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**NATIONAL PARLIAMENTS IN EU MULTILEVEL GOVERNANCE –
DILEMMAS AND STRATEGIES OF ADAPTATION**

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1. National parliaments in a dynamic multilevel power game

Since the late 18th century, parliaments are regarded as the central institutions of democratic political systems. While representative assemblies have a long tradition and were, according to Montesquieu, invented “in the forests” of the ancient Germans (Montesquieu [1748] 1989: 166), elected parliaments became the nucleus of a democratic system during the 19th century. In theory and practice, the idea that laws should be passed by elected parliaments and that political power of rulers should be derived from and controlled by them is now widely acknowledged.

Thus, it raises serious questions of democratic legitimacy if analysts diagnose a “de-parliamentarisation” of a political system. This term is also used to characterise two features of European integration: Firstly, at the European level the European Parliament (EP) is still regarded as too weak in comparison with the Council. Secondly, with the emergence of a new kind of European multilevel governance legislative power has been transferred not only from the nation state to the European level, but also from national parliaments to the executive. This second development seems to be more crucial than the first: While the power of the EP has been extended in several steps of institutional reform, national parliaments are said to lose power in the EU multilevel governance continuously. According to a widely discussed hypothesis, European policy-making strengthens national executives, because they control the flow of information, the coordination of divergent interests, the generation of ideas and the handling of institutions (Moravcsik 1994). At the same time, the power of national parliaments to influence and supervise their governments negotiating in the Council is often considered as rather weak.

While most scholars of European integration will agree that this analysis was all in all correct, this is not the end of the story. As a rule, no institution or actor simply accepts a loss of power without any resistance. Once they realise their incremental downgrading they search for ways to regain power or to compensate the altered power structure. This is exactly what we observe when we study national parliaments in the process of European integration.

The most obvious reaction of national parliaments first and foremost concerned their institutional structure. However, these institutional reforms were only partly effective in counterbalancing the executive’s power position. In addition, the institutional changes intensified and made explicit a dilemma parliaments are confronted with when they engage in European affairs. The more effectively they influence and scrutinise their government, the more they bind their representatives negotiating in the European Council to national interests. We will show, however, that national parliamentarians, after having adjusted their institutional capacities to the challenges of European integration, develop strategies to cope not only with the government’s gate-keeper position but also with this dilemma. In this paper, after analysing the ambivalent consequences of institutional reforms during the process of Europeanization of national parliaments, we provide first evidence about the strategies of members of parliaments.

2. Parliaments strike back: Institutional reforms in national parliaments

As regards the effects of European integration on national politics, there seems to be at least one consensus, namely that it has strengthened the executive and weakened (among

other domestic actors) national parliaments because policy-making competencies were transferred from the national to the European level. National parliaments are still able to hamper or slow down important steps of the integration process as they have to ratify Treaty agreements (as far as they are not subject to referenda), but they are no longer able to prevent European legislation. They hold discretionary power with regard to the transposition of European legislation into national law, but can only indirectly influence intergovernmental decision-making. As a consequence, national parliaments were and still are losing a growing part of their sovereignty as legislatures while national executives are strengthened due to their direct involvement in European policy-making. National parliaments seem to have been “left behind in the rush” (Norton 1996: 192).

This argument has been emphasised especially by scholars who analyse the role of national parliaments in the EU with a pure “two level game” approach. Moravcsik, for example, identified four factors that he argued would determine who benefited from membership of the EC (Moravcsik 1994). These he labelled the “four ‘I’s’”: initiative, institutions, information and ideas. Because executives act as gatekeepers between the national political system and the international organisation, they can *initiate* negotiations on policy issues without prior consultation with other domestic actors. Secondly, as constitutional rules normally do not require formal ratification until after an agreement has been reached, executive actors are able to dominate *institutional decisions* while their legislatures are later faced with “take-it-or-leave-it” choices because renegotiations are impossible. Thirdly, national executives, through their participation in international regimes, also have access to a steady stream of *information*, which domestic actors, such as parliaments, can only obtain at considerable expense. Without this information, they are ill equipped to challenge or control the executive. Fourthly, governments can manipulate *ideological justifications* for a particular policy.

This approach, however, ignores the possibility that parliamentary actors as the alleged losers of the European integration may identify the structural disadvantages resulting from the multi-level structure and react accordingly (Auel and Benz 2000). In fact, compared to developments in domestic politics, we can observe a remarkable resilience of national parliaments in the European context. The reasons are obvious: While in the national political system parliaments are affected by long-term incremental and informal changes in the executive-legislative relations, power shifts caused by European integration are based on explicit decisions and changes in the formal rules of the political system. Moreover, these formal changes gave rise to intense discussions on the democratic deficit as well as on the role of parliaments at all levels, a process which has induced national parliaments to respond. Meanwhile, parliaments have even been discovered as a source of legitimacy of the European Union by the governments themselves. The Treaty of Nice has triggered a debate on their role in the European political system, and the “Convention on the Future of the European Union” working on a Constitutional Treaty dedicated considerable effort to this issue. Therefore, it is not astonishing that national parliaments have reacted to European integration and that this process of adjusting the balance of power still continues.

