions that elaborated on the prerogatives and functions of the EP were coded with *European Parliament*.

Table 3: Role models for parliaments in EU decision-making

Role	Indirect legitimacy ('intergovernmental legitimacy')		Parliamentary legitimacy ('supranational legitimacy')	
	<i>Domestic Control Body</i>	<i>Third Chamber</i>	<i>Sublevel Parliament</i>	<i>European Parliament</i>
<b>Basis for democratic input</b>	National demos	People's collective demoi	National demos and European demos	European demos
<b>Type of participation for national parliament</b>	Individual and indirect	Collective and direct	Individual and indirect	Not applicable
<b>Objects of discourse</b>	<ul style="list-style-type: none"> <li>- information to be provided by the government</li> <li>- internal parliamentary reforms</li> <li>- mandating rights for the parliament</li> <li>- all individual rights of national parliaments enshrined in the treaties (e.g. the action on the grounds of subsidiarity before the ECJ, participation rights on simplified treaty revision, and passerelle clauses in the Treaty of Lisbon)</li> </ul>	<ul style="list-style-type: none"> <li>- interparliamentary cooperation as a means to improve the role of national parliaments in the EU (e.g. COSAC)</li> <li>- a virtual or real <i>Third Chamber</i> of national parliamentarians on the European level</li> <li>- collective participation of parliaments on the European level (e.g. the Early Warning Mechanism, the control of Europol,...)</li> </ul>	<ul style="list-style-type: none"> <li>- elaboration of a European constitution with participation of national and European parliamentarians</li> <li>- strengthening of the national parliament is depends on the strengthening of the EP</li> <li>- all statements that promote a parliamentary control of national parliaments and EP on different levels</li> <li>- the strengthening of national parliaments can only be a transitory measure to remedy the lack of parliamentary representation until the EP is a fully fledged parliament</li> </ul>	<ul style="list-style-type: none"> <li>- all prerogatives and functions of the EP without mention of national parliament</li> </ul>

Note: Roles for national parliaments in grey.

## ***D - Conclusion***

To answer the research questions, it was necessary to deploy a comparative research strategy, comparing actors and action patterns in EU affairs and MPs' discourse on the role of parliaments in the EU across time within the chambers and across space between the chambers. The empirical analysis draws on interview and archive data to analyse actors and action patterns in EU affairs, and on data from a systematic deductive-inductive discourse analysis of parliamentary debates to compare MPs' ideas about the role of parliaments in the EU.

The first section of this chapter discussed the operationalisation of *time* as a factor for the research design and presented the logic that led to the selection of the Assemblée nationale and the Bundestag as cases (sub-chapter A). In order to assess *typifications of actors* and *action* and the parallel meaning-building processes on the role of parliaments in the EU, it was necessary to cross a most similar systems with a most distant systems design. Patterns were analysed within each chamber across time, comparing a Maastricht (1979 to 1999) and a Lisbon (1999-2013) period and then comparing across chambers. Parliamentary discourse on the role of parliaments in the EU was compared by analysing one parliamentary debate on the fundamental features of the EU in each period, i.e. the debates on the Treaty of Maastricht and the Treaty of Lisbon.

The second section discussed how the impact of 'Europe' could be grasped at the micro-level through studying the practice of the actors (sub-chapter B). It operationalised the theoretical reflections in Chapter I through the development of hypotheses and indicators, and discussed the methods and data used. This thesis argues that indicators for the *typification of actors* in EU affairs are 1) the normalisation of the functions of the European affairs bodies and the extension of EU expertise, and 2) the increasing importance of EU experts as agents of change for parliamentary prerogatives. The *typification of action* can be traced through 1) an increasingly patterned use of formal and informal instruments, and 2) interaction with EU transnational actors.

Finally, the chapter reflected on the resources that have been used to analyse actors and action patterns in EU affairs over time, and discussed the methods that were used to collect and exploit them for the purposes of this study (sub-chapter C).

The following chapter presents the results of the first part of the investigation of *Hypothesis 1* through an analysis of actors and action patterns in EU affairs in the Assemblée nationale and the Bundestag during the Maastricht period.

## CHAPTER III The Maastricht period (1979-1999: ‘acting’ Europe)

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This chapter presents the results of the comparison of parliamentary EU practice in the Assemblée nationale and the Bundestag during the period that will be referred to as the ‘Maastricht period’ for the purposes of this study. This period covers the 80s until the end of the 90s, but data regarding the 80s is incomplete. The chapter shows that in both parliaments MPs ‘act’ in European affairs, but they do not ‘perform’ typical roles or functions.

The chapter compares evolutions in this period in the Assemblée nationale (sub-chapter A) and in the Bundestag (sub-chapter B) and shows that there are similarities in EU affairs in the two parliaments despite their MPs’ institutionalised practices on the domestic level being different. In order to investigate *Hypothesis 1*, the first section analyses (1) actorship in EU affairs, and pays special attention to the European affairs bodies and EU experts more generally in the chambers. It then proceeds by investigating which actors are successful protagonists for the introduction or revision of formal rules regarding the chambers’ EU participation. In a second section, each chapter investigates the activities of the chambers in EU affairs and the meaning that actors attribute to this activity (2).

The conclusion shows there are similarities in actorship and activities between both chambers in the Maastricht period. In both chambers ‘doing EU’ is still ‘arbitrary’ and subject to frequent change. In both chambers, the European affairs body’s shape and competences are subject to fundamental change and political contestation. There are still only few actors who know both how EU decision-making and the parliament’s ‘usual ways of doing things’ work. In both chambers, the introduction and amendment of the formal framework for the participation in EU affairs are not pushed through experts of day-to-day EU decision-making, but by actors who have either specific political agendas without a link to EU affairs, who hold specific ideologies concerning the scope of European integration, or who try to defend the competences of their institutional fiefdoms.

Neither in the *Assemblée nationale* nor in the *Bundestag* do specific patterns exist with regard to handling EC/EU affairs that have a certain stability. Participation modes depend on the individual actors. Despite the different role orientations of the chambers on the domestic level, concrete actions in EU affairs are low. In both chambers actors want to remedy this low involvement through a stronger *control* of the government. An important feature of the Maastricht period is that organisational arrangements (such as the shape of the European affairs bodies) and action in EU affairs are often ‘incompetent’ with regard to the existing parliamentary practices. EU affairs are lowly institutionalised as an ‘ordered practice’ in both chambers.

### ***A - Assemblée nationale***

This first sub-chapter examines the handling of EU affairs in the French lower house during the Maastricht period. The first section shows that there is no ‘community of actors’ sharing knowledge about parliamentary affairs that can provide a clearly defined agency in EU affairs for the chamber during this phase. Interest in EU affairs and awareness regarding the impact of EC/EU decision-making is low. Actors who have EU experience lack parliamentary experience. Throughout the major part of the Maastricht period, the Delegation for the European Communities (*Délégation pour les Communautés européennes*, or ‘EC Delegation’) created in 1979 is a largely technical body that therefore cannot ensure the functions for the *responsiveness* of the chamber as a whole, which the committees usually hold. Actors have little experience in the day-to-day handling of EU affairs and mainly have other motives for action, be they political or ideological.

The second section shows how this type of agency results in the introduction of prerogatives for the chambers, such as the ‘Europe Resolutions’ introduced as an instrument for government *control*, which are only used for a short period of time and whose usefulness in parliamentary practice (as well as their meaning) is contested. Despite a relatively high number of resolutions (compared to the ‘Lisbon period’), actors in interviews are mostly dissatisfied

with participation. The participation in EU affairs of the chambers is low and there is no general pattern. Moreover, individual actors express highly different wishes for improvement.

## **1) Actors and agency**

This first section concentrates on the actors who carry out EC/EU-linked action in the *Assemblée nationale*. The first part examines the Delegation for the European Communities created in 1979 to ensure the chambers' EU participation – whose nature and logic of membership are subject to regular change in this period. Interest in and expertise by the members of the *Assemblée nationale* regarding the Delegation's work are low, even from its own members. There is no 'community of practice' sharing knowledge and expertise about day-to-day parliamentary participation in EU affairs. For a long time, the EU body's technical nature does not allow it to perform 'competently' for the chamber as a whole – performing activities according to the roles of the standing committee. The second part analyses who the successful agents are who push for the successive changes of the legal framework for 'doing EU' in the chambers. Motives are various but they derive only rarely from the experience of or shared knowledge about day-to-day EU decision-making.

### **a) European affairs body and EU experts**

During the Maastricht period, the nature and type of composition of the Delegation is subject to regular change. Until the end of the 90s, it does not have the type of membership nor the working mode that is characteristic of the permanent committees, nor does it have a comparable level of attention from its own members. Most importantly, EC expertise in the committee is low. There is no discernible community of practice linked to EU affairs. As in the *Bundestag* in the same period, parliamentary actors explain this with the fact that most MPs are not aware of the (potential) impact of EU legislation on domestic legislation.

Until the adoption of the ‘Josselin’ law, the EC Delegation has only 18 members and does not allow for a proportional representation of the parliamentary party groups (Stanat 2006, 162) as is usually the case of the committees. The body is thus a technical one that is not ‘competent’ for *political scrutiny* of EC/EU documents, which would be necessary to fulfil the Assemblée nationale’s role as an interest intermediary.

Only with the extension to 36 members in 1994 can the body potentially work coherently with parliamentary practice on the domestic level. However, its working mode and methods remain highly different from those of the standing committees, in particular with regard to the interest and knowledge of its members in EC/ EU affairs. Both the chairman of the Delegation from 1993-1997, Robert Pandraud, and the chairman from 1997-1999, Henri Nallet, consider the overall capacity of the Assemblée nationale in EC affairs in the Maastricht period to be disappointing.

‘How many MPs really knew, how many were interested and present? [silence] Few. Listen, honestly... ten. Ten or maybe less. And among these ten, they didn’t all have deep knowledge. Ten interested, and honestly four or five with good knowledge of the community’s mechanisms’<sup>22</sup> (interview 6)

Nallet estimates that there are only around 10 MPs in the Delegation interested in EC and EU affairs – and that out of those only four or five have the competence to efficiently scrutinise European legislation because they know well how institutions and decision-making procedures on the European level worked (interview 6).

Nallet explains this generalised disinterest in the scrutiny of EC/EU draft acts with the fact that MPs are highly preoccupied with other subjects and the work in the standing committees – but above all because of the low subjective feeling of conflict caused by

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<sup>22</sup> ‘Il y avait combien de parlementaires qui connaissaient vraiment, qui s’y intéressaient, qui étaient présents ? [silence] Peuf. Ecoutez honnêtement... dix. Dix et encore. Et encore sur les dix, ils s’y connaissaient pas tous. Dix intéressés, et de bons connaisseurs de la machine communautaire honnêtement quatre ou cinq.’



increasing EU legislation. MPs still do not consider that increasing European legislation does have an impact on their work.

In the opinion of Nallet, MPs in the Assemblée nationale are still ‘completely convinced that it is the French Parliament that makes the law’<sup>23</sup> (interview 6). In his opinion MPs are not aware of the fact that there are important parts of national legislation that are and would be stimulated in the future by EC/EU legislation. For him, the MPs in the Assemblée nationale have an ‘ancient and very Republican conception of law-making. For them, it is the national Parliament’<sup>24</sup> (interview 6). He experiences that MPs are greatly surprised when one explained to them the principle of supremacy of EU law or the impact of the general principles elaborated by the European Court of Justice on French legislation: ‘I can assure you that they are taken aback’<sup>25</sup> (interview 6). For Pandraud this assessment is even one of his motivations for becoming chairman of the Delegation:

‘Because I noticed when I was a Minister and an MP that in fact, we lived under false pretences. In very large fields, during electoral campaigns as well as in everyday business, we did as if Europe didn’t exist. But ultimately, I think it was Delors who said that two-thirds of our legislation comes from Europe, but according to me it is more important than that. The European interferences are manifold: they are legislative, jurisprudential, European Court in Strasbourg, Court of Justice in Luxembourg. All this leads us to reconsider many of our positions. I was very interested in European problems.’<sup>26</sup> (interview 3)

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<sup>23</sup> ‘complètement convaincus que c’est le parlement français qui fait la loi’

<sup>24</sup> ‘conception très républicaine ancienne de l’élaboration de la loi. Pour eux, c’est le parlement national.’

<sup>25</sup> ‘Je vous assure qu’ils ouvrent de grands yeux.’

<sup>26</sup> ‘Parce que j’avais constaté lorsque j’étais ministre et parlementaire qu’en fait, nous vivions dans de faux semblants. Dans des domaines très vastes, à la fois dans les campagnes électorales et dans la gestion quotidienne, nous faisons comme s’il n’y avait pas l’Europe. Or en définitive, je crois que c’est Delors qui disait que deux tiers de notre législation venaient de l’Europe mais à mon avis c’est plus important que ça. Les interférences européennes sont multiples, elles sont législatives, jurisprudentielles, Cour européenne de Strasbourg, Cour de justice de Luxembourg. Tout ceci amène à revoir beaucoup de nos positions. J’étais très intéressé par les problèmes européens.’

Both chairmen of the Delegation consider that the MPs of the *Assemblée nationale* complain about Europe but do not participate in EU affairs: ‘They grumble but they don’t participate. They do not talk about it during electoral campaigns’<sup>27</sup> (interview 3). Nallet retains a partially bitter feeling of his chairmanship. He considers that French MPs are ‘hypocritical’ when they talk about the democratic deficit of the European institutions, because they are not interested at all in how the latter work (interview 6).

Even after 1994 the chairmen of the European affairs body do not hold expertise comparable to that of chairmen of other standing committees. Most importantly, all of them lack substantial experience in parliament. Their EU expertise is low. Robert Pandraud only has five years of parliamentary experience and no significant experience with EU institutions before being appointed as a chairman of the Delegation. Henri Nallet has some experience with EU decision-making processes from the perspective of a member of the French government<sup>28</sup>. However, both have only relatively short parliamentary careers before being appointed chairmen of the Delegation.

Interest of the sectoral experts in EC/EU affairs is low for the reasons explained earlier. Before the constitutional revision of 1992 on the occasion of the ratification of the Treaty of Maastricht, the standing committees do not participate at all in the scrutiny of EU dossiers (Szukala and Rozenberg 2001, 231). A two-step ‘European Resolution’ procedure foreseen in the constitutional revision is supposed to give the standing committees the possibility to become involved early<sup>29</sup>.

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<sup>27</sup> ‘Ils gueulent mais ils participent pas. Ils en parlent pas dans les campagnes électorales.’

<sup>28</sup> Henri Nallet was minister of agriculture in 1985/86 and then again (switching to the ministry of justice) from 1988 to 1992.

<sup>29</sup> Even if in principle each member of the *Assemblée* could table a resolution, the standing orders of the *Assemblée* that were only modified in 1994 to include the constitutional amendments continued to foresee a central role for the delegation for the scrutiny procedure (Szukala and Rozenberg 2001, 231): it continued to examine all documents transmitted by the government upon arrival in the *Assemblée*, and was almost exclusively the initiator of European Resolutions.

However, the permanent committees only participate reluctantly.<sup>30</sup> Nallet notes in an interview that when he sends a proposal for a resolution to a permanent committee, its chairman usually complains about not knowing where to put the ‘annoying thing’ on the agenda:

‘Holalala, you’ve sent me a thing, it’s really a pain, you know I already have a very loaded agenda, I don’t know when I will be able to schedule your thing.’<sup>31</sup> (interview 6)

For Henri Nallet the resolutions are therefore not an efficient tool. He prefers informal exchanges with government and administration. Furthermore, he considers that if the resolutions were discussed in the plenary, there is rarely new input from the standing committees or other members of parliament. The same arguments that have already been used in the Delegation are repeated again (interview 6).

The European affairs body is isolated within the *Assemblée nationale* during the Maastricht period. Only few MPs attend plenary sessions on European Resolutions. Even during the chairmanship of Robert Pandraud, which starts directly after the heated Maastricht debates that put EU affairs high on the agenda and during which 33 resolutions (which represent nearly all resolutions during his chairmanship) are discussed in the plenary (Szukala and Rozenberg 2001, 232), only 30 or 40 MPs attend such plenary sessions (interview 3). Under the chairmanship of Henri Nallet, it even happens that there are only five or six MPs in attendance (interview 6).

## **b) Agents of change regarding formal rules and organisation**

As a consequence of the missing community of practice in EU affairs, until the end of the 90s protagonists of the change in the formal framework for the participation of the French

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<sup>30</sup> Until the constitutional revision of 2008, which changed the statute of delegation into the one of committee, European Resolutions had to be adopted by one of the standing committees foreseen by the French Constitution.

<sup>31</sup> ‘[...] holalala, tu m’as envoyé un truc, qu’est-ce que c’est emmerdant, tu sais j’ai déjà un ordre du jour très chargé, je ne sais pas quand je vais pouvoir le mettre ton truc.’

parliament in EU/EC affairs are not experts in parliamentary proceedings in EU affairs. During the Maastricht period the motives of actors who successfully push their ideas through for the formal framework ruling regarding EU/EC participation are various: particular ideas about European integration, the defence of specific institutional power positions, or the public game between governing majority and opposition.

A particularly strong force of change in this period in the *Assemblée nationale* is the Eurosceptic MPs of the Gaullist *Rassemblement Pour la République* (RPR) party, who fight for stronger participation rights for parliament when in government coalitions with the more integration-friendly *Union pour la Démocratie Française* (UDF). They believe that a better limitation of European integration can be achieved through a better representation of the French national interest in EU decision-making.

The MPs of the Socialist Party (PS) are also reluctant or even hostile towards further steps of institutional integration of the European Community. During the first parliamentary ‘*Assises*’ of the national parliament and the EP in Rome in 1990, they vote, for example, against a proposal for a new decision procedure between the Council and the EP (Stanat 2006, 161).

The most fundamental change of formal prerogatives of the *Assemblée nationale* in EU affairs between 1979 and 1999 is the introduction of article 88.4 (see e.g. Nuttens 2001) into the French Constitution at the occasion of the ratification of the Treaty of Maastricht. The article reorganises parliamentary participation in EU affairs, in particular through the introduction of the so-called European Resolutions, which were already mentioned above. The introduction of the article is obtained by RPR and UDF in partially coordinated opposition against the Socialist government. Especially the pressure of the RPR parliamentary party groups in opposition in both chambers is high (the high majorities needed for a constitutional amendment in both chambers put the right-wing parties in the *Sénat* in a veto position against the government). The strengthening of the prerogatives of the parliament is a consensus position between RPR and UDF, whereas they differ on the government’s EU policy (Rozenberg 2010).

Table 4: *Assemblée nationale: Evolution of formal prerogatives (Maastricht period)*

EU events	Year	Formal rules	Conflicts in parliament	Actors successful in change
Single Market Programme First direct elections EP	1979	<b>Loi ‘Foyer’</b> - Creation of EC Delegation	- Failure of the transposition of the sixth EC directive on TVA	Eurosceptic members of the RPR parliamentary party group (against UDF prime minister Barre)
	1990	<b>Loi ‘Josselin’</b> - Reform of the Delegation: extension of membership, possibilities of hearings with government and European personalities, possibility to publish reports (before only possible for standing committees), Delegation can issue an opinion; information right about EU draft acts once when transmitted to the Council and if under art. 34 Constitution (‘domaine de la loi’)	- trigger Single European Act, but no major conflict  - major conflict with Sénat because of fear of creation of a seventh standing committee and a reorganisation of the competences in matters of foreign affairs between the government and the parliament	Chairman of the EC Delegation, Charles Josselin, PS
Treaty of Maastricht	1992	<b>Revision of Constitution</b> - Introduction of art. 88.4 (resolutions on issues of the first pillar that fall under law domain)	- The competence transfer foreseen by the ratification of the Treaty of Maastricht	Eurosceptic MPs of the sovereigntist wing of the Gaullist party
	1994	<b>Loi ‘Pandraud’ (amendment of loi ‘Josselin’)</b>  - Delegation changes name: from Delegation for the EC to Delegation for the EU  <b>Standing orders of the Assemblée nationale (amendment)</b>  - Implementation of the constitutional changes foreseen in 88.4 French Constitution		Powerful anti-Maastricht coalition exists among the MPs of the governing majority – in particular against a pro-European pole in the Balladur government

		<p><b>Government ‘circulaire’ (Balladur)</b></p> <ul style="list-style-type: none"> <li>- Government grants the parliament one month to scrutinise the EU draft acts (‘réserve parlementaire’)</li> </ul> <p><b>Constitutional reform (no special EU focus) (1995)</b></p> <ul style="list-style-type: none"> <li>- attempt to extend information rights failed</li> </ul> <p><b>Letter by Prime Minister Juppé</b></p> <ul style="list-style-type: none"> <li>- guarantee of transmittal of: draft acts of 2<sup>nd</sup> and 3<sup>rd</sup> pillar; of the motivations of the <i>Conseil d’Etat</i></li> </ul>		
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In this phase, the Sénat is an important agent of change as well. While in a first phase its conservative majority blocks a strengthening of the EC Delegation that is too far-reaching (because of the fear of making it a seventh standing committee), in the negotiations regarding the Treaty of Maastricht the Sénat tries to use its veto position to enhance its own prerogatives in EU affairs as well.

### *Eurosceptic members of the RPR: ‘Foyer’ law, 1979<sup>32</sup>*

The agents who successfully push for the ‘Foyer’ law, which institutes the Delegation for the European Communities in 1979, are the Eurosceptic members of the RPR parliamentary party group who are in a government coalition with the Centrist MPs from UDF and *Union Démocratique du Centre* (UDC) parliamentary groups. There are strong tensions within the government majority because parts of the Gaullist party consider the policy of the UDF Prime Minister Raymond Barre to be too pro-European. They contest, for example, the decision by

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<sup>32</sup> President Giscard d’Estaing (UDF), Prime Minister Raymond Barre (UDF).

the European Council in 1976 to introduce the first direct elections of the EP. This culminates in the rejection of the transposition of the sixth EC directive on Value Added Tax by parts of the RPR parliamentary party group in 1979.

The chairman of the Law Committee, Jean Foyer, therefore proposes a draft act foreseeing a parliamentary body for European affairs. The sovereigntist opponents within the government majority (in consensus with the Eurosceptic Communist and Socialist opposition parties) manage to obtain the establishment of an EC Delegation against the will of the government. However, the new body is less powerful than the Eurosceptic MPs initially hoped. Amendments filed by MPs, which are in favour of European integration and a pro-European consensus in the Sénat across all parliamentary party groups except for the Communists, lead to a Delegation that is a small technical body without clearly defined own competences (Stanat 2006, 157–58).

### *The chairman of the EC Delegation: ‘Josselin’ law, 1990<sup>33</sup>*

The ‘Josselin’ law is the only exception to the rule that, in the first phase of parliamentary participation, the Eurosceptic forces are the major actors successfully pushing for change of parliamentary prerogatives. The law is not a successful one, however. In the aftermath of the Single European Act, the law is introduced by an EU expert, i.e. the chairman of the EC Delegation, Charles Josselin, PS, to meet some major flaws in the competences and structure of the EC Delegation (extension of number of members, precision of competences, better information of the government, publications of the activities of the Delegation). The original text is consensual in the Assemblée nationale with the exception of the Communist party, which considers the competences foreseen in the draft law to be too weak.

In a subsequent phase of the parliamentary proceedings, the law meets major opposition from all parliamentary party groups in the Sénat except for the governing Socialists, and it takes

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<sup>33</sup> President François Mitterrand (PS), Prime Minister Michel Rocard (PS).

13 months of parliamentary negotiations to finally adopt it. Apart from electoral considerations between government and opposition, the major reason for resistance is the continuing fear in the Sénat's major parliamentary party groups (as in 1979) that increased competences for the Delegation will harm the balance of competences between the Delegation and the standing committees. The right-wing majority in the Sénat does not want to change the distribution of competences between the government and the parliament in matters of foreign affairs. The government backs the position of the Sénat against its parliamentary majority, as it is not eager for the chamber to have stronger control rights. The final law is close to the Sénat's version and contains only the increase of the members of the Delegation to 36, extended rights to organise hearings of government ministers and other European personalities, the possibility to publish reports (which used to be the sole competence of the standing committees) and to issue opinions on EU draft acts and submit them to the standing committees (Stanat 2006, 161–66).

### *Eurosceptic members of RPR: Constitutional revision, 1992<sup>34</sup>*

The major reform of formal EC/EU prerogatives for the French parliament during the debates about the ratification of the Treaty of Lisbon is a prime illustration of the role of Eurosceptic forces (and the fight between government and opposition in the French parliament) as promoters of change.

Major agents of change that are able to promote strengthened parliamentary participation rights for the two chambers are thus the Eurosceptic MPs of the sovereignist wing of the Gaullist party, who are organised in the *Association parlementaire pour l'Europe des nations* under the leadership of Philippe Séguin, Franck Borotra (Assemblée nationale), and Charles Pasqua (Sénat). During the Maastricht negotiations, an extreme bipolarisation occurs between pro-Europeans (moderate Socialists, Centrists, moderate Gaullists, *Génération Ecologie*) and sovereignist political forces rejecting the Treaty of Maastricht (Communists,

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<sup>34</sup> President François Mitterrand, Prime Minister Pierre Bérégovoy (minority government).



Front national, traditional left or ‘Jacobins’ under Jean-Pierre Chevènement, Philippe de Villiers, ‘old’ Gaullists under Séguin) (Stanat 2006, 185).

The sovereignists – and especially those organised in the RPR parliamentary groups of the two chambers – threaten to block the ratification in the two chambers of the parliament. Therefore, president François Mitterrand announces publicly on 12 April 1992 that it will probably be necessary to ratify the Treaty of Maastricht through a referendum against the will of the chambers.

However, in order to obtain the adoption of the constitutional revision required by the *Conseil d’Etat* before ratification (on three points: the voting rights in local elections for EU citizens, the introduction of the European Monetary Union, and the entry and free movement of persons in the common market), the Socialist minority government of Pierre Bérégovoy is obliged to make important concessions to the sovereignists (and especially in the Sénat) in order to be able to find the necessary majorities. These concessions concern a veto role of the Sénat for the definition of the law implementing the voting rights for foreign nationals in local elections (later art. 88.3 of the French Constitution) and the modalities of participation of parliament in EU affairs (later art. 88.4).

The MPs in the Assemblée nationale ask for a constitutional guarantee a) of the (already existing right of) submission of EC documents upon their transmittal to the Council if they fall under article 34 of the French Constitution (*‘domaine de la loi’*), and b) of the possibility of issuing an opinion on these draft acts (which in principle already exist for the standing committees).

Because of the pressure of the RPR parliamentary party group in the Sénat, the government and the Socialist parliamentary party group must accept that the instrument of opinion in the Sénat (called *‘avis’* in the Assemblée nationale’s version) has been changed into a *‘resolution’* (following a proposal by Jacques Larché).

This is an important change symbolically because only highly restricted possibilities exist of issuing resolutions for the two chambers in the Vth Republic (following a decision by

the *Conseil constitutionnel*). Parliamentary resolutions are widely considered to have contributed to the governmental instability in the IIIrd and IVth Republics. The concrete implementation of the procedure for EU resolutions is supposed to be elaborated by the chambers in their standing orders (which they only do in 1994). Despite their symbolic and political value, however, resolutions do not engage the government to follow the parliament's line. There is therefore no change in practice. The chambers already had the possibility to issue non-binding opinions before (Stanat 2006, 187).

In contrast to this, the proposals by the EU experts, i.e. both chairmen of the delegations in the *Assemblée nationale* and in the *Sénat* (Michel Pezet, PS, and Jacques Genton, *Union Centriste*<sup>35</sup>), to mention the EC delegations in the constitution in order to transform it into a seventh standing committee and failed to give the body an autonomous right to centralise the opinions of the permanent committees. The literature interprets this as an 'auto-limitation tacite'<sup>36</sup> by the MPs (Nuttens 2001, 30), but it instead probably reflects the continuing will of those MPs organised in other standing committees to leave the internal parliamentary hierarchy untouched.

### *A powerful anti-Maastricht coalition: 'Pandraud' law<sup>37</sup>, 'Circulaire Balladur', and 'Juppé' letter<sup>38</sup>*

The following incremental improvements of the prerogatives of the chambers take place during the years 1994 and 1995, during in which a powerful anti-Maastricht coalition exists among the MPs of the governing majority (Stanat 2006, 189; Szukala and Rozenberg 2001) – in particular against a pro-European pole in the government Balladur. Leading personalities

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<sup>35</sup> Union Centriste (today Union des démocrates et indépendants - Union centriste) is a center right pro-European *Sénat* parliamentary party group.

<sup>36</sup> 'Tacit self-restraint'.

<sup>37</sup> President François Mitterrand, Prime Minister Edouard Balladur (second co-habitation).

<sup>38</sup> President Jacques Chirac, Prime Minister Alain Juppé.

who publicly declare having voted against the Treaty of Maastricht obtain important positions in the parliamentary hierarchy. The three most important personalities are Philippe Séguin, the speaker of the Assemblée nationale; Robert Pandraud, the chairman of the Delegation for the European Communities; and Robert Mazeaud, chairman of the Law Committee, all three of whom have important parliamentary experience. At the same time, the political posts of chairmen of the parliamentary party groups are held by personalities who have only little political weight because they are at the end of their career or still have little parliamentary experience. A number of experienced MPs leave parliament to join the Balladur government after the parliamentary elections in 1993, which lead to the second ‘*co-habitation*’ under the Socialist president François Mitterrand. After a landslide victory of the right-wing centrist-Gaullist coalition, the majority of the MPs have a parliamentary mandate for the first time, and most of them are mostly interested in the work in the circumscription (Stanat 2006, 188–89).

In close cooperation with Philippe Séguin, Pierre Mazeaud, and the speaker of the Sénat, René Monoroy (UDF), Robert Pandraud tries to use the amendment of the ‘Josselin’ law in 1994<sup>39</sup> to obtain extended information rights, including on the second and third pillars of the newly created EU. All parliamentary party groups adopt the draft law except for the Communists, who consider it not to be far-reaching enough. They claim an obligation of examination for EC/EU draft acts by the Delegation, and the obligation of the government to notify the Council of ministers in Brussels about an adopted parliamentary opinion (Stanat 2006, 190).

Following the adoption of the law, the government argues that a simple law cannot break the constitutional law (from 1992) and that it is thus not bound legally to the new submission rights. Informally, however, it is not possible for the government to ignore the political claims. As compensation, prime minister Juppé grants parliament an examination period of four weeks during which government ministers shall not agree to an act in the Council of Ministers through

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<sup>39</sup> In the final law, the term European Communities is replaced everywhere with European Union, e.g. in the name of the Delegation.

a government decree or *circulaire Balladur* (known as *reserve parlementaire*) to give parliament enough time for deliberation (Stanat 2006, 257–58). Symbolically, this step is important because the government grants parliament a right of influence in a domain of foreign/EU policy, which in the ‘usual ways of doing things’ was reserved for the executive in constitutional practice.<sup>40</sup>

Improvements of parliamentary prerogatives in 1995 follow the same pattern. Robert Pandraud tries to use the constitutional revision of 1995 (initiated by the new president Jacques Chirac and his prime minister Alain Juppé) to amend article 88.4 of the Constitution, and to finally oblige the government to submit all EU/EC draft acts concerning the second and third pillars, all interinstitutional agreements, and all acts under the sole competence of the European Commission, as well as consultative documents by the European Commission.

His amendment is refused by the Law Committee on legal grounds: the amendment is supposedly not sufficiently closely linked to the original draft act according to article 85.5 of the standing orders of the *Assemblée nationale*. However, through political pressure he manages to obtain most of the points through a less formal concession by Prime Minister Balladur fixed in an official letter to the speaker of the parliament and to Pandraud himself.

The latter promises to withdraw his proposal for amendment in the public reading on the constitutional revision (and thus not to publicly blame the government for its information practice). Juppé consents in his letter to submit a) all draft acts under the second and third pillars, as well as b) the official motivations of the *Conseil d’Etat* that decide upon submission to the parliament or not (under art. 34 of the Constitution).

