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STRENGTHEN THE EUROPEAN PARLIAMENT

The European Parliament Controls the European Union National Parliaments Control their Governments

1. National parliaments legitimise the transfer of sovereignty rights from the Member States to the EC/EU. Their role must remain limited to transferring competencies and scrutinising their governments. The thesis regarding their ostensibly inadequate participation in the integration process overlooks two things: First, Member States' parliaments ratify Treaty changes and accessions; second, the parliaments are comprehensively involved in the implementation of directives.
2. The European Union must become more democratic. The European Parliament (EP) continues to be the sole directly legitimised EC institution. In the future, the EP must thus participate as a legislator in EC lawmaking on equal footing with the Council of Ministers. To this end, the election procedures must be standardised and a greater representativeness must be achieved.
3. The Maastricht Treaty exacerbates the parliamentary democratic deficit: The Common Foreign and Security Policy (CFSP) and the Co-operation in Justice and Home Affairs (CJHA) are subject neither to uniform national nor direct European parliamentary control.
4. To remove this parliamentary democratic deficit, the legislative powers of the EP must be strengthened through increased use of the co-decision procedure and enhancement of the national parliaments' powers of scrutiny vis-a-vis their governments.

Flexible integration requires parliamentary participation.

5. Methods of flexible integration allow a certain number of Member States to proceed ahead of the EU in its entirety in a few areas. In the future, when a decision is taken in an area where flexibility is already written into the Treaty, then the EP must receive a right to co-decision and the national parliaments a right of final ratification.
6. New parliamentary chambers consisting of deputies from those states participating in the flexibility core will only lead to a duplication of vested interests and to conflicts of interest within the Council of Ministers or between the Council of Ministers and the EP. Thus, they should be rejected.

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The scrutiny of member state governments through the national parliaments should not be made uniform.

7. Make parliamentary rights of scrutiny uniform would contradict a basic principle of the Union: respect for the national identity of the Member States.
8. A protocol to a revised Maastricht Treaty should make possible a timely examination of EC/EU documents by national parliaments. The protocol should set a minimum time period to be granted to the national parliaments to examine the documents in question.

Strengthen the dialogue between the EP and the national parliaments.

9. The Conference of Parliaments (where deputies from the national parliaments and the European Parliaments meet) should, at the invitation of the EP, always meet when the EU has acts requiring ratification on its agenda. The resolutions of the Conference would be of a consultative and advisory nature.

1. Functions of the EP and of National Parliaments

The loss of parliamentary legislative powers has been the subject of increased discussion since the ratification of the Single European Act (SEA) and the Treaty on European Union (TEU). Since the reforms of the European Community/European Union (EC/EU) initiated in 1986/87 and 1991/93, it has become clear that preparing the EU for its next big step of enlargement must also involve careful examination of an important question: the location of parliamentary rights of co-determination at both the European and the national level.

The Intergovernmental Conference (IGC) to revise the Maastricht Treaty aims to achieve a more efficient, democratic and transparent Union. Seeking to remove the democratic deficit, the IGC is evaluating the possibility of strengthening the legislative powers of the EP through a broader application of the co-decision procedure. To the same end, it is also looking at increasing the national parliaments' power to scrutinise their governments' handling of EC/EU affairs, which would be delineated through the introduction of a Treaty protocol regarding their role in the EC/EU.

The EP continues to be the only directly legitimised institution of the EC. As such, the EP must participate in the future as a legislative body on equal footing with the Council of Ministers when it comes to EC legislation.

National parliaments legitimise the transfer of sovereignty rights from the Member States to the EC/EU. As such, national parliaments will also need to ratify the results of the IGC. The German constitutional court, in its Maastricht ruling, determined that "responsibilities and powers of substantial scope should remain..." ["Aufgaben und Befugnisse von substantiellem Gewicht verbleiben" (BverfGE 89: 155, 156)] with the German Bundestag. Nevertheless, in view of the need to delineate legislative powers with an eye to efficiency and clarity, one should warn against an interpretation of this ruling – moved by the desire for

an implementation that favours the national parliaments – that overlooks the difference between EC/EU primary law (set by the Member States after being ratified by their parliaments) and EU secondary law (formulated by the EU institutions).