The ongoing debate about the democratic deficit of the European Union, and above all their interest to maintain their power has motivated national parliaments to implement institutional reforms as a first reaction to the challenges of European integration (Kamann 1997; Laursen and Pappas 1995; Maurer and Wessels 2001; Norton 1996a; Smith 1996; Weber-Panariello 1995). These institutional reforms had three basic objectives:

- They were meant to entitle national parliaments to obtain comprehensive information on European issues by their government. While this right at first applied mainly to the “first

pillar” of the EU, it was later expanded to the “second” and “third pillar” in most national parliaments.

- They aimed at enhancing parliamentary capacities to handle and process this information. All national parliaments have reformed their infrastructure by setting up one or more special European Affairs Committees and by implementing a scrutiny procedure for European documents and decisions.
- They intended to establish participation rights that parliaments hold vis-à-vis the government within the national arena for European affairs as well. This includes the right to draft resolutions on European issues (“scrutiny reserve”). The mandating effect of these statements, however, differs considerably between member states.

The details of these reforms vary between different national parliamentary systems. In the following section, we provide a brief description of the institutional reforms in national parliaments in three member states. We selected the British *House of Commons*, the Danish *Folketing* and the German *Bundestag* because they stand for three parliaments in different types of political systems: the competitive democracy of the “Westminster” system, a consensus democracy typical for the Nordic countries and a mixed system combining elements of a competitive and consensus democracy in Germany.

Institutional reforms in the House of Commons

The British House of Commons¹ stands for the classic Westminster model of democracy. A clear parliamentary majority as well as an almost complete symbiosis of government and its parliamentary majority characterize it. As a result, the House of Commons is regarded as a relatively weak parliament (Mény and Knapp 1998: 181). While the traditional British principle of absolute parliamentary sovereignty² cannot be regarded as mere constitutional fiction, the immense power originating from this principle is transferred to the executive via a disciplined party system. The parliamentary majority’s main task consists in providing the personnel for the formation of government and supporting it in office afterwards. The task of policy-making, on the other hand, lies solely in the hands of the government: “Thus a system based on parliamentary supremacy becomes a system of executive dominance“ (Madgwick 1991: 30). The opposition forms similarly close ranks. It is regarded as a state authority and the “alternative government on hold” that is paid more respect than its relative weakness might suggest. While it is entitled to only few of the usual parliamentary rights of participation and control, the main task of the opposition is that of parliamentary confrontation (Helms 2002).

The fact that the House of Commons can be characterized as a debating parliament with mostly communicative and control functions (“tension release”; Norton 1991: 326) is also evident in the minor role played by parliamentary committees (Sturm 2003). Standing

¹ Due to the relative insignificance of the House of Lords the United Kingdom is regarded as an almost-one-chamber-system (Mény and Knapp 1998: 185). Yet, especially the House of Lord’s Committee on European Legislation has earned high merits with regard to the scrutiny of European matters (Sturm 2003).

² The competencies of Parliament may not be limited, not even by Parliament itself. Parliamentary legislation takes absolute priority and hence cannot be revoked by British courts.

Committees are set up, contrary to what their name suggests, for the debate of a bill only and are dissolved once the legislative process is finished. This severely restricts the development of parliamentary expertise in single policy fields or sub-fields. In 1979, additional Departmental Select Committees were introduced. These Committees are not, however, involved in the legislative process. Their task is the critical scrutiny of governmental action, i.e. the implementation of policies (Rush 2000). This is underlined by the fact that the Committees normally sit in public.

Notwithstanding the weakness of the House of Commons, the question of parliamentary sovereignty and its limitation by subordinating it to European legislation dominated the debate on the UK's accession to the EC (Mather 2000). Accordingly, the House of Commons began quite early to deal with the loss of power membership in the EC would entail. As soon as 1972, the House of Commons set up a commission to elaborate a procedure to secure parliamentary sovereignty. Following the commission's proposal, parliament set up a Select Committee on European Legislation to scrutinise European proposals and to assess their political and/or legal importance for the UK ("burglar alarm", Cygan 2001: 54). Its task was not, however, to discuss the merits of European proposals or to suggest alternatives (Collins 1990: 120). Thus, debates on the proposals did not take place in the Committee. Rather, the Committee's reports were made known to the House and documents considered as politically and/or legally important were then delegated to the "Committee of the Whole House" or to a Standing Committee for debate.

Today, after several reforms, the scrutiny procedure in the House of Commons is still based on these two basic mechanisms. Firstly, European documents are transferred to the *European Scrutiny Committee* (ESC) whose task is "to examine European Union documents and (a) to report its opinion on the legal and political importance of each such document and, where it considers appropriate, to report also on the reasons for its opinion and on any matters of principle, policy or law which may be affected; (b) to make recommendations for the further consideration of any such document pursuant to Standing Order No. 119 (European Standing Committees); and (c) to consider any issue arising upon any such document or group of documents, or related matters" (Standing Order 143). For this task, the Committee not only obtains information in form of *Explanatory Memoranda* from the responsible department, but also has the right to ask for further information and to question the responsible minister. Once the ESC has determined the political and/or legal importance of a document, it can be deferred to one of the three European Standing Committees or – by a motion put down by the government – to the Committee of the Whole House. This gives the government the possibility to avoid a plenary debate by not putting down the respective motion.