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<sup>40</sup> The parliamentary reserve does not have much weight in practice (Auel, Rozenberg, and Thomas 2012).

## **2) Action and participation patterns**

This second section discusses which action results from the actor constellations presented above, and which interaction with EC/EU transnational actors is favoured by the MPs in the Assemblée nationale. There is a general perception of low EC/EU activity, and actors are dissatisfied. The ideas about which roles the Assemblée nationale should play in EU affairs, i.e. which action patterns MPs should favour, change depending on the individual actors. In particular, the usefulness of the European Resolutions with regard to established practices in the chambers and their meaning are contested by succeeding chairmen of the Delegation.

### **a) Participation patterns and their meaning**

Until the end of the 90s, there are no clear patterns for how MPs in the Assemblée nationale participate in EU affairs, in terms of neither the use of formal instruments nor the more informal roles they play. The wishes that MPs attribute to the Assemblée nationale's role in EU affairs vary strongly. Rozenberg has described that the chairmen of the Delegation for the EC/EU in the Assemblée nationale have considerably varying ideas about the major objective of the parliamentary participation in the EU decision-making processes depending on their motivational roles (Rozenberg 2009).

Robert Pandraud and Henri Nallet have widely differing preferences for formal instruments of control. For Pandraud, hearings and resolutions are the most efficient tools of parliamentary control. For Nallet, on the other hand, the best instrument for parliamentary participation in EU decision-making is information reports. All of these tools are mainly destined for the *ex ante* phase of decision-making, either as instrument for the provision of information, as instrument for the expression of a parliamentary opinion, or as a longer-term tool for dialogue with the government.

There is another important difference between Robert Pandraud and Henri Nallet concerning the importance of resolutions. While both would like these resolutions to be

generators of plenary debates (which is not the case), only Robert Pandraud considers them to be a useful tool for the expression of the opinion of the parliament. For him, resolutions are a public tool of *control*, engaging ‘the ministers’ political responsibility’<sup>41</sup> (interview 3).

In contrast to this, for Henri Nallet resolutions are a complicated and unsuccessful tool for the expression of the opinion of parliament. In his view, they are unable to produce the necessary debates in the plenary. These are primordial for him as the Delegation is dependent on the standing committees to adopt or debate them under the Maastricht version of the article 88.4. For him, resolutions are without any major consequence because they are agreed upon between the government and the parliamentary majority (‘Because it is always telephoned between the majority and the government. It’s telephoned, it’s agreed upon. They need to find an agreement. Because we are not used to parliamentary control.’<sup>42</sup> (interview 6).

Nicole Catala, member of the Delegation since 1988, also confirms that because of the usual dominance of the executive in EU affairs, there is little open debate about the government’s EC/EU policy in this phase, with the exception of the debate about the Treaty of Maastricht (interview 1).

Pandraud’s preference for resolutions is uncommon among the chairmen of the Delegation succeeding him. This exceptional position can probably be explained by three factors. The first is that Pandraud is chairman during a co-habitation phase with the socialist president François Mitterrand from 1993-1995 (member of the RPR/UDF majority in the Assemblée nationale). Furthermore, interviews show that the real cleavage in EC/EU policy perceived by the MPs is not the one between the government and the parliament, but the one between the government majority and the government ministers against the ministerial administration (see e.g. interview 3; see a similar observation for the German case (Beichelt

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<sup>41</sup> ‘la responsabilité politique des ministres’

<sup>42</sup> ‘[...] parce que c’est toujours téléphoné entre la majorité et le gouvernement. C’est téléphoné, on se met d’accord. Faut se mettre d’accord. Parce qu’on a pas l’habitude du contrôle parlementaire.’

2009)). As the ministerial administration is in the hands of a Socialist government from 1988 onwards (Mitterrand being in office already since 1981), it is probable that the mistrust in it is particularly high, as is the wish for the ministers of the new government majority to control it tightly.

Secondly, because of the strong cleavage within the Gaullist party between federalists and sovereignists which opened at Maastricht (see e.g. Rozenberg 2010; La Serre and Lequesne 1993; Szukala and Rozenberg 2001), some of the ministers seem to be too pro-integrationist in the view of the group of Maastricht-sceptical MPs to which Pandraud belongs: 'For us it was a bit like that if you want, it was an enema that you shove up the ministers' asses in order to make them think that there is still a Parliament and that there are French interests'<sup>43</sup> (interview 3). To fix ministers publicly on certain political positions is an exceptional tool for the parliamentary majorities of the Vth Republic due to these particular political circumstances.

The third explanation is that the parliamentary resolutions are a completely new tool that were put into place by the constitutional revision at the occasion of the ratification of the Treaty of Maastricht, and members of the then RPR and UDF opposition were important promoters of this tool. Pandraud certainly wants to prove this new provision useful and to use it as a tool for the enhancement of the position of the French parliament in EU affairs, as is the wish of his party fellows Séguin and Pasqua (Rozenberg 2009). He does this at the expense of other important instruments such as information reports (about the 'economic and financial national interests, the representatives of the major associations, the Nations' active forces'<sup>44</sup>) and interparliamentary cooperation, as he admits himself (interview 3).

However, there are also similarities of perception that prefigure the role that the Assemblée nationale plays in the Lisbon period. For both chairmen, European Resolutions are

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<sup>43</sup> 'Nous, c'était un peu ça si vous voulez, c'était une poire à lavement qu'on met dans le cul des ministres pour qu'ils pensent qu'il existe toujours un parlement et qu'il y a des intérêts français.'

<sup>44</sup> les 'intérêts économiques et financiers nationaux, les représentants des grandes associations, les forces vives de la Nation.'

not a means to replace the detailed work of the EP, meaning that they will not transform the Assemblée nationale into a 'working parliament'. 'It is not at all, like the EP, to revise a sentence or a single word of a draft directive'<sup>45</sup> (interview 3). For Pandraud, resolutions are broad guidelines to show the government which broad opinion parliament has on an issue. Consequently, they are tools of representation and interest intermediation, as is 'the spirit of the texts that constituted us'<sup>46</sup> (interview 3). However, he also considers that ministers have to explain to the parliament why they cannot defend the position of the parliament.

But Pandraud's vision of parliamentary control is a soft one and constrained by the 'national interest'. He stresses the fact that in international negotiations the government cannot guarantee anything to the parliament but has to do what is best in the national interest, and he considers the resolutions to have helped the government to defend the best positions in the French interest:

'But overall, I think that it helped the government [...] On the aspect of the relations between the Delegation and the minister, it was when the minister had to defend in Bruxelles a decision which was unanimous to defend French interests, where it was useful for him to invoke the Parliamentary decision in order to be able to say "all the Parliament is behind me".'<sup>47</sup> (interview 3)

The difficulties of the handling of EU/EC affairs with reference to usual parliamentary practice are also illustrated by the fact that both Pandraud and Nallet describe their work as dominated by a mechanical screening of the projects of directives and regulations or other decisions that have been transmitted to them by the government and undergone an evaluation by the *Conseil d'Etat* (to see whether they fall into the parliament's competence according to art. 88.4 of the Constitution). This screening work is regularly described as being 'extremely

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<sup>45</sup> 'C'est pas du tout, comme le PE, de revoir telle phrase ou petit mot d'un projet de directive.'

<sup>46</sup> 'l'esprit des textes qui nous constituaient.'

<sup>47</sup> 'Mais en gros, je crois que ça a aidé le gouvernement [...] Sur l'aspect des relations entre la Délégation et le ministre, c'est quand le ministre devrait défendre à Bruxelles une position qui était unanime pour défendre les intérêts français, il lui était utile de s'appuyer sur une décision du Parlement pour pouvoir dire "j'ai tout le Parlement derrière moi".'



demanding'<sup>48</sup> (interview 3), as occupying the majority of their time, and as concerning about 150 documents weekly (interview 3). It requires most of the chairmen's time, even at the expense of the work in the circumscriptions. The screening and selection of important documents to deal with, the 'parliamentary scrutiny'<sup>49</sup>, is described as the basic duty of the chairmen of the Delegation: 'No this needs to be done, that's everyday business'<sup>50</sup> (interview 6).

A major problem mentioned by all interviewees is the right to be informed about EU decision-making, while the government seems to distrust parliamentary interference too much.

For Henri Nallet of the Socialist party, and chairman of the Delegation from 1997 to 1999, the screening is a means to 'make the Community's institutions more democratic'<sup>51</sup> (interview 6). On the other hand, for Robert Pandraud from the Gaullist RPR, chairman of the Delegation from 1993 to 1997<sup>52</sup>, it is a means to give the ministers a certain degree of democratic mandate, to provide the ministers negotiating in the Council 'a certain competence linked to Brussels'<sup>53</sup> (interview 3). Both consider that one of the most important challenges for the Delegation is to obtain access to information. Until the 'Josselin' law, the body did not have any formal guarantee for the transmittal of documents whatsoever. Until the late 90s, legal guarantees of document transmittal are restricted to documents falling under article 34 of the French Constitution, which restricts parliamentary legislative competence to a limited catalogue of policy areas. Both consider that they have to 'bang our fists on the table'<sup>54</sup> at the Secretary

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<sup>48</sup> 'extrêmement lourd'

<sup>49</sup> 'examen parlementaire'

<sup>50</sup> 'Non, ça faut le faire, c'est le travail quotidien'

<sup>51</sup> 'rendre les institutions communautaires plus démocratiques'

<sup>52</sup> From 1993 to 1995 under the second 'co-habitation' of President François Mitterand, PS, and prime minister Edouard Balladur, RPR. Pandraud is known as being Eurosceptic and voted against the Treaty of Maastricht (Rozenberg 2009).

<sup>53</sup> 'une certaine compétence liée à Bruxelles'

<sup>54</sup> 'taper du poing'

General of the Interministerial Committee for Questions of European Economic Cooperation (SGCI)<sup>55</sup>, the administrations, the minister for European affairs, and even the prime minister, to obtain necessary information, despite good relationships.

For Pandraud, the most important issue concerning information is the access to all EC/EU draft acts (not only those being judged as falling under the '*domaine de la loi*'), and later for Nallet the issue is more the access to all necessary documents. However, both consider that with considerable effort it is always possible to obtain the necessary information. MPs are mostly interested in relating information to their circumscriptions and to alert the government 'ahead of the decisions'<sup>56</sup> (interview 3).

Both chairmen consider the capacity of the Assemblée nationale as a whole to follow EU decision-making as deficient, even if the number of resolutions submitted in the 90s is relatively high in comparison to in the Lisbon period (see sub-section page 204). Both regret that especially public debates in the plenary are too rare and attended by only a few MPs. Nallet even suggests that it is necessary to have regularly programmed debates about EU issues in the plenary. This would be the only way to properly fulfil the Assemblée nationale's 'role' in EU affairs (interview 6). From 1989 to 1997, only 14 debates and 4 public government declarations take place regarding EC/EU issues (based on art. 132 of the rules of procedure); these are listed below.

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<sup>55</sup> former name of the SGAE

<sup>56</sup> 'en amont des décisions'

*Table 5: Assemblée nationale: Plenary debates and government declarations (1989-1997)*

<b>Date</b>	<b>Topic</b>
12 December 1989	Perspectives of the European Community after the Strasbourg European Council
10 April 1990	France and the future of Europe
10 October 1990	The future of the European Community and its democratic control
19 June 1991	The proceedings of the Intergovernmental Conferences on the political Union and the Economic and Monetary Union
27 November 1991	The state of the work of the Intergovernmental Conferences before the European Council of Maastricht
24 June 1992	The reform of the Common Agricultural Policy
18-19 May 1993*	Europe
25 November 1995	The organisation of electricity and gas in the European context
14 June 1994	Europe
7 December 1994*	Europe
20 June 1995	The European policy of France
21 November 1995	The Mediterranean Policy of France and of the European Union in the run up to the Barcelona Conference
13 December 1995	The European policy of France in the run up to the European Council of Madrid
20 February 1996*	The Economic and Monetary Union
13 March 1996	The preparation of the perspectives of the Intergovernmental Conference
18 June 1996	The European 'summit' of Florence
27 November 1996	The European policy of France in the run up to the European Council of Dublin
2 December 1997	The European policy of France in the run up to the European Council of Luxemburg

Source: (Hochedez and Patriarche 1998, 221).

Notes:

- Table translated by the author
- \* indicates government declaration

In practice, participation in EC decision-making is low and occurs late in the decision-making phase in Brussels. Scrutiny *ex ante*, i.e. before the final decision is taken in the EC/EU institutions, is carried out exclusively in the EC/EU Delegation, while the transposition of EU

acts in the implementation phase is performed by the standing committees (Sprungk 2007; Szukala and Rozenberg 2001).

### **b) Interaction with EU transnational actors**

Until the end of the 90s there are only few contacts with transnational actors. MPs of the Assemblée nationale only seldom interact with the European Commission. Contacts with Members of the European Parliament (MEPs) are most frequent, especially with the French MPs. Institutionalised parliamentary contacts with the EP are rare, despite an ongoing effort to invite MEPs to the meetings of the Delegation. MPs and MEPs meet mainly in meetings especially organised through their parties.

There is some rare bilateral contact with other national parliaments, but it consists of selective official interactions. Only when MPs write legislative or information reports may they happen to organise individual visits to other European parliaments. The multilateral parliamentary fora are welcomed by the EU experts but their impact is still considered to be low (Hochedez and Patriarche 1998; Assemblée nationale and Pandraud 1994).

There is not much direct exchange with the members of the European Commission or its civil servants. MPs only rarely take part in visits to the European institutions or organise individual meetings with Commission representatives. The only exchange activity that develops in this phase takes place in the domestic framework: since the passing of the law of 10 May 1990 ('loi Josselin') the delegations have the right to organise hearings with representatives of the European Commission (even though there were already selective hearings before the implementation of the law (Hochedez and Patriarche 1998, 83)). From 1990 to 1998 the Delegation thus organises eight hearings with members of the European Commission and five meetings with directors general or directors of the different services of the Commission.

Contact with the EP is slightly more frequent but happens mostly through specialised meetings within the national parties to which MPs belong (interview 5). These meetings are

mainly seen in the context of the extension of the diplomatic networks through which French EU policy is made<sup>57</sup>. Other contacts are organised through the government. From 1994 onwards, the French Deputy Minister for European Affairs organises a monthly consultation between representatives of French parliamentary party groups and the chairmen of the delegations of the Assemblée nationale and the Sénat (Hochedez and Patriarche 1998, 206; Assemblée nationale and Pandraud 1994, 264). Furthermore, French MEPs receive a liaison document written by the European services of the Assemblée nationale and the Sénat on the occasion of each plenary session of the EP.

Starting in 1990, the MEPs can also take part in the meetings of the Delegation, and the delegations can invite MEPs for hearings. This possibility is rarely used until 1998, even if Robert Pandraud puts considerable effort into inviting the MEPs to the meetings of the Delegation to discuss information reports on certain topics (Hochedez and Patriarche 1998, 207). The agendas of the EP and the Delegation are not compatible (interview 14). Hearings are not frequent either. Between 1990 and 1998, the Delegation only invites a French or other MEP to be heard 10 times (Hochedez and Patriarche 1998, 83).

On a more formal level, there is some other selective contact with the EP, such as meetings of the Delegation chair with the President of the EP, working meetings of the Delegation with individual committees of the EP to discuss individual topics, and the participation of individual members of the Delegation in conferences organised by the EP (Hochedez and Patriarche 1998, 83). However, all of this is sporadic.

Exchanges with parliaments of other member states is also sporadic at best during the IXth legislative period from 1988 to 1993, during which Michel Pezet is chairman of the Delegation for the European Communities (Assemblée nationale and Pandraud 1994, 266). There is no exact number of meetings with other parliaments from EU member states for the

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<sup>57</sup> Still in 1994, a report of the delegation (written by R. Pandraud) considers that the direct elections of the EP and thus the end of the 'lien organique' (Assemblée nationale and Pandraud 1994, 264) of the national parliaments with the European institutions was an error.

successive period, but Robert Pandraud, chairman of the Delegation from 1993-1997, assesses himself that ‘there remained a lot that needed to be done’<sup>58</sup> (interview 3). In the first 14 months of the Xth legislature, there are no meetings with other national parliaments whatsoever (Assemblée nationale and Pandraud 1994, 266).

Interviewed after his time as Delegation chairman, Robert Pandraud admits that he took part in official meetings with other national parliaments, but that he was not ‘an important instigator of travel’<sup>59</sup> (interview 3). His interparliamentary work consisted mainly of the reception of delegations from the candidate countries for the foreseen enlargement in Paris (interview 3).<sup>60</sup>

In practice, interparliamentary cooperation does not play much of a role in the day-to-day work of the Delegation, and even less in the Assemblée nationale as a whole. Communication is one-directional. After the failure of the information network between the specialised EU bodies in national parliaments (in place from 1993-1995), the Delegation diffuses its documents, in particular information reports, to the EU committees of all other national parliaments (and receives documents from some of them); however, opinions of other national parliaments only irregularly appear in parliamentary reports of the Assemblée nationale (Hochedez and Patriarche 1998, 206).

On the level of the standing committees, the Assemblée nationale launches two initiatives: the conference of presidents of the Committees of Finance, launched in 1984 upon Franco-Italian initiative; and the biannual meetings of the presidents of the Foreign Affairs Committees, launched by the chairman of the Foreign Affairs Committee in 1993 and enlarged successively to the higher chambers and the EP. The success of the former is judged to be

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<sup>58</sup> ‘il restait beaucoup à faire’

<sup>59</sup> ‘très instigateur de voyager’

<sup>60</sup> However, in his parliamentary report he considers that the promotion of convergent opinions of several parliaments would have a much greater weight in EU decision-making processes and that it would be necessary to establish a real network of national parliaments (Assemblée nationale et al., 1994, pp. 266–267).

limited however: it is considered to deal with topics that are too general, ‘or even academic’<sup>61</sup> (Hochedez and Patriarche 1998, 208).

The multilateral parliamentary coordination on the EU level is seen by the actors in the *Assemblée nationale* as an important tool for which important French parliamentary actors have fought, but their success and even future prospects are judged as being mitigated. The Conference of the Speakers of EU Parliaments every two years since 1981 are judged to be problematic: the statutes of the parliaments and the prerogatives of the speakers are supposed to be too different (Hochedez and Patriarche 1998, 209–10). The ‘Assises’ in Rome in 1990 (258 members: 2/3 MPs, 1/3 MEPs) on the Treaty of Maastricht, is even judged to have been a failure. This is because of fights between MPs and MEPs over the ratio of representation and because of differences on a text demanding a federal basis of the EU – on which a majority of French MPs abstained. Furthermore, it is also considered to be too complicated for the day-to-day business of the EC/EU (Hochedez and Patriarche 1998, 209–10).

Only the COSAC, a conference of bodies responsible for European affairs in national parliaments (COSAC 2015), is supposed to have good future prospects according to the *Assemblée nationale*’s report, with its information, exchange of texts, networking, and thematic work on big topics of the EU agenda, which were put into place following a proposal by then speaker of the *Assemblée nationale* Laurent Fabius.

Despite these difficulties, French MPs’ self-perception is that they are the major driving forces behind collective parliamentary participation on the European level. To associate national parliaments collectively with European integration has always been a way forward pursued by French MPs. For example, Philippe Seguin initiated the parliamentary group of reflexion in parallel to the Intergovernmental Conference on the Treaty of Amsterdam, whose proposals were finally taken up in the protocol on the role of national parliaments (Hochedez and Patriarche 1998, 211–12).

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<sup>61</sup> ‘voire académiques’

Table 6: *Assemblée nationale: Contact with EU transnational actors (1996)*

	Country's MEPs	EU Civil Servants	European Commission	MP of Other EU Member State
France (1996)	33/144 (23%)	10/144 (7%)	3/143 (2%)	7/143 (5%)

Source: European Members of Parliament Study (Weßels et al., 1999).

Note: Ratio of positive answers to overall number of MPs taking part in the representative study (percentage).

This qualitative evidence gained from interviews and parliamentary documents is confirmed when examining the data gathered in the European Members of Parliament Study coordinated by Bernhard Weßels in 1996 (Weßels et al. 1999) (see table 6).

The preceding analysis showed that neither *actors* nor *action* follow a *typical* logic in the *Assemblée nationale* during the 80s until the end of the 90s. The following sub-chapter analyses actors and action in EU affairs in the Bundestag in the same period. In accordance with hypothesis 1, the German lower chamber agency in EU affairs is also still weakly developed and action in EU affairs does not follow clear-cut typical action patterns.

### ***B - Bundestag***

This second sub-chapter examines the handling of EU affairs in the German lower house during the Maastricht period. The first section shows that despite the generally pro-integrationist stance of the Bundestag's MPs, there is no 'community of practice' sharing knowledge about parliamentary affairs that could have provided a clearly defined agency. Despite a high interest in the question about the future shape of European integration, interest of the Bundestag's MPs in day-to-day EU affairs is low, as is awareness of the impact of EU legislation. Actors who have EU experience lack parliamentary experience and vice versa. The



shape of a potential European affairs body is strongly contested. From 1983 onwards there is a succession of widely differing European affairs bodies, which have neither the same logic of membership, nor the same competences. A major problem is the fact that competences provided to the succeeding bodies do not enable them to fit into the ‘usual ways of doing things’ in a chamber where a high number of specialised sectoral committees have a high degree of autonomy from each other because they mirror one of the federal ministries.

As in the *Assemblée nationale*, actors successful in pushing for the reform of the formal framework for EU participation mainly have other motives of action than the day-to-day EU participation of the chambers, be they ideological concerning the role of the EP, or the defence of fiefdoms within the chamber and in the federal state structure.

The second section demonstrates that this results in the introduction of prerogatives and organisational solutions that do not allow ‘competent’ action with reference to parliamentary practices. Real activity is low and while actors seem to have the same wishes for improvement, the proposals for instruments vary considerably.

### **1) Actors and agency**

This first section focuses on the actors who carry out EC/EU-linked action in the chamber. It first investigates the different European affairs bodies that are created in the Bundestag from 1983 onwards. Their nature and logic of membership are subject to regular and fundamental change during this period. Their members either lack knowledge about EU institutions and procedures or they do not have the necessary knowledge about parliamentary ‘ways of doing things’ in the Bundestag. This is the case when the Europe Commission is constituted by members of the EP. The low interest of MPs and the changing nature of the committees inhibit the emergence of a community of practice.

The second part analyses who the successful agents are who push for the successive organisational solution of the coordination of EU affairs and the legal and regulatory framework

for ‘doing EU’ in the chamber. Motives are various but they derive only marginally from the experience of – or shared knowledge about – day-to-day EU decision-making.

#### **a) European affairs body and EU experts**

As the Delegation for the European Communities, the different European affairs bodies in the Bundestag do not play an important role in the German chamber and, with are considered to be lower-ranking bodies by the established committees. Even more than in the *Assemblée nationale* in the Maastricht period, the type of membership in the different European affairs bodies changes regularly. Throughout most of the period, members either have in-depth EU/EC knowledge and networks, or important positions in the chamber but no experience with EU decision-making. There is no emergence of a community of practice with shared EU and parliamentary knowledge. As a general rule, as in the *Assemblée nationale*, MPs are not aware of the (potential) impact of EU legislation on their areas of competences.

There are only a few EU experts in the Bundestag, even though there are no data about the concrete number of MPs interested in EU affairs until the end of the 90s. In a first phase, the MPs in the Bundestag try to remedy this lack of expertise through fostering the links with the EP. In 1983 the Bundestag creates a Europe Commission (*Europa-Kommission*) with the participation of German MEPs. This commission initially aims both for a stronger exchange with the EP and for a better coordination of the deliberations on EC draft acts in the sectoral committees<sup>62</sup>. In practice, however, the Europe Commission is a committee supporting the claims of the EP for the EU level and not the concerns of the Bundestag. It turns out to be much more frequented by the members stemming from the EP than by the members of the Bundestag itself (Töller 1995, 71), and thus paradoxically lacks national parliamentary expertise or at least a stable connection to the Bundestag. This means that there is no ‘community of parliamentary

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<sup>62</sup> The Committee was created on the basis of the article for *Enquête-Commissions* (Art. 56 Standing Orders of the Bundestag).

EU practice’: the members of the European affairs body only share knowledge about EU institutions and procedures but not about the parliamentary ‘ways of doing things’. The Commission is not at all able to provide EC expertise to the Bundestag in matters of parliamentary participation, and is instead a body promoting the pro-integrationist stance of German MPs.

The succeeding EC Committee in turn lacks EC expertise. MPs who have been MEPs (or have had other significant EU transnational experience) before joining the Bundestag are rare. One exception is an important member of the the *Sozialdemokratische Partei Deutschlands* (SPD) and former minister, who joined the Bundestag in 1986 after having been MEP since 1979. In an interview, she confirms having decided to run as a candidate for the Bundestag after discussions with other EC/EU politicians in her party that showed her the need to have further EU expertise in the parliamentary arena on the national level:

‘I was member of the European Parliament from 1979 to 1987. After this I became member of the Bundestag’s parliamentary party group. As politicians specialising in EU affairs we considered at the time that it was necessary to be present on a national level as well.’<sup>63</sup> (interview 44)

The lack of EU experience and knowledge of MPs is confirmed by a study in 1995 based on the official handbook of the Bundestag: an evaluation of the short biographies of the members of the first EC Committee established in 1991 shows that especially among the members of the SPD parliamentary party groups, only 17% have any EU experience<sup>64</sup>. Even if 40% of the members of the *Christlich-Demokratische Union* (CDU) / *Christlich-Soziale Union* (CSU) parliamentary party group have such experience (Töller 1995, 132–33), only one of them

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<sup>63</sup> ‘Ich war von 1979 bis 1987 Mitglied im Europäischen Parlament und bin dann praktisch in die Bundestagsfraktion gewechselt, weil wir innerhalb der Europapolitiker damals gesagt haben, es ist eigentlich notwendig, dass wir sozusagen auch ein europapolitisches Lager auf der nationalen Ebene haben [...]’

<sup>64</sup> European experience was understood broadly as membership in the EP, one of the European parliamentary assemblies (e.g. of the Council of Europe, of the WEU, ...), an office in a European association or federation, or other professional experience with the EU (Töller 1995, 132).

has been an MEP, while the others have diffuse professional experience with the EC or are members of professional associations (e.g. the MP Manfred Schell who was the president of the independent European Trade Union of Train Drivers). Two are or were members of a European parliamentary assembly (Töller 1995, 133) – an office that is far from providing expert knowledge about the complex decision-making procedures of the European Community. Overall two-thirds of all MPs in the EC Committee probably hold a ‘pro-integrationist’ attitude, but do not have any of this already broadly defined EU experience.

Even if a pro-European attitude is widespread among German MPs, as in the *Assemblée nationale*, MPs are not aware of the breadth of EU legislation in this first phase. Neither do they know how MPs can pursue their interests in the multi-level system of the European Community:

‘[...] because at the time it was not as clear as it is today that one needs to know how to stand in for one’s own (national) interest in the European Union (today the word has spread a bit more) and on the other hand about where the European legal obligations are, how far one can go.’<sup>65</sup> (interview 44)

The former vice-chairwoman of the SPD party and speaker on European affairs of the SPD at the time of the Treaty of Maastricht, estimates that today, MPs (2013) generally have more EU knowledge. At the time, however, having EU experience qualifies her to be the EC expert both in the working group (*Arbeitskreis*) for foreign affairs, in the board of the parliamentary party group (*Fraktionsvorstand*), and for the office of rapporteurs (*Berichterstatter*) of the SPD parliamentary party group in the European Union Special Committee for the ratification of the Treaty of Maastricht:

‘And then I was basically responsible for European Affairs in the working group for Foreign Affairs and then also in the bureau. We had a sort of cross-sectional group,

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<sup>65</sup> ‘[...] weil damals weniger als das heute der Fall ist, heute hat sich’s ja etwas mehr rumgesprochen, aber doch eben klar war, dass man dass man auch wissen muss, wie man seine eigenen Interessen vertritt, national in der Europäischen Union und umgekehrt auch die Grenzziehungen, wie weit man an bestimmten Fragen europapolitisch gesetzlich verpflichtet ist, wie weit man da gehen kann.’

which I chaired. This is why it was attributed to me, because of my function - I was also vice-chairwoman of the SPD party.’<sup>66</sup> (interview 44)

In comparison to the EC Committee, EU expertise is an even less important criterion for the European Union Special Committee that the Bundestag establishes in 1991 to deal with the ratification of the Treaty of Maastricht, thereby circumventing the already existing EC Committee (Beichelt 2009; Sturm and Pehle 2006; Töller 1995, 137).<sup>67</sup> After the signature of the Treaty of Maastricht, the parliamentary party groups agree to establish this special committee for the parliamentary negotiations for the adoption of the ratification law. It allows sectoral experts from other committees to be included in the parliamentary deliberations (interview 38; interview 39) and politically higher-ranking MPs to be sent into the newly established committee. The first priority for the committee is swift parliamentary negotiations to assure a quick ratification of the Treaty of Maastricht in the German Bundestag (interview 38). Therefore, it is necessary to involve important MPs from the parliamentary party groups.

To be appointed to the EU Special Committee, it is important to have either a good standing in one’s own parliamentary party group; more general expertise in German foreign affairs, the law committee, or the finance committee; or expertise regarding the ongoing negotiations taking place in parallel in the Common Constitutional Commission (*Gemeinsame Verfassungskommission*) of the Bundesrat and Bundestag. The latter was established to make proposals for the reform of the German Basic Law after reunification. Because of the negotiation of the ‘Europe Article’ of article 23 in the German Basic Law (which replaces the old article 23, which had foreseen the accession to the Federal Republic of Germany), the two subjects are intrinsically linked.

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<sup>66</sup> ‘Und dann bin ich praktisch in der Arbeitsgruppe Außenpolitik für Europapolitik zuständig gewesen und dann auch im Fraktionsvorstand. Wir hatten dann so eine Art Querschnittsgruppe, die ich geleitet habe. Insofern ist es mir eigentlich einfach aufgrund der Funktion, ich war auch stellvertretende SPD-Vorsitzende, ist mir das zugewachsen.’

<sup>67</sup> The latter is a further indication of the fact that the EC Committee does not play much of a role for the Bundestag as a whole at the beginning of the 90s.

In an interview the former chair of the EU Special Committee confirms that he does not have any real EU expertise prior to his appointment. In his view, the important criterion for his appointment is the fact that he is both the parliamentary secretary of the SPD parliamentary party group and the spokesperson for Foreign and European Affairs for the latter in the Common Constitutional Commission. In this function, he has some media presence during the sittings of the Commission. Furthermore, it is the opposition's turn to have the chairmanship of the committee:

‘And you have to take into account the latter’s [the Joint Constitutional Committee’s] deliberations into your reflections. In this Joint Constitutions Committee I was the rapporteur for Foreign, Security and European Affairs. And as Europe was high on the agenda because of Maastricht, we dealt with it in the beginning of the proceedings of the Constitutional Committee, tackling some very, very fundamental issues. And this led in the end, when the Treaty was signed and the ratification had to start, to the shared opinion between the government and the parliamentary party groups that this could not be dealt with in the course of the normal parliamentary proceedings and that a special committee was needed. And as it was the opposition’s turn for the post of chairman and, as it is sometimes in Germany, as I had had some presence in the media on the subject, one turns suddenly into the expert for the subject. I had never prominently stepped forward on EU affairs before.’<sup>68</sup> (interview 38)

The SPD and other parliamentary party groups also send their leading politicians in matters of foreign affairs to the committee: Peter Glotz and Karsten Voigt (SPD), Karl Lamers (CDU/CSU), and Ulrich Irmer (*Freie Demokratische Partei*, FDP) (Töller 1995, 138). Twenty-two members of the EU Special Committee (overall 39 members) are also members of the EC

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<sup>68</sup> ‘Und deren [der “Gemeinsame Verfassungskommission”] Beratungen müssen Sie mit einbeziehen in Ihre Überlegungen. Und in dieser gemeinsamen Verfassungskommission war ich der Berichterstatter für Außen-, Sicherheits- und Europapolitik. Und weil eben das Thema Europa aktuell war wegen Maastricht, ist das am Anfang behandelt worden in der Verfassungskommission und mit einer Reihe sehr, sehr grundlegender Fragestellungen. Und das hat am Ende dazu geführt, dass als dann der Vertrag unterschrieben war und der Ratifizierungsprozess beginnen musste, sich sowohl die Regierung als auch die Fraktionen des Bundestages sehr schnell einig waren, dass das nicht im normalen parlamentarischen Verfahren bewältigt werden konnte und dass man dafür einen Sonderausschuss brauchte. Und weil nun die Opposition dran war mit dem Vorsitz und ich, wie das manchmal in Deutschland so ist, wenn man eine Zeitlang zu einem Thema eine gewisse Medienpräsenz hat, dann ist man plötzlich der Experte für dieses Thema, der wirklich nicht mal, ich war vorher überhaupt nie besonderes europapolitisch hervorgetreten.’