A central role of national parliaments in providing democratic legitimacy must remain limited to primary legislation involving the transfer of sovereignty. It would not make sense to grant national parliaments similar functions in the area of secondary legislation involving the establishment of norms. It is the EP and the Council of Ministers that provide secondary legislation with its democratic legitimacy.

2. The European Parliament has to be strengthened

Past Treaty-based EU reforms have increased the EP's powers of legislation and control. All the same, there is a gap between the institutional and procedural structure of the EU, on the one hand, and the principles of democracy maintained by the EU and the Member States, on the other.

Transferring power from the Member States to the EC/EU inevitably leaves national parliaments with less legislative authority. Though not necessarily inevitable, such transfer has in practice also led to the overall loss of parliamentary power within the EU. As a rule, the right of initiative goes to the Commission; legislative power to the Council. This phenomena has led to the term EC/EU democratic deficit.

Even after the conclusion of the IGC, the danger exists that the EP will gain only part of those transferred legislative competencies necessary to put it on an equal footing with the Council of Ministers.

2.1. Basic Principles for Strengthening the EP

The revision of the Maastricht Treaty should thus be guided by the following basic principles:

- a. The EP shares legislative power with the Council on regulations, directives and other legislative acts that all Member States are obliged to apply and where the Council decides by qualified majority.
- b. In the case of joint legislation, the EP and the Council of Ministers should negotiate according to the co-decision procedure (simplified procedure, Art. 189b ECT).
- c. On joint legislation, the option might be created for the Council of Ministers to adopt implementation measures after consultation by the EP.
- d. In all other cases defined by the EU Treaty, assent of the EP is required.

An effective right of co-decision is only wielded by the Parliament in those cases where the Council of Ministers decides by (qualified) majority. As such, the IGC must seek to move more issue areas from unanimity to majority decision making. The German government is thus called upon to finally put forward a list of those policy areas where it is prepared to move from the principle of unanimity to that of majority.

2.2. CFSP and Justice and Home Affairs Must Become More Democratic

The democratic deficit is largest in the areas of Common Foreign and Security Policy (CFSP) and Co-operation in Justice and Home Affairs (CJHA). The Parliament's right to consultation is limited to the most important aspects and the fundamental issues of CFSP, whereby the Council Presidency decides on the

amount and substance of the information and when it should be provided. The Parliament also receives reports from the Commission, whose powers, however, are significantly limited. The Commission has a (seldom used) right of initiative, but it participates neither in the formulation of Common Positions (Art. J.2) nor in the adoption of Joint Actions (Art. J.3). Instead, it is the European Council that has the right to adopt guidelines for the development of the CFSP that also provide the basis for the adoption of Joint Actions by the EU. Proposals from either the Member States or the Commission are qualitatively subordinated to these European Council guidelines. As the guidelines provide the primary basis for Joint Actions, the European Council acquires a factual, non-sanctionable right of initiative, which has a similar effect to the Commission's right of initiative in the area of the ECT.

Only the parliaments of Denmark, Sweden, Germany and Austria are consulted by their governments on documents related to CFSP; the degree of consultation, however, varies significantly and is, according to the parliaments' own evaluations, unsatisfactory. CFSP is thus subordinate neither to uniform national nor direct European parliamentary control.

In the area of CJHA, article K.6 defines the participation rights of the EP in a way largely similar to CFSP. The Member States, however, have a monopoly on the right of initiative on matters of judicial co-operation, co-operation in civil and criminal matters, customs co-operation and policy co-operation. In CJHA there is also only an issue-specific possibility for controlling and sanctioning the Commission, not however, the Council. Nor do national parliaments compensate for the European Parliament's wanting right of participation. The parliaments of Belgium, Greece, Spain, Ireland, Italy, Luxembourg, and Portugal are not consulted at all or only to a limited extent on questions of CJHA.