The rights of the European Standing Committees were designed accordingly. According to Standing Order 119, the Committees, generally meeting in public, have the possibility to debate a European decision and the respective governmental motion and to move amendments to this motion. However, for the amendments to become effective the Committees again have to rely on the government, as it is the government that puts down the final motion on the Floor of the House (House of Commons 2002). To ensure that parliament has the opportunity to deal with European matters before they are agreed upon at the European level, the House of Commons adopted a resolution on the scrutiny reserve: "(1) No Minister of the Crown should give agreement in the Council or in the European Council to any proposal for European Community legislation or for a common strategy, joint action or common position under Title V or a common position, framework decision, decision or convention under Title VI of the Treaty on European Union:— (a) which is still subject to scrutiny (that is, on which the

European Scrutiny Committee has not completed its scrutiny) or (b) which is awaiting consideration by the House (that is, which has been recommended by the European Scrutiny Committee for consideration pursuant to Standing Order No. 119 (European Standing Committees) but in respect of which the House has not come to a Resolution)³.

Institutional reforms in the Danish Folketing

The *Folketing* in Denmark stands for a parliament in a consensus democracy (Lijphart 1999; Nannestad 2003: 55; Schmidt 2000: 342). In contrast to the UK, Denmark has a highly fragmented multi-party system (Nannestad 2003: 81). Parliament's power vis-à-vis the government is relatively strong, because Danish governments are generally formed by minority coalitions unable to act without a supporting majority (Laursen 1995). According to article 15 of the Danish constitution, a government may remain in office as long as it does not have a majority in parliament *against* it ("*negative parliamentarism*"; Laursen 2001: 99). Votes of no confidence can be motioned not only against the prime minister, but also against every member of his cabinet, a regulation that further strengthens the government's dependency on parliament.

Against minority governments, the opposition is in a rather powerful position. Contrary to the situation in the House of Commons and the *Bundestag*, it is not only able to change or even obstruct governmental policy-making, but can also – at least in theory – push its own agenda (Damgaard 1997: 80). This opposition power is partly balanced by the government's right to dissolve parliament at almost any time and call for new elections. The threat to call for early elections can be effective, since elections might lead to the loss of a parliamentary seat for some members, but not necessarily to the formation of an alternative government (Eysell 1996: 387 ff.) And indeed, elections ahead of schedule are quite frequent (Jesse 1994: 185).

In contrast to the House of Commons, the *Folketing* is regarded as a "working" or a policy-making parliament (Norton 1990: 5), where committees and commissions play a major role in legislation (Nannestad 2003: 60). Membership in these committees is highly stable which leads to the emergence of parliamentary experts for single policy fields, which is a further source of parliament's relative strong power vis-à-vis the executive.

It is therefore not surprising that „EU affairs are serious business in the domestic politics of Denmark, and the Parliament has tried from the very beginning of Denmark's EC membership to control the Government rather tightly" (Laursen 2001: 99). When Denmark applied for accession in 1961, the *Folketing* set up a committee to monitor the accession negotiations, and in 1972 a Market Relations Committee (*markedsudvalg*)⁴ was established as a permanent committee to implement the Accession Act and to scrutinise the government's European policies. Shortly after the accession to the EEC in 1973 a severe conflict erupted between parliament and the government over a European agricultural price agreement, which

³ The first resolution on the Scrutiny reserve had been adopted as early as 1980. The current scrutiny reserve is based on the resolution of November 18th 1998, see ESC 2001: Appendix III, online: <http://www.parliament.uk/documents/upload/ESC%20GreenGuide.pdf>.

⁴ In 1994, after the entry into force of the Maastricht Treaty, the name was changed to European Affairs Committee (*europaudvalget*).

the government could not explain to a satisfying degree. A motion of censure by the conservative-liberal opposition against the social-democratic minority government of Anker Jørgensen in February of 1973 remained unsuccessful, but as a result of the conflict the *Folketing* could enforce extended rights in European policy-making (Arter 1996; Laursen 2001). The decisive provision, which lays down the competence of the Committee, is not to be found in the constitution or even a law, but in the first *Report* of the Market Relations Committee of March 29th 1973: “The Government shall consult the Market Relations Committee of the *Folketing* in questions relating to EC policy of a major importance so that the regard for the influence of the *Folketing* as well as the freedom to negotiate are respected. Prior to negotiations in the EC Council of Ministers on decisions of a wider scope, the Government submits an oral mandate for negotiation to the Market Relations Committee. If there is no majority against the mandate, the Government negotiates on this basis”.⁵ According to the logic of “negative parliamentarism”, the aim of this provision was to prevent the government from agreeing to a European decision that might not be supported by a majority in the *Folketing* (Damgaard and Nørgaard 2000: 42).