Committee; additional members stem mostly from the foreign affairs, law, and finance committees.

To be a member of the EU Special Committee, political standing and expertise regarding the internal constitutional issues of Germany and its reunification and the Bundestag are thus more important than genuine EC/EU expertise.

There are great hopes in the academic literature at the time and among EU experts that the new EU committee and the prerogatives stemming from the 1992 constitutional revision will change the handling of EU/EC affairs in the Bundestag. This is not the case, however. The new formal prerogatives do not change the informal parliamentary ‘ways of doing things’. Despite including some prominent members – the former foreign affairs minister Hans-Dietrich Genscher for example – the EU Committee is as marginalised within the German lower chamber as is the Delegation in the *Assemblée nationale*.

Furthermore, despite the tradition in the Bundestag of ensuring a relatively strong continuity of MPs in parliamentary committees throughout different legislative periods, only 12 out of 39 members have been members of the EC committee before. Moreover, only 11 have been members of the EU Special Committee before. The prominent foreign affairs specialists who are members of the EU Special Committee all return to the Foreign Affairs Committee in the following legislative period. is the former chairman of the EU Special Committee, chooses the Foreign Affairs Committee as well – despite the fact that he confirms having used the chairmanship of the special committee and the associated media attention to relaunch his political career:

‘I shamelessly used this opportunity to come into play again myself. My career had been quite on the ropes, hadn’t it? And my political comeback began precisely with this. I admit openly that I used this shamelessly. I mean, shameless, this is legitimate, isn’t it?’  
<sup>69</sup> (interview 38)

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<sup>69</sup> ‘Ich habe ja diese Gelegenheit relativ schamlos ausgenutzt, auch um selber wieder stärker ins Spiel zu kommen. Meine Karriere war ja ziemlich am Ende gewesen schon, nicht? Und meiner politischer

The EU Committee does not possess the capacities necessary to handle the enormous number of documents that are submitted to it by the German government because it does not fit into the ‘usual ways of doing things’ in parliament, i.e. it does not fit into the hierarchy and working methods of the chamber. A lacking reputation is also a problem of the Delegation in the Assemblée nationale. The former chairman qualifies it as a ‘coincidence’ when the EU Committee finds something that is important in the pile of documents:

‘At the time [...] very clearly [...] the European Affairs Committee of the Bundestag was not very effective, because it worked comparatively without attention, did not have high prestige and was snowed under with paper by the government. You could not cope with this, it was simply impossible. And then you sat there in front of these mountains, right? And so it was pure coincidence if you happened to find something.’<sup>70</sup> (interview 38)

He considers that the different governments are pleased by this situation, because they do not want parliament to disturb their EU policy. Once the dossier is decided in Brussels, the national MPs cannot do much anyway besides transpose the act into national law:

‘And each government was quite happy with the fact that the parliament did not interfere with its EU policy. And at the end you have a more or less automatic adoption, as it is called in Switzerland, the government has given its consent to some compromise. Afterwards this has to be transposed into national law. What should one do?’<sup>71</sup> (interview 38)

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Wiederaufstieg hat ja präzis damit angefangen. Ich gebe offen zu, dass ich das schamlos ausgenutzt habe. Oder schamlos, das ist ja legitim, nicht?’

<sup>70</sup> ‘Damals [...] war ganz klar [...] der Europaausschuss des Bundestages [...] nicht wirkungsvoll, weil der arbeitete relativ unbeachtet, hatte keinen hohen Stellenwert und der wurde von der Regierung einfach zugeschüttet mit Papier. Das konntest du gar nicht bewältigen, das war einfach nicht möglich. Und da saßt du vor solchen Bergen, nicht? Und also das war einfach also reiner Zufall, wenn die mal was gefunden haben.’

<sup>71</sup> ‘Und jede Regierung hat sich damit sehr wohl gefühlt, dass das Parlament ihr in der Europapolitik nicht reingeredet hat. Und am Ende haben sie dann im mehr oder minder automatischen Nachvollzug, wie man das in der Schweiz nennt, die Regierung hat in Brüssel irgendeinem Kompromiss zugestimmt. Hinterher musste es in nationales Recht umgesetzt werden. Was sollte man machen?’



Thus, the EU Committee cannot develop into a focal point of EU expertise in the Bundestag. Its prerogatives and form are not adapted to existing parliamentary hierarchies and working methods.

### b) Agents of change of formal rules

As in the Assemblée nationale in the Maastricht period, successful agents of change of formal rules are not EU experts and the reform of formal rules is not driven by agents with experience with the day-to-day parliamentary participation in EU/EC. EU/EC affairs are the field for battles over power positions and, to a lesser extent, over votes. Given the strong consensus regarding European integration, unlike in the Assemblée nationale there are no ideological battles, but conflicts regarding power positions within the chambers between the Bundestag and the Bundesrat, and between government and opposition.

The agents of change in the Bundestag in this first period are powerful politicians in the parliament's and the parliamentary party groups' hierarchies, who pursue aims that are not linked to parliamentary participation in EU decision-making in the first place.

*Table 7: Bundestag: Evolution of formal prerogatives (Maastricht period)*

EU events	Year	Formal rules	Conflicts in parliament	Actors successful in change
Direct elections of the EP	1983	<b>Europe Commission</b> - on basis of the investigation committee - MEPs could be members - aims: improve parliamentary participation and relations to the EP	Missing coordination of scrutiny; Council of the Elders for integration (failure: only six meetings in one legislative period)	Established parliamentary committees
Single European Act	1987	<b>EC sub-committee in the Foreign Affairs Committee</b> - exception to the standing orders: MEPs could be members	Missing coordination of scrutiny, failure of Europe Commission (only MEPs present)	Foreign policy experts of the FDP parliamentary party group

Negotiations on the Treaty of Maastricht	<b>1991</b>	<b>EC Committee</b> - aims: 1) Parliamentary participation in treaty negotiations, 2) Interinstitutional questions, 3) Cooperation with the EP, 4) Deliberations on EU acts	Coordination of EU scrutiny: a central body was against the principle of Bundestag committees mirroring federal ministries	SPD opposition
Ratification of the Treaty of Maastricht	<b>1992</b>	<b>EU Special Committee</b> (six weeks); <b>Joint Constitutional Commission</b>	Preparation of quick and swift parliamentary ratification (high-ranking body necessary); Competition of several committees for responsibility; competition from Länder over participation rights; constitutional requirements	n.a.
Ratification of the Treaty of Maastricht	<b>1993 (effective)</b>	<b>New art. 23 GG and 45 GG; Law on the cooperation of the federal government and the Bundestag on matters of the EU</b> - constitutional rank for EU Committee with special participation rights in substitution to the plenary - broad and earliest as possible information of the Bundestag - Government must give the Bundestag the opportunity to issue an opinion and must consider this opinion - Government must also send consultative documents	See above	Members of the Bundestag, important members of the Common Constitutional Commission, important members of the EU Committee, and key actors in all three major parliamentary party groups
Ratification of the Treaty of Maastricht	<b>1994 (effective)</b>	<b>EU Committee</b>	See above; longer negotiations on standing orders, establishment only in new legislative period to avoid continuity with EC committee	See above

## *The established sectoral committees: Europe Commission, 1983*<sup>72</sup>

The actors that manage to shape the institutional outline of the Bundestag's first European affairs body – the Europe Commission – are the established parliamentary committees and the parliamentary party groups supporting their chairmen. After the failure of a special 'Council of the Elders for Integration'<sup>73</sup> in 1969, several reflections are considered regarding how the Bundestag could become more efficient in handling EC draft acts. A central issue is the better coordination of the decentralised scrutiny in the Bundestag. The idea of establishing a committee for EC matters is already discussed in 1979, but is quickly abandoned because of the opposition of the established committees (Töller 1995, 71).

Likewise, in 1983, the established committees do not welcome the new rival and opt for other 'softer solutions'. A Europe Commission is created on the basis of the existing standing orders. The article for the establishment of committees of inquiry serves as legal basis (*Enquête-Kommission*) (§ 56 Standing orders). This proceeding makes it possible to a body that does not rival the sectoral standing committees, because it does not have the same prerogatives and status. It is not allowed to issue opinions to the plenary and can only issue reports on its deliberations (Töller 1995, 71).

The Bundestag largely ignores the activities of the Europe Commission and the MPs participate less actively in its meetings than the MEPs do (who are also full members). In the end, the body serves as a platform to discuss broad issues of European integration and to promote plans for the strengthening of the EP. Considered widely as a failure, the Europe Commission is not established again in the subsequent legislative period.

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<sup>72</sup> CDU/CSU-FDP coalition, Chancellor Helmut Kohl (cabinet Kohl II).

<sup>73</sup> The body was supposed to coordinate incoming EC draft acts, but did never really convene.

*The liberal foreign affairs office holders in parliament and government: EC sub-committee in the Foreign Affairs Committee, 1987<sup>74</sup>*

Successful actors shaping the scope and function of the succeeding European affairs body in the Bundestag are the FDP parliamentary party group and the FDP party. At that time, the latter usually holds the Foreign Office when in coalition with one of the two people's parties.

After the failure of the Europe Commission, the SPD opposition argues again for the establishment of a new standing committee for EC matters. Even if there is some support in the CDU/CSU parliamentary party group for the solution proposed by the SPD (Töller 1995, 72), the chosen institutional solution is the FDP parliamentary party group's proposal for the establishment of a sub-committee for matters of the European Communities in the Foreign Affairs Committee.

The Federal Foreign Minister (Hans-Dietrich Genscher) and important figures in the Foreign Affairs Committee in the Bundestag are all FDP politicians. The FDP parliamentary party group favours a solution that will not endanger the competences of the minister for foreign affairs. As the standing committees in the Bundestag 'mirror' the federal ministries, the creation of a separate committee on European affairs could potentially prefigure the creation of an independent federal ministry for European affairs. This is not in the interest of the foreign ministry (Sturm and Pehle 2006).

The sub-committee for European affairs proves to be completely inefficient because of the tensions between the genuine competences of the Foreign Affairs Committee and the issues dealt with by the sub-committee. These are often domestic policy issues: 12 members of the sub-committee stem from the Committees on Economics, Budget, Finances, and Agriculture (Töller 1995, 72). It already stops working in the ongoing legislative period.

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<sup>74</sup> CDU/CSU-FDP coalition, chancellor Helmut Kohl (cabinet Kohl III).

### *The opposition: EC committee, 1991*<sup>75</sup>

The Social-democrat opposition successfully pushes through the shape of the succeeding European affairs body in the Bundestag against the CDU/CSU/FDP government.

When the Intergovernmental Conferences on the Treaty of Maastricht are imminent, the Bundestag is forced to act and to quickly find a solution for a body that can follow the negotiations. This gives the SPD opposition the opportunity to put the government under pressure and to successfully push for the establishment of a new parliamentary committee.

As in the previous legislative period, numerous solutions are discussed, but no solution is found for over 12 months. Again, the SPD parliamentary party group in the opposition is in favour of an independent EC Committee, while the FDP coalition partner in the government is against such a body. Within the CDU/CSU parliamentary party group, support for a committee solution increases.

The SPD puts pressure on the government by tabling its proposal from the previous legislative period again. The government coalition rejects this proposal, but the latter obliges it to act. Together the parliamentary party groups of the government coalition and the SPD parliamentary party group work on a compromise proposal. While the new body will have the statute of a committee, its competences are only vaguely mentioned. On the other hand, the follow-up of the negotiations on the Treaty of Maastricht, of institutional issues of the European Community, and the promotion of close relations with the EP are mentioned as main objectives of the work. The deliberation of EC drafts is only mentioned late in the list of competences (Töller 1995, 75).<sup>76</sup>

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<sup>75</sup> CDU/CSU-FDP coalition, Chancellor Helmut Kohl (cabinet Kohl IV).

<sup>76</sup> Interestingly enough, the members of the then-established EC Committee do not share this prioritisation of tasks. In a survey organised during the 12<sup>th</sup> legislative period by Annette E. Töller, the majority of its members answer that the most important task of the committee is to coordinate the decision-making process of the Bundestag in EC matters (Töller 1995, 76).

During the time of its existence, the EC Committee is only rarely endowed with the responsibility of an EU/EC draft act.

*The party hierarchies and the Länder opposition: EU Special Committee, 1992<sup>77</sup>*

There is no consensus in the literature about who the successful actors were behind the major changes of formal prerogatives for the Bundestag with the Treaty of Maastricht (Beichelt 2009; Janning 1994; Läufer 1993; Sturm and Pehle 2006; Töller 1995; Wolf 1992). Interview and archive evidence shows that the major agents of change of the formal rules of participation of the Bundestag in EU matters are members of the Bundestag who have important positions in the Common Constitutional Commission and in the EU Special Committee established for the ratification of the Treaty of Lisbon from all three major parliamentary party groups. With minor exceptions, these actors do not have any major experience in the day-to-day business of EC affairs in the Bundestag.

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<sup>77</sup> Common constitutional commission, CDU/CSU-FDP coalition, Chancellor Helmut Kohl (cabinet Kohl IV).

Table 8: Bundestag: Agents of change for prerogatives (Maastricht period)

Date	Event	Important actors
16 January 1992	The <b>Joint Constitutional Commission</b> ( <i>Gemeinsame Verfassungskommission</i> ) is instituted  Because of Maastricht, the Commission deals with 'Europe' early	64 members (39 Bundestag MPs, 25 Bundesrat representatives)  Chairmen <b>Rupert Scholz</b> (CDU) and <b>Henning Voscherau</b> (SPD)
February 1992	Signature of the Treaty of Maastricht	
April 1992	Government politically accepts a stronger participation guarantee for Länder in the <b>Joint Constitutional Commission</b>	Länder are dominated by CDU/CSU coalition  Leading actors in 'coalition': <b>Johannes Rau</b> (SPD, NRW), <b>Edmund Stoiber</b> (CSU, Bavaria)
26 June 1992	<b>Joint Constitutional Commission</b>  First draft of art. 23 (foresees only Länder participation rights)	<b>Helmut Kohl</b> convinces Rupert Scholz to agree – otherwise ratification in danger
1 and 2 October 1992	Government is <b>late</b> in sending the draft acts for ratification instrument and the constitutional revision to Bundestag ( <b>the ratification is supposed to be finalised by 12 December 1992: EC summit in Edinburgh</b> )	<b>Helmut Kohl</b> and his cabinet promote EU integration as 'historic milestone', German ratification must be guaranteed because of 'historic necessity'
October 1992	Bundestag establishes a European Union Special Committee  Main issues discussed:  - <b>EMU, independence of Bundesbank (major importance)</b>  - <b>Transfer of competences through art. 23.1 GG, in particular the necessary majorities of two-thirds in both chambers (and thus through art. 79 para 2 and 3 GG) (major importance)</b>  - participation rights in constitutional revision (art. 23.1, 23.2, and 45 GG) (minor)	Consensus among parliamentary party groups and government that a special committee is necessary  Two members are also members of the Joint Constitutional Commission: <b>Hans-Jürgen Irmer</b> (FDP) and <b>Günter Verheugen</b> (SPD) (speaker for EC and foreign affairs)  Opposition's turn to nominate chairman: SPD nominates its parliamentary secretary, <b>Günter Verheugen</b> (SPD) (rapporteur for SPD on EU and foreign policy in Joint Constitutional Commission)  Only 12 members of the EU Special Committee are also members of the EC Committee  <b>Intense exchange with minister presidents and representatives of Länder</b>

<b>October 1992</b>	Government accepts participation rights laid down in art. 23 GG for Bundestag in the <b>Joint Constitutional Commission</b>	Important authors for art. 23: <b>Rupert Scholz</b> (CDU) and <b>Hans-Jochen Vogel</b> (SPD); pushed for it: <b>Stoiber, Rau</b> and <b>Vogel</b>
<b>October 1992</b>	<b>Joint Constitutional Commission</b> proposes to institute a <b>committee for EU affairs in art. 45 GG</b>	Proposal by <b>Rupert Scholz</b> : only as a consequence of the claims of the Länder for more participation and their better organisation in EU matters
<b>2. December</b>	<b>Adoption of ratification instrument and constitutional revision (543 MPs in favour, 17 against, 8 abstentions)</b>	
<b>3 February 1993</b>	<b>Agreement on Law on the cooperation of the Federal Government and the Bundestag in matters of the European Union</b> (minor) in the mediation committee between Bundestag and Bundesrat	Implementation laws art. 23  <b>Final phase: conflict between Länder and Bundestag, not between parliamentary party groups in BT</b>

As in the Assemblée nationale at the occasion of the ratification of the Treaty of Maastricht, the motivation to establish more participation rights for the Bundestag in this phase is not primarily the experience of incompetent handling of EU affairs in the Bundestag – i.e. of conflicts of action in EU affairs with established practices and ways of doing things in the Bundestag. Instead, major issues of debate are the constitutionality of the further transfer of competences to the European level and the interests of the Bundestag in the equilibrium between the Bundesrat and the Bundestag.

The actors in the Bundestag who bring about the constitutional changes (mainly laid down in art. 23 and 45 GG and in the following implementing laws) are found in the Joint Constitutional Commission appointed in February 1992 and in the EU Special Committee appointed in October 1992 (see also page 116).

Under the chairmanship of an MP from the Bundestag and the Bundesrat, the Joint Constitutional Commission is supposed to discuss the revision of the German Basic Law (*Grundgesetz*) after German reunification (Goetz and Cullen 1995). It is composed of 39 members of the German Bundestag and 25 representatives of the Bundesrat. The former



chairman stemming from the Bundestag considers he was appointed to the committee because of his reputation as constitutional lawyer:

‘[...] I was member of the Bundestag and as I was not completely unknown as constitutional lawyer; already at that time this was beyond question, I believe.’<sup>78</sup> (interview 39)

As the establishment of the Commission is parallel to the signature of the Treaty of Maastricht, the relationship between the German Basic Law and European integration are discussed in the beginning of the proceedings of the Commission (interview 38). The Joint Constitutional Commission and its members thus become important actors: in the debate about constitutional revisions prior to the Treaty of Maastricht.

The parliamentary ratification of the Treaty of Maastricht as such is prepared in the aforementioned EU Special Committee, which is appointed in October 1992, in a consensus among the major parliamentary party groups (Töller 1995, 137). Several sectoral committees and the EC Committee compete to take the responsibility for the ratification procedure. In the highly unusual appointment of a special committee, commentators see the attempt to circumvent the parliamentary rivalries, and the necessity to appoint a mix of sectoral experts to the committee and to ‘upgrade’ the issue politically (Töller 1995, 138).

The government puts enormous time pressure on the Bundestag by submitting the draft acts for the ratification instrument and the constitutional revision to the parliament only at the beginning of October. It is not clear whether the government’s behaviour is the fruit of rational calculus or whether it simply underestimates the potential problems of parliamentary ratification. Several parliamentary actors at the time consider that the government is completely unprepared to discuss the political and constitutional aspects of the Treaty of Maastricht and their impact for Germany (interview 38, interview 39, Interview 44) and its Basic Law.<sup>79</sup>

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<sup>78</sup> ‘[...] ich war Mitglied des Deutschen Bundestages und da ich als Verfassungsrechtler nicht so ganz unprominent gewesen bin, auch damals schon, war das, ich glaube, überhaupt keine Frage.’

<sup>79</sup> The government considered that only one constitutional revision (on the voting rights for EU citizens) was necessary prior to the ratification.

Furthermore, Chancellor Helmut Kohl creates a discursive environment in which criticism of the Maastricht Treaty appears to be ‘petty-minded’<sup>80</sup> (interview 38).

The government also has reason to believe that the parliamentary ratification will be a smooth process because of the general ‘pro-integrationist attitude’ among MPs in Germany. In principle, the SPD parliamentary party group, which is the only important opposition party representing a significant weight for the negotiations<sup>81</sup>, already made a decision in 1991 to agree to the ratification of the treaty (interview 38, interview 44).

As the ratification was supposed to be concluded before the summit of Edinburgh scheduled in mid-December, the margins of manoeuvre for the Bundestag are tight. The leading actors in the parliamentary party groups of the Bundestag need to ensure quick deliberations so that the European treaty does not fail in Germany: ‘[in] Frankreich schon, Deutschland nicht’ (interview 38). Furthermore, the Bundestag must show some active and serious deliberations given the strong demands by the Länder. The former chairman of the EU Special Committee (SPD) describes his role as chairman as follows:

‘And therefore I was chosen and my main objective was to organise the work, so that Germany would not be responsible for a delay, and so that the ratification procedure would be decently, but rapidly completed. Decently, in the sense that no problems were swept under the carpet, that everybody who needed to vote was conscious about the entire issue, but rapidly, in the sense that this committee had to accomplish more than is usually the case in a relatively short time span.’<sup>82</sup> (interview 38)

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<sup>80</sup> ‘[...] das galt als kleinlicher Widerstand’

<sup>81</sup> PDS/Linke Liste and Greens only have meagre scores at the parliamentary elections in 1990 after reunifications, which are not sufficient for forming a parliamentary party group of their own.

<sup>82</sup> ‘Und so fiel mir das zu und mein Hauptziel als Vorsitzender war, die Arbeit zu organisieren, ohne dass Deutschland schuld sein würde an einer Verzögerung, der Ratifizierungsprozess ordentlich, aber auch zügig umgesetzt werden konnte. Ordentlich in dem Sinne, dass keine Probleme unter den Teppich gekehrt werden, dass allen, die hinterher abstimmen mussten, die gesamte Problematik vollständig bewusst war, aber zügig auch in dem Sinne, dass dieser Ausschuss in relativ kurzer Zeit mehr Arbeit leisten musste, als das normalerweise der Fall ist.’

Who are the leading agents of change for the parliamentary participation rights that the Bundestag obtains in parallel to the ratification of the Treaty of Maastricht?<sup>83</sup> These major agents are the Länder together with major actors of the SPD in the Joint Constitutional Commission, which has been deliberating since the beginning of 1992.

The signature of the Treaty of Maastricht has caused major political debate in Germany. At the beginning of 1992, the Länder, parts of the SPD, and also members of FDP and CSU threaten not to agree to its ratification. They even ask for renegotiations, but draw back this claim relatively quickly because none of the actors the Treaty of Maastricht to fail because of Germany (Wolf 1992, 314–15).

Under the leadership of Johannes Rau (minister president of NRW) and Edmund Stoiber (Minister president of Bavaria), the Länder decide instead to obtain further participation rights by putting pressure on the internal ratification procedure in Germany. Major actors from the SPD support the idea of an article 23 as well, including Hans-Jochen Vogel (speaker for the SPD parliamentary party group in the Joint Constitutional Commission) and Heidemarie Wieczorek-Zeul (speaker of the SPD parliamentary party group on European issues). They are in close exchange with Rau and Stoiber about the strategy to convince the government that a major revision of the German Basic Law is necessary for a further transfer of competences to the EC/EU (Interview 44).

Until late in 1992, however, the important issues for the actors of the Bundestag are only those points of article 23 that define limits, aims, and fundamental questions of the competence transfer to the EC/EU, and in particular the constitutional empowerment for competence transfer to the EC/EU and the voting majorities in the Bundestag and Bundesrat to authorise the

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<sup>83</sup> That is: the necessity of constitutional majorities for future ratifications; the guarantee of ‘earliest possible information’ about EC/EU draft acts and of ‘consideration’ of the Bundestag’s opinions (laid down in article 23 of the Basic Law and the legislation implementing it); the introduction of an EU Committee stipulated at the level of the constitution, through a revision of article 45, Basic Law; and the (non-binding) parliamentary vote before the entry into the third step of EMU.

ratification of treaty changes (interview 38, interview 39, interview 44).<sup>84</sup> Parliamentary participation in day-to-day EC/EU decision-making does not play much of a role.

The government in the Joint Constitutional Commission already accepts stronger participation rights for the Länder in EU decision-making in April 1992 (Läufer 1993, 300–301). This is done against the legal assessment of the CDU chairman of the Joint Constitutional Commission, who estimates that the Länder prerogatives as too far-reaching and that they interfere in federal competences<sup>85</sup> (interview 39). He considers that his party colleagues and in particular chancellor Helmut Kohl persuaded him to accept them for political reasons, in order not to endanger the ratification. A first version of article 23, containing only the participation rights of the Länder, is drafted during the summer of 1992 (Classen 1992, 57) (interview 38, interview 39):

‘[...] well, with the 23 we tried at that time, well, fundamentally the aim with the 23 was to create for Europe, for the European integration process, legal grounds that go beyond article 24. That is, the 24 that says that it is possible to transfer powers to a collective entity. [...]

This would have been sufficient in the following, for what happened in the following years, but the 23 was strictly speaking a demand of the Länder. The Länder said clearly at that time – and this was then related to Maastricht – that they would not agree, to Maastricht, the Euro, if they did not get better participation in the Basic Law in European integration. [...]

As I already said, we had to give in at that time, I myself was no advocate of giving in, because fundamentally, implicitly very constitutive participation rights were asked for the Bundesrat. [...]

But at that time, also the Chancellor, that is Helmut Kohl, I remember one conversation with him in which he pushed very hard for this, said: “You need to do this now, otherwise we will not be able to carry Maastricht off. And then we will have a lot of trouble, with the French as well. In particular with the French.” And as a consequence

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<sup>84</sup> The point was not consensual in the SPD either, because of the fear that future SPD governments would suffer from the new constitutional prerogative (interview 38).

<sup>85</sup> In particular because of the fact that EC drafts that fall under Länder competence usually also concern the federal level.

this was then agreed, that is a bit of time pressure, the 23 were modified once in the meantime, but was still not a felicitous provision'<sup>86</sup> (interview 39).

The Bundestag's own participation rights have not played much of a role for a long time. Only in October 1992, once the government has presented the draft laws for the constitutional revision and the ratification instrument, does the Bundestag ask for the inclusion of its rights in article 23 for information and expression of opinion in the negotiations in the Council. Key actors across parties, such the chairman of the EU Special Committee, consider that the Bundestag's position is already sufficiently ensured and that German MPs only need to be more active in EU affairs. The inclusion of the Bundestag's participation rights in article 23 is merely promoted as a means to ensure its equality with the Bundesrat:

'I held this view already at that time. [...] We have the prerogatives; we only need to use them. And this was then put into place only because of the principle of equality with the Bundesrat. Later, in the course of time, it became clear that my assessment was wrong, right? Well, I say today that my assessment was wrong.'<sup>87</sup> (interview 38)

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<sup>86</sup> '[...] gut, mit dem 23 haben wir damals ja versucht eben, ja, die im Grunde ging es beim 23 darum, für Europa, den europäischen weiteren Integrationsprozess eine Ermächtigungsregelung zu schaffen, die über den Artikel 24 rausgeht. Nämlich der 24, der ja sagt, das kann auf kollektive Einrichtung, Hoheitsrecht übertragen werden. [...] Das hätte auch ausgereicht weiter, für das, was da in den folgenden Jahren geschehen ist, aber der 23 war genau genommen eine Forderung der Länder. Die Länder haben damals klar gesagt – und das bezog sich dann auf Maastricht – sie würden nicht zustimmen, Maastricht, dem Euro, wenn sie nicht für die europäische Einigung, im Grundgesetz eine verstärkte Beteiligung bekommen. [...] Das hat dann zu dem 23 geführt, ich erinnere, ich habe im Wesentlichen damals zu formulieren gehabt, und wenn mich jemand fragt heute, ob ich schon mal schlecht formuliert habe, dann sage ich immer, der 23. aber das war damals, ich erinnere mich noch an die Beratung in der Verfassungskommission, damals waren da Stoiber und eigentlich Stoiber und Hans-Jochen Vogel, die da eben sehr drauf drängten. Hans-Jochen Vogel war der Obmann der SPD-Bundestagsfraktion, der Verfassungskommission und Stoiber war im Grunde so ein bisschen Sprecher der Länder, die da also sehr massiv drängten. [...] Also wie gesagt, wir mussten damals nachgeben, ich selbst war gar nicht so gleich auf Nachgeben zu sehr, weil im Grunde die Impliziten, da wo also sehr konstitutive Zustimmungsrechte des Bundesrates gefordert werden, [...]. [...] Aber damals hat dann auch der Bundeskanzler, also Helmut Kohl, ich erinnere mich an ein Gespräch mit ihm, da sehr drauf gedrängt, hat gesagt: "Ihr müsst das jetzt machen, sonst kriegen wir Maastricht nicht hin. Und das gibt Ärger dann auch mit den Franzosen. Vor allem mit den Franzosen." Und so ist das dann zustande gekommen, also ein bisschen der Zeitdruck, der 23 ist ja inzwischen auch nun mal geändert worden, eine glückliche Bestimmung ist er nach wie vor nicht.'

<sup>87</sup> 'Ich habe die Auffassung damals schon vertreten. [...] die Rechte haben wir, die müssen nur wahrgenommen werden. Und lediglich aufgrund der Gleichbehandlung mit dem Bundesrat wurde das

Even in the deliberations of the EU Special Committee, the rights for the Bundestag's participation in the negotiations in the Council of Ministers only play a subordinated role. Topics of major importance are the Economic and Monetary Union (EMU) and the more fundamental question of the authorisation of the transfer of competences to the EU on the basis of article 23.1 German Basic Law and the necessary parliamentary majorities (interview 38, Interview 44). Deliberations about the EMU and the constitutional revisions linked to it take most of the committee's time, and particularly the independence of the European Central Bank and the Bundestag's claim to have a parliamentary vote before the introduction of the third step of the EMU (interview 38) (On the restricted binding effect of this vote see Läufer 1993, 301).

Furthermore, parliamentary participation rights are no fruit of the pressure of 'backbenchers who fight back' (Raunio and Hix 2000). The then speaker of the SPD for European affairs considers that there are no such proposals by backbenchers on the table, even if the elite of the parliamentary party groups later use the new rights to calm down anti-Maastricht backbenchers (Interview 44):

'Yes, in the SPD parliamentary party group, there were definitely also people critical of the Maastricht Treaty [...] And in this respect there were definitely critics who said that the political union was missing, the social union, the ecological union. I say this now a bit casually. They would have preferred a refusal considering these points, right? Or at least an abstention. Well, for those the parliamentary participation was, of course, so to speak a concession from our side. *Interviewer: [...] You asked as it were [...] for more parliamentary participation because of these critical voices?* No, this was independent from that point.'<sup>88</sup> (Interview 44)

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dann gemacht. Es hat sich später im Laufe der Zeit ja gezeigt, dass meine Einschätzung falsch war, nicht? Also, ich sage heute, meine Einschätzung war falsch.'

<sup>88</sup> 'Ja, in der SPD-Fraktion gab es ja durchaus auch Kritiker am Maastricht-Vertrag [...] Und insofern gab es ja durchaus Kritiker, die gesagt haben, es fehlt die politische Union, es fehlt die soziale Union, es fehlt die Umweltunion. Ich sage es jetzt mal etwas salopp. Und unter dem Gesichtspunkt gesagt hätten, eher ablehnen, ja? Oder enthalten oder jedenfalls nicht wollen. So und für die war natürlich sozusagen diese parlamentarische Beteiligung auch ein Entgegenkommen von unserer Seite. *Interviewer: [...] Sie haben sozusagen [...] die parlamentarische Beteiligung auch aufgrund dieser kritischen Stimmen verlangt ?* Nein, die war ja unabhängig davon.'