The EU's second and third pillars have serious democratic deficits. On these matters, the Council faces no binding Treaty commitment to report to or consult with the EP or the national parliaments. The lack of parliamentary scrutiny over the third pillar is particularly problematic. The various working groups, conferences and institutions like Europol, as well as more flexible forms of integration like the Schengen agreement, are controlled neither by the EP nor by the parliaments of the Member States.

The IGC is now deliberating a progressive transfer of particular CJHA policy areas into the EC Treaty. This prospect for the creation of an area of freedom, security and justice in which the free movement of persons finally comes about is a significant step on the way to a European Union. Efforts should already be made now, however, to ensure that the EP fully participates as a legislative and control institution, both during the progressive establishment of the free movement of persons as well as after the overall target date (1 Jan. 2001).

In the future, the following basic principles should apply to the areas of Common Foreign and Security Policy and Co-operation in Justice and Home Affairs:

- Before the Council adopts Common positions or other legally binding measures adopted outside the context of the European Communities, these must go through an obligatory consultation procedure by the EP.
- In the context of non-obligatory financing of actions and measures, the EP is to be involved as a budgetary arm of the EC.
- Conventions agreed to outside the European Community framework can only be presented to the national parliaments for ratification after a consultation by the EP.
- In all other cases, assent of the EP is required.

2.3. Flexible Forms of Integration Require Parliamentary Participation

The Economic and Monetary Union (EMU) and the Schengen Agreement, as well as the Social Protocol and the options arising out of Article K.7 of the TEU for enhanced co-operation are often cited as examples of differentiated, flexible or variable integration. The IGC is currently negotiating whether such forms of integration should be expanded only in specifically defined areas or whether they should be more generally applicable. Flexibilization of the EC/EU has a lot of appeal. All the same, the debate on moving ahead through flexible integration is about providing the EC/EU with efficient mechanisms for taking action should the real goal, namely, "...efficiency through the extension of majority voting in the Council of Ministers," not be achieved. Focusing the reform discussion on the option of flexible integration distracts from the issue of achieving greater efficiency through greater democratisation!

Should methods of flexible integration be introduced, then not only is clarification needed of the rules for decision making in the Council but also of the procedures for parliamentary inclusion. Both the Treaty provisions of the Schengen Agreement and of the EMU corroborate that the participation of the Parliament is too limited and that it is by no means commensurate with the political significance of these moves toward greater integration.

A continuation of specific flexibilization rules in those areas where a sub-group of Member States is legislating must take into account the role of the EP in the context of the co-decision procedure.

The introduction of a general flexibility clause applicable to broad range of issue areas would entail a certain danger: the constitutional character of a core union of 15 – N (member states) + X (new member states) could change without a formal revision of the Treaty being required. In order to avoid this situation, the conditions for introducing flexible integration provisions must be extremely restrictive. As a general flexibility clause would allow the constitution of the Union to change without actually revising the Treaty, decision-making in the Council must be coupled to the legitimising functions of the national parliaments and the EP. Here, there are two options:

- (1) When a decision is taken in an issue area where flexibilization is already written into the Treaty, then the EP must acquire a right of co-decision and the national parliaments a right of final ratification.
- (2) Should a general and non-specific flexibility clause make it possible for a certain number of Member States to proceed ahead of the other Member States in certain areas, then the EP must give its assent.

The national parliaments can participate either through their influence over the policy formulation of their governments or through a ratification procedure.

Whatever form of flexible integration is agreed upon, the basic principle should apply that the institutional framework of the Community and the presently achieved level of integration will be maintained. Proposals for flexibility options that raise questions regarding the makeup of the Community institutions should generally be rejected. In this context, proposals for the creation of new parliamentary chambers made up of deputies from those states participating in the flexibility core should also be rejected. Finally, the EP and national parliaments must exercise greater control over the introduction of flexible integration. This can be achieved through a more systematic use of existing co-operation instruments (e.g., the Conference of European Affairs Committees, COSAC).