In practice, the procedure entitles the Committee to formal veto-rights vis-à-vis the government in European policy-making (Arter 1996; Laursen 1995, 2001), because “a government wanting to survive politically knows it will have to listen to the Committee” (Laursen 2001: 105). The Committee is further strengthened by the fact that its members are often experienced MPs and even former ministers that have served on the committee for a long time thus acquired considerable expertise in European affairs (Dosenrode 1998: 60). At the same time, these institutional reforms allow for a rather close scrutiny of the government’s negotiation behaviour in the Council. Danish ministers are obliged to inform the Committee on the last Council meeting within one week. In questions of major importance the Committee may also question the minister on specific Council issues. In addition, the committee receives quite extensive information on the Council meetings via the Council’s General Secretariat. The résumés of the Council minutes at least allow for controlling the minister’s voting behaviour and whether he has stayed within the mandate.

Institutional reforms in the German Bundestag

The parliamentary system in the Federal Republic of Germany combines elements of a competitive and a consensus democracy. Similar to the Westminster model, the government and its supporting parliamentary majority form a functional unit vis-à-vis the opposition (Döring 1994, Schütt-Wetschky 2000, Steffani 1981). With respect to other important characteristics it is quite different: The German electoral system, a combination of majority and proportional representation (system of “personalized proportional representation”, BVerfGE 21, 355), favours the development of a multi-party system where government is regularly formed by coalitions. In contrast to the Westminster model, Germany is also characterized by a highly differentiated system of checks and balances. The decision-making process is strongly determined by the federal structure, the specific role of the *Bundesrat* and

⁵ The distinction between questions of “major importance”, about which the Government shall inform the Committee, and decisions of “a wider scope” to which the Government shall submit a mandate for negotiation has become less and less important over time. Today, the Government also submits mandates for negotiation in a number of cases which are not of a wider scope. Thus it has become practice to submit a mandate for negotiation to practically all legal documents prior to their adoption in the Council of Ministers.

its involvement in the legislative process. These basic conditions have shaped the relationship between the majority and the opposition in parliament, but also the relationship between the majority and its government.

Similar to the Danish *Folketing*, the *Bundestag* is characterized as a rather “sober working parliament“ which finds its expression in the transfer of parliamentary policy-making to numerous standing committees, sub-committees and working groups at the party and coalition levels (Ismayr 2001). The standing committees, set up for an entire legislative period, allow for the development of parliamentary expertise in different policy fields and sub-fields as the members are continuously involved in the legislative process. These working structures are mirrored at the parliamentary party group or coalition level through corresponding working groups. As a rule, all Standing Committees hold closed sessions, but may by decision admit the public.

Until the Maastricht Treaty, the ratification law on the Treaties of Rome (of July 1957 in BGBl. II: 753) had been the legal basis for the *Bundestag*'s involvement in European legislation. The government was obliged to “keep the *Bundestag* and the *Bundesrat* informed on developments in the Council of the European Economic Community and the Council of the European Atomic Community“, with the information to be given before a decision in the Council was made as long as it “has to be transposed into German law or is directly applicable in Germany“. In 1983, in order to strengthen its influence in European affairs, the *Bundestag* set up a Europe-Commission consisting of national MPs and MEPs which, however, failed in the very same legislative period because it could not be integrated into the existing standing committee system (Hilf and Burmeister 1996: 68). It was replaced by a sub-committee of the Foreign Affairs Committee, which, due to this subordination, remained without any influence as well. A Committee on European Affairs, set up in 1991 in response to the debate on the Maastricht Treaty, could also not live up to expectations due to the rivalry with the established standing committees (Bila et al. 1998: 6).

In the course of the ratification of the Treaty on the European Union on November 1st 1993 the participation rights of the *Bundestag* (and the *Bundesrat*) were finally tied down constitutionally through amendments to Articles 23 and 45 of the German Basic Law (*Grundgesetz*, GG).⁶ Article 23, section 2, clause 1 GG states that the *Bundestag* cooperates with the government in affairs of the European Union. This broad definition includes not only directives and regulations but all matters of the European Union, i.e. measures and agreements under the second and third pillar. Accordingly, parliament has to be informed by the government comprehensively and in time, i.e. receive all relevant formal and informal documents. According to § 4 of the accompanying law the government not only transfers all documents, but also informs the parliament of their content, the government's position and the ongoing negotiation situation in Brussels. However, the government is not forced to fully disclose its internal negotiation processes but preserves its “integration competency” (Hölscheidt 2000: 33). According to article 23, section 3 GG the *Bundestag* has the right to draft a resolution, which the federal government has to take into account in the negotiations.

⁶ Details are set out in the accompanying „Law on the Collaboration between the Government and the Bundestag in European Affairs“ („Gesetz über die Zusammenarbeit von Bundesregierung und Deutschem Bundestag in Angelegenheiten der Europäischen Union“, EUZBBG).