In the Bundestag, the backbenchers of the major opposition party, which has publicly put into question the Treaty of Maastricht, thus play no role in the claims about more parliamentary participation rights in the decision-making processes of the EU.

The literature on national parliaments in the EU lends major importance to the formal participation rights in EU decision-making acquired with the Treaty of Maastricht. In the Bundestag, however, these rights are only of a minor importance for the actors, given the whole package of points negotiated with the government with reference to the constitutional revision (in particular art. 23.1 Basic Law) and the ratification instrument (in particular the vote on the third step of the EMU). Apart from the political debate about the content of the treaty itself and especially the outlook of EMU reflections regarding the parliamentary participation in future steps of European integration, the power distribution between the Länder and the federal level and the compatibility of the German Constitution with the state of European integration laid down in the Maastricht Treaty are far more important.

The Bundestag still has little experience participating in day-to-day decision-making in Brussels, and has not managed to accumulate this experience in a standing committee or other types of permanent structures. Key actors in the Bundestag who negotiate the new participation rights are mainly important politicians in the parliamentary party groups and constitutional or foreign affairs experts, and not EC/EU experts. The codification of the participation rights of the Bundestag in the constitution is the fruit of the late awareness that the Bundestag needs to be factored in as well if the Bundesrat obtains far-reaching participation rights in the first draft of article 23<sup>89</sup>. This is also underlined by the fact, that throughout the negotiations on the implementation of the participation rights of article 23 that follow the ratification, the important cleavage (about a strong or weak design of these rights) runs between the Bundestag and the Bundesrat, rather than between the government majority and the opposition or the different parliamentary party groups within the lower chamber (interview 38). The law on the

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<sup>89</sup> The Bundestag's participation rights remain weaker and more indirect in article 23 than those of the Bundesrat, which receives detailed direct participation rights in the negotiations.

cooperation of the federal government and the Bundestag in matters of the EU has to be agreed upon in the conciliation committee between the Bundestag and the Bundesrat in February 1993 (Töller 1995).

Yet another illustration of the weak agency of EU experts is the genesis of the codification of the EAC in article 45 of the Basic Law. The proposal does not originate in the EU Special Committee, and even less in the EC committee. Instead, it originates in the Joint Constitutional Commission, and is based more on theoretical considerations about the constitutional equilibrium of the Bundestag and the Bundesrat than on concrete experience with the realities of the handling of EC acts by the EAC and the sectoral committees in the Bundestag. The Bundesrat has obtained the establishment of a ‘Europe Chamber’ (*Europakammer*) in article 52.3a of the German Basic Law, enabled to make decisions for the plenary on EC/EU issues. The constitutional lawyer Rupert Scholz, chairman of the Joint Constitutional Committee, considers that the Bundestag needs such a central superordinate committee as well. Accordingly, he drafts a project for a revision of article 45 in the German Basic Law (interview 39). This draft is officially proposed by the Joint Constitutional Committee (Töller 1995, 143) and then discussed in the European Union Special Committee. However, the idea for the committee does not take into consideration that the decision-making structures of an executive organ such as the Bundesrat<sup>90</sup> and those of a parliamentary body such as the Bundestag function completely differently. Already, the implementation of the constitutional article into the standing orders of the Bundestag shows that to enable a committee to decide instead of the plenary is against the usual ‘ways of doing things’ in parliament, and even against the ‘DNA’ of the institution. This results in a high number of preconditions necessary before the EAC is able to statute in the place of the plenary. In practice, this right of plenary substitution is thus almost never used.

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<sup>90</sup> The Bundesrat’s Europe Chamber and its efficient consultation structure with the governments of the Länder are considered to be one reason why the parliaments of the Länder have even fewer real options for participation (Brückner 1993, 230).



## **2) Action and participation patterns**

This second sub-section discusses which action results from the actor constellations analysed above, and which interactions the MPs in the Bundestag have with EC/EU transnational actors. There is generally little EC/EU activity and actors are dissatisfied. The ideas about which roles the Bundestag should play in EU affairs, i.e. which action patterns MPs should favour, are more clearly defined in the Bundestag. However, the procedural solution to achieve this in the frame of established parliamentary practices is strongly contested.

### **a) Participation patterns and their meaning**

During the Maastricht period, the action of the Bundestag in EC/EU affairs does not follow clear patterns. MPs in the Bundestag contest it. There is a feeling among the bureaus of the parliamentary party groups that the Bundestag's handling of these affairs is insufficient.

As in the *Assemblée nationale*, activity in EC/EU matters is rare. In contrast to the *Assemblée nationale*, on the other hand, the Bundestag has *prima facie* strong plenary activity in EU affairs during this period. However, this is only the expression of a necessity stemming from the standing orders. The Bundestag's working level, i.e. working groups of the parliamentary party groups and committees, does not deal with EC/EU issues. Unlike in the *Assemblée nationale*, the major problem identified is not so much the information provided by the government, but the internal organisation and coordination of decision-making on the working level.

In contrast to the French MPs, the German MPs' idea about their role in EU decision-making is to participate in this process on EU level sufficiently early so that their opinions can still have weight in the preparation of the draft by the Commission or in the negotiation phase with the Council. However, for different organisational and ideological reasons this idea is not put into practice until the end of the 90s. At least until the beginning of the 90s, an important

group of German MPs see the role of the Bundestag in the promotion of European integration. Among others, they hope that this role can be fostered through the development of a close connection with the EP. A majority of MPs of the Bundestag see the legitimization of EU decision-making as being guaranteed through a gradually strengthened EP.

As in France, however, participation *in practice* comes in late in the decision-making phase in Brussels. The several procedural changes discussed in the preceding chapter are not adequate. In contrast to the practice in the *Assemblée nationale*, the standing committees exclusively carry out the scrutiny. From the 80s onwards, they start to create sub-committees for the European Community. There is no EAC in place until 1991, and even the impact of the committee for the affairs of the EU, which exists from the end of 1994 (following the Maastricht ratification), is not strong in this respect (Beichelt 2009).

In the 70s, individual MPs in the Bundestag start to complain about the inefficiency of the parliamentary participation in the decision-making phase in Brussels. Out of principle, some well-known members of the Bundestag, such as the chairman of the SPD parliamentary party group, Herbert Wehner, vote against EC draft acts (Töller 1995, 66).

Many MPs see the major problem that the Bundestag produces an enormous amount of paper work, as each draft act is dealt with as a law and is distributed to all MPs in printing (*Bundesdrucksache*), while at the same time parliamentary proceedings are so slow that parliamentary decisions (which have to be taken by the plenary) are only adopted once the decision has already been taken in the Council of Ministers. MPs describe this situation as a sort of ‘parliamentary theatre’:

‘[...] which sense does it make to permanently present to us documents, which we have to take note of, which we are not able to take note of, to make a committee deliberate on them, which – everybody knows this – will not take note of them either, then let the committee report that it took note of them to finally present a document here, which the plenary has to take note of again’<sup>91</sup> (MP Norbert Gansel (quoted in Töller 1995, 66)).

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<sup>91</sup> ‘[...] welchen Sinn hat es eigentlich, uns ständig Papiere vorzulegen, die wir zur Kenntnis nehmen sollen, die wir nicht zur Kenntnis nehmen können, einen Ausschuss darüber beraten zu lassen, der – das

Therefore, in contrast to the *Assemblée nationale*, the plenary deals with a large amount of EC draft acts. However, in the Bundestag, decisions are taken on the level of the working groups (*Arbeitskreise*) of the governing parliamentary party groups and of the committees. Thus, the important plenary activity is no sign of a ‘competent’ handling of EU affairs in coherence with domestic practice for MPs in the Bundestag. It is simply a necessity stemming from the standing orders. Almost none of the documents dealt with in the plenary have been properly debated on the working level of the Bundestag, and this is a major sign of incompetence in the handling of EU/EC affairs in the Bundestag. Individual MPs concerned by EC/EU affairs start to realise that there is an important amount of paperwork being done that is disconnected from the decision-making processes in Brussels and parliamentary practice.

The main causes of this incompetent handling of EC/EU affairs in the Bundestag are the standing committees’ organisational overload of paperwork, and the latter’s incapacity to select the important EC draft acts. This leads to a high amount of EC acts of which only the Bundestag officially takes note, but on which MPs do not produce a further recommendation for a decision (*Beschlussempfehlung*) for the plenary. From 1972 to 1986, only about 10% of the EC draft acts lead to a recommendation for a decision by the plenary (Töller 1995, 66–69). For the period from 1980 to 1986, Klaus Hänsch calculates that about 65% of these plenary decisions are taken after the publication of the final act in the Official Journal of the European Communities (Hänsch 1986, 197).

This situation continues despite a first slight adaptation in 1980 (§ 93 Standing Rules of the Bundestag), according to which EC acts are no longer transmitted by a plenary decision, as was usually the case, but are submitted to the responsible committees directly by the bureau (*Präsidium*) and the Council of the Elders (*Ältestenrat*). Within the committees, the documents are supposed to go through a selection procedure by a group of MPs appointed by each

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weiß jeder – sie auch nicht zur Kenntnis nimmt, dann den Ausschuss berichten zu lassen, daß er davon Kenntnis genommen hat und dann hier noch einmal ein Papier vorzulegen, von dem das Plenum noch einmal Kenntnis nehmen muss.’ (MP Norbert Gansel (quoted in Töller 1995, 66)).

parliamentary party group. The selection is carried out on the grounds of information provided by the federal ministry for the economy, which is responsible at the time for the coordination of EU policy within the government. A better coordination within the government is supposed to provide the parliament with exact information about the timing of the decision in the Council of Ministers. Only those documents on which the committee recommends a decision to the plenary are published as official printings (*Bundesdrucksache*) and distributed to all MPs. All other documents are only published and distributed in the form of a list with titles (Töller 1995, 68).

In contrast to the *Assemblée nationale*, the problem in the view of the MPs in the Bundestag in this phase is not so much the access to information, but the processing of the information provided. This is also a problem for the *Assemblée nationale*, but is less pressing because of the concentration of EC scrutiny in the EC Delegation. Different standing committees discuss major political dossiers in parallel without any coordination – often with the result that the Bundestag does not manage to compile one joint parliamentary opinion (Töller 1995, 76).

This problem is not solved with the introduction of the first EC Committee nor later with the ‘Committee for the Affairs of the European Union’ which exists until today: both of them are rarely selected as main responsible committee. They are an ‘anomaly’ in the ‘usual ways of doing things’ or the domestic practices.

During the Maastricht period, the administration of the Bundestag usually decides which committee is the responsible one in coordination with the committees and the parliamentary party groups. The act is normally directly addressed to the committee mirroring the ministry from which the draft act stems within the government<sup>92</sup>. Finally, the secretariat of the committee to which the act is attributed is then responsible for asking which other committees are interested in the question as well. The formal decision is finally taken in the Council of the

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<sup>92</sup> Since the sixth legislative period, the standing committees of the Bundestag have always mirrored the ministries and their sectoral competences.

Elders, but in reality difficult decisions are taken in advance on the level of the whips of the parliamentary party groups (Töller 1995, 89).

Logically, the EC Committee could thus be automatically responsible for all EC/EU acts transmitted by the two ministries, ensuring EU coordination within the German government<sup>93</sup>. However, given the close cooperation between the sectoral committees and the ministry having the line responsibility in the government for the act, and given the existent expertise of the sectoral committees, this proceeding is not possible in parliamentary reality.

Furthermore, the EC Committee is in competition with prestigious committees such as the Foreign Affairs Committee and the Committee for Economic Affairs, and therefore cannot change existing practices.<sup>94</sup>

The new competences of the Committee for the Affairs of the EU, which is constituted for the first time in December 1994, only change this situation at the margins, as neither the procedure for the attribution of the responsibility, nor the committee hierarchies are changed in practice. A major adaptation, however, is the fact that the EU Committee officially obtains the central position in the coordination of the transmittal of EC/EU draft acts to the responsible committees. All EU acts have to be transmitted first to the EU Committee (§ 93.1 Standing orders). The coordination of the process of transmittal thus moves from the Department XII in the parliamentary administration to the secretariat of the EU Committee and its *Europabüro* (Europe Office).

In practice, however, the EU Committee is only the designated responsible committee when it comes to general European integration and institutional matters. From 1998 to 2002, it is only responsible for 14.5% of all Bundestag printings stemming from EU decision-making

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<sup>93</sup> The Federal Foreign Ministry usually assures this function in cooperation with either the Ministry for the Economy or the Ministry of Finance.

<sup>94</sup> After massive protests by the speakers of the parliamentary party groups in the EC Committee, the possibility of providing a sectoral committee with the status of first co-deliberator (*1. Mitberatender Ausschuss*) does not have any success in practice (Töller, 1995, p. 91).

processes, of which only 3.6% correspond to EC draft laws (Beichelt 2009, 253). This is slightly more than the EC Committee has obtained and means that these subjects are no longer automatically dealt with in the Foreign Affairs Committee.

Ex post control of the government negotiations in Brussels is not highly important.

### **b) Interaction with EU transnational actors**

The Bundestag's contact patterns are above EU average (conversely, those of the Assemblée nationale are below average), but the overall frequency of contacts with transnational actors is low except for contacts with the EP. This means that the Assemblée nationale and the Bundestag have the same type of contact pattern in the Maastricht period, in which the exchange with MEPs is the most frequent contact pattern for domestic MPs. As in the Assemblée nationale, this exchange is not institutionalised in parliament, but happens through the party channels. Contacts with the European Commission and other national parliaments are more frequent than in the Assemblée nationale. According to actors at that time, the contacts with the EP and other national parliaments (comparatively high in the Bundestag) do not happen in the course of specific EC/EU decision-making procedures, but serve as exchange on 'constitutional' issues about the evolution of the EU system.

The data situation regarding transnational contacts of MPs is difficult. Fortunately, there is the aforementioned European Representation Study (Weßels 2013; Weßels et al. 1999), which provides detailed comparative insight into the contact structures of the MPs in the Bundestag (and compares them to other member states, including France).

The Bundestag MPs' contact with the European Commission and EU civil servants is above European average: in 1996, 7% compared to 4% of MPs, respectively, have contact, which increases to around 10% of MPs in both cases in 2003. Nevertheless, these figures are somewhat low, especially when compared to government ministers and their bureaucracies,

with which between 74.4% and 90.1% of MPs, respectively, have at least one monthly contact in 1996 (Weßels et al. 1999, 206–7).

Conversely, even if only compared to the EU average, the contacts of MPs in the Bundestag with German MEPs on an at least monthly basis are frequent: 48% of Bundestag MPs are in at least monthly contact with German MEPs (see table 9).

*Table 9: Bundestag: Contact with EU transnational actors (1996)*

	Country's MEPs	EU Civil Servants	European Commission	MP of other EU Member State
Germany (1996)	150/311 (48.2%)	27/308 (8.8%)	20/307 (6.5%)	42/311 (13.5%)
Germany (2003)	39.9%	9.8%	10.2%	13.5%

Source: for 1996: European Members of Parliament Study (Weßels et al. 1999); for 2003: (Weßels, 2013)

Note: ratio of positive answers to overall number of MPs taking part in the representative study (percentage); at least monthly contacts.

MPs in the Assemblée nationale and the Bundestag thus have the same pattern concerning transnational EC/EU contacts, even if the German contacts are more than doubly as frequent. In France, only 23% of MPs of the Assemblée nationale have at least monthly contact with MEPs (see table 6).

There is a difference between the Assemblée nationale and the Bundestag with regard to contact with MPs from other national parliaments. While in France only about 5% of MPs have contact with a colleague from another national parliament at least once a month, in Germany the percentage is almost three times as high. Overall, however, the exchange with MPs of other national parliaments can be considered to be low.

This is also in line with MPs in the Bundestag's self-assessment in the first half of the 90s. The former chairman of the EU Special Committee considers that there is 'absolutely no parliamentary culture' to cooperate on EC/EU issues. After the signature of the Treaty of Maastricht, he often travels abroad, but he claims to do this to 'relaunch' his career and to be

‘present in the media’, and not to coordinate positions on the Treaty of Maastricht or even on parliamentary participation rights. The administrative staff follow the ratification debates in other countries, but only to be informed of what they mean for the German position (interview 38). Rupert Scholz agrees with this assessment (interview 39).

For the former speaker of the SPD for European affairs, this type of coordination does not play much of a role either. If there are attempts to coordinate positions, they happen only with the German MEPs who participate in the bodies in the Bundestag and within the SPD party structures (interview 44). This corresponds to François Loncle’s assessment of the same time period in France (interview 5).

The preceding sub-chapter showed that during the Maastricht period, actors in EU affairs in the Bundestag are still not *typical actors*. Different interest constellations between government and opposition, and between the Bundesrat and the Bundestag and German MPs’ strong pro-European ideology decide who leads the game in EU affairs in the chamber independently of concrete participation in day-to-day EU decision-making. Action in EU affairs is low and weakly patterned.

The following conclusion summarises the main findings of the comparative analysis of the participation in EU affairs in the Assemblée nationale and the Bundestag. The results of the comparison according to the most similar systems logic are so far coherent with *Hypothesis 1*. Despite widely differing parliamentary functions on national level in the Maastricht period, there are few stable patterns in EU affairs in either of the chambers.



## ***C - Conclusion***

This chapter presented the results of the comparison of actors and patterns of action in EU affairs in the Assemblée nationale and the Bundestag during the Maastricht period. The analysis showed that in both the Assemblée nationale and the Bundestag, EU affairs are only weakly institutionalised. One cannot observe ordered practices of ‘doing EU’ as there is no clearly defined agency, nor distinct or *typical* action patterns of EU/EC participation. Successful motives for action in both chambers are various, but rarely stem from the experience of day-to-day participation in EU/EC decision-making and of incompetent action in EU matters with reference to domestic practices.

In both chambers, the majority of parliamentary *actors* do not have much EU expertise, either within the different European affairs bodies or in the sectoral committees. Furthermore, awareness about the impact of EU legislation is low. Despite different traditions of parliamentary working procedures, in both chambers the ‘new’ European affairs bodies are largely isolated and lack standing and prestige in the hierarchies of committees.

*Agents of change* in this period are clearly not, or not primarily, the MPs who can be qualified as experts of day-to-day European decision-making. Major agents of change are either Eurosceptic MPs in the French case, or politicians in important power positions in the parliamentary party groups (or outside the Bundestag), as well as constitutional lawyers in the German case.

In both chambers, changes to the constitutional and regulatory framework of EU affairs are not pushed by a community of practice of experts on parliamentary proceedings of EU matters, but instead possibly by specific political interest constellations. In France, this includes the fierce ideological opposition to the Treaty of Maastricht by parts of the Gaullist RPR (see for an analysis of the sovereigntist rhetoric Rozenberg 2010) and the Sénat’s attempt to use the constitutional amendment necessary before the ratification to improve its role in French asymmetrical bicameralism. In Germany, major changes are possible because of the Bundesrat’s and parts of the major opposition parties’ strategy to use the ratification of the Treaty of Maastricht to push for constitutional changes and the strengthening of the Länder

position in EU affairs. Strengthened participation rights of the lower chamber in day-to-day decision-making are only a sort of coincidental by-product of this negotiation process.

While the actors' orientations concerning their *desired role* and ensuing *action* in EU affairs as well as their ideological conviction on the scope of European integration are highly different in France and in Germany, the concrete action in day-to-day decision-making in both chambers is similar. At the end of the Maastricht period, both parliaments have created European affairs bodies with centralised sifting competences. In both parliaments, the sifting is considered to be inefficient and an administrative burden.

Major instruments for parliamentary participation, such as the European Resolutions in France or the possibility of the EAC of the Bundestag to substitute itself to the plenary, and the organisational solutions found for EU affairs remain largely void letters, because they do not correspond to institutionalised practices in the chambers and their usual 'ways of doing things'. They prove to be inefficient and do not improve parliamentary scrutiny of EU affairs, even if they are often substantial enhancements of prerogatives from a formal-legal perspective.

The following chapter will analyse actors and patterns of EU-related action in the Assemblée nationale and the Bundestag during the Lisbon period. From the middle of the 90s onwards, EC/EU binding decision-making strongly increases, and MPs (and their voters) are supposed to more strongly feel the concrete output and outcome of this decision-making by the end of the decade. Therefore, *Hypotheses 1* proposed that one should observe emerging types of actors playing an important role in parliamentary EU affairs, as well as emerging typical action patterns in EU affairs.

In both chambers, EU experts indeed take a more central role in EU affairs in this phase, and EU action more steadily follows the same logic.

## CHAPTER IV The Lisbon period (2000-2013: starting to ‘perform’ Europe as a practice)

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This chapter presents the results of the comparison of parliamentary EU practices in the Assemblée nationale and the Bundestag during the period that is referred to as the ‘Lisbon period’ for the purposes of this study. This period covers the years 2000 to 2013. In the beginning of this period, MPs are supposed to have experienced the full effects of the Treaty of Maastricht (and its successors) in parliamentary day-to-day activity, and notably the steep increase of the stock of EU legislation in the middle of the 90s. The chapter shows that in both parliaments MPs attempt more and more to ‘perform’ Europe in accordance to domestic practices. New action patterns adapt EU affairs to typical domestic parliamentary roles or functions.

As was done for the Maastricht period, this chapter compares evolutions in this period in the Assemblée nationale (sub-chapter A) and in the Bundestag (sub-chapter B) to determine whether there are similar evolutions in EU affairs despite them being parliaments in which MPs’ aggregate practices on the domestic level differ widely. Actorship and activities in both chambers are analysed in order to ascertain whether one can observe patterns that indicate the institutionalisation of ‘ordered practices’ (defined as specific agency and patterned action) in EU affairs.

In order to further investigate *Hypothesis 1*, each section first analyses (1) actorship in EU affairs, paying particular attention to the European affairs bodies and EU experts more generally in the chambers. It then proceeds to investigate which actors are successful protagonists for the introduction or revision of formal rules for the chambers’ EU participation. Next, each chapter examines the chambers’ activities in EU affairs and the meaning that actors attribute to this activity (2).

The conclusion summarises the comparison between the Assemblée nationale and the Bundestag and shows that there are similar evolutions in both of them. In both chambers, the

logic of the handling of EU affairs is stabilised, and the European affairs bodies' shapes are less and less contested. The latter become *typical* actors in EU affairs in each chamber, albeit not at all in the same way. EU expertise increases in both chambers, but not to the same degree. In both chambers, a community of practice emerges that shares knowledge and experience regarding EU affairs. This group of MPs acquires agency and is the successful agent of change of formal prerogatives and organisational solutions for EU affairs in the chambers.

In both chambers, action is more patterned in the Lisbon period than was the case in the Maastricht period. In both, actors follow *typical* 'ways of doing things' in EU affairs and start to 'perform Europe' as an ordered practice. The chapter also demonstrates, however, that this typification and institutionalisation of Europe as a practice happen through a search for *functional equivalents* to domestic action patterns or roles, i.e. competent action in EU affairs with reference to the domestic practices and deeply enshrined 'ways of doing things' in both chambers.

As a consequence, MPs in the Assemblée nationale develop activity patterns that allow them to fulfil roles that they have at the domestic level, in particular the *responsiveness* to voters in the circumscriptions. In contrast, MPs in the Bundestag develop activity patterns that allow them to take on roles in EU affairs that are oriented towards the direct *control* of the decision-making and legislation in Brussels. Patterns of interaction evolve accordingly.

The institutionalisation of the EU as an ordered practice in both chambers thus leads to the stabilisation of social structures and has 'fixed ideas' in people's minds about 'doing EU' in each of the parliamentary chambers. Paradoxically, however, after the important impact of the Treaty of Maastricht, this institutionalisation leads to *more differences* in the participation patterns between the chambers regarding EU affairs and the roles, meanings, and background to which these activities are intrinsically linked.

## ***A - Assemblée nationale***

The first sub-chapter discusses the handling of EU affairs in the French lower house during the Lisbon period. The first section shows that the European affairs body slowly acquires typical features of a ‘usual’ standing committee in the chamber, and develops into one central actor for EU affairs. Interest and EU knowledge increase among the MPs, albeit slowly. Within its ambit, a community of practice slowly emerges, sharing knowledge about parliamentary EU affairs. This community acquires agency and successfully participates in the reform of the formal and regulatory framework for EU affairs in the Assemblée nationale.

The second section shows that the action in EU affairs of both the European affairs body and the chamber as a whole is more patterned and less contested. MPs have gained experience and adapted their deeds to produce more competent action with the chambers’ ‘usual ways of doing things’ and practices. Action patterns help the MPs to better and competently fulfil their domestic role of *interest intermediation* (and to a lesser extent of *public deliberation*) for EU affairs as well. The government’s wish for control expressed in the Maastricht period is mostly abandoned, and decision-making in the Council is largely left to the government. This is in accordance with the fact that the government’s exclusive competence on legislation is largely accepted on the domestic level in the Vth Republic. The Europe Resolutions, which some of the actors understood as instruments of public control of the government in the Maastricht period, are partially reinterpreted as information instruments for the chamber as a whole. The MPs carry out the sifting and scrutiny of documents in ways that allow (some of) them to recover a certain degree of the chamber’s usual style of responsiveness. During the Lisbon period, actors are more satisfied overall with participation in EU affairs than they report being in interviews conducted during the Maastricht period.

According to the new activity patterns that represent functional equivalents to the roles of the Assemblée nationale on the domestic level, interaction with the EP increases in the Lisbon period to increase *responsiveness*. For the same reason, interaction with the European Commission also increases slowly to nourish a ‘steady dialogue’ with the European executive to raise its awareness about issues potentially difficult for French voters.

## 1) Actors and agency

The first sub-section focuses on the actors who carry out EU-linked action in the Assemblée nationale. The first part examines the European affairs body, which stabilises as a ‘political’ body. The logic of politically representative membership allows it, throughout the Lisbon period, to play a role that reinterprets the ‘usual’ role of the standing committees for the chamber as a whole in European affairs. The European affairs body tries to be the hub for information for the Assemblée nationale as a whole, not the least through a fundamentally ‘political’ (albeit fragmented) sifting of incoming EU documents. MPs’ EU expertise and interest rise, even if they are still lower than in the Bundestag. A community of practice sharing knowledge and expertise about day-to-day parliamentary participation in EU affairs emerges in the ambit of the European affairs body. The second part of this sub-section discusses how this EU agency successfully participates in the reform of the formal framework and organisation of the chambers’ EU activities.

### a) European affairs body and EU expertise

During the Lisbon period, the meaning and role that actors attribute to the European affairs body slowly stabilise. Its agency within the Assemblée nationale is ‘constructed’ and becomes clearer (Adler and Pouliot 2011). The European affairs body develops into a committee whose membership and action attempt to reproduce the roles played by the standing committees – however reinterpreted for the purposes of EU decision-making. It slowly develops action patterns that represent a *functional equivalent* to domestic roles. These action patterns are less contested during this period, and a constitutional revision in 2008 more strongly supports the already existing practice. The de jure materialisation of the new practices is the fact that during the Lisbon period the body acquires the statute of committee, even if it does not equal the prestige of some of the traditionally important committees of the Assemblée nationale. This fact is not surprising given the role as interface for European affairs that the body plays through its ‘double membership’ for the chamber as a whole. In contrast to the Maastricht

period, actors estimate that more MPs are interested in EU affairs and have EU expertise in their sector.

The typification of the membership of the committee happens earlier than expected by the periodical sequencing of the comparative framework. Up until 1993, the body is a ‘technical’ body that does not correspond to the usual parliamentary working mode. This leads to an ‘incompetent’ handling of the scrutiny of EU affairs in parliamentary practice, in the sense that the body simply cannot carry out the main function of committees in the *Assemblée nationale*, which is the selection of draft legislation important for French voters in the circumscriptions along a *political* logic of input legitimacy. This will be shown later.

As a consequence, the other standing committees do not pay much attention to the body’s scrutiny activities. The composition of the European affairs body is changed in 1994 and has not been changed since. From then on, the members of the European affairs body are designated according to a logic of political representativeness of the parliamentary party groups in the *Assemblée nationale*. This turns the body from a technical into a political one. The extension of its membership from 36 in 1994 to 48 in 2009 (Avril, Gicquel, and Gicquel 2014, 134) is only a quantitative change, and not a qualitative one.

A ‘normalisation’ towards a more political body from the 90s onwards is further confirmed by the selection logic for members of the body. A member of the then UDF parliamentary party group and MP from 1993 to 2007, reports that he does not manage to join the Delegation despite his wishes, for ‘seniority and political reasons’, which are also the common selection criteria for the membership of the standing committees:

‘I did not succeed in becoming part of the Delegation, because it was a rat-race to enter it and the arbitrations in terms of politics and in terms of seniority that govern, despite whatever one may say, the life of the *Assemblée nationale* did not allow me to do so.’<sup>95</sup> (interview 4)

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<sup>95</sup> ‘Je n’ai pas réussi à faire partie de la délégation, car cela a été une foire d’empoigne pour y entrer et les arbitrages à la fois politiques et l’ancienneté qui gouverne quoi qu’on en dise la vie de l’Assemblée Nationale ne m’ont pas permis de le faire.’

Pierre Lequiller confirms that the competition is already high to become a member of the EAC when the membership passes to 36.

‘[...] There is a strong competition [...]. For example, I belong to the UMP group and we have 24 seats at the European Delegation. The European Delegation is composed of 36 members, and given the results, we fill them in proportion to the parliament, there are 24 seats and, well, at the moment when the delegation was designated, at the opening of the parliamentary session, six months ago, eight months ago, there were 82 candidates for 24 seats, and so the competition is quite strong.’<sup>96</sup> (interview 7)

Alain Barrau, PS, chairman of the Delegation from 1999 to 2002, and Pierre Lequiller, Union pour un Mouvement Populaire (UMP), chairman of the Delegation from 2002 to 2012, both report that they associated hopes of a ministerial post with taking up the mandate (interview 7, interview 8).<sup>97</sup> This is an additional indicator that the Delegation has developed into a more political body that receives at least some minimum attention from the parliamentary party groups.

From the end of the 90s onwards, there is also an increase in the parliamentary expertise of the European affairs body’s chairman – a knowledge important to foster competent action of the body with existent parliamentary practice. Alain Barrau has some direct experience in EU institutions and within the national party<sup>98</sup>, and he has of seven years of experience in parliament (albeit dating some years back) when he takes up the chairmanship of the European affairs body in 1999. With Pierre Lequiller (2002-2007), for the first time the Delegation has a chairman who has considerable experience with both European decision-making and with the working modes of the *Assemblée nationale*. Moreover, he has been active regarding EU

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<sup>96</sup> ‘[...] il y a une forte concurrence [...]. Par exemple j’appartiens au groupe UMP et on a 24 places à la délégation européenne. La délégation européenne est composée de 36 membres, et là du fait des résultats, on fait ça en proportion à l’intérieur de l’enceinte il y a 24 places et bah au moment où la délégation s’est composée, là à la rentrée parlementaire il y a 6 mois, 8 mois, il y avait 82 candidats pour 24 places donc la concurrence est assez forte.’

<sup>97</sup> Paying out for neither of them, however.

<sup>98</sup> Alain Barrau was member of the EP from 1979 to 1984, national delegate of the Socialist party for European affairs from 1979 onwards, and technical adviser to the minister for European affairs in 1981.



questions in the conservative party and speaker for European Affairs for the UMP since 2002. He has been member of the French lower chamber without interruption since 1988 and has considerable experience in foreign affairs before taking care of European affairs. Furthermore, he was Secretary and Vice president of the Assemblée nationale from 2000 to 2002.