3. Scrutiny of the Member State Governments by National Parliaments Can Not Be Made Uniform

National parliaments already carry out a wide variety of tasks in the context of the development and continuation of the European legal environment. There are those, however, who argue that national parliaments are insufficiently included in the integration process. Yet this overlooks both the requirement that national parliaments give their assent on Treaty amendments, accessions, agreements, "communitarization" and decisions on own resources and the broad role national parliaments play in the implementation of directives. These activities ensure a connection between the EC/EU and its citizenry. An expansion of the ratification duty appears only appropriate

- when the Council of Ministers is engaged in legislation and the EP, after the completion of the IGC, has still no right of scrutiny;
- when new Treaty provisions are introduced that affect the constitutional foundations of the Community.

The transfer of sovereignty to the EC/EU also involves national parliaments transferring their legislative competencies to the legislative authorities of the EC. It is possible to compensate for this loss of competency, though it depends on the nature of the parliamentary role in shaping the position of their governments on matters relating to the Council of Ministers. Specifically, how and when do the respective governments inform, consult or seek the assent of their parliaments?

Such parliamentary scrutiny varies from member to member. Making the existing control procedures more uniform would be difficult because the respective roles of government and parliament are mandated by national constitutions. Indeed, standardising parliamentary control rights would not be possible as it also contradicts a basic principle of the Union: respecting the national identity of the Member States.

3.1. Minimum Requirements and Limits for the Inclusion of National Parliaments

The participation of national parliaments in the implementation of directives follows from Article 189 of the EC Treaty whereby "national authorities" are left with the choice on the form and the methods when they transpose EC directives into national law. In order to maintain the credibility of the EC/EU, it is important

that members implement the adopted legislation in a manner both timely and true to the original intent; the question of the respective responsibility of the various national institutions should be solved in a subsidiary manner reflective of the differing state constructions prevailing in those areas of member state responsibility.

The participation of national parliaments in the legislative process of the EC/EU is written into the Union Treaty in Declaration Number 13 on the role of the member state parliaments in the European Union:

"[...] The (Intergovernmental) Conference considers that it is important to encourage greater involvement of national parliaments in the activities of the European Union. [...] In this context, the governments of the Member States will ensure, inter alia, that national parliaments receive Commission proposals for legislation in good time for information or possible examination. [...]"

Though legally non-binding, this makes clear that national parliaments have a scrutinising function vis-a-vis their governments. As such, direct participation on legislation at the EU level can only be based on the constraining provisions of Article 146 ECT (Composition of the Council) on how Member States fill positions in their EU delegations. In view of the IGC's goal of greater "efficiency, transparency democracy," introducing additional institutionalised decision making bodies must be avoided.

3.2. Minimum Requirements for the Scrutiny of National Governments

3.2.1. Scope of Parliamentary Scrutiny

All parliaments are informed and where applicable consulted on European Commission legislative proposals applicable to the EC Treaty. Differences exist, however, regarding the manner in which Green and White Papers and communications from the Commission as well as documents from the Council (Council minutes, etc), the EP (resolutions, reports, etc.) and the other institutions (ECOSOC, Committee of the Regions) of the Community are forwarded to them.

The scope of scrutiny is also an issue in regard to the additional information provided by the governments. The Danish Folketing receives not only EC documents, but summaries from the government on the content of a proposal and its consequences for Danish law, administrative guidelines and general Danish norms and standards; an overview on the consequences for the public sector, the firms and the citizens of Denmark; an overview of the consequences for state finances; information regarding which groups or associations have submitted protests and what the reaction to such protests was; an overview of the procedure in the EP, including the content of the amendments adopted by the Parliament; and the position of the Commission regarding the amendments. Similar arrangements for increasing efficiency exist in the parliaments of Belgium, Luxembourg, the Netherlands and the United Kingdom.