As provided for in article 45 GG, the European Affairs Committee was finally set up in December of 1994 at the beginning of the 13th legislation period. Like the Foreign Affairs, the Defence, and the Petitions Committee, the European Affairs Committee is established through constitutional law and therefore not subject to the *Bundestag's* Parliamentary Standing Orders. Compared to the other Standing Committees, however, it has a superior institutional position: According to § 93a of the *Bundestag's* Standing Orders, the European Affairs Committee has the right to adopt a resolution on behalf of the plenary, i.e. act on behalf of the whole parliament, as long as none of the standing committees disagree. As the Committee deals with all the important institutional decisions made at the EU level it is regarded as the *Bundestag's* central arena for European affairs. However, all European decisions dealing with matters connected directly to a policy field are, as domestic policies, dealt with in the sectoral standing committees.

3. The dilemma of parliamentary control in multilevel governance

The aim of the institutional reforms described above was to counterbalance the aforementioned redistribution of political resources through the process of European integration, i.e. to obtain the same information as the government, to be able to influence European decision-making before the stage of formal ratification or implementation, and to improve the “infrastructural” preconditions for both. Still, these institutional reforms did not completely make up for the structural disadvantages. Being not directly involved in European policy-making, parliaments still depend on their government as the main source of information and they have neither adequate influence on the agenda setting at the European level, nor can they directly affect EU decisions. The government still holds the position of gatekeeper. Parliaments did, however, obtain the right to influence the negotiation position and behaviour of their national government. Yet, the rights of participation and control confront national parliaments with a collective action dilemma inherent in parliamentary systems.

In legal terms, most national parliaments have the right to pass non-binding resolutions on issues that are on the European agenda. However, if the parliamentary majority drafts a public resolution on a European policy or even rejects it completely, the government and its representative in the Council cannot simply ignore that fact. Such decisions are equivalent to a *de facto* veto. Issued *ex ante*, i.e. as a statement regarding the national position on a European policy before negotiations are finished, it may hamper European decision-making by restricting the necessary scope of action of the negotiating government. Negotiating actors bound to a clear cut mandate lack the necessary flexibility to search for the best realisation of national interests that can be achieved in co-operation with other governments. The use of an *ex-post* veto, i.e. the national rejection of a negotiation result carefully arranged at the European level, need not inevitably block the decision-making process, but it would undermine the trust in this Member State in the Council as well as the mutual trust between the government and its majority in parliament.

This situation is only a specific variant of a more general dilemma of majority parties in parliamentary system. Philip Norton has described it as follows:

“...the members in the majority party, or in parties forming a governing coalition, are expected to be part of a scrutinising parliament and at the same time sustain the government in office, that sustenance being provided through parliamentary votes. Undertaking aggressively the task of scrutiny – asking awkward questions,

pressing ministers to do that which they do not wish to do, threatening to vote against the government in order to achieve an outcome not desired by party leaders – may undermine the political credibility of the governing party or parties. On the other hand, following the party line slavishly destroys the viscosity – and, potentially, the popular legitimacy – of the parliament” (Norton 1998: 194).

In the national context, this dilemma remains mostly latent as long as a majority government is in power. The parliamentary system achieves its effectiveness and stability by the fact that the majority group in parliament can veto government’s decisions, but generally lacks the motivation to exploit this power. The opposition parties, on the other hand, have the motivation, but lack the capacity to obstruct the government’s policy-making during its term in office. This results in a situation where the government is able to implement its policy while a minority in parliament stimulates debate and provides for public critique. If a minority government is in office, the opposition parties do indeed have the power to veto the government’s decisions. The motivation to make use of this power, however, is greatly reduced by the government’s ability to dissolve the parliament and call for early elections.

In the multilevel context of the EU, however, this dilemma becomes manifest. Truly, even in European policies governments are usually supported by their majority in national parliament. The loyalty of the parties that elected the government normally gives representatives in the Council sufficient leeway in the negotiations by allowing them to balance national interests with European concerns. Nonetheless, the motivation of the majority to loyally support their government is lower compared to domestic politics since the agenda to be decided upon does not originate from a programme, which the government and the majority parties agreed upon. It is a policy initiated by an *external* institution, namely the European Commission. Moreover, the majority parties in parliament also have to take into account possible reactions of the opposition. Even if they agree with their government on accepting a European policy, the opposition parties may blame the government for giving up essential national objectives. Thus the government is forced into a rivalry on who is the better representative of the national interest.

However, if the majority parties get actively involved in European affairs and make European policies a matter of competition for the support of the electorate, they induce their government to adopt a bargaining strategy in EU negotiations. The more closely a minister of a national government is bound to an opinion of its parliament defined with orientation to electoral support, the more likely is he or she to act as an agent and not as a representative of the national parliament. While as a representative he or she is free to look for the best realisation of national interests that can be achieved in co-operation with other governments, as an agent he or she is expected to maximise national interests, even at the expense of a compromise with other governments (Benz 2001; Czada 1997). To the degree that members of parliaments realise this effect of a strict scrutiny or of veto strategies, they are actually exposed to the dilemma mentioned above.