EU competence and motivation of the members of the European affairs body are more of an issue for the chairmen of the Delegation in the Lisbon period. While the important part of the work of the body was carried out almost exclusively by its chairmen during the Maastricht period, the succeeding chairmen put more effort into disciplining the members of the Delegation (later EAC) (interview 8). In that same vein, Pierre Lequiller states that he has the habit of ‘recalling’ the duties of an MP in the European affairs body in case members are not active. He even tries to replace inactive members.

‘[...] What is the most difficult is to have a sufficient number of competent and motivated MPs who follow this debate. And that, that requires permanent reminders. When we see that somebody starts to let loose during two or three months, we need to try to work something out in order to have him replaced, which is not easy, even with people from one’s own group. [...]. Because they always explain that they have had a difficult moment, but that they will be back.’<sup>99</sup> (interview 7)

In interviews 10 years later (2012), a parliamentary clerk considers that there are about 30 MPs in the Assemblée nationale who are active in EU affairs (interview 21)<sup>100</sup>. Even if this number is much lower than what is estimated for the Bundestag (see page 224), this is a considerable shift compared to the Maastricht period. As will be shown subsequently, in the Assemblée nationale’s practice of providing participation in EU affairs mainly through *input*

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<sup>99</sup> ‘[...] ce qui est le plus difficile, c’est d’obtenir qu’on ait assez de parlementaires compétents et motivés qui suivent ce débat. Et ça, ça demande en permanence des relances. Quand on voit que quelqu’un commence à décrocher deux trois mois, il faut essayer de se débrouiller pour qu’il soit remplacé ce qui n’est pas facile, même avec des gens de son propre groupe [...]. Parce qu’ils expliquent toujours qu’ils ont un passage difficile mais qu’ils reviendront.’

<sup>100</sup> Since the constitutional reform of 2008 and its implementation in the Standing Rules of the Assemblée, the number of members of the Committee on European Affairs has increased from 36 to 48. MPs have the right to participate in the meetings of standing committees of which they are not members (Standing Orders Assemblée nationale Art. 38 (1)).

regarding voters' concerns, a smaller number of MPs who are directly concerned than there are in the Bundestag might even be sufficient to perform this role.

During the Maastricht period, the sectoral committees showed limited interest in EU affairs and the Treaty of Maastricht. Respondents of the 2002 interviews consider that MPs beyond the EAC have integrated the 'European dimension' more into their day-to-day considerations. Since the middle of the 90s, MPs working on draft legislation are much more aware of its European dimension, while previously this did not play a role at all (interview 1). One member of the law committee affirms in 2005 that the committee examines many more draft laws with a EU dimension than was the case before (interview 4), even if he considers the share of such draft acts to still be low in 2002. He also considers that, at the beginning of the 2000s, there are fewer and fewer cases in which national laws are adopted for electoral purposes, despite the fact that their initiators know that they can never be applied because of existing European legal frameworks to which they are contradictory (interview 4).

Throughout the 2000s, the sectoral committees' attention to EU issues slowly continues to increase. Even if the EAC is at the heart of the scrutiny of EU affairs in the *ex ante* phase, in the XIIIth legislative period (2007-2012) it examines 12 proposals of resolutions that originate in one of the sectoral committees. In the XIIth (2002-2007) legislative period, in contrast, no such proposals for resolutions exist (Commission affaires européennes 2012, 20). Exceptionally, sectoral committees, i.e. the Law Committee, even second one or two clerks to the scrutiny of EU draft acts (Thomas and Tacea 2015).

However, the standing committees mainly change the amount of attention that they pay to the EU dimension during domestic legislative procedures, in which a transposition of EU legal acts is usually deeply intertwined with domestic legislation. Furthermore, domestic legislation is increasingly subject to pre-existing European legal frameworks. This translates also into a rising number of information visits to the European Commission by MPs from the Assemblée nationale (interview 14).

As there are more MPs interested in EU affairs during the Lisbon period, the European affairs body's working style in practice draws slowly nearer to the standing committees, insofar

as one can consider that it functions in a multitude of highly specialised ‘sub-committees’ composed of MPs interested in a specific EU issue in coordination with the standing committees.<sup>101</sup> A similar working mode has been described for the standing committees. Despite their generalist nature<sup>102</sup>, in practice the committees meet as highly specialised sub-committees.<sup>103</sup> In the literature, the rate of participation in permanent committees’ meetings is estimated at about 30% (Kimmel 1991, 99), i.e. those members who are interested in the issue at stake.

Other interview evidence further confirms a more general integration of ‘usual’ practices of the permanent committees throughout the Lisbon period. Interviewed in 2002, Nicole Catala, member of the Delegation from 1988 to 2002, considers that the working style of the Delegation has become much more similar to the one in the sectoral committees compared to 1992:

‘I think that it has become, I would say, more professional, it has strengthened, we work more, and we work a lot, a lot more than 10 years ago. There are more meetings, a larger number of reports, and the themes being addressed are more diverse. There is a work pace that is at least equal to that of the busiest committees of the Assemblée nationale, that is to say the law committee, the financial committee or that of social affairs, the rhythm is at least equal.’<sup>104</sup> (interview 1)

In that same vein, Pierre Lequiller confirms the professionalisation of the Delegation. MPs have to show that they are strong workers to become members.

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<sup>101</sup> Its members have a double membership in the European affairs body and one of the standing committees.

<sup>102</sup> Permanent committees in the Assemblée nationale usually have a very important number of members (because of the limited number in the French Constitution).

<sup>103</sup> MPs have the right to take part in meetings of all standing committees.

<sup>104</sup> ‘Moi, je trouve qu’elle s’est, je vais dire professionnalisée, elle s’est renforcée, on y travaille plus, on y travaille beaucoup, beaucoup plus qu’il y a une dizaine d’années. Les réunions sont plus nombreuses, les rapports sont plus nombreux, les thèmes abordés sont plus divers. Il y a une cadence de travail qui est au moins égale à celle des commissions les plus chargées de l’Assemblée, c’est-à-dire la commission des lois, la commission des finances ou celle de affaires sociales, c’est un rythme au moins égal.’

‘One needs to display a strong commitment, to show that one is willing to work, because it is a Delegation that works enormously, because we examine all of the directives and regulations that pass before going to the Council of Ministers. We have a lot of meetings.’<sup>105</sup> (interview 7)

In contrast to the situation in the 90s, almost all interviewees underline the EAC’s consensual working style during the Lisbon period (interview 14, interview 20). At first sight, this seems to differ from the practice in the standing committees. However, as the committee work is part of the ‘invisible’ politics, it is not clear whether the committee working style in the Assemblée nationale is as conflictual as is often pretended (Costa and Kerrouche 2007). For the Bundestag’s committees participant observation has recently refuted the often-described conflictual working style in the literature (Oertzen 2006). The emphasis on a consensual working style in the committee might be a conscious or unconscious means by French MPs to describe the EAC’s working style in accordance with the role expected from them: the representation of French voters’ interests.

The European affairs body takes slowly up functions that are partially *functional equivalents* for EU affairs to the usual practice of committees in the Assemblée nationale: 1) MPs in the European affairs body put important EU legislation concerning French voters again on the French political agenda improving the chamber’s *responsiveness*, and 2) they provide *information* to the Assemblée nationale as a whole. Both serve in the first place the Assemblée nationale’s typical dominant functions of *responsiveness* to French voter’s concerns and *information* and *deliberation*.

Firstly, like the standing committees, the European affairs body offers the house as a whole a filter for politically interesting legislative acts. While the standing committees play the role of ‘grave-diggers’ (see page 70) (Miles 2011) of legislative proposals stemming from MPs who try to satisfy demands stemming from stakeholders in their circumscriptions, the EAC

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<sup>105</sup> ‘Il faut quand même euh si je puis dire montrer patte blanche, montrer qu’on a envie de travailler parce que c’est une délégation qui travaille énormément puisque on étudie toutes les directives et les règlements qui passent avant d’aller en Conseil des ministres. On a beaucoup de réunions.’

plays the inverted role of ‘grave-opener’ or ‘resuscitator’ of issues important for French stakeholders withdrawn from the political debate in France because policy-making takes place on the EU level. However, the parliamentary core function concerned is the same: *being responsive* with regard to the concerns of French stakeholders (and neither *control*, nor *legislation*). As will be shown in the following, the filtering is highly political and fragmented, and fundamentally different from the filtering carried out by the Bundestag. The latter’s sifting follows an almost bureaucratic logic that, in contrast to the Assemblée nationale, is all-encompassing, covering the whole breadth of EU decision-making.

All incoming EC draft acts are first sifted by the clerks of the European Affairs Service of the Assemblée nationale. These clerks distinguish between documents on which no further parliamentary scrutiny is necessary and those that need further examination (interview 21).

The clerks of the EAC’s European Affairs service sift the incoming EU documents in close coordination with the EAC’s chairman. This should not be mistaken for an ‘administrative’ screening of the documents, a ‘clerks-driven’ sifting exercise (see also Thomas/Tacea 2015), or even ‘agenda setting’ (Högenauer and Neuhold 2015). Parliamentary clerks are well instructed by the chairman of the EAC and its members about the areas of EU decision-making in which they are interested for their voters in the circumscriptions or more generally. Communication is regular and flexible (interview 21). This working mode in the Assemblée nationale finds its objectification and illustration in a similar working mode in the Sénat. The European Affairs Service of the Sénat has established ‘lists’ of priority areas for scrutiny, which change with the Senators who compose the EAC. Acts belonging to areas of issue that are not on the priority lists are cleared upon arrival and are not screened any further for parliamentary deliberation (interview 12).

During the Lisbon period, the sifting in the Assemblée nationale is increasingly a profoundly political *intermediation and representation* exercise fragmented along the selective choices of the members of the European affairs body and depending on the input from their circumscriptions. Issues of importance for the local or regional communities and the agricultural sector are represented the most strongly (interview 12). The sifting is destined in

the first place to improve the *input responsiveness* of the Assemblée nationale, and not to control the breadth of the government's negotiations in the Council or to impact the content of EU legislation.

This role orientation is also illustrated by the fact that central actors continue to describe the scrutiny work as a 'fastidious' bureaucratic exercise (interview 20) – despite major efforts undertaken by the European Affairs Service to systematise the screening (Thomas and Tacea 2015) – while actors in the Bundestag have a tendency to valorise the important efforts made to scrutinise the whole breadth of incoming documents. For the purposes of response to a selective number of issues that are potentially interesting to voters in the circumscriptions, the systematic screening of incoming documents is indeed an important effort to reproduce a *functionally equivalent* outcome.

The fact that the sifting is not destined for government *control* is illustrated by the recurrent description of the work by clerks as an exercise necessary to *facilitate* the government's work, which would otherwise be bound by unnecessary 'reserves' while negotiating in the Council.<sup>106</sup> Thus, the main aim of the reorganisation of the sifting is not the more effective screening of the incoming EU documents in order not to miss important issues. Instead, the aim is to 'lighten' the administrative burden for the government:

'With the increase of documents we had to organise the selection more systematically. The documents are sent to the administrator that is responsible for the issue area. The person then has 3-4 days to decide if the document can be cleared.

You know this is necessary because of the parliamentary reserve. This is a very administrative ('une chose notariale') thing, not very useful ('inutile') for most of the documents. Big parts of the document we get are technical documents and things not politically interesting. We wanted before all to simplify the life of the government. You know this concerns 60-80% of the document flow.' (interview 21)

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<sup>106</sup> Interviews with civil servants in the permanent representation of France confirm that the 'parliamentary reserves' are likewise seen as a bureaucratic exercise from the government side (Auel, Rozenberg, and Thomas 2012).

Already Alain Barrau, PS, chairman of the EU Delegation from 1999-2002, considers that the scrutiny is the ‘duty’ of the Delegation, but that the truly important work of the body is to foster public debate on the EU and to inform fellow MPs and to the citizens that the EU is an important political framework (interview 8). Accordingly, for his successor Pierre Lequiller, UMP, the aim of the work of the EU Delegation/Committee is to foster EU debates in the chamber, to organise public information hearings with EU actors, and to foster public debate on EU issues more generally (interview 7). This has repercussion in the action patterns of the Assemblée nationale during the Lisbon period (see page 241).

This shows again that the parliamentary reserves, which are an important achievement by chairman of the Delegation Pandraud during the ‘pre-Maastricht period’, do not match the parliamentary ways of doing things and the usual practice of interaction between the government and the parliament. In cases in which there are still open parliamentary reserves when the issue is tabled in the Council, the reserve is lifted in close cooperation between the government and the chairman of the Delegation (Auel, Rozenberg, and Thomas 2012).

Secondly, the European affairs committee is an *information* provider for the plenary and the house as a whole and tries to enhance in particular the *deliberative* function of the chamber in EU affairs.

Much more than in the Bundestag, the permanent committees in the Assemblée nationale have an information role for the plenary and the chamber as a whole (Kimmel 1991, 91–116). In parliamentary reality, they have much less of a role in decision-making and legislation. The role of the standing committees in the Assemblée nationale is to prepare the legislative debate in the plenary in terms of content and arguments, and not in terms of decision-making. The bulk of the amendments are presented in the plenary.

The Constitutional revision of 2008 only changes this practice at the margins. The basis for the plenary debates is presently the texts that the standing committees have already amended and not the original government draft laws, as was the rule before. In practice, however, amendments are still presented both in the committee and in the plenary. Usually, amendments rejected in the committee are even presented again in the plenary. The opposition continues to

present its amendments regardless, preferably in the plenary because of the increased political and symbolical character of a rejected amendment in public (Gicquel 2011, 7). The legislative function of the – since 2008 – eight standing committees is thus still restricted in practice. They serve mainly as a body for the information of the plenary and the Assemblée nationale as a whole, and for the preparation of the arguments for the plenary.

The EAC fulfils a similar information role first through the so-called ‘European Resolutions’ (see also page 204 for the chamber’s activity as a whole). The actors of the European affairs body have reframed these resolutions into an information tool for the standing committees and the Assemblée nationale as a whole. As shown in chapter III (see page 122), European Resolutions were introduced into the chambers during the Maastricht period to foster control of the government on EU issues. Actors from a powerful anti-Maastricht coalition prominently promoted and initially used them to control the government (see page 132).

In retrospect, however, this type of use was only important for a short period of time under the chairmanship of Robert Pandraud. The fact that dissatisfaction with EC/EU parliamentary participation at the time was high, leads to the assumption that the important use of European Resolutions was not ‘competent’ activity that was coherent with usual practice in the chambers, and more generally could not foster the chambers’ input legitimacy. Rather than being destined for the parliamentary control of day-to-day decision-making, it was destined for the public control of the integration-friendly policy of a Centrist executive. Since then, European Resolutions have lost their importance in number.

Since the Constitutional revision of 2008, the actors in the EAC have reframed them from an instrument of control into a tool for the information of the Assembly as a whole (see page 204). Through the change of the European affairs body’s statute from ‘delegation’ to ‘special committee’, the European affairs body can now adopt resolutions on its own. Before, the Delegation depended on the responsible standing committee for the adoption of a European Resolution. Under the threat of a European Resolution by the EAC, sectoral committees presently feel more obliged to debate communications of draft acts stemming from the EAC because they fear resolutions in their field of competence to which they have not taken the



chance to contribute. As a consequence, the committee often uses them as a tool for ‘inciting’ the sectoral committees to debate an issue (interview 11).

In same line of argument, actors of the European affairs body have tried above all to promote formal rules that help the body to enhance this *information role* for the Assemblée nationale as a whole (see page 194), i.e. to act in a ‘more competent’ manner with the existing practices in the chambers. The European affairs body selects in particular the following new competences as important to give it the possibility to inform fellow MPs early regarding issues in their interest:

Since 2008 the EAC has the right to deal with any EU document notwithstanding the sector or the stage of progress of the document in EU decision-making (Commission affaires européennes 2012, 24). The new version of the Constitution grants the two French chambers the possibility to debate and issue resolutions on any document stemming from EU institutions without being obliged to wait for the government’s submittal. For the first time, this also includes the documents on the Common Foreign and Security and Policy (CFSP) and the Common Security and Defence Policy (CDSP). While since a circular letter by the government in 1999 documents of other policy areas were regularly transmitted to both chambers on a voluntary basis, these policy areas were completely withdrawn from parliamentary control.

Furthermore, the EAC obtained the possibility to issue *information* on its own initiative to sectoral committees in case they deliberate on issues that have a link to European legislation<sup>107</sup> (Thomas and Tacea 2015, 173–74). The EAC actively uses this right. In the XIIIth legislative period, for example, it produced 26 annexes for information reports of sectoral committees (Commission affaires européennes 2012, 24).

This evolution is also translated into a growing number of joint meetings between the EAC and the sectoral committees, from seven joint meetings in the XIIth legislative period to 32 in the succeeding one. The meetings mainly concern the committees for the economy,

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<sup>107</sup> 151-1-1 Standing Orders Assemblée nationale.

finances, sustainable development, and external affairs (Commission affaires européennes 2012, 24).

The committee obtained the right to engage in legislative dossiers linked to the competences of the EU, which are dealt with in the sectoral committees. The EAC actively uses this right as well. In 2009, the EAC engages in the legislative process on the postal reform, and in 2010 on a larger national environmental reform (Commission affaires européennes 2012, 24).

Furthermore, the standing orders of the Assemblée nationale foresee that one session during the parliamentary ‘control week’ is reserved to European issues. Thus, reinforcing the *deliberative* function of the chamber in EU affairs. According to the 2008 version of the Constitution, this week is reserved to ‘the monitoring of government action and to the assessment of public policies’<sup>108</sup>. Again, here control must probably be seen in an *responsiveness* and *deliberation* perspective. The European affairs body itself interprets this new prerogative in the standing orders as a possibility for the plenary to ‘[...] debate at least once a month about Europe’<sup>109</sup> (Commission affaires européennes 2012, 16). Questions to the government allow French MPs to gather information on dossiers that are interesting for their voters, and to obtain a possibility to publicly show that they defend stakeholder interests in their circumscriptions or to foster public debate about EU issues.

This evolution of the EAC into the information hub of the Assemblée nationale can be interpreted as an attempt to normalise the former’s functioning according to the usual parliamentary practices of committees in the Assemblée nationale. Actors use the formal instruments foreseen to participate in EU decision-making in a way that is ‘competent’ regarding domestic practice. During the Lisbon period, the EAC tries to develop its competence in distributing information to fellow MPs in order to give them the opportunity to fulfil their

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<sup>108</sup> Article 48.8 Standing orders of the Assemblée nationale.

<sup>109</sup> ‘[...] débattre d’Europe au moins une fois par mois’

‘representation and interest intermediation role’ towards both their stakeholders and the government.

### **b) Agents of change of formal rules**

During the Lisbon period the European affairs body slowly becomes an agent of change. During the preparation of the ratification of the Constitutional Treaty, the Delegation under the chairmanship of Pierre Lequiller takes stock of the parliamentary rights acquired so far and issues an important information report of which most major proposals are finally implemented in the major reshuffling of French institutions in 2008.

While the EU experts only manage to push a small part of their claims through during the negotiations on the constitutional revision at the occasion of the (failed) ratification of the Constitutional Treaty, almost all claims formulated by the 2005 ‘Lequiller Report’ (Assemblée nationale 2005) are taken up in the Constitutional revision aiming to ‘modernise’ French institutions in the summer of 2008.

Important in this period is the fact that the battles on prerogatives for parliament in EU matters are much less mediatised than they were during the Maastricht period, in which the so-called sovereignists played an important role. Negotiations about adaptations of parliamentary rights on the control of EU issues seem to be carried out behind closed doors. The preparation of the major constitutional revision in 2008 through an expert committee chaired by Edouard Balladur is probably an important window of opportunity for the EU experts to push their claims through. An important argument used by members of the EAC for pushing their claims through is the perpetual ‘mantra’ that, in particular, the new ‘denomination’ of the EAC would not change the ‘usual’ parliamentary ways of doing things and would thus not interfere with the competences of the standing committees.

## *The EAC: Constitutional revision 2008 and 2009*

There is only one major change in parliamentary prerogatives for the French parliament in the Lisbon period. It takes place in the summer of 2008 in the course of a reform of the French Constitution reaching beyond the prerogatives on European affairs of the French parliament<sup>110</sup>. The 2008 constitutional revision is a long-term project aiming among others to rebalance the powers of the parliament and those of the executive, and to strengthen the notoriously weak French parliament (Gicquel 2011; Magnon et al. 2012; Mathieu 2008).

The constitutional revision is prepared by a specialist committee called '*Comité constitutionnel*' (Comité constitutionnel 2008) under the chairmanship of former French Prime Minister Edouard Balladur.

The new prerogatives concerning EU participation foreseen in the Constitutional revision seem to be the fruit of a lobbying process by the EU experts of the Delegation for the EU, and in particular its chairman. In contrast to the Maastricht period, this happens without attracting much media attention in exchanges between the government majority and the government. Similarly to in the Bundestag, political windows of opportunity on the national level seem to have finally helped to realise the claims.

As early as 2005 the Delegation uses the occasion of the upcoming ratification of the Constitutional Treaty and its revision to take detailed stock of its activities and the shortcoming of the dealings of European affairs in the Assemblée nationale since the Treaty of Maastricht.

'After 12 years of existence, article 88-4 appears to have reached the age of reason. An equilibrium has been found which guarantees the Parliament good information of the European institutions' normative activity and allows it to control the governments' European policy. The difficulties encountered at the beginning of the implementation of

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<sup>110</sup> The prerogatives for national parliaments foreseen in the Lisbon Treaty (linked to simplified treaty revision procedures, passerelle clauses, and the Early Warning Mechanism on subsidiarity) are already introduced in a minor Constitutional revision in February 2008.

article 88-4 have disappeared, whereas the evolution of the European integration process now makes new ones appear.’<sup>111</sup> (Assemblée nationale 2005, 35)

The report is signed by the chairman of the Delegation, Pierre Lequiller, who has been in office since 2002 and who was member of the Convention on the Future of Europe from 2002 to 2003, holding thus important EU and parliamentary experience.

The claims formulated by the Delegation focused on certain central points, which concern information rights and the statute of the Delegation (Assemblée nationale 2005). All claims are carefully formulated. This is probably due to the knowledge that not only the government but also the chairmen of the six standing committees are reluctant to grant extended participants, as they fear a change in their power basis and the ‘usual ways of doing things in parliament’:

‘[...] The Delegation for the European Union should not simply change its name, but change its status too. The problem with this point is not so much the Constitution as the opposition from the committee presidents. This revision is the occasion to raise this problem again, a problem that for many is simply a matter of the interior rules of the Assemblée nationale. The current means are in any case not at the height of the importance of the issue ’<sup>112</sup> (Pierre Lellouche quoted in Assemblée nationale 2005, 59)

Concerning the government, the report considers that the Assemblée nationale does not have problems gaining information anymore, as

‘the “Josselin” (1990) and “Pandraud” (1994) laws indeed guarantee the right to information, as they impose on the government to transmit to the Delegations for the European Union of the Assemblée nationale and the Sénat all necessary documents

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<sup>111</sup> ‘Après douze ans d’existence, l’article 88-4 semble avoir atteint son âge de raison. Un équilibre a été trouvé qui garantit au Parlement une bonne information de l’activité normative des institutions européennes et lui permet de contrôler la politique européenne du gouvernement. Les difficultés parfois rencontrées dans les débuts de la mise en œuvre de l’article 88-4 se sont estompées, tandis que l’évolution de la construction européenne en fait désormais apparaître de nouvelles.’

<sup>112</sup> ‘[...] [L]a Délégation pour l’Union européenne ne devrait pas simplement changer de nom, mais de statut. Le problème sur ce point n’est pas tant la Constitution, que l’opposition des présidents de commission. Cette révision est l’occasion de poser à nouveau le problème, qui relève pour beaucoup simplement du règlement de l’Assemblée nationale. Les moyens actuels ne sont, en tout état de cause, pas à la hauteur des enjeux.’

established by the different EU institutions, with the exception of nominative acts. The parliament also needs to be kept informed of the negotiations in progress <sup>113</sup> (Assemblée nationale 2005, 36).

In the same paragraph, the report states that the Assemblée nationale can only issue resolutions on about one-quarter of the acts transmitted to it by the government because only they fall under article 88.4 French Constitution.

After praising the government for respecting the parliamentary reserve of four weeks that it imposed on itself, and emphasising the fact that the parliament has introduced a new emergency procedure in order to render the life of the government less difficult in case a rapid decision is necessary in the Council (Assemblée nationale 2005, 37–38), the report cautiously suggests that a reform of the procedure for resolutions would be much more efficient in avoiding dealing twice with the same issue, first in the Delegation and then in the permanent committee. Furthermore, the report stresses that the Delegation has highly positive experiences with the adoption of conclusions that it can send directly to the government. The latter do not engage the chamber as a whole, but are taken seriously by the government: ‘Toutefois, les conclusions ont acquis au fil des années un poids politique dont tient compte le gouvernement dans le cadre des négociations européennes’ (Assemblée nationale 2005, 39).

The report argues that a reform of the procedure for resolutions would primarily remedy the steady decrease in resolutions debated in plenary sessions (and render them quicker) because it would lighten the burden on the permanent committees. The report underlines the fact that the existing logic of the procedure would be maintained (adoption through the permanent committee) but that if the permanent committee did not consider a deliberation on

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<sup>113</sup> ‘les lois “Josselin” (1990) et “Pandraud” (1994) garantissent en effet le droit à l’information puisqu’elles imposent au gouvernement de transmettre aux Délégations pour l’Union européenne de l’Assemblée nationale et du Sénat tout document nécessaire établi par les différentes institutions de l’Union, à l’exception toutefois des actes nominatifs. Le Parlement doit également être tenu informé des négociations en cours.’

the resolution necessary, it would automatically become an adopted resolution of the whole chamber after a delay (Assemblée nationale 2005, 40).

In the following, the report cautiously explains that European Resolutions are only a political instrument and do not legally engage the government or oppose its positions:

‘In any event, the parliamentary resolutions under article 88-4 are not legally binding, their scope is exclusively political’<sup>114</sup> (Assemblée nationale 2005, 41).

Furthermore, the same sub-chapter explains that European Resolutions in France only have two effects in practice: either they strengthen the government’s position by supporting it, or they make the government’s positions slightly firmer. The report emphasises the fact that European Resolutions never oppose the government (Assemblée nationale 2005, 41).

It is only much later, after explaining that the new European framework has led to major changes, that the report cautiously formulates the claim that the distinction between the law and regulatory domain in the French Constitution should be abolished to render the control system more ‘comprehensible’ and ‘efficient’, because European legislation does not take care of the distinction made in the Constitution. The report proposes that the government by default submit all EU legislative acts and those acts that concern the law domain in the Constitution (Assemblée nationale 2005, 45). This would also make the interparliamentary cooperation more operational. The report emphasises that this submittal should without any doubt remain ‘optional’ for the government – i.e. there should not be an obligation for the government fixed in title XV of the Constitution.

Only in a sub-chapter even further, called ‘Beyond article 88.4’, does the report finally suggest that the government should accompany the transmittal of information by information notes on the state of the negotiations in the Council and on the French position. The report humbly presents this claim as a result of the best practice exchanges within COSAC, and

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<sup>114</sup> ‘En tout état de cause, les résolutions parlementaires de l’article 88-4 n’ont aucune valeur juridique contraignante, leur portée étant exclusivement politique.’

cautiously suggests that such information notes would be ‘welcome’ (Assemblée nationale 2005, 54).

Finally, and also under the ambiguous heading ‘Beyond article 88.4’, the report cautiously asks for the change of statute of the Delegation by slightly misleadingly suggesting a ‘change of the denomination of the Delegation’. The argument is that neither French citizens nor the European partners understand what the function of a ‘delegation’ is. In all other parliaments of the EU, the name of the European affairs body is ‘commission’ (Assemblée nationale 2005, 51–52).

The report underlines that the change of name would not impede on the role and statute of the standing committees, and that it would not be mentioned among the standing committees in article 43 French Constitution, but only in title XV of the French Constitution:

‘A change of name would not infringe on article 43 of the Constitution, which limits to six the number of permanent committees with legislative character and in charge of the general control of the government. The aim is indeed in no way to institute a seventh committee. This is why this committee would fall under title XV of the Constitution on the European Communities and the European Union, and not article 43, which addresses the six permanent committees’<sup>115</sup> (Assemblée nationale 2005, 51).

It explicitly underlines the fact that the committee would keep its special and transversal nature and would in any case impede on the legislative prerogatives of the six standing committees:

‘Given its transversal composition, in the sense that it comprises members of the six permanent committees, the committee for the European Union would keep a specific role, *sui generis*, without infringing on the competences of the permanent commissions.’

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<sup>115</sup> ‘Un changement de dénomination ne porterait pas atteinte à l’article 43 de la Constitution, qui limite à six le nombre des commissions permanentes à caractère législatif et chargées du contrôle général du gouvernement. Il ne s’agit en effet nullement d’instituer une septième commission. C’est pourquoi cette commission serait visée dans le titre XV de la Constitution sur les Communautés européennes et l’Union européenne et non pas à l’article 43 qui traite des six commissions permanente.’



Legislative projects or propositions would not be sent to this committee.’<sup>116</sup> (Assemblée nationale 2005, 51).

The Delegation for the EU does not manage to include any of these claims in the constitutional revision of 2005 (before the potential ratification of the Constitutional Treaty), except for an obligation for the government to submit a legislative act of the EU if it is asked by the speakers of either the Assemblée nationale or the Sénat, the chairmen of the EU Delegations, or either 60 Senators or members of the Assemblée nationale.<sup>117</sup> This low level of success is remarkable, as the chairman of the Delegation considers himself close to the then Prime Minister, Jean-Pierre Raffarin (interview 7). Opposition to plans to change status and prerogatives of the Delegation for the EU are too high among the chairmen of the Assemblée nationale’s standing committees.

However, the claims by the EAC surface again in 2007 in the preparation of the already mentioned Constitutional revision. In its final report issued on 29 October 2007, the expert committee preparing the revision, chaired by former Prime Minister Edouard Balladur, takes up two central claims formulated in the 2005 Lequiller report into its proposals for a constitutional law reforming the French Constitution: first, the change of the denomination of the Delegation for the EU; and second, the definite end of the distinction between EU draft falling under the ‘law domain’ of the French Constitution and those which do not, and consequently the submittal to parliament of all documents stemming from an EU institution (Comité constitutionnel 2008, 10). Furthermore, the ‘Balladur committee’ takes up the suggestion in the 2005 report to

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<sup>116</sup> ‘Du fait de sa composition transversale, dans la mesure où elle comprend des membres des six commissions permanentes, la commission pour l’Union européenne conserverait un rôle spécifique, sui generis, sans empiéter sur les compétences des commissions permanentes. Les projets ou propositions de loi ne lui seraient pas envoyés.’

<sup>117</sup> The latter prerogative is introduced by an amendment by the chairman of the Foreign Affairs Committee, former Prime Minister Edouard Balladur, and one of the members of the latter standing committee, Hervé de Charette.

simplify the procedure for transposals of EU acts into national law (to be transposed through the standing rules of the chambers).<sup>118</sup>

This time, several factors facilitate the introduction of the new prerogatives. First, the proposals are elaborated by an expert committee, and as a consequence the opposition internal to the parliament is probably to some degree circumvented. Furthermore, Prime Minister Edouard Balladur and some members of the committee have long-term experience in EU affairs, either in governmental positions or within the EU institutions, such as ex-MEPs Jean-Louis Bourlanges and Olivier Duhamel (Comité constitutionnel 2008). In addition, the few political personalities from the right wing and centre in government heard by the committee include not only ex-Prime Minister Jean-Pierre Raffarin, to which the chairman of the Delegation is close, but also several MPs interested in EU issues, such as Patrick Devedjian (UMP) and François Sauvadet (UDI). The chairman of the Delegation, Pierre Lequiller, has excellent networks both in his own party UMP and in the Assemblée nationale, where he has also been member of the Foreign Affairs Committee with minor interruptions since 1993. The Foreign Affairs Committee is one of the most prestigious committees in the Assemblée nationale, in which a number of his party colleagues are represented who held high government offices in the past, such as former Prime Minister Edouard Balladur. He also holds a particular position of trust within the EU Delegation, which has a consensual working style. The MPs who are members of the Delegation give Pierre Lequiller great leeway to manage European affairs and lobby for reformed prerogatives (interview 20).