In the German Bundestag, the "basic principles of the committee for matters of the EU regarding the examination of the Union documents provided to it in accordance with Paragraph 93 of the Rules of Procedure of the German Bundestag from 25 Oct. 1995" also foresee an obligation on the part of the Federal Government to report on the deliberations in the institutions of the EU. In order to increase the material scope of the Bundestag's scrutiny, an expansion of its committee activities should be pursued. For example, the resolution of the home affairs committee of the Bundestag from 6 March 1996 on regular reporting of the Federal Government on the activities of the Council of EU Home Affairs and Justice Ministers could be utilised and further developed. From this perspective in particular, we would welcome

it if the Federal Government were obliged to report to the responsible committees on matters relating to the EU. This would not hinder the activities of the EU committee.

An expansion of the scope of parliamentary information and scrutiny is necessary, above all, in the areas of CFSP and CJHA--particularly if the IGC does not improve the small and circumscribed obligation to consult with the EP and if the co-operation structure remains as is in both pillars.

3.2.2. Timing of Parliamentary Scrutiny

The annual legislative programme of the European Commission is an important document for examination at the national level because it gives timely indication of when the institutions of the EC will propose, deliberate and adopt legislation. Examination of the annual legislative in national parliaments can thus be used as an early warning system, in order to prepare positions--together with the governments, the EP and other institutions of the Community--on legislative proposals that are referred to in the program.

In the course of the decision making in the Council of Ministers, the task of the national parliaments is to scrutinise the representative of their government in the Council. The successful exercise of scrutiny rights is hindered through lacking transparency at the level of the Council of Ministers—despite intermittent public voting. Only a minority of the parliaments receives information about the status of the legislative activity at the various levels authorised to negotiate within the Council.

Formally, most national parliaments receive the EC documents that are required to be forwarded on to them after the European Commission presents them to the Council. Practice has shown, however, that parliaments and their committees often receive EC documents too late and that there is only limited time for a comprehensive examination before the relevant Council of Ministers meeting.

A more timely examination of EC/EU documents in the national parliaments could be achieved by means of a binding provision in the EC Treaty or as a protocol to the Treaty. Such a provision would prescribe a minimum time period to be granted to the national parliaments to examine the respective documents. This time period would have to be based on the frequency of the parliamentary sessions at the national level. The four-week period foreseen in the Irish Treaty draft seems adequate for most of the Member States. It should, however, be considered that this period would force some parliaments (Italy, Greece, Portugal, Spain, the Netherlands) to reorganise their deliberation procedures.

In order to assure timely information and to prepare decisions on EC documents in a meaningful manner, national parliaments should examine the Commission's annual legislative programme at an early point and independent of any formalised forwarding procedure.

The option discussed at the IGC, not to anchor the national parliaments' rights of scrutiny in a protocol to the Treaty but in the Council's procedural rules, should be rejected. This proposal would make the Council of Ministers, which is a collective institution, responsible for forwarding information to national parliaments as opposed to the national governments, which are constitutional institutions. The proposal of the Irish draft Treaty giving responsibility for the formal forwarding procedure to the individual governments is preferable.

3.2.3. Effects of Parliamentary Scrutiny

The nature of the binding effects resulting from scrutiny by the national parliaments of their governments depends, for the time being, on the scope of the scrutiny and on the time period that is defined or that emerges for examination of EC documents.

With a view to strengthening the control powers of the national parliaments, a rule should be added to the EU Treaty which, at a minimum, requires governments (in accordance with their constitutional provisions) to consult their parliaments on the planned legislation, both comprehensively and at the earliest possible date before the meetings of the Council. However, no delay should result from parliaments not examining legislative proposals within the time period set by the Council Presidency.

Making national parliaments' powers of scrutiny more uniform should only be pursued if the Amsterdam summit leaves the EP with either no supervisory rights or only rudimentary ones.

3.2.4. A Right to Sue for National Parliaments?

The German SPD parliamentary group proposes incorporating into the EC Treaty a right for national parliaments to file suit with the European Court of Justice. This proposal is motivated by the observation that national parliaments are compelled to transpose EC legislation even when the parliaments are of the view that the imposed norm violates the subsidiarity principle. (SPD parliamentary group in the German Bundestag "Forderung zur Reform des Vertrags von Maastricht und der Europapolitik," – BT-Drs. 13/1739; see also Report of the Luxembourg deputy Charles Goerens to Minister President Jean-Claude Juncker).