These theoretical considerations suggest the assumption that increased parliamentary involvement either diminishes the effectiveness of European policy-making or remains merely symbolic. We will argue, however, that neither is the case. So far, institutional improvements of parliamentary participation have not hampered the effectiveness of European policy-making. The decisive reason is that parliamentary actors are indeed well aware of the disadvantages and dangers looming in multi-level decision-making structures and therefore use their rights of participation and control in a strategic way. Based on their

practical knowledge they react to problems created by the multilevel structure and search for “*escape routes*” in order to avoid the inherent traps (Héritier 1999). The literature in on multilevel governance in federal systems and in the EU (e.g. Benz 2003; Héritier 1999; Scharpf, Reissert and Schnabel 1976) provides ample evidence for the fact that actors are able to learn from intricate collective choice situations and to develop “heuristics that approach best-response strategies” (Ostrom 1998: 9). It demonstrates that although interlocking multi-level structures do produce dilemma situations, they do not inevitably end in deadlock. Instead, they motivate actors to search for strategies to avoid these dilemmas. So far, these studies mainly focused on executives, while strategies of members of parliament have up to now not been subject of empirical research. Our own research has been designed to provide more evidence on this aspect. The term “strategies” is used here to describe activities of single MPs or groups of MPs that are aimed at making institutional structures more effective and at improving their capacities to counterbalance the executive’s gatekeeper position.

From a theoretical point of view, three basic strategies can solve the dilemma of parliaments in European multilevel governance.

- Firstly, they can abstain from deciding on the government’s negotiation position or decision proposals but make them public. In this case, the parties supporting the government leave the responsible minister broad room for manoeuvre in European negotiations but force him to act as a representative of the electorate and give him no opportunity to shift the blame or disguise his responsibility.
- Secondly, MPs can informally cooperate with their government during the process of European negotiations. This enables them to influence the government’s European policy without binding the responsible minister to a specific mandate. At the same time, they are able to adjust the parliamentary position to opportunities or constraints arising during the negotiation process.
- Thirdly, MPs may improve their position in European governance not via informal cooperation with the government but by by-passing the government. They can try to establish their own contacts to actors at the European level or in other member states. This way they gain independent information on what is possible in European negotiations which allows them to formulate mandates to the government accordingly. In addition, they can establish their own channels of influence at the European level. Although this strategy brings the parliament in competition with the government it does not necessarily end in a problematic power game in European affairs.

The comparative research should reveal that not only the institutional reforms, but also the strategies parliamentary actors develop to cope with coordination problems resulting from the multi-level structure are influenced by the overall institutional context of the respective parliamentary system.

4. Managing the dilemma: Strategies of MPs in European policy-making⁷

The institutional reforms in all three parliamentary systems were aimed at counterbalancing the redistribution of political power sources connected with the process of European integration. All three parliaments obliged the government to provide them with comprehensive information on all EU matters and introduced some kind of scrutiny reserve to prevent the government from agreeing to any decision at the European level before the relevant committees had the opportunity to deal with them. At the same time, the institutional reforms in all three parliamentary systems preserved the distinctive functional logic of their respective political systems and are thus “path-dependent”. As will be argued in this chapter, they all reflect the parliamentary function that dominates in the respective parliaments. This not only affects the degree to which parliaments have to deal with the above described dilemma situation, but also the strategies that are developed to make their involvement more effective.

The House of Commons: Public scrutiny

In the House of Commons, the pronounced confrontational party competition is even intensified by a cleavage over European integration with the rather pro-European New Labour and the euro-sceptic Conservative Party.⁸ Thus, the Conservatives are not only the “institutional enemy” of the governing New Labour Party, but are also opposed to certain aspects of further European integration. As a consequence, the opposition has no interest whatsoever not to let the party competition over European matters escalate. Quite on the contrary, the less the government is able to defend the alleged national interest, the more support the opposition may gain in the rather Euro-sceptic British public.

However, the dilemma situation to be expected is mitigated by particular procedural rules. They make debates on European Affairs on the Floor of the House a rather rare event. This is due to a selection process and the role of committees. European documents and decisions are first dealt with by the European Scrutiny Committee, which evaluates their importance but does not debate their merits. They members of the ESC “are not trying to reach a view over the documents as good or bad. That is not as restrictive as it sounds, because in the process of deciding whether to clear a document we quite often question things in it that seem to be inadequate or just plain wrong, or maybe the legal base is dodgy” (interview, 22.11.2002). Thus, even if the parties have different views on it, the *government’s negotiation position* is

⁷ The following is based on evidence derived from interviews with Members of the House of Commons, the Folketing and the Bundestag between July 2002 and April 2003. All in all 61 members of parliaments (21 in the House of Commons, 28 in the German *Bundestag* and 12 in the Danish *Folketing*) were interviewed, including representatives of different parties and of the relevant committees.