The remaining claims of the 2005 report are finally taken up either during the parliamentary deliberations on the constitutional law or in the reforms of the standing orders of the two French chambers.

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<sup>118</sup> With reference to European affairs, the ‘comité constitutionnel’ furthermore suggests reforming the provisions on a necessary referendum before the entry of new EU member states that were introduced in the French Constitution before the referendum on the Constitutional treaty. The convocation of a referendum is no longer obligatory but follows the ordinary procedure under article 89.

During the deliberations on the constitutional law, the Delegation even obtains in having the new body foreseen in article 88.4 of the French Constitution be called committee ('commission'), such as the standing committees, and not only commission ('comité'), as had been foreseen in the initial draft constitutional law. Two amendments in this sense are adopted, submitted by MPs François Sauvadet (Nouveau Centre, NC) and Jean Christophe Lagarde (NC) (Assemblée nationale 2008b), as well as Daniel Garrigue (no affiliation, Gaulliste) (Assemblée nationale 2008a).

MP Daniel Garrigue withdraws another amendment that asks that the new EAC be able to express its view in the plenary on each draft legislative act for which it considers intervention necessary, but the chairman of the Law Committee promises that the question will be taken up in the new standing orders following the constitutional amendment:

'M. Daniel Garrigue: I've come to understand that regarding European affairs, one really needs to go forward step by step and hence I take note of the date appointed for the reform of the regulation. I am happy about the openness displayed by Jean-Luc Warsmann, rapporteur and president of the law committee on the amendment number 22, which I withdraw.

Chairman: M. Pierre Lequiller has the floor.

M. Pierre Lequiller: I completely agree with M. Warsmann's words on M. Garrigue's amendment and I take note of them. I also believe that it would be useful if the committee in charge of European affairs could express itself during plenary sessions because the texts that we debate can often be addressed from a European angle. Monsieur le rapporteur, we agree: it is useless to address this question in the Constitution. However, do not forget to think of the committee in charge of European affairs during the next modification of the regulation of the Assemblée nationale.

Chairman: Amendment n°22 is withdrawn. I put to the vote article 32, modified by the adopted amendments.'<sup>119</sup> (Minutes of the plenary debates, constitutional revision 2008).

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<sup>119</sup> 'M. Daniel Garrigue : J'ai fini par comprendre que, sur les affaires européennes, il fallait vraiment avancer pas à pas et je note donc le rendez-vous pour la réforme du règlement. Je suis heureux de l'ouverture qu'a montrée Jean-Luc Warsmann, rapporteur et président de la commission des lois sur l'amendement n° 22, que je retire.

M. le président : La parole est à M. Pierre Lequiller.

M. Pierre Lequiller : Je suis tout à fait d'accord avec les propos de M. Warsmann au sujet de l'amendement de M. Garrigue et j'en prends bonne note. Je crois aussi qu'il serait utile que la commission chargée des affaires européennes puisse s'exprimer en séance publique car les textes dont

Other central claims of the 2005 report, such as the reform of the procedure for the adoption of resolutions, are also put into place through the reform of the standing orders.

## 2) Action and participation patterns

This second sub-section analyses which action results from the agency in the chamber described above, and which interaction MPs in the Assemblée nationale have with EU transnational actors during the Lisbon period. Action is now more patterned, because actors try to find EU participation modes that fulfil as *functional equivalents* the role that MPs play at the domestic level, i.e. of ‘representation and interest intermediation’. EU activity mostly does not aim to control the government’s negotiations in the Council, and aims even less than in the Maastricht period to influence legislative draft acts. It focuses on establishing a ‘steady dialogue’ about broad guidelines with the government in order to raise the latter’s awareness about issues potentially problematic for French voters. Actors in the EAC try to reproduce the chamber’s deliberation function on the domestic level by increasingly opening their meetings to the public. The interaction of MPs with EU transnational actors reproduces the ‘steady dialogue’ on the European level to enhance the chamber’s *responsiveness*. This steeply increased exchange with French MPs in the EP and (to a lesser extent) the European Commission serves the *representation* of French voters’ interests.

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nous débattons peuvent souvent être abordés sous l’angle européen. Monsieur le rapporteur, nous sommes d’accord: il est inutile d’aborder cette question dans la Constitution. En revanche, n’oubliez pas de penser à la commission chargée des affaires européennes lors de la prochaine modification du règlement de l’Assemblée nationale.

M. le président : L’amendement n°22 est retiré. Je mets aux voix l’article 32, modifié par les amendements adoptés.’

### **a) Use and meaning of formal and informal instruments**

During the Lisbon period, the activity of the chambers is more clearly patterned and typified as a *functional equivalent* in EU affairs to the chamber's main domestic functions of *responsiveness* to stakeholders in the circumscriptions and (to a much lesser extent) public deliberation.

During this period, MPs in the Assemblée nationale develop patterns of activity that allow them to act more competently in EU affairs with reference to domestic parliamentary practice. The Assemblée nationale's domestic role of 'interest representation and interest intermediation' is fulfilled in European affairs through a stronger role of the chamber as 'partner' of the government searching to 'alert' the latter in case EU draft acts might cause difficulties to French voters as a whole.

The role that MPs see for their parliament in EC/EU decision-making becomes increasingly clearly typified. In contrast to parts of the Maastricht period, in the years 2002 and 2012 (and thus after the implementation of the Treaty of Lisbon) MPs interviewed from different parliamentary majorities consider the relationship between the majority and the government to be a 'good and honest' one (interview 7, PS, interview 8, interview 21). In contrast to some of their colleagues in the first period, MPs consider that the government has an 'honest' relationship with the MPs of the majority as far as concerning the information about negotiations in the Council (interview 7, interview 8) and even with the opposition. This estimation is widely shared throughout both chambers among MPs and clerks in interviews carried out in 2012 as well.

A parliamentary clerk suggests that the more open governmental information policy than in the Maastricht period results from the fact that the government has learned 'by doing' that it does not have to fear anything publicly from its majority. On the contrary, to spread information to its majority helps to identify potentially electorally difficult EU dossiers, because the MPs are close to the voters in the circumscriptions. The parliamentary clerk acknowledges that there is a sort of self-censure of parliamentary clerks to give away sensitive information

potentially useful for the opposition MPs to use against the government (interview 14, interview 21).

A committee clerk describes the perception of the EAC in the following way:

‘We think that the parliament’s task is to alert the government on problematic issues. It is important for the government as well to avoid potentially politically problematic points. Problematic issues are raised only very late on the political level in EU decision-making processes. When parliament alerts, the government can put a small explanatory note in the file of the minister and he will pay attention.’ (interview 21)

Some MPs of the parliamentary majority already conceived of themselves as ‘partners’ of the government in EU decision-making in the first period, and defined their role as one of ‘alerting’ the government to potentially politically difficult issues that could cause problems in the circumscriptions. In the Lisbon period there seems to happen a clarification of ‘ideas in people’s minds’ (Adler and Pouliot 2011) about the relationship with the government.

Accordingly, information, which was a major problem during the Maastricht period, is no longer a problem in the Lisbon period. This is a reverse evolution to the perception of the MPs in the Bundestag, for whom information was no problem during the Maastricht period, but is a major one in the Lisbon period. MPs and clerks of the *Assemblée nationale* do not see strong problems in obtaining information about the negotiations in the Council during the decision-making or after the decisions have been taken. The positive working relationship between the officials of the *Secrétariat Général des Affaires Européennes*<sup>120</sup> (SGAE) or the government ministries and the administrators of the chambers, who have a comparable standing as high-ranking state civil servants, is of high importance here:

‘[...] we get a lot of information. This is the difference to the Bundestag for example. [...] We have access to the cables from the representation, even if we do not see everything, like for example the instruction for the ministers.’ (interview 21)

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<sup>120</sup>The General Secretariat for European Affairs (or SGAE) is a government agency that reports directly to the French Prime Minister. It is in charge of interministerial coordination of the position of the French authorities on issues related to the EU and the Organisation for Economic Co-operation and Development.

This open information policy does not mean that the process of ‘alerting’ the government is always without difficulty in this second Lisbon period. Members of the government majority may use the European Resolutions as a menace to blame the government publicly.<sup>121</sup> However, MPs of the *Assemblée nationale* and even of the *Sénat* first always use informal ways of informing the government about their concerns – or they at least use formal and informal ways in parallel:

‘If we want to influence on an issue, we will have to go two ways: the formal and the informal. The formal way is important because it gives you visibility and power. But you have to try out the informal ways at the same time to make yourself heard’ (interview 10).

As French MPs are in practice used to playing the function of ‘interest intermediators’ and not so much that of controllers or legislators in the literal sense, the *Assemblée nationale*’s MPs are furthermore only highly selectively interested in direct information about the details of the negotiations in Brussels. Furthermore, they do not systematically control whether their point of view has been retained after the decisions have been taken in Brussels. This is not as clear in the interviews regarding the Maastricht period. In the latter, interviewees sometimes express the wish to have more possibilities for control *ex post*.

MPs sometimes follow up dossiers in which they are interested individually *via* the parliamentary clerks who are in close contact with either the SGAE or the responsible government official. However, the purpose of this follow-up is not to control government activity, but again to fulfil their role of ‘interest intermediators’, i.e. to dispose of the necessary information to be able to show to stakeholders in the circumscriptions that they are ‘well informed’ about how things proceed (interview 12).

In accordance with the French MPs’ weak law-making role on the domestic level, during the Lisbon period parliamentary participation continues to come in mostly during the decision-

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<sup>121</sup> The opposition can only hardly obtain the necessary majorities to adopt a resolution.

making phase, even if actors describe participation as intensified. On individual dossiers there is now some activity in the preparation phase by individual MPs and the EAC (interview 9; interview 10; interview 21).

None of the interviewees in the Lisbon period (neither in 2002 nor in 2012) describes the relationship with the government as a process of public control. Instead, MPs describe their attempts to ‘remind’ the responsible government minister at every possible occasion about the important points that they see (interview 13), according to the proverb, ‘Constant dripping wears away the stone’.

The dominating mode of communication, a steady ‘dialogue’ (interview 21; interview 9; interview 10) with the government, can be seen as a sort of ‘awareness raising’. This dialogue takes place as an exchange through reports, questions and hearings to remind the members of the government of issues that are important for French stakeholders. These action patterns reproduce the role of French MPs as representatives of individual interests in their circumscriptions towards the government. Resolutions are mostly seen as serving this dialogue (interview 21).

In terms of their number, in practice the resolutions do not play a significant role during the Lisbon period. If one considers the important increase of documents submitted to the chambers throughout the first decade of the new millennium (which still increases after the Treaty of Lisbon) and the increasing number of documents on which a resolution is potentially possible, resolutions have decreased in importance. While during the 90s European Resolutions were adopted on between 6.6% and 13.5% of the submitted texts under 88.4 of the French Constitution, from 2000 on resolutions are only adopted on between 1 and 2.9% of the submitted texts (with two exceptions in the year 2000 and 2005, when the percentages are 4.5 and 5% of submitted acts, respectively, but are still low).<sup>122</sup>

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<sup>122</sup> The situation is different in the Sénat, where the amount of European Resolutions has increased since the coming into force of the Treaty of Lisbon.

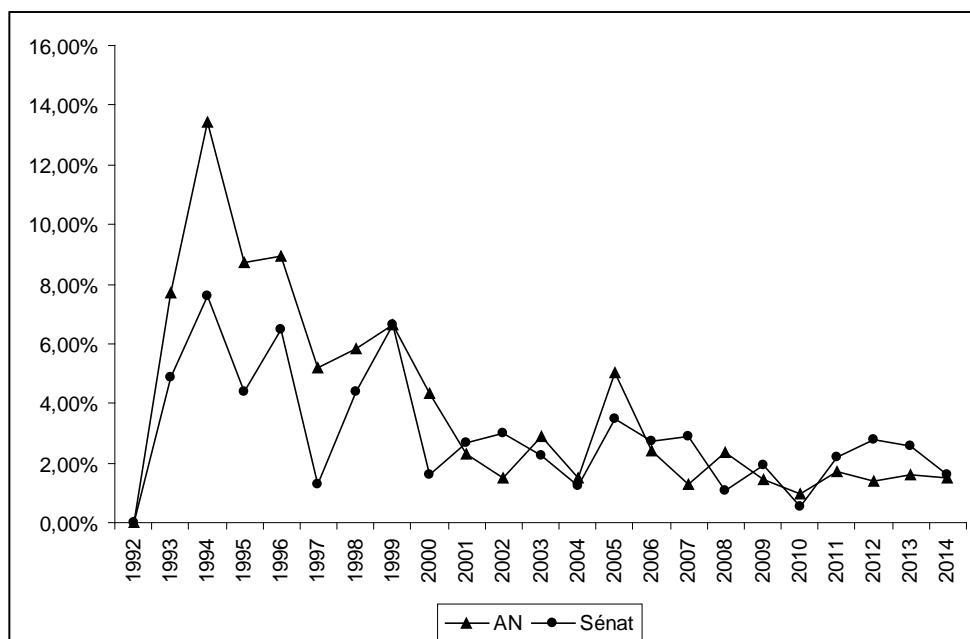


The evidence gained from interviews confirms these data on resolutions. Clerks in the Assemblée nationale acknowledge that MPs consider resolutions to be a slow and inefficient tool.

‘We do not care about formal resolutions. They are a slow instrument. If you have an urgent issue they are not sufficiently quick. You can use them to say something. This is a steady dialogue. You have to find a good political dialogue in the committee and with the government. There are not a lot of cleavages in European matters’ (interview 21).

Direct informal channels to the government are far more important. Even the reform of the procedure for resolutions through the constitutional amendment in 2008 implemented in the standing orders in 2009 does not change this situation. This strongly underlines the accuracy of the estimations that involved actors of the Assemblée nationale give in interviews both in 2003 and 2012.

Figure 5: EU resolutions - percentage of incoming texts falling under 88.4



Source: own calculation on the basis of (Rozenberg 2013, 69), plus own compilation for 2011-2014 on the basis of (Assemblée nationale 2015a; Sénat 2015b; Sénat 2015a).

Even in the Sénat, where interview partners see a stronger interest of senators in resolutions since the 2008 and 2009 reforms (interview 11), clerks and MPs consider them more as a tool to involve the sectoral committees into the scrutiny process than as a tool to interfere in detail with the negotiation processes in Brussels (interview 11). Resolutions are often described as a ‘last’ tool to remind the government of important points without interfering too much with the concrete text of the EU draft laws.

‘We are of the same political colour as the government. Our role is more to alert the government on things they have not seen in proposals coming from the EU level and to tell them what they have to change in order not to get into political trouble – and not to confront the government. A resolution is not the first thing we will do. We will organise hearings with the government and also use our informal contacts. But sometimes we manage to even get joint resolutions with the AN. In this case the government is quite tied (“encadré”) and knows what to do’ (interview 9).

Despite the decreasing use of the highly symbolic European Resolutions since approximately the year 2000 in this Lisbon period, satisfaction with the involvement of the Assemblée nationale in EC/EU affairs has clearly risen and seems to continue to do so in the 2012 interviews after the implementation of the Treaty of Lisbon. This highlights the missing coherence between the European Resolutions with parliamentary practice, role understandings, and ‘usual ways of doing so’.

Interviewed in 2003, François Loncle, PS, member of the committee for foreign affairs in the Assemblée nationale and former member of the Delegation for the EU and the Convention on a Charta on Fundamental Rights, acknowledges that there has been considerable progress in EC/EU-linked parliamentary activity since Maastricht.

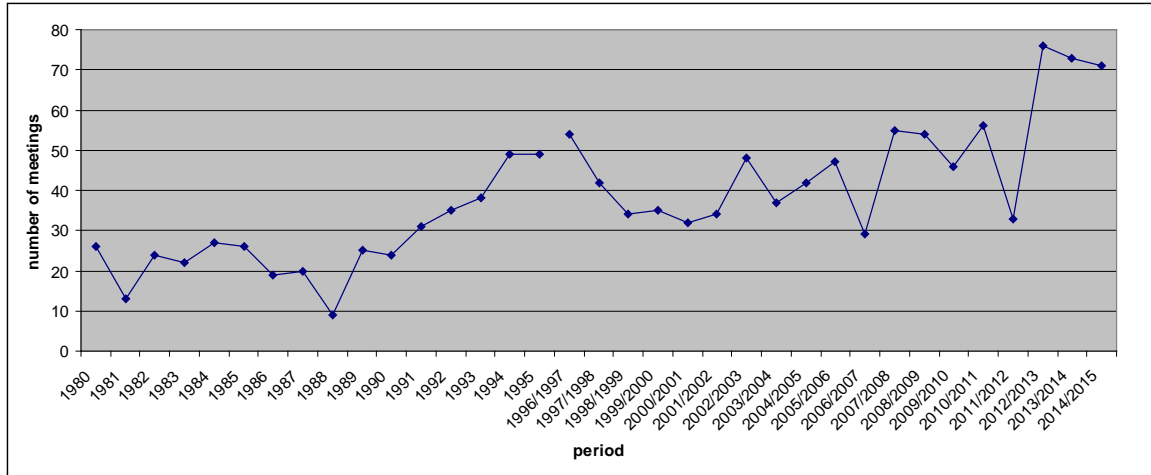
He considers that the Assemblée nationale was largely absent from EU affairs throughout the 70s and 80s and that it is only since the Treaty of Amsterdam that there is some movement in parliamentary participation. For him, the Convention on a Charta on Fundamental rights is an important impulse as well (interview 5). Nicole Catala, UMP, member of the EC/EU Delegation from 1988 until the end of her mandate in 2002 and member of the law committee at the time of the interview, considers that the handling of EU affairs in the chamber has become much more professionalised (interview 1).

The perception of a general progress in satisfaction about parliamentary participation is also a common red line through all interviews carried out in 2012. This is again in strong contrast to the acknowledgements of MPs active in parliamentary EC affairs during the Maastricht period. Of course, this does not mean that MPs who are experts in EU affairs are satisfied with the situation.

Actors, mainly from the EAC, have tried to reinforce the Assemblée nationale's activity with regard to its other main role: *public deliberation, information, and legitimation* to render EU affairs more coherent with parliamentary practice.

As shown above, the activity of the European affairs body is highly important for the overall activity pattern of the chamber because it carries out a substantial part of participation in EU affairs in the Assemblée nationale. The EC/EU Delegation/Committee has steadily extended the number of its meetings even from the Treaty of Amsterdam onwards. The average number of its meetings since the Treaty of Amsterdam is 47.3 per period of parliamentary sittings, while this used to be only 27.3 per year in the period from 1980 to 1995.

Figure 6: Meetings of the EC/EU Delegation/Committee (1980-2014)



Source: Assemblée nationale: Activity Reports 1980-2014/2015 (Assemblée nationale 2015a)

Note: The Assemblée nationale changed the basis for the calculation from annual to legislative sitting periods. For better visibility both periods are represented in the same graph, with a discontinuity indicating the new calculation rules; all downward peaks correspond to periods before general elections (1988, 2006/2007 and 2011/2012).

More important than this extension, however, is that, from the beginning of the 2000s onwards, if the trend after half of the current legislative period holds, the meetings that are open to the press might more than quadruple from the XII (2002-2007) to the current XIV (2013-) legislative period in absolute numbers under chairmen from different parliamentary majorities. Unfortunately, there is no comparable data evidence from the Maastricht period, but interview evidence and an analysis of the parliamentary documents suggest that the publicity of the meetings played less of a role in the previous period (interview 3).

Table 10: Meetings of Assemblée nationale's European affairs body (2002-2015)

Year	2002-2007 (XIIth legislative period)	2007-2013 (XIIIth legislative period)	2013-Sept 2015 (XIVth legislative period)
Chairman	Pierre Lequiller, UMP	Pierre Lequiller, UMP	Danielle Auroi, EELV
Number	69	136	129
Percentage of overall number of meetings open to the public	34%	62%	90%

Source: XIIth and XIIIth legislative periods (Commission affaires européennes 2012); XIVth legislative period (Assemblée nationale 2015a).

According to *wishes* expressed already in the Maastricht period, the activity of the European affairs body in the Assemblée nationale thus develops in the direction of more interaction on EU dossiers with the general public, thus increasing *information* and *deliberation* functions. Activity reports and official statements by the European affairs body underline this as an important evolution. The increasing opening of the European affairs body to the public serves to a certain extent to compensate the still low presence of EU affairs in the plenary and thus to help to enhance the chamber's deliberation and interest intermediation functions. MPs have the possibility to showcase that they defend French voters' interests before the government and they can try to foster public debate about EU issues.

MPs in the European affairs body have claimed a more general involvement of the plenary on EU affairs for a long time. Even if there are no data, at the beginning of the Lisbon period there are some modest improvements concerning EU debates in the plenary according to actors (interview 4). In general, the involvement of the plenary remains low. In 2002, one of its long-term members judges the missing presence of its work in plenary debates as being the weakest point of the work of the Delegation for the EU (interview 1).

Ten years later, interviewees consider the involvement of the plenary as having improved, even if still low. A clerk of the EAC considers that almost all plenary debates with a European dimension continue to be initiated by the EAC of the Assemblée nationale (interview

20). Comparative data on activity in EU affairs indeed show a weak involvement of the plenary of the Assemblée nationale in EU affairs, while the number of committee meetings is relatively high (Auel, Rozenberg, and Tacea 2015).

The reinforced parliamentary participation in the meetings of the European Council, which was introduced in 2005 after the failed referendum on the Constitutional Treaty, follows the same logic. During the Maastricht period, the European affairs body of the Assemblée nationale only exceptionally organised hearings with the minister of foreign affairs or his or her deputy minister/state secretary for European affairs to question them on the preparation or the outcome of European Council sessions (the president is only rarely allowed to speak in the chamber, and was not at all before 2008). Plenary debates were even rarer (see table 5).

The Assemblée nationale now systematically organises plenary debates the day before ordinary European Council meetings (Rozenberg and Wessels 2012), and the foreign affairs minister or his deputy state secretary for European affairs are invited to the EAC after the meetings to report about the sessions in Brussels. Again, the logic of these meetings is not to mandate the government or to control it publicly or non-publicly *ex post*, but to entertain the ‘steady dialogue’ between the parliamentary majority and its government on EU issues, to showcase the MPs’ defence of French voters’ interests, and to inform the wider public about important points on the EU agenda. The latter point can help French MPs in their *input* function. MPs refrain from publicly holding to account their government (Rozenberg and Wessels 2012 see interview with parliamentary clerk Assemblée nationale, Annex 1).

Plenary debates before the European Council are organised too late to have an impact on the negotiations. They do not take place with the president, who represents France in the European Council (interview 14). The president’s political accountability is thus not at stake. Furthermore, the debates are only organised before ordinary European Council meetings, because MPs in the Assemblée nationale themselves argue that a fruitful debate cannot be organised on short notice before extraordinary and special European Council meetings. This is a further indicator that for the longer term these plenary debates are supposed to provide *information* about ongoing EU issues to the chamber and the wider public, and not to serve

immediate control purposes (Rozenberg and Wessels 2012 see interview with parliamentary clerk Assemblée nationale, Annex 1).

The hearings organised after the European Council meetings are mostly not public. However, they do not serve immediate control purposes either as they are a strongly formalised exercise. The meetings start with a statement given by the government minister present, and then time is allocated to individual MPs for their comments. There is no time allocated for the minister to answer the comments. In the interviews with actors of the Lisbon period, this can only be interpreted as a formal activity in line with the ‘steady dialogue’ between the government and its majority present as an institutionalised leitmotiv for parliamentary participation in EU affairs. The hearings thus serve the function of *informing* the MPs about important – more or less confidential – outcomes of the European Council, and the government minister receives immediate feedback about issues on which MPs wish to ‘alert’ the government for future proceedings.

#### **b) Interaction with transnational actors**

Interaction patterns with transnational actors change from the Maastricht to the Lisbon period. The Assemblée nationale’s interaction with transnational actors during the Lisbon period focuses on the European Commission and the EP. They are more coherent with domestic role models in the second period. Experience with EU affairs seems to have led to different real interaction patterns.

While the interaction with the MEPs was moderate in the Maastricht period and only lowly institutionalised, things change substantially here. According to clerks MPs consider the exchange with the French MEPs to be an important tool for information gathering and exchange on political positions (interview 20). For the French MEPs, the exchange with the national MPs gives them some visibility in the domestic arena.

Several interview partners in 2012 speak of a new ‘culture’ of the French MPs. While they did not take the EP seriously throughout the 90s, they are increasingly interested in information and political exchange with MEPs later on. This even increases after the implementation of the Treaty of Lisbon. There are several formal and informal channels through which interaction with the EP takes place.

The French MPs in the different parliamentary party groups in the EP represent an important platform for exchange on political positions. The EP’s groups increasingly invite their national counterpart to meetings. For the Green group, this exchange is even decisive for positions on the national level, but for the bigger parliamentary party groups these exchanges are increasingly important as well (interview 18).

While Robert Pandraud already tried to regularly invite MEPs to the meetings of the Delegation for the EC/EU in the 90s, during the first decade of the new millennium, procedures are adapted in a way that ensures that MEPs can be present in EAC meetings. They are no longer systematically invited to the meetings, but there is a concrete bilateral cooperation to arrange for special meetings in the week reserved for MEPs’ external activities. The European affairs bodies of the *Assemblée nationale* and the *Sénat* jointly decide the agenda of these meetings. All parliamentary party groups of both houses are present in these meetings (interview 14). The meetings take place on a regular basis of three to four times a year (interview 18).

This again means that they are a forum for the exchange on longer-term issues aiming to increase the *Assemblée nationale*’s *input function* in EU affairs, but they are not a tool for enhancing influence on concrete legislative acts in the decision-making phase in Brussels.

Whereas during the Maastricht period there was almost no contact with the European Commission apart from sporadic invitations to Commissioners and Commission civil servants to the Delegation for the EC/EU, during the Lisbon period French MPs slowly extend their contacts with the European executive. These new contacts must be interpreted as a fulfilment of their role of *representation* of individual interests and *interest intermediation*, and as a



prolongation of the ‘steady dialogue’ with the executive on the domestic level. Contacts are destined neither to control the Commission, nor to influence EU legislation in early stages.

In contrast to patterns in the Bundestag (see page 248), MPs of the *Assemblée nationale*’s contact with the Commission does not take place in the preparation phase of European decision-making, but in the framework of national legislative procedures in which MPs wish to exploit the European dimension of the dossier at stake. They are not individual informal contacts either, such as one can find in the case of the Bundestag, but are usually officially organised for small groups of MPs by the parliamentary representative of the chamber in Brussels (interview 18, interview 21).

The interest in these visits to Brussels of groups of MPs working on a specific legislative dossier has increased from the beginning/middle of the first decade of the years 2000 and has become more rapid since the 2008 Constitutional revision, for reasons independent of EU affairs.<sup>123</sup> There are no official statistics on these meetings, but a former parliamentary representative of the *Assemblée nationale* during this period estimates the number of these visits at about one mission per week during the parliamentary sitting period (interview 14). Ninety per cent of these visits are experts’ meetings between a group of MPs specialised in a certain policy field and the responsible civil servants of the Commission. In a smaller number of cases, these meetings consist of larger groups of MPs who wish to meet important political EU actors, such as the presidents of the institutions or the French Commissioner (interview 18), which is often the case for the Bundestag.

These new forms of parliamentary visits are not attempts to directly influence the European decision-making procedures. They must rather be seen as a tool to establish a ‘dialogue’ with the European Commission, and as a supplementary tool of information gathering by the parliament to inform stakeholders and entertain a steady ‘dialogue’ with the

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<sup>123</sup> The new legal framework grants the parliament a period of six weeks between the tabling of a new draft law and its scrutiny by the responsible committee (interview 14). This means that the rapporteurs responsible for the legislative draft acts have more time to visit the European Commission to explore the European dimension of an issue.

Commission to nourish the ‘partnership’ with the French government. They are never described as attempts to *control* the information provided by the government. In contrast to the Bundestag, the increased interaction with the European Commission (which remains low) must be seen in the context of the representation function that MPs fulfil for their constituency. The visits are a tool that provides MPs with the necessary knowledge to share with their stakeholders at home about important regulatory developments on the EU level. According to interviewees, they serve to sensitise civil servants of the European Commission to issues that can be potentially problematic for French voters.

In support of this line of argument is the fact that the only complaint about the European Commission in this context – which is usually described as highly interested in this type of meetings to enhance successful transposition of EU law – is about a Commission civil servant refusing to meet with stakeholders whom a Senator had invited to Brussels to be able to present their concerns (interview 10).

The use that the Assemblée nationale makes of the opinions addressed to the European Commission in the framework of the so-called ‘Barroso dialogue’ must also be seen as a means of ‘steady dialogue’ with the European Commission and not as a policy-making tool. This is further illustrated by the fact that the reasoned opinions that parliaments are enabled to send in the framework of the Early Warning Mechanism on subsidiarity since the implementation of the Treaty of Lisbon are almost not used by the Assemblée nationale.<sup>124</sup>

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<sup>124</sup> The situation might be different in the Sénat, where Senators have opted for a legalistic interpretation of the subsidiarity check and a systematic screening of all incoming EU legislative draft acts through a working group of members of the EAC.

Table 11: *Assemblée nationale: Political dialogue and EWM (2006-2014)*

Type	2006	2007	2008	2009	2010	2011	2012	2013	2014
Political dialogue	1	0	0	2	1	0	1	11	9
Reasoned opinion	/	/	/	0	0	2	0	0	0

Source: (Thomas and Tacea 2015, 182); own completion for 2013 and 2014 on the basis of the same source (European Commission 2015).

The French *Assemblée nationale* uses the Political Dialogue with weak to moderate frequency, even if there are unfortunately no concrete data (and in the official documents the absolute number seems to be lower than the number of opinions sent by the Bundestag), since until 2012 there was a conflict between the European Commission and the *Assemblée nationale* as to which document should be counted in the Political Dialogue.<sup>125</sup> Interview evidence suggests that what the *Assemblée nationale* considers to be usual numbers of opinions in the political dialogue from 2013 onwards is adequate.

In practice, this means that the *Assemblée nationale* has simply extended its ‘dialogue’ with the government to the European Commission. Documents (conclusions, communications, European Resolutions) that are sent to the government are now also submitted to the European Commission in parallel. Interview partners in the *Assemblée nationale* suggest that the Political Dialogue with the Commission is an important symbolic tool for MPs as it opens a direct channel of exchange with the European Commission for them (interview 14, interview 18). Again, this does not mean that the MPs see the Political Dialogue as a means to circumvent the government. On the contrary, MPs use it because it gives them the opportunity to express some important political longer-term points of principle that are usually in line with the government policy. In contrast to the opinions (*Stellungnahmen* based on *Beschlussempfehlungen* stemming from the committees) of the Bundestag, which may be highly detailed, the conclusions,

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<sup>125</sup> Conversation with assistant of parliamentary party group.

communications, and even resolutions submitted by the Assemblée nationale usually contain a certain number of broad political guidelines.

Interview partners suggest that the reasoned opinions on subsidiarity are rarely used exactly for that same reason. MPs do not want to interfere with the government in the early phase of the decision-making in Brussels. According to domestic practices, they consider the check of subsidiarity and the definition of the objectives of European integration to be a matter of the government, and refrain from expressing themselves early in the decision-making process. In case a reasoned opinion on subsidiarity is submitted, this is usually coordinated with – or at least checked by – the government (interview 14). Thus, it is a means of supporting the government.

Such a clear vision about which role parliament should play vis-à-vis the government and vis-à-vis Brussels did not exist during the Maastricht period. The idea defended in France that national parliaments should have direct representation on the national level is thus more likely to express the will to extend information channels and to advocate the interests of French voters.