Filing a proceeding for annulment based on Article 173 of the EC Treaty to clarify overlapping Union jurisdictions might be possible. But in doing so, it must be assured that the ECJ does not degrade into a forum where governments and parliaments carry out their conflicts. For this reason, a complaint should only be allowed in those cases where the questioned Community norm was adopted against the vote of one's own government.

4. The Dialog Among the Parliaments Must be Strengthened

Declarations 13 and 14 attached to the Maastricht Treaty recommend increasing contact between the EP and the parliaments of the Member States through "appropriate reciprocal facilities," "regular contacts between Members of national parliaments and the EP," and meetings as a Conference of the Parliaments (or assises). In the case of a convention of the Conference of Parliaments, Declaration No. 14 provides that it "will be consulted on the main features of the European Union, without prejudice to the powers of the EP and the rights of the national parliaments." Moreover, "the President of the European Council and the President of the Commission will report to each session of the Conference of the Parliaments on the state of the Union." From the perspective the respective parliaments, whose governments only sporadically forward information on the status of EU legislation, the Conference of Parliaments holds a certain attraction. Also from the perspective of the Federal Republic of Germany, it would be desirable for the "assises" to always meet when the EU agenda includes either acts requiring ratification (Article N, O, K.3 (2c.), K.9 TEU, as well as 8e, 138(3), 201 and 220 TEC) or possible "flexibilization decisions." The

decision of the assises should only be of an advisory nature and not stand in competition to the advising and supervising rights of the EP.

Other forms of inter-parliamentary co-operation such as the Conference of Presidents and Speakers of the Parliaments, joint meetings bringing together corresponding committees, convocations of rapporteurs and parliamentary staffs could also strengthen the parliaments' rights of communication and scrutiny. In particular, the informal contacts at the level of the committees should be expanded, in order to jointly examine the legislative acts of the EC as early as possible and from the perspective of their transposition and implementation in the Member States.

A Treaty-based institutionalisation of inter-parliamentary co-operation is unsuited to reducing the democratic deficit, if for no other than that the efficiency of scrutinising action does not increase with the level of formalisation. In the final analysis, new institutions only duplicate vested interests and conflicts of interest within the Council of Ministers, and between the EP and the Council of Ministers.

The protocol on national parliaments to be worked out in the context of the IGC should thus build to the greatest degree possible on the unanimously adopted final conclusions of the Dublin COSAC of October 1996.

Appendix

The Scope of Parliamentary Scrutiny in the Areas of CFSP and CJHA

	CFCP	CJHA
Belgien Advisory Committee of the Chamber of Representatives and the Senate	Right to put written and oral questions, interpellation	Right to put written and oral questions, interpellation
Dänemark	Yes (analogous to the EC pillar)	Yes (analogous to the EC pillar)
Deutschland Bundestag Bundesrat	Yes (through the Committee for Foreign Affairs) No	Yes (all documents drafted under Article 100c, K.9 and K.3-2 TEU) Yes (analogous to the EC pillar)
Griechenland	No	No
Spanien	At the Government's discretion	At the Government's discretion
Frankreich Assemblée nationale Sénat	Yes, since 10/95 No	Yes, since 6/94 No
Irland	At the Government's discretion, if the documents are binding for Ireland	At the Government's discretion, if the documents are binding for Ireland
Italien Camera und Senato	On Request; at the Government's discretion	On Request; at the Government's discretion
Luxemburg	No	No
Niederlande Tweede Kamer Eerste Kamer	Through the Committee for Foreign Affairs No	Yes, because the parliament's assent required Yes, because the parliament's assent required
Österreich Nationalrat Bundesrat	Yes Only if competences of the Bundesländer are affected	Yes Only if competences of the Bundesländer are affected
Portugal	At the Government's discretion	At the Government's discretion
Finnland	Yes	Yes
Schweden	Yes	Yes
Vereinigtes Königreich House of Commons House of Lords	Very restricted; at the government's discretion Very restricted; at the government's discretion	Restricted Restricted