⁸ This is partly an effect of the new orientation of the New Labour Party. Against a New Labour that had discovered many of the former conservative issues of the market-oriented neo-liberal agenda, “Europe” provided at least one issue to organise an election campaign on. Accordingly, Conservative Party leader William Hague had closed the ranks of his party, deeply split on the European question since the seventies (Turner 2000), behind a rather Europe-sceptical stance. The development under the slogan: „Britain in Europe, but not run by Europe“ has also been pursued by the succeeding party leaders Ian Duncan Smith and Michael Howard.

not subject of the debate. Regarding the assessment of the importance of a document, however, there is usually a consensus among the members of the Committee.

At a second stage of the proceedings, documents are generally forwarded to one of the three European Standing Committees. Their task is the debate of a government motion, which includes the possibility of questioning the respective minister. The Committees may decide to pass the government's motion, amend it or even reject it completely. However, "[a]t present, the motion passed by the Committee has no practical effect [...] if the motion is amended and the Government dislikes the amended motion it can move a different motion in the House. It casts doubt on the value of serving in European Standing Committees if their decisions can simply be ignored, and undermines the credibility of the process" (HC 152-xxx, para. 70).⁹ In general, the House, not unlike the practice in other national parliaments, votes on the government motion without any further debate.

Given this power of the government to control the process in parliament, members of the House of Commons refer to strategies, which are quite in accordance with the general functions of the Westminster system, where parliamentary mandates and the collaboration in governmental policy-making are much less dominant than holding the government to account. This underlying logic is also mirrored in the scrutiny procedure in European affairs. "The purpose of the scrutiny system in the Commons is [...]: to ensure that members are informed of European proposals likely to affect the UK, to provide a source of information and analysis for the public, and to ensure that the House and the European Scrutiny Committee, and through them other organisations and individuals, have opportunities to make Ministers aware of their views on EU proposals, seek to influence Ministers and hold Ministers to account" (HC 152-xxx/02, para. 25). Thus, the main aim is to keep the general public informed on legislative processes at the European level and the respective position of the UK government. In this respect, the scrutiny procedure in the UK did introduce a new form of parliamentary control that had so far been quite unknown to the parliamentary system, the *ex ante* control of governmental action. The procedures allow MPs to consider legislative proposals for EU directives, "while parliament remained systematically excluded from the pre-legislative stage of UK domestic legislation" (Judge 1995: 86). However, these *ex-ante* controls are not used to define mandates for the government but to indirectly influence government's policy by resorting to the controlling power of the electorate.

Accordingly, the strategies developed in the House of Commons primarily refer to the parliamentary control function and, in particular, to the government's adherence to parliamentary rules regarding complete information or the scrutiny reserve. The main aim of the whole scrutiny process is not "to tell government what to do, but to see that government explains what it is doing and follows the rules properly" (interview with majority MP, 26.11.2002). Complete information on European initiatives and the government's position on them are essential for the Committees work. At the same time, the ESC can use its systematic and strategic questioning and demands for more information as a means to indirectly influence the government. A very potent strategy seems to be "*public embarrassment*", where the majority even sides with the opposition if the government neglects parliamentary rights. For example, from 1994 to 1998 the ESC kept a "Black Book" where government's failures

⁹ As early as 1991, the House of Commons' Procedure Committee criticised this rule as "a mockery of the scrutiny process and [...] a waste of the Standing Committee's time and effort" (HC 51 (95/96), para. 198).

to provide the Committee with information on time were meticulously listed by name and later published (HC 791/98, Annex G). Since the beginning of 2000 the Departments are obliged to issue a monthly declaration on information not made available to the Committee (HC-152-xxx/02, para. 47).

The most effective strategy, however, is to regularly cite Ministers before the Committee to question them on certain issues or to hold them accountable for incomplete information or breaches of the scrutiny reserve. “Our job is to hunt them” (interview with majority MP, 25.11.2002). These public “*evidence sessions*” can be quite uncomfortable for the ministers, as they generally have to face the Committee alone, i.e. without a large staff, to answer to questions not known beforehand. In all interviews with members of the ESC it was pointed out that ministers, who make a bad impression in these evidence sessions because they are unable to defend the government’s position properly, may even jeopardise their standing in the cabinet. Nevertheless, even their own party members quite often fiercely attack ministers. For example, the Committee Chairman dismissed the Minister of State for environment and agri-environment, Michael Meacher, after a rather embarrassing questioning on a scrutiny reserve breach on November 6th 2002 with the words: “So I think, whilst you did commit a sin, perhaps, on this occasion, it will prove not to have been a mortal sin. Thank you for coming before the Committee” (HC 1308-i, para. 35). Even the opposition has to admit that the Labour members in the Committee “act as a group of parliamentarians, not as party members” (interview with opposition MP, 19.11.2002).