The only interaction with the European Commission that already existed in the Maastricht period was the invitation of Commissioners and their civil servants to the hearings in committees in the Assemblée nationale. In line with the MPs of the Assemblée nationale's growing attention to the EU as a political framework, this activity increases considerably (even if not as much as EC/EU legislation). While there were 13 such hearings throughout the entire Maastricht period up to 1997, between 2002 and 2012 alone there were 31 hearings with Commissioners and 58 hearings with other 'European personalities'<sup>126</sup> (Commission affaires européennes 2012, 20).

A growing practice of *interaction with other national parliaments* starts at the end of the 90s with the preparation of the accession to the new member states, the Convention for a Charter on Fundamental Rights (interview 5). The idea that develops in this context and that

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<sup>126</sup> The report unfortunately does not explicitly indicate who is counted in this category.

has already been discussed in this thesis is that, according to their representation role on the national level, MPs should be representatives of France and French positions to other national parliaments (interview 7, interview 8). In 1999, Alain Barrau attributed one candidate country to each of the interested members of the Delegation. The respective MP served as a diplomatic representative of the Assemblée nationale to the parliament of the candidate country. When asked about his role regarding other member states' parliaments, Pierre Lequiller, the chairman of the European affairs body of the Assemblée nationale from 2002 to 2012, also affirms feeling like an ambassador of French positions to other parliaments. Such ideas were less clearly shared among actors during the Maastricht period. The *control* of the government through an enhanced role for parliaments was an important demand by Robert Pandraud and Philippe Séguin, for example.<sup>127</sup>

Throughout the first decade of the 2000s, interparliamentary cooperation is supported and strengthened despite changing parliamentary majorities. In 1999 (Sénat) and 2005 (Assemblée nationale), both chambers establish parliamentary representatives in Brussels. They are seen as part of the French diplomatic networks in Brussels (interview 14). The physical expression of this fact is that their office is located in the Permanent Representation of France to the EU. When the EP offers office space to accommodate all parliamentary representatives on its premises, the French parliamentary representatives retain two offices (interview 14, interview 18). Interviews in 2012 show that they feel closely connected to the civil servants of the Permanent Representation, and that former permanent representatives were among the leading drivers of the establishment of parliamentary representatives in Brussels (interview 14).

The type of work that the parliamentary representatives conduct underlines the fact that the post is not primarily conceived for supporting parliamentary participation before decision-

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<sup>127</sup> There is one exceptional period to this rule: the control of the subsidiarity principle plays an important role for the Committee for the Affairs of the EU from 2012 to 2013 under Socialist chairman Simon Sutour. This seems to have been the consequence of the Sénat being exceptionally of another political colour than the government and thus in opposition, rather than being the expression of a changed perception of parliamentary participation in EU decision-making.

making in Brussels. Two-thirds of their time is spent on the organisation of the information visits described above. In the remaining time, they fulfil the role of representatives of the Assemblée nationale or Sénat to the network of other parliaments, communicating the chamber's point of view on certain issues. It is only then that they take care of the information of the parliamentary administration back home about proposals in the pipeline in Brussels (interview 14, interview 18). Their diplomatic function is underlined by the fact that in the Sénat all official communication with EU institutions must at least be notified to the parliamentary representative (interview 18).

Interviewees underline the fact that even if almost all member states of the EU do have a parliamentary representative in Brussels, the status and tasks of these representatives are different, which makes cooperation difficult despite their common location. Furthermore, they underline that by being in Brussels, parliamentary representatives are somewhat cut from the parliamentary agenda and practice at home, and for the MPs they often represent only one possible channel of information on proceedings of EU affairs – and certainly a less important one than the government (interview 14, interview 18).

On the bilateral level there seems to be some increase in interparliamentary cooperation since the Maastricht period, but not much. Institutionalised cooperation (i.e. regular meetings of chairmen of standing committees) even seems to have decreased because the meetings proved to be inefficient or were absorbed by larger parliamentary frameworks, such as the parliamentary assembly on CFSP/CSDP. Initiatives for such cooperation seem to be ad hoc and depending on individual chairmen or MPs' personal contact. The Assemblée nationale has developed some regular exchange with the Bundestag and with the Italian and Spanish parliaments (Thomas and Tacea 2015, 185). Contact still seems to be more intense with parliaments that share the same language family, i.e. parliaments of countries with Roman languages (interview 9). This type of interparliamentary cooperation does not correspond to the usual parliamentary practice, and not only is coordination with other parliaments difficult to organise because of different political and parliamentary agendas, but it does not promise much interesting output either.

Interviews show a somewhat paradoxical situation concerning multilateral parliamentary fora. On the one hand, interparliamentary fora or representative institutions on the European level have been an important priority for the diplomatic efforts of succeeding French MPs since the Maastricht period. COSAC is seen as an important French initiative among French MPs, and the former chairman of the Assemblée nationale's EAC seems to have been an important driver behind the idea of introducing a parliamentary assembly in article 13 of the Treaty on Stability, Coordination and Governance (TSCG) (interview 20). On the other hand, the satisfaction with concrete achievements of these parliamentary fora on the European level is low. Even if participation in these fora is now regular and even increasingly ensured by chairmen of sectoral committees, they are qualified as being too general (interview 13) and heterogeneous. They are mostly appreciated for the possibility of informal exchanges of views at their margins (interview 19).

During the Lisbon period, *typifications* operate in the Assemblée nationale. EU experts with important national parliamentary experience and networks become the 'typical' actors in EU affairs in the chamber. MPs' activities on the aggregate level represent role models of the chambers on the domestic level. The following sub-chapter shows that one can observe similar evolutions in the Bundestag for the Lisbon period.

## ***B - Bundestag***

The second sub-chapter examines the handling of EU affairs in the German lower house during the Lisbon period. The first section shows that the European affairs body in the Bundestag also undergoes a *typification* in the direction of a 'normal' committee. However, this happens differently than in the Assemblée nationale. In the Bundestag, a cross-party community of practice clearly emerges that shares knowledge and experience about 'doing EU' in the chamber. This group of MPs has a significant agency for the reforms of organisation and legal

frameworks for EU participation in the Bundestag during the Lisbon period. EU expertise in the chamber more generally increases.

The Bundestag's action follows more distinct patterns. As in the *Assemblée nationale*, MPs attempt to reproduce *functional equivalents* for the roles that the Bundestag has on the domestic level. Accordingly, the committees in the Bundestag try to establish close links with the ministries of the government to 'accompany' the responsible unit on the negotiations in the Council. This reproduces the close cooperation between government and parliamentary majority on the detailed legislation on domestic level, and also attempts to fulfil the Bundestag's expert *control* and *co-governance* role in EU matters. Interaction with EU transnational actors more clearly follows this dominating role model for the Bundestag as well.

According to the same logic, interaction with the EP decreases during the Lisbon period. Instead, interaction with the European Commission in the preparatory phase of decision-making increases and serves either direct attempts to influence European decision-making or the better control of government information.

### **1) Actors and agency**

The first sub-section focuses on the actors who carry out EU-linked action in the chamber. In a first part, it discusses the European affairs body, which has become a *typical* committee of the Bundestag and loses the coordination role for EU affairs for which did not fit to existing practices in the chamber. According to its administrative logic, the sifting and coordination of incoming documents between the standing committees is done at the administrative level. Sectoral experts are increasingly interested in EU affairs.

The second part shows that the actors successfully pushing for the fundamental revision of the legal framework for EU participation during the Lisbon period stem from a cross-party community of practice that shares knowledge about the day-to-day participation in EU decision-making.



### a) European affairs body and EU expertise

The European affairs body in the Bundestag is remodelled in a long process of ‘trial and error’ in the chamber. With the experience of ‘doing EU’, and of the incompetence of subsequent bodies to enhance participation of the Bundestag in EU affairs within the framework of established parliamentary practices and ‘ways of doing things’, the body is remodelled several times throughout the Maastricht period (see page 152).

During the Lisbon period, the role and practices of the European affairs body – whose membership is definitely fixed in 1994 – become more *typical*. As a consequence of established parliamentary practices, the EAC only rarely has the lead responsibility for an EU draft act in sectoral policy fields. Therefore, it develops into a body that ‘mirrors’ the Chancellery and the two coordinating ministries in the government for German EU policy (Beichelt 2015). This can be considered a *typical* role for a Bundestag committee. Its activity radius only encompasses the institutional and procedural issues of the EU in particular and European integration in general.

This logic corresponds to the usual organisation of the committees in the Bundestag. The Bundestag establishes one committee per government ministry to ensure a close cooperation between minister and ministerial administration, the parliamentary party groups of the majority, and the ‘expert’ committees. The specialisation of the EAC must therefore be interpreted as a ‘normalisation’ of the committee with reference to the ‘usual ways of doing things’ in the Bundestag. The attempt to transform the Bundestag’s European affairs body into a coordination body superordinate to the sectoral committees underestimates this established parliamentary practice. Members of the EAC must be seen as experts on ‘constitutional’ questions of the EU. During the Lisbon period, MPs in the EAC thus handle questions about EU accession, the modifications of EU treaties, all issues regarding EU institutions, and cross-cutting issues, such as EU 2020, which do not clearly fall under the competences of one of the sectoral committees. Other policy-related subjects are dealt with in the sectoral standing committees.

The overall number of EU experts is higher in the Bundestag than in the Assemblée nationale during this period. Observers consider that there are about 100 EU experts in the Bundestag in 2012 (Callies and Beichelt 2013). This must be seen from the perspective of the patterns of activity that the Bundestag develops during this second period (see page 241). It develops participation patterns that allow it to reproduce the MPs' main roles as *experts*, *law-makers*, and *controllers* of executive policies for European affairs. This means that, in contrast to the Assemblée nationale, in the Bundestag MPs need to cover the whole range of EU legislative and decision-making output to produce action patterns that represent *functional equivalents* to their domestic role of expertise and co-governance in the sector of EU affairs. As was shown previously, in the Assemblée nationale, to fulfil their role of *interest intermediators* MPs need to be interested in EU affairs only insofar as their stakeholders' interests are at stake.

During the Lisbon period, the EAC retains a fundamentally symbolic function of administrative coordination of the submittal of EU documents to the sectoral committees. However, the important functions in terms of the content of EU draft acts, such as the sifting and prioritisation of the incoming documents, are carried out in an administrative unit that is only under the auspices of the EAC for a short period of time (for the meaning of the sifting practice see page 241). It is then quickly integrated into the general administration of the Bundestag under the control of the latter's general political steering bodies.

In 2005 (1.4.2005), the Bundestag creates a 'Task Force Europe' in the office of the Bundestag's director. The name of this organisational unit is changed on 1 May 2006 to 'Unit PA 1 – Europe' (PA1). It obtains further tasks, is broken off from the director's office, and integrated in the 'Department P – Parliament and Members of Parliament', in which it becomes an autonomous sub-unit of the 'Committees' sub-department where all secretariats of the committees are pooled. From 1 July 2007 onwards, the 'Europe Office' located in the EAC's secretariat is transferred to this new 'PA 1 – Europe' unit (Feldkamp 2010). The institutional anomaly of having an administrative unit responsible for document sifting centralised under the

auspices of the EAC, which was introduced with the Treaty of Maastricht, is thus abandoned again.

This means that the allocation of EU documents is again presently a matter of the coordination of an autonomous unit of the administration – in coordination with the president of the Bundestag, the Council of the Elders, and the parliamentary party groups – and not a matter of the secretariat of one of the committees. This development is reinforced when an autonomous sub-department ‘PE – Europe’ is created in 2013, which definitely and formally breaks the selection and distribution of documents from the sub-unit comprising all committee secretariats (Feldkamp 2010).

This organisational change corresponds to the way in which the attribution of documents to the standing committees always fundamentally worked out in practice. The EAC did not have any real power on the incoming EU documents and its secretariat merely acted as a neutral hub of documents<sup>128</sup>. For an in-depth selection of documents, it was terribly overloaded. At the same time, there is an important increase in the number of staff in ‘PA 1 – Europe’ to ensure a more systematic pre-selection of the incoming documents, which increase sharply with the new legislation implemented in 2005 and 2006.

The newly created administrative unit (PA1) allows the Bundestag to cope with the particularity of the EU issues that are both cross-sectional and too numerous to be dealt with alone with the usual distribution by the plenary or the president of the Bundestag in cooperation

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<sup>128</sup> At best, the right to be informed about all incoming EU documents, which was first granted to the Committee for the Affairs of the European Community, ensured that the committee was informed about all EU draft acts with which the Bundestag dealt. The important information overload of the ‘Europe Office’, however, later hindered the Committee for the Affairs of the EU in concentrating on the important dossiers dealing with fundamental questions of the EU.

with the Council of the Elders – and the First Secretaries of the parliamentary party groups to which PA1 sends the document selection (interview 31).<sup>129</sup>

Draft acts in the Bundestag are usually formally attributed to the standing committees by the plenary or in a simplified procedure by the president of the Bundestag in accordance with the Council of the Elders (Standing Orders § 80)<sup>130</sup>. In practice, the First Secretaries of the parliamentary party groups take the decision, and then the Council of the Elders formally enacts it (Töller 1995, 89).

As the Bundestag is strictly organised in accordance with the federal ministries, the attribution of the responsibilities to the committees usually exactly follows the line of responsibility for a draft act among the government ministries. In matters of the EU, this distribution logic has always been applied as well, and has never been modified, notwithstanding the changing arrangements for the formal coordination competence of the incoming documents on the administrative level.<sup>131</sup>

The establishment of PA1 thus corresponds to a reinterpretation of ‘usual ways of doing things’ to find *functional equivalents* to the old practices. The decision to put into place an autonomous administrative unit for distribution and selection also finally and formally cements the Bundestag’s decentralised dealing in practice with matters of the EU:

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<sup>129</sup> The parliamentary party groups agree in 90% of the cases with the pre-selection. One interviewee explains this as the fruit of the close cooperation between the sectoral committees and the fact that parliamentary clerks base their selection on the interests of the respective committees (interview 31).

<sup>130</sup> EU draft acts are usually all attributed according to the simplified procedure to speed up parliamentary scrutiny and to cope with the short deadlines of the Council negotiations.

<sup>131</sup> Until the establishment of the first Committee for the Affairs of the European Community, the secretariat of the Bundestag submitted EU draft acts to the ‘Specialist Division XII – European Community’ of the Scientific Service of the Bundestag, which transferred the draft acts according to the line ministry communicated by the government. The Committee for the Affairs of the European Community was then at least informed about all incoming EU documents. The ‘Europe Office’ of its successor, the Committee on Matters of the EU, was finally formally charged of the coordination of the distribution in the Bundestag.

‘This is why we have the Europe unit and why we are not attached to the EU Committee. This was the organisational decision behind this. [...] As a unit we will exist until 2006. And in the previous discussions, before the establishment of the unit, [the “mainstreaming” of EU policies] was the decision that was taken.’<sup>132</sup> (interview 31).

### **b) Agents of change of formal rules**

As in the *Assemblée nationale*, throughout the Lisbon period experts in day-to-day EU decision-making push through the change of formal rules for EU affairs in the Bundestag. A group of long-time EU parliamentary specialists, including among others Michael Stübgen (CDU), Michael Roth (SPD), and Rainer Steenblock (*Bündnis 90/Die Grünen*), form a sort of community of practice across party groups and government and opposition cleavages. They are the leading agents of change of formal rules for the handling of EU affairs in the Bundestag from the beginning of the year 2000 onwards. The group of MPs shares knowledge and ideas about parliamentary participation and tries to convince changing governments and own majorities about the necessity of introducing more far-reaching participation rights for parliament. To push their claims through, they use political ‘windows of opportunity’.

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<sup>132</sup> ‘Deswegen haben wir auch das Europareferat und sind nicht angedockt am EU Ausschuss. Das war die Organisationsentscheidung dahinter. [...] Uns als Referat gibt es seit 2006. Und in der Diskussion im Vorfeld, vor der Gründung dieses Referats war das [“mainstreamen” der EU Politik] die Entscheidung, die getroffen wurde.’

Table 12: Bundestag: Evolution of formal prerogatives (Lisbon period)

EU events	Year	Parliamentary prerogatives	Conflicts in parliament	Agents of change
Convention for the Future of Europe; ratification of the Constitutional Treaty	2006	<p><b>Agreement between the German Bundestag and the Federal Government in matters of the EU (<i>Bundestags-Bundesregierungsvereinbarung</i>)</b></p> <ul style="list-style-type: none"> <li>- extension of information rights</li> <li>- establishment of an office of the Bundestag in Brussels</li> </ul>	Late participation of the Bundestag in the decision-making cycle; lack of sufficiently early information; coordination problems	'Club of EU experts' (from CDU/CSU, SPD, FDP, <i>Bündnis 90/Die Grünen</i> ) in intergroup working group
Treaty of Lisbon	2009	<p><b>Law on the Cooperation of the Federal Government and the German Bundestag in matters of the EU (novel of EUZBBG)</b></p> <ul style="list-style-type: none"> <li>- definition of type of documents to be sent to the Bundestag</li> <li>- additional information rights on selective foreign policy matters</li> <li>- obligation for the government to inform Bundestag about Council negotiations</li> </ul> <p><b>Responsibility for Integration Act (<i>Integrationsverantwortungsgesetz</i>)</b></p>	<p>Lack of sufficiently early information,</p> <p><i>Lisbon judgement of the German Constitutional Court</i></p>	EU experts of CDU/CSU, SPD, FDP, <i>Bündnis 90/Die Grünen</i> in intergroup working group; parliamentary secretaries of the same parliamentary party groups
Treaty of Lisbon (follow-up of 2009 legislation after 'monitoring phase'); context: Eurozone crisis	2013	<p><b>Law on the Cooperation of the Federal Government and the German Bundestag in matters of the EU (novel of EUZBBG)</b></p>	<p>Monitoring report commissioned by the Bundestag showing information failures by the government, in particular concerning information provision</p> <p><i>Lisbon judgement of the German Constitutional Court</i></p> <p><i>Judgement of the Constitutional Court on action by the Green Party</i></p>	EU experts of CDU/CSU, SPD, FDP, <i>Bündnis 90/Die Grünen</i> , and <i>Die Linke</i>

## *An interparty working group of EU experts: Agreement between the federal government and the Bundestag, 2006*

Between 1993 and 2003, the parliamentary dealings of EU affairs are in principle based on the Law on the Cooperation of the German Bundestag and the Federal Government in matters of the EU (EUZBBG), which is relatively short. It repeats the prerogatives for the Bundestag as they are fixed in article 23 of the German Basic Law, substantiates the circumstances of the information of the Bundestag, and introduces the possibility for the Bundestag to issue opinions before decisions in the Council (Beichelt 2015, 302).

After the public debates about the European Arrest Warrant and the Service Directive, and the debate about the legitimacy of the EU with the Constitutional Treaty, there is much debate in the Bundestag about the impact of European legislation on German domestic law (interview 42).

‘On the one hand there was the debate that many decisions, specialist decisions, were determined in Brussels and that the Bundestag gets a corridor, so to say, within which it can decide itself about 50 or 60 or I do not know what percentage of a legislation. This was new for many MPs, and therefore the interest in how one could actually do something in the preparatory phase and how one could organise government control, this was a very important debate at that time.’<sup>133</sup> (interview 42)

There is a widespread feeling among MPs in the Bundestag that there have been changes that no longer allow them to fulfil the Bundestag’s genuine role of participation in the governance.

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<sup>133</sup> ‘Auf der einen Seite gab es ja die Debatte, dass eben viele Entscheidungen, fachpolitische Entscheidungen in Brüssel determiniert sind und der Bundestag eben sozusagen, sagen wir mal, Korridor bekommt, indem er selber entscheiden kann für 50 oder 60 oder wie viel Prozent einer Gesetzgebung. Das war für viele Abgeordnete neu und von daher war so das Interesse, wie kann man im Vorfeld eigentlich was machen und wie kann man Regierungskontrolle machen, das war schon eine ganz wichtige Debatte in der Zeit.’

In contrast to what happened when the parliamentary prerogatives were enhanced with the Treaty of Maastricht, the EU experts of all parliamentary party groups (except for the then *Partei des Demokratischen Sozialismus* (PDS) group) are important agents of the new parliamentary reforms that are prepared around 2004 and 2005. Whereas in 1992 many EU experts are not convinced about the necessity of having a new legislation for parliamentary participation, in 2004 and 2005 the EU experts from the majority and the opposition fight for changes in their respective political camps.

In 2004 and 2005, the patterns appear that will structure the struggle for enhanced parliamentary participation rights until the present day. A well-connected interparty group of EU experts fight to convince their parliamentary party groups' establishment about necessary reforms. Parliamentary party groups in the government are reluctant to grant new rights, and reforms come about when there are either windows of opportunity caused by the political cycle or pressures on the governing parties, usually from the public and the actions filed at the Constitutional Court.

The pattern of interaction between the government and the opposition in this period is characterised by the fact that the opposition must choose between playing the political game of publicly claiming further participation rights and accusing the government of information failures, or negotiating behind closed doors with the EU experts of the parliamentary party groups in government to obtain more rights against the government together. One CDU member of the European Affairs committee confirms:

'Because we are always strong in cases in which we propose something together with the opposition. And I preach this always, and often it does not work out. When the opposition overdraws, that is launches a campaign – it must always decide between campaigning in the hope of gaining something for the next elections – then it fails, because we block them [...]. Or we try to achieve something regarding content. In this case I can always use the opposition against the government as hostages, like for example you say, they will agree, but we have to give them this, like this. This is a kind



of game, usually you get better results like this. For the opposition it is a dilemma, of course, that it does not appear publicly.’<sup>134</sup> (interview 46)

The inner-parliamentary process leading to a novel of the EUZBBG and to the Agreement between the Federal Government and the Bundestag is a complex negotiation process. In 2004, an interparty working group on the reform of the legal framework of the Bundestag’s participation in EU affairs is established.

The question of who the parliamentary party groups should send to the working group is decided in favour of the EU experts (instead of sending the parliamentary party groups’ secretaries), who have to campaign intensely for this. The main argument for sending the EU experts is that the First Secretaries (or Chief Whips) do not have the necessary expertise to negotiate parliamentary participation rights:

‘[...] [It] was also controversial, [...] if the whips from the parliamentary party groups should negotiate it or the Europe people, and I fought a lot to have the Europe people do it, because the whips are not able to do this, they know far too little about it. But there were also controversies about this, internally, because the competition is relatively high. Finally, the Europe people did it.’<sup>135</sup> (interview 42)

In contrast to the Maastricht period, within parliament a ‘club’ now exists of long-standing EU experts from different parliamentary party groups who have good personal relationships and who have promised each other to fight for strengthened parliamentary

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<sup>134</sup> ‘Weil wir sind immer dann stark, wenn wir mit der Opposition zusammen was bringen und das ist das, da predige ich immer und oft klappt es nicht, wenn die Opposition überzieht, das heißt, eine Kampagne macht - sie muss sich eigentlich immer entscheiden, will sie eine Kampagne machen, in der Hoffnung sozusagen für die nächste Wahl irgendwas ziehen zu können - dann scheitert sie, weil wir blocken sie dann weg [...]. Oder wollen wir inhaltlich was erreichen, dann kann ich die Opposition immer sozusagen benutzen gegenüber der Regierung als so Geiseln, also dass man sagt, die stimmen zu, aber das müssen wir ihnen geben, so. Das ist so ein Spiel, da kommt man in der Regel zu vernünftigeren Ergebnissen. Für die Opposition ist natürlich das Dilemma, dass sie öffentlich nicht vorkommt.’

<sup>135</sup> ‘[...] [Es] war auch umstritten, [...] ob es die Geschäftsführer verhandeln sollten aus den Fraktionen oder ob das die Europaleute verhandeln sollen und da habe ich sehr dafür gekämpft, dass das die Europaleute waren, weil die Geschäftsführer das nicht können, die wissen da viel zu wenig drüber. Aber da gab es auch Streitereien drum und so, also intern, weil die Konkurrenz da bei allen relativ groß ist. So, und dann haben es die Europaleute gemacht.’

participation rights, including against the elite of their own parliamentary party groups and their own government (interview 42).

‘[...] at that time there was a club of people who got along with each other very well from the parliamentary party groups. We had promised each other solemnly that we would also fight with our own people in the bureau of the parliamentary party group or in the government.’<sup>136</sup> (interview 42).

In 2005, the CDU/CSU parliamentary party group launches a draft law containing substantially enhanced information rights for the Bundestag, and campaigns strongly in public for this new law (*Gesetz zur Ausweitung der Mitwirkungsrechte des Deutschen Bundestages in Angelegenheiten der EU*) (Deutscher Bundestag 2005)).

The EU experts from the other parliamentary party groups consider the law to be an excellent legislative framework for the Bundestag’s participation in EU affairs, in particular concerning the broadened information rights throughout the negotiations in the Council (interview 42). For the EU experts from the governing coalition, and in particular parts of the Green parliamentary party group, the situation is highly difficult. They support the content of the opposition draft law and try to convince the government to find a solution to grant the Bundestag further rights. However, the Green Federal Minister for Foreign Affairs<sup>137</sup> in particular is not interested in having stronger prerogatives for the government. The EU experts fight fiercely internally in the first half of the year 2005 within their parliamentary party groups, but without much success.

‘[...] we [had] at that time, I mean in the parliamentary party group, and I in particular, a strong interest [...] in using the opportunity, to extend the participation rights [...]. The background was that the CDU [...], which at that time, 2004, 05, in the first half-year was still in the opposition [...] had produced a quite good draft of a participation law, because they had not anticipated, well nobody had anticipated that we would have

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<sup>136</sup> ‘[...] zu der Zeit hat es eben so ein Klub von Leuten, die sich persönlich alle gut verstanden, aus den Fraktionen, gegeben, die sich sozusagen in die Hand versprochen haben, wir streiten uns auch mit unseren eigenen Leuten im Fraktionsvorstand oder in der Regierung.’

<sup>137</sup> The Federal Foreign Ministry is traditionally in one of the two ministries that coordinate the EU instructions for the Council of Ministers within the German government.

general elections so soon. [...] technically, all should have been adopted by the Bundestag in the summer 2005 and I had had a lot of controversies with the government, because Fischer as foreign secretary did not have any interest in this, to strengthen the rights of the Bundestag.’<sup>138</sup> (interview 42)

A coincidence of the electoral agenda finally helps EU experts to obtain a more far-reaching law than the SPD/Green government would have authorised. Parliamentary proceedings cannot be finalised in summer 2005, however, because after a disastrous electoral defeat in the Land North-Rhine-Westphalia the Schröder government surprisingly calls for early elections<sup>139</sup>, which lead to a grand coalition led by chancellor Angela Merkel.

‘And basically we finally managed it, and this was also a condition to passably get away with it with the Constitutional Court. The fact that we had a relatively good legislation, we wouldn’t have had it if the government had not changed. What the red-green coalition, well what they would have allowed the parliament, would have been much less than what we achieved later on.’<sup>140</sup> (interview 42)

Once in government office, the CDU/CSU-led government is much less keen on its own draft law on parliamentary participation. The SPD-led Federal Ministry for Foreign Affairs opposes strengthened information rights as well. Both the fact that Angela Merkel strongly

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<sup>138</sup> ‘[...] wir [hatten] damals, also aus der Fraktion heraus, und ich ganz besonders, ein großes Interesse [...], die Chance zu nutzen, die Beteiligungsrechte [...] zu erweitern, [...] der Hintergrund war, dass die CDU [...], die war ja damals 2004, 05 im ersten Halbjahr noch in der Opposition [...] einen ziemlich guten Entwurf für so ein Beteiligungsgesetz gemacht [hatte], weil die nicht damit, also da rechnete damals ja keiner damit, dass wir so schnell Neuwahlen bekommen würden. [...] eigentlich sollte das im Sommer ’05 alles durch den Bundestag abgesegnet werden und ich hatte mich auch ziemlich rumgestritten mit der Regierung, weil Fischer als Außenminister überhaupt kein Interesse daran hatte, dass die Beteiligungsrechte des Bundestages gestärkt werden.’

<sup>139</sup> In Germany the government cannot dissolve parliament. In a constitutionally contested move, the chancellor asked for the confidence of the parliament, which he was denied. He then asked the Federal President for the dissolution of parliament and the call for early elections.

<sup>140</sup> ‘Und das haben wir im Grunde nur letztendlich positiv hingekriegt und das war ja auch eine Voraussetzung, dass wir nachher beim Verfassungsgericht einigermaßen durchgekommen sind [“Lisbon Judgement”, author’s comment]. Dass wir eine relativ gute Gesetzgebung hatten, wir hätten sie nicht gehabt, wenn nicht die Regierung gewechselt hätte. Also unter Rot-Grün, also das, was unsere Regierung damals dem Parlament erlaubt hätte, war sehr viel weniger als, was nachher durchgesetzt worden ist.’

supported the draft law in public when still in opposition and the fact that the CDU/CSU majority of the government was keen on containing the new SPD Foreign Minister give the EU experts the opportunity to push major parts of the original draft law through in the new legislature. The then Green speaker for European affairs assumes:

‘And it was just because the CDU did not have the Foreign Ministry and wanted to treat on Steinmeier’s foot a bit, and therefore – well it was an extremely, for the Parliament extremely favourable situation, something like this is rare.’<sup>141</sup> (interview 42)

However, some points are weakened and the information rights of the Bundestag are finally only fixed in an implementation agreement (*Bundestags-Bundesregierungsvereinbarung*, BBV (Bundesgesetzblatt 2006)) and not in a federal law. A long-time member of the European Affairs committee of the CDU recalls:

‘[...] well, we introduced a bill in parallel, which we called differently at that time however, a sort of duty-for-information-law for the government. And this was, of course, rejected by the coalition. And [...] then we railed at the government, well evil and bad and upsetting, this will not work. [...]

And the thing was taken up in the coalition negotiations, we had the anticipated general elections. And then the agreement was, we make a BBV, that means no law [...], because Merkel was by then Chancellor and did not want to be bothered with her text anymore, this is how it is.

And then I was responsible for working on the BBV. And the longer, the more the government dissipated its energies, the less it wanted to have any really substantial rights. But then in 2006 [...] they got through with it.’<sup>142</sup> (interview 46).

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<sup>141</sup> ‘Und die CDU eben, sie hatte eben nicht das Außenministerium und wollte dem Steinmeier da auch ein bisschen auf die Füße treten und so – also das war eine extrem, für das Parlament eine extrem günstige Situation, hat man selten.’

<sup>142</sup> ‘[...] also wir haben gleichzeitig ein Gesetz eingebracht, das haben wir aber anders genannt damals, so eine Art Informationspflichtengesetz der Bundesregierung. [...] Und das hat natürlich die Koalition abgelehnt. Und [...] da haben wir geschimpft auf die Regierung, also böse und schlecht und schlimm, das geht gar nicht. [...]

Und dann marschiert die Sache in die Koalitionsverhandlung, wir hatten ja die vorgezogenen Wahlen. Und da, die Vereinbarung war, wir machen eine BBV, also kein Gesetz [...], weil Merkel war mittlerweile Kanzlerin und wollte von ihrem alten Text so viel dann gar nicht mehr wissen, so ist das halt.

The central controversy between the government and the EU experts regards the information rights of the parliament and the representation of the Bundestag in Brussels. The government is reluctant to grant the Bundestag better access to internal documents and has plans to install a parliamentary representative in the Permanent Representation of Germany, instead of installing a fully fledged office of the Bundestag in Brussels. The then speaker for European affairs of the Green party recalls:

‘And that the, well it was always about the documents, if they had to be transmitted or not. Well, this was defensive by the government [...]. Then basically, in the beginning they did not want a separate office at all, but wanted to put somebody from the administration of the Bundestag into the Permanent Representation. [...] So to speak to maintain a structure dominated by the executive [...].’<sup>143</sup> (interview 42)

Finally, on 17 November 2005, the Bundestag adopts a ‘Law on the extension and strengthening of the rights of the Bundestag and the Bundesrat in matters of the EU’, and then in 2006 the already quoted interinstitutional agreement between the Bundestag and the Bundesregierung (Beichelt 2015, 305). While the laws adopted in 1992 already foresaw that all Council documents that were sent to the government had to be transferred to the director of the Bundestag, the obligations of the government to inform the Bundestag are now further detailed. The government is from 2005 onwards also obliged to transmit Commission initiatives and proposals in the preparation phase of the decision-making cycle in Brussels. Furthermore, the government is obliged to inform parliament about content, objectives, and timing of its negotiation strategy in the Council of Ministers. This new prerogative is a direct fruit of the feeling that MPs have of not to be sufficiently informed by the responsible units in the line

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Und dann hatte ich diese Aufgabe, diese BBV zu verarbeiten. Und je länger, je mehr sich die Regierung gezettelt hat, umso weniger wollten sie was von wirklich substanziellen Rechten noch wissen. Und sind dann aber 2006 [...] durchgekommen damit.’

<sup>143</sup> ‘Und dass die, also es ging immer um die ganzen Dokumente, die zugeleitet werden müssen oder nicht und welche Dokumente. Also das war sehr defensiv von der Regierung [...]. Dann wollten sie im Grunde am Anfang überhaupt gar kein eigenes Büro haben, sondern wollten aus der Bundestagsverwaltung jemand in die ständige Vertretung reinpacken. [...] Sozusagen also so eine exekutiv dominierte Struktur [...] weiter behalten.’

ministries about important developments on EU legislative dossiers and thus of the conflict with their role as expert *controllers*.

The agreement between the Bundestag and the federal government specifies the concrete list of documents that have to be transmitted (Beichelt 2015, 307). The most important innovation of the legislative package is fixed in the interinstitutional agreement: the Federal government is obliged to state until when the Bundestag's opinion can still be taken into account for each EU procedure (Beichelt 2015, 307).

The agreement furthermore specifies that, through its Permanent Representation and through the bilateral Embassy, the government must assist the liaison office of the Bundestag in Brussels, which was established in 2007 (Bundesgesetzblatt 2006).

*An interparty working group of EU experts: 'EUZBBG' (first novel); Responsibility of Integration Act, 2009*

A group of EU experts of whom most already followed the 2004/2005 negotiations are also important agents of change for the following important adaptation of the legislative framework of the Bundestag's participation in EU affairs.

For a long time, EU experts in the Bundestag had called for a transformation of the interinstitutional agreement between the Bundestag and the Federal government into a law, but they did not succeed in convincing their government of this necessity when the ratification of the Treaty of Lisbon is on the agenda. For the then opposition, the subject is not as important as threatening not to ratify the treaty (interview 46).

When the Federal Constitutional Court rules in June 2009 that the Bundestag accompanying law to the ratification instrument for the Treaty of Lisbon is against the German Basic Law, because it does not sufficiently preserve the Bundestag's participation rights, the EU experts seize the opportunity to extend the Bundestag's prerogatives as far as concerning the day-to-day decision-making.

The Federal Constitutional Courts ‘Lisbon ruling’ only marginally regards the Bundestag’s participation in day-to-day decision-making (interview 46). The ruling is mostly concerned with the Bundestag’s participation in changes to the EU treaties that are not subject to national ratification, such as changes decided upon by the simplified treaty revision procedure and the so-called ‘passerelle clauses’, which allow the introduction of qualified majority voting in certain policy fields.

As a consequence of the Lisbon ruling, the Bundestag’s parliamentary party groups again establish an intergroup working body to push through a new accompanying legislation throughout the summer. The time frame for this new legislation is restricted because general elections are planned for autumn 2009. Parliamentary proceedings must be quick if Germany does not want to be responsible for a delay of the coming into force of the Treaty of Lisbon, which is foreseen for December 2009.

Therefore, similarly to during the Maastricht negotiations, the parliamentary working group is staffed with the First Secretaries of the different parliamentary party groups (interview 46). As a consequence of extreme time pressure and high-level participation, there is not much real parliamentary debate about the improvement of the Bundestag’s parliamentary participation in EU affairs (interview 40). The political aim is, as in the Maastricht debates, to respond to constitutional considerations (this time already expressed in a ruling by the Federal Constitutional Court) and to proceed swiftly to the end of the ratification procedure. As a consequence, at first only a draft act exists for the ‘Responsibility of Integration Act’, which responds in principle to the concerns of the Constitutional ruling.

In contrast to the Maastricht proceedings, however, the group of EU experts who have already participated in the debates about the legislative packages in 2004 and 2005 also participate in the working group on the new accompanying legislation and have already accumulated their expertise on the matter. The EU experts of all parliamentary party groups except *Die Linke* (which has a negative standpoint on the Treaty of Lisbon more generally) agree that the real fundamental issue is the Bundestag’s participation rights in the day-to-day decision-making in the Council (interview 46). This group of EU experts therefore pushes for

the transformation of the interinstitutional agreement between the Bundestag and the government into a law. Further changes are added which for the most part result from the 2004/2005 parliamentary debates and not from the Lisbon ruling. These changes particularly concern a still more detailed list of the documents that must be submitted to the Bundestag, and in particular specifications concerning the wire reports ('Drahtberichte') on the negotiations in the Council, which government civil servants send to Berlin.

The judgement enhances the group of EU experts' chances of pushing through important claims that they already formulated five years earlier.

In particular the new version of the EUZBBG, which results from the described negotiations, is written under extreme time pressure in the course of several hours. This is why the EU experts decide to include a follow-up monitoring of the functioning of the new legislation that was due in 2001.

### *A network of EU experts across all groups in the Bundestag: 'EUZBBG' (second novel), 2013*

The EUZBBG's fresh novel in 2013 is again the consequence of the process that was launched by the group of EU experts in 2004/2005. The Eurozone crisis and the new rulings by the Constitutional Court (in particular following an action filed by the Green party in opposition<sup>144</sup>) and especially the ensuing media attention provide more political windows of opportunity for the EU experts to include stronger specifications on the information provision by the government and the consideration of the Bundestag's opinions ('Stellungnahmen').

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<sup>144</sup> Opposition MPs and backbenchers of the government parliamentary party groups (and in minority members of the civil society) file actions related to the rights of the Bundestag before the German Federal Court on the following four occasions: 1) the 2011 Constitutional Complaint about measures to help Greece and the euro rescue package (rejected); 2) the 2012 organ controversy about the Bundestag's rights of participation/EFSF; 3) the 2012 organ controversy on ESM, Euro Plus Pact; and 4) the 2012 application for interim measure to prevent ratification of ESM and Fiscal Pact (rejected) (Callies and Beichelt 2013, 33).



The monitoring report in 2011, which is compiled by the then unit PA1 of the Bundestag's administration and responsible for EU affairs, shows flaws in the way the government has used its information policy towards the government in several sensible dossiers (interview 46). As early as 2011, the EU experts of the parliamentary party groups therefore reflect upon the possibility of a novel of the 2009 EUZBBG. The EU experts of the CDU/CSU and FDP governing coalition undertake a series of efforts to convince their government and parliamentary party group establishment that a novel of the EUZBBG is necessary. However, they do not have much success, despite the Green action before the Constitutional Court looming on the horizon (Interview 46).

Realising, however, that there is no chance of convincing the government of a renewed legislative framework, the EU experts decide instead to publicly ask the government to respect the 2009 version of the law – a measure that would already be quite far-reaching for a governing majority (Interview 46). The Lisbon ruling following an action by the Green party on belated information of the Bundestag changes the situation. The bureau of the CDU/CSU parliamentary party group is now convinced that a novel of the law will be necessary, and therefore helps to convince the government.

The ensuing negotiations predominantly take place behind closed doors because all five parliamentary party groups in the Bundestag (including *Die Linke*) agree on the necessity of the new legislation. While the Green parliamentary party group's ideas are traditionally the most far-reaching as far as concerning the necessity of the submission of working documents from the Council's working groups, the CDU and SPD fear being snowed under by documents and claim only documents from the COREPER level and above (interview 46).

An important point of conflict is the submission of so-called 'non-papers', which are not official but constitute important documents in the preparation phase of the Brussels policy cycle.

## 2) Action and participation patterns

This second sub-section demonstrates how the Bundestag's activity becomes increasingly distinct in this second period, producing aggregated patterns that are *functional equivalents* to the roles that the Bundestag plays on the domestic level. According to their role of 'co-governance' and 'accompanying control', MPs increasingly try to follow the ministerial bureaucracy's negotiations in the Council. Interaction with EU transnational actors is oriented towards this production of *functional equivalents* for domestic roles as well. The Bundestag decreases its interaction with the EP and increases instead its interaction with the European Commission early on in the European decision-making process.

### a) Use and meaning of formal and informal instruments

The Bundestag's participation activity in EU affairs develops distinctive features during the Lisbon period. In contrast to the Maastricht period, the Bundestag is now more active. As in the Assemblée nationale, activity follows patterns that serve as *functional equivalents* to the main roles that the Bundestag plays on the domestic level. As a consequence of this similar evolution, in contrast to the Maastricht period, the type of action taken by MPs in the Bundestag is different from the one in the Assemblée nationale. During the Maastricht period, activity is low in both chambers, and activity is more similar. As in the Assemblée nationale, the meaning of parliamentary action in EU affairs has been clarified and is shared among the actors.

In contrast to in the Assemblée nationale, a central problem and concern for the MPs in the Bundestag throughout the Lisbon period are the detailed information about draft acts in the 'pipeline' in the Commission and about the texts negotiated in the Council, as well as the proceeding of this information within the chamber. Information is a major concern in all attempts to revise the formal prerogatives of the Bundestag in EU affairs (see page 228). This corresponds to the practice of *legislation* and *control* on the domestic level: MPs of the governing majority impact and control decision-making in a somewhat opaque 'network' of

interactions between the working groups of the parliamentary party groups, the minister, and the government administration (see page 70).

With the experience of dealing with EU affairs too late to be able to effectively control the formulation of legislative draft acts during the Maastricht period, much of the reform effort of the community of practice of EU experts across parliamentary party groups described earlier (see page 228) goes into pushing for the organisation of autonomous administrative capacities to allow the individual expert MPs to participate in EU decision-making and the legislative cycle early on, and to use the information rights conferred to them even before the Commission issues its first draft act.

Since 2007, the ‘Liaison Office of the German Bundestag to the EU’ collects an important amount of information about the preparatory phase of decision-making in Brussels. The office is composed both of clerks of the Bundestag (belonging to PE 3 since 2013 – see (Feldkamp 2010, 19) and assistants of the parliamentary party groups. This hybrid composition allows the ‘Office’ to carry out a watch on draft legislation, which represents a *functional equivalent* to the parliamentary party groups’ role in the legislative initiative (Oertzen 2006) and the early cooperation on the legislation prepared by the government on the domestic level. The office is a means for the parliamentary majority to limit the government’s efforts to withdraw draft legislation in the domain of EU affairs from the control of its majority (and probably in particular of its coalition partner), and thus to deviate from ‘usual ways of doing things’. For a long time, the Federal government resisted the creation of an autonomous ‘Office’ and proposed to integrate a small number of parliamentary representatives into the Permanent Representation of Germany to the EU (interview 42) – a model close to the current situation for the Assemblée nationale, in which MPs leave the legislation to the executive on the domestic level, and thus not adapted to the Bundestag.<sup>145</sup>

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<sup>145</sup> The liaison office allows the Members of the Bundestag both to have a supplementary information channel about informal interinstitutional negotiations to check the information provided by the government (interview 42, interview 46), and to provide a direct interaction with the European executive, i.e. the European Commission (interview 31). In 2012, interviewees in the then PA1 consider

The action carried out on the documents submitted to the Bundestag are also more patterned and ‘normalised’ regarding usual practices in the chamber than during the Maastricht period. In contrast to the Assemblée nationale, the logic of the sifting in the Bundestag is a detailed scrutiny of the whole breadth of EU documents mirroring all issues with which the government ministries deal in parallel. The logic of the sifting is to enable the MPs to be informed and to follow in at least ‘accompanying control’ *all* issues of concern in their issue area – and to be able to show this to the opposition. In contrast, in the Assemblée nationale the sifting only needs to be responsive to stakeholders’ interests.

In contrast to the Assemblée nationale, at the end of the Lisbon period neither prioritisation of documents nor the scrutiny in the *ex ante phase* is carried out in the EAC (see page 224).

One observes a clarification of the criteria for prioritisation of the documents which did not exist in the Maastricht period, when document sifting was left to the sectoral committees. These criteria are different in this second period than those that are applied in the French case, even if in both parliamentary clerks carry out the sifting. While in the Assemblée nationale criteria for the selection are the political priorities of the individual members of the EAC, selection criteria in the Bundestag are far more ‘legalistic’: the clerks evaluate the impact of the legislation on federal legislation, as well as the political and financial impact for Germany in general (Interview 31). This type of selection criteria is close to calculations that one would expect the government administration to make with reference to national legislation before the negotiations in Brussels. It is a sort of doubling of the considerations that the government has already undertaken in an effort of co-governing.

The Bundestag strongly increases staff resources for the prioritisation of the increasing number of EU documents for all committees, and in particular for the better tailor-made prioritisation of the documents to the needs of the standing committees. Each officer in the PA1 (since 2013 in the unit ‘PE 3 – analysis, prioritisation for EU draft acts’) is responsible for two

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that in an important way this complements the detailed information that is now guaranteed to the Bundestag once the Commission officially issues a draft act (interview 31).

to four committees, and his or her work is oriented towards the priorities of those committees (Interview 31).

In the *Assemblée nationale*, on the other hand, MPs consider this type of systematic coordination with national legislation to be a task of the government, whereas it is the task of the national representatives to establish more selective political criteria, which are defined by the interests of voters and stakeholders of the MPs, with whom the MPs have closer contact than the government does.

This difference is illustrated by the number of documents cleared from further examination. Whereas in 2012 a clerk in the *Assemblée nationale* confirms clearing about 60-80% of the documents from further examination because ‘they are of technical nature and not politically interesting’ (interview 21), in the Bundestag only about half of the documents are cleared from further examination. After a screening by the parliamentary party groups (which usually maintains about 90% of the decisions by the administrative body that carries out the scrutiny (interview 37) the rest is classified as relevant for further examination and forwarded to the about 22 different standing committees.

A comparison of the number of documents that the *Assemblée nationale* and Bundestag screen during the “Lisbon period” also illustrates the distinction between the roles that both parliaments play, as a ‘working’ and a ‘talking’ parliament on the one hand, or an *expert legislative controller* and a body focusing on providing *input legitimacy* on the other.

The *Assemblée nationale* ensures a screening of about 3,500 documents during the XIIIth legislative period (2007-2012) submitted under article 88.4 of the French Constitution, which amount to an average of about 700 documents per year. Conversely, in 2012 an interviewee in the Bundestag’s department for European Affairs who is responsible for the sifting talks about 25,000 documents that are screened by its entity (Interview 31) in one legislature, i.e. about 6,250 documents per year. These do not only include draft legislative acts, but also all non-legislative documents stemming from the EU institutions and an important amount of government reports on the documents at hand.

Two points can explain the differences between the amounts of incoming documents. On the one hand, the Bundestag more actively seeks documents in the preparatory phase through its office in Brussels. On the other hand, different reforms of the legislative framework for the participation of the Bundestag from 2005 until the present strongly extend the government's responsibility to provide internal documents to parliament and to produce information reports for the Bundestag on EU documents and their different stages in the negotiation procedures in Brussels (See Beichelt 2009; Höing 2015b).

In the Bundestag, the subsidiarity check that was introduced with the Treaty of Lisbon is conducted in the sectoral committees as well, while the EAC only has a coordinating role for the transmission of the documents to the European Commission (Interview 31).

It is difficult to estimate in concrete numbers the increase in the Bundestag's activity in matters of the EU. This is because the bulk of the European activity in the Bundestag is carried out by the standing committees, and there is currently no comprehensive study on the activity in EU affairs of the Bundestag's standing committees (Beichelt 2015, 553–54). Furthermore, the practice of the parliamentary majority in matters of the EU is not substantially different from its practice in domestic affairs. The majority is not interested in publicly showing differences with its government. Therefore, MPs in the Bundestag informally express their wishes towards the federal government on the level of the working groups of the parliamentary party groups and the committees.

The government is represented each week in the committee meetings in the Bundestag, which the MPs consider their favourite opportunity to communicate parliamentary points of view to the government (interview 31). The government knows that it will have difficulty if it does not take into account the MPs' considerations in the implementation phase of EU legislation (interview 31). In contrast to the *Assemblée nationale*, this is all the more important as once they have been decided upon in Brussels, the scrutiny of EU draft acts and the implementation of the finalised acts are carried out by the same committee, which in both phases is in close connection with the same units of the ministry of the government that is responsible for the policy field.

The same informal logic explains why the Bundestag issues much fewer ‘article 23 resolutions’ (the instruments foreseen in art. 23 of the German Basic Law since the Treaty of Maastricht) and opinions on subsidiarity than the German Bundesrat does, for example.

*Table 13: Bundestag: Political dialogue and EWM (2006-2014)*

Type	2006	2007	2008	2009	2010	2011	2012	2013	2014
Political dialogue	1	2	2	3	6	6	0	1	0
Reasoned opinion	/	/	/	0	1	1	1	0	0

Source: (Höing 2015b, 201); own completion for 2013 and 2014 on the basis of the same source (European Commission 2015).

MPs do not want to publicly show conflicts with the government. Clerks in the ‘Europe’ department of the Bundestag consider that even the European Commission knows that an opinion on subsidiarity stemming from the Bundesrat does not have the same ‘weight’ as one from the Bundestag (interview 31). MPs in the Bundestag feel that they have to be careful when using the instrument, and they consider it an imminently political one (interview 31). MPs would rather use the common ‘recommendations for decisions’ by the standing committees and accordingly the ‘decisions’ taken by the plenary when they wish to formally express a point of view.

This confirms for the Bundestag what this chapter already demonstrated for the Assemblée nationale. Prerogatives that do not correspond to the chamber’s usual practice – of either internal procedures or political interaction – have a tendency to remain ‘void letters’. A number of formal prerogatives introduced during the Maastricht period met this fate.

Given this informal interaction between the government and the Bundestag, the ‘timely’ information about the negotiation processes in Brussels is far more important for MPs than the formal ‘mandating’ or ‘resolution’ rights. This is further developed in the two acts of 2005 and

2006, and is detailed in the novel of the EUZBBG of 2013 and explicitly extended to treaties under international law – not the least after the public blaming of the German government through the judgement of the Constitutional Court following the action by the Green parliamentary party group (interview 42, interview 46).

As a consequence, the novel of the EUZBBG in 2013 enumerates details in terms of time limits for the submission of documents and their nature. The government's information obligations towards the Bundestag are at the heart of the new law. The submittal of internal government documents linked to the work of the Permanent Representation and the Council are fixed in detail. This confirms that the Bundestag has acquired in-depth knowledge of elements necessary in practice to effectively follow EU decision-making.<sup>146</sup> This is also underlined by the fact that the 2013 version of the EUZBBG is based on the in-depth monitoring report commissioned by the working group of EU experts in 2009 to the parliamentary administration when adopting the agreement between the Bundestag and the government in matters of the EU. According to several EU experts who have followed the process for a long time, the 2013 version of the EUZBBG resolves major flaws in government information detected between 2009 and 2011 (date of the internal debates about the report in the Bundestag – it was only officially published in 2013).

Conversely, the Bundestag's prerogatives stemming from the Responsibility for Integration Act of 2009, in which the EU expert group was not involved, but were induced by the Lisbon judgement of the German Bundestag, are widely considered to be prerogatives of a 'Sunday law' (Callies and Beichelt 2013), i.e. they will only rarely be applied. On the one hand, the Treaty of Lisbon prerogatives to which they correspond are only rarely used, and on the other hand it is unusual in the Bundestag's practice to use the prerogatives, MPs from the government majority will not go against a decision taken by their government.

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<sup>146</sup> More critical voices suggest that the detailed nature of the enumeration of documents and the government's obligations to submit a number of internal documents that were originally only destined for the better coordination of the German negotiation strategy might lead the German government to switch to other types of internal documents (Beichelt 2015, 544)



While during the Maastricht period neither the Assemblée nationale nor the Bundestag conducted substantive *ex post controls* of the decisions that were taken in the Council, during the Lisbon period this situation changes in the Bundestag. Through several changes of the legislative framework throughout the year 2000, the Bundestag obliges the government to report in detail about the different negotiation stages in the Council both before and after the decision is taken. This means that, as for domestic legislation, either the politicians responsible for a decision or their high civil servants have to report in the responsible sectoral committee after decisions have been taken in Brussels. The meetings of the standing committees are mostly not public, which gives the Bundestag's majority the opportunity to be informed in detail and to control its (coalition) government without putting it into danger publicly.

Another important difference between the Assemblée nationale and the Bundestag during the Lisbon period that was not as clearly discernable in the first period is that in the Bundestag there is now an extensive written exchange between the responsible sectoral committee on an EU issue and the administrative unit that deals with the topic on the side of the government. In EU affairs this reproduces the close interaction between the committees and the ministerial bureaucracy. As already demonstrated, the government has extensive reporting duties to the Bundestag, and these duties increasingly comprise written reports. While during the Lisbon period the Assemblée nationale focuses increasingly on participation through the invitation of politicians who are members of the government to public hearings, the Bundestag concentrates increasingly on a constant exchange between the responsible standing committee and the high civil servants of the federal administration involved in the negotiations in the Council behind closed doors.

#### **b) Interaction with transnational actors**

During the Lisbon period, the MPs in the Bundestag's interaction patterns with transnational actors change in comparison to the Maastricht period and allow the Bundestag to reproduce its domestic role of *expert controller* in EU affairs. The interaction patterns emerging

during the Lisbon period correspond to the German MPs' strong orientation towards the executive on the domestic level. The Bundestag's MPs have clearly diminished their exchange with the *EP* and extended their individual and collective contact with the *European Commission*, often already in the preparation phase of EU draft acts. German MPs see institutionalised fora for interparliamentary exchange with some scepticism. As a consequence, during the Lisbon period the *Assemblée nationale* and the Bundestag are clearly distinct from each other in terms of interactions with transnational actors.

As was shown above, as early as in the year 2003, the contacts of German MPs with the *European Commission* increase, while their contacts with the EP decrease by 10% in comparison to 1997 (Weßels 2005). Interview evidence confirms the data from Bernhard Weßels's parliamentary study. Throughout the first decade of the year 2000, direct contact with the European Commission becomes increasingly important for German MPs and continues to do so through the interview wave of 2012. This direct contact happens early in the policy cycle in Brussels, and usually allows MPs to be informed about issues before they reach the stage of formal draft initiative. There are also frequent visits by entire committees of the Bundestag to the European Commission (and to the Permanent Representation, but not to the EP) (Interview 31).

With regard to the interaction between the MPs of the Bundestag and the EP, one can observe an opposite evolution in both chambers from the Maastricht to the Lisbon period. In both chambers, there are early initiatives to institutionalise the interaction with the EP. While this is not initially successful in the *Assemblée nationale*, the Bundestag's Europe Commission even serves as a platform for the political agenda on German MPs' European integration at one moment, albeit without much real interaction with the usual parliamentary work in the Bundestag. During the Lisbon period, the reverse can be observed. While, as shown above, the *Assemblée nationale* manages to institutionalise different forms of regular meetings with French MPs, in the Bundestag no such institutionalised fora exist. German MEPs are seldom present in Berlin (Interview BT 2012). The institutional contacts between the Bundestag and the EP are 'very indirect' (Interview BT 2012). According to a clerk, the Chairman of the EAC

in the Bundestag, Gunther Krichbaum, considers that the Bundestag should make much better use of contact with the EP (interview 37).

German MPs have many personal contacts through their party families (as is the case in the Assemblée nationale). As in France, this seems to be especially the case for the Green party.

Another difference between the Assemblée nationale and the Bundestag during the Lisbon period is the use that is made of the parliamentary representatives in Brussels. In both cases, interviewees cite the communication with other national parliaments as one of the tasks of the parliamentary representative. In the case of the Assemblée nationale, this is judged to be a minor function (in terms of working hours spent on it), and in the Bundestag interviewees consider this task not to be 'useful'. According to a clerk in the Bundestag's administrative division, which is responsible for EU affairs, the efficiency of the 'Monday morning meetings' that regularly bring together the parliamentary representatives should not be overrated. The mandating and resources of the parliamentary representatives are too different. While the main task of the parliamentary representatives of the Assemblée nationale is to organise MPs' information visits to the European institutions, the main task of the German parliamentary representatives (together with the well-staffed Bundestag office in Brussels) is to gather information from European institutions about the preparatory phase of the policy cycle in Brussels. They organise regular meetings with European Commission officials about 'issues in the pipeline' (interview 37).

In 2012 both in the Assemblée nationale and the Bundestag, bilateral parliamentary cooperation is still considered something that would be beneficial to do in the future but that only develops slowly. In both chambers, actors consider that the working modes and statures of the different national parliaments are too different. As in the Assemblée nationale, there is some more institutionalised cooperation, such as the one between French and German parliamentary chambers or the so-called *Triangle of Weimar* (France, Germany, and Poland), but overall it mostly happens through personal contact on a selective basis.

The prospects of institutionalised multilateral interparliamentary cooperation on the European level are judged differently in the Assemblée nationale and the Bundestag. Actors in

the Bundestag do not consider interparliamentary cooperation to be efficient because it lacks ‘decision-making power’ (Interview 41), while actors in the Assemblée nationale are positive regarding its future prospects but point to current shortcomings. Accordingly, while major actors of the Assemblée nationale’s EAC put much diplomatic effort into pushing for the parliamentary assembly foreseen in article 13 of the TSCG Treaty, interviewees in the Bundestag are sceptical of its usefulness.

During the Lisbon period, actors and action in EU affairs in the Bundestag increasingly come in *typical* forms that serve to reproduce the Bundestag’s domestic role as an expert parliament. The following conclusion resumes the main findings of the comparative analysis of the participation in EU affairs in the Assemblée nationale and the Bundestag during the Lisbon period. Furthermore, it presents the results of the comparison of the Assemblée nationale and Bundestag as most similar systems over time in both chambers. The results are mostly coherent with *Hypothesis 1*. Despite highly different parliamentary practices on the national level, in both parliaments a similar evolution can be observed throughout both identified periods. However, the results of this evolution are clearly different action patterns in both chambers.

### ***C - Conclusion***

This chapter presented the results of the comparison of actors and patterns of action in EU affairs in the Assemblée nationale and Bundestag during the Lisbon period. In this period, normative conflicts because of ineffective participation in EU decision-making are assumed to be relatively high because of a steep increase in binding EU decision-making.

The analysis showed that both in the Assemblée nationale and in the Bundestag, EU affairs indeed start to be increasingly institutionalised. EU experts are clearly identifiable as actors taking action related to EU decision-making and as agents for the reform of parliamentary prerogatives. Action starts to be patterned in a way that allows MPs to ‘competently’ participate in EU affairs according to the working methods of each chamber, i.e. formal and informal

instruments are increasingly *functional equivalents* to the role fulfilled by each of the chambers on the domestic level.

In both parliamentary chambers under examination, evolutions can be observed that support *Hypotheses 1. Action* becomes slowly more typified in both chambers. EU affairs are better integrated into parliamentary working habits. Interaction with EU transnational actors is more common. *Typical EU actors* start to come to the fore. In both chambers, EU experts have a clearly defined profile and increase in importance. In contrast to the preceding period, in both chambers the change of formal prerogatives is pushed by EU experts who use political windows of opportunity to enhance the parliaments' capacities to fulfil their original parliamentary roles.

In this phase, EU experts are the main *agents of change* in both parliaments. They search for solutions to adapt their capacities of action in EU decision-making in a way that ensures *functional equivalents* to 'usual ways of doing things in parliament' on the domestic level, thereby leaving important formal prerogatives obtained in the past unused and pushing for new – and better adapted – formal rules. In particular, the rules introduced with the Treaty of Maastricht do not prove to be adequate for usual parliamentary practice in either of the two chambers under examination.

However, these similar evolutions lead to more divergent action patterns between both chambers than was the case at the beginning of the 90s when the EU affairs were still weakly typified. The cause for this paradoxical evolution is the fact that typification happens through conflicts with established 'ways of doing things' or practice in the chambers, and that actors search for solutions that represent *functional equivalents* for established practices in the parliamentary chambers.

In the Assemblée nationale, actors develop forms of parliamentary participation in practice that help them to better fulfil functions of representation and interest intermediation on European issues. The EAC increasingly develops into a central actor and information power house for the whole chamber.

Informal dialogue between individual MPs who are experts in EU affairs and the political level of the government becomes the dominating form of interaction regarding EU issues. All tools destined to better inform the whole chamber on EU issues are more strongly developed. This concerns especially debates on EU issues, information reports, and public hearings of national and EU personalities. Even the classical control instrument of Europe Resolutions important in the first period is by now used more so as a tool to raise awareness of the sectoral committees.

MPs in the *Assemblée nationale* are not interested in control after the final decision has been taken in Brussels. They wish to be informed in order to relate this information to their constituencies. Overall, MPs in the *Assemblée nationale* start to have long-term strategies in EU affairs rather than influence strategies on concrete legal acts. These formal and informal instruments allow MPs to relate information to the stakeholders in their circumscriptions and to relate the latter's interests to the government. Thus, the MPs play the role of a supplementary alarm and diplomatic channel for the government, enhancing the chamber's overall *responsiveness* to the input from society.

In contrast, during approximately the same period, MPs in the Bundestag develop an increasing number of forms of parliamentary participation that allow them to regain governance functions or functions of legislation and control, even if the Bundestag does not obtain concrete mandating rights.

In the Bundestag, the EAC develops into a committee mirroring a government entity (Beichelt 2009), a functional logic that follows all standing committees in the Bundestag, and in this case the Chancellery. The EAC scrutinises all matters of institutional and constitutional concern of the EU, and has obtained these rights to the detriment of the Foreign Affairs Committee. It does not take part in the scrutiny of day-to-day decision-making of the EU, however.

In contrast to the *Assemblée nationale*, the most important location for following up the draft legislation through the different stages of negotiations in the Council are the sectoral committees, in which all parliamentary party groups take part.

A well identifiable group of EU experts also act as *agents of change* to push for extended control capacities and obtain more rights for continuous information about the different negotiation stages in the Council of Ministers (carried out directly by the government's administration).

*Action* in EU affairs in the Bundestag is increasingly characterised by an early participation in the preparation of the decision-making processes in Brussels. MPs try to obtain information on concrete legislative dossiers early in the preparation phase to improve their ability to control the final draft act through various channels in the phase of legislative initiative. To achieve this, the Bundestag substantially and continually restructures its administrative backup and channels to Brussels throughout the first decade of the new millennium.

The preceding chapters showed that parliamentary practice in EU affairs clearly changed between the Maastricht and the Lisbon period. EU experts have become *typical* actors in EU affairs, and *typical* patterns of action related to EU decision-making have emerged. These new typical forms are *functional equivalents* to the role that each chamber plays in decision-making on the domestic level. The Assemblée nationale has developed its capacity to represent French voters' interest on the EU level and to keep different national stakeholders informed about issues coming up in Brussels. In contrast, the Bundestag has developed its governance role and already follows EU decision-making before the European Commission issues a draft proposal, and closely monitors the negotiations in the Council.

The following and final chapter questions whether these evolutions of the chambers' practice have had an impact on the ideas that MPs convey about the role of parliaments in the EU. The chapter compares ideas regarding the role of parliaments in the parliamentary debates on the Treaty of Maastricht and on the Treaty of Lisbon in both chambers.

The chapter shows that in the Lisbon debates, ideas about the role of parliaments in the EU can indeed be better traced to domestic role orientations than was the case in the Maastricht debates. In the Maastricht debates, ideas conveyed in both chambers can be traced to the speakers' ideology about the objectives and future shape of European integration.