Strategies aimed at improving direct parliamentary influence, on the other hand, are hardly developed in the House of Commons. Contrary to the German *Bundestag*, the parliamentary party organisation offers only few possibilities to backbenchers to influence the government’s position internally. Since there is no standing committee system similar to the *Bundestag* (Sturm 2003: 231), the parliamentary parties have no equivalent to the German parliamentary party working groups. One arena of coordination between the majority and government are the 16 Departmental Committees of the Parliamentary Labour Party (PLP) that cover specific policy fields.¹⁰ While the Committees are not all similarly active, most of them convene about once a month to discuss topical issues. Attendance of the MPs varies with some meetings being attended by just a handful and others by more than a hundred MPs. Although the influence of these Committees on governmental decision making is disputed, at least they signal the general parliamentary opinion to the government “because the MPs who are interested enough in a subject to attend the relevant backbench grouping are also the ones who could cause trouble in more public arenas“ (Cowley 2000: 16). According to the interviewed MPs, these Party Committees are among the best possibilities to influence the government’s position. With regard to European affairs, however, this possibility is hardly ever used.¹¹

Similar observations apply to other strategies of informal influence available to MPs such as contacting the relevant minister personally or by letter. Most of the MPs declared to be able

¹⁰ This is, of course, also true for the Conservative Party, the most important being the 1922 Committee.

¹¹ Interestingly, the Party Committees were never directly mentioned in answers to questions on the possibilities to influence the government but only when specific questions on their role and functions were asked.

to get an appointment¹² with the respective minister quite easily. In the case of high priority issues, MPs also have the option to write to the prime minister or at least his private secretary. Another strategy consists in forwarding letters from the constituency, especially from businesses or interest groups, directly to a minister with the request for a statement or an answer “to make him feel the pressure himself” (interview majority MP, 26.11.2002). However, almost all MPs declared that they practically never used these strategies in connection with European issues or questions.

As the transfer of information in European Affairs is regarded as a vital element of the government’s formal accountability, and requests for better or more information and questionings of ministers are an essential part of the formal scrutiny process, British MPs also rarely try to open up alternative information sources. Most of the Members of the Committee declared to have hardly any contacts to European institutions or members of other national parliaments. Existing contacts are normally of a very formal nature and are based on mutual parliamentary visits. The possibilities to stabilise the contacts to other national parliaments have been discussed in the ESC, and the government initiated the so called step-change programme, a project “to end the British isolation from Europe and to start cooperating with the European partners” (interview with majority MP, 19.11.2002) which also included MPs, but all these discussions and programs are rather slow in having any effect.

The Folketing: Confidential cooperation with the responsible minister in the shadow of veto power

While the institutional reforms generally turned parliaments into “external veto-players” (Benz 2003) in European governance, who may obstruct decisions made by other institutions but are not themselves involved in the decision-making and can therefore only *react* to processes and their outcome (ibid.: 231-232), the situation in Denmark is rather special. Due to the formation of minority governments and the particular rights of the Committee for European Affairs, Danish MPs can exert much more immediate influence on the decision-making process and the decision itself.

Although the mandating procedure is based only on *agreements* between the government and the committee, all governments since 1973 have adhered to it. In practice, every minister presents a mandate to the Committee before taking part in decisions in the Council of Ministers. “It is a security for the minister to seek the mandate in the parliament before he goes to Brussels, because otherwise he risks his life, when he comes back. Then, of course, in parliament we use this opportunity to have influence on the legislation because [...] we have to implement them in Danish legislations afterwards. Many of the decisions taken in Brussels need national implementation. And then you must have a majority in the Danish parliament to fulfil the legislation” (interview with opposition MP, 28.03.2003).

¹² As the interviews revealed, these meetings are either of a completely informal nature (private meeting) or more formal and take place in the presence of external experts or representatives of interest groups. In the latter case, the meetings normally are recorded. Which kind of meeting the MP decides to arrange depends on the actual situation. While in the private meetings the minister might be more inclined to make concessions, the advantage of the formal meetings lies in getting outside help and in the formalisation of the results.

Party competition generally plays a rather minor role in the Committee debates. Foreign and European policy-making in Denmark is traditionally based on a broad coalition between the four “old” parties¹³ regardless of who is in government. Although different party political views on certain political issues and decisions do play a role, the Committee mainly focuses on the strategic question of what would be in Denmark’s best interest and, even more importantly, on what is achievable with what kind of coalition in the Council. Thus, the Committee debates strategies rather than actual policy issues based on party political views. This is also true for the current *Folketing*, where, the liberal-conservative minority government of Prime Minister Anders Fogh Rasmussen is, for the first time, generally supported by the Danish People’s Party (DPP) in domestic politics. In European affairs, however, this “governing coalition” changes. As the nationalistic DPP quite violently opposes European Integration¹⁴, the government cannot and will not rely on its support in the European Affairs Committee but rather forms the traditional “grand coalition” with the Social Democrats and the Social-Liberal Party, currently the main opposition parties.

The more strategic and less party political approach in the debates in the European Affairs Committee is further facilitated by the fact that the Committee meets in private. As the information the Committee receives is often confidential, so are the debates in the Committee. Until recently, the votes of the different parties on the mandate have not been published either. This changed somewhat in 2003 when the Chairman of the Committee published statistics on the general voting behaviour in the Committee (but not on the votes of particular parties), revealing that more than 60% of the mandates had an all party support and as many as 85% were opposed by only one party.¹⁵

As a consequence of its position as the government’s junior partner, the European Affairs Committee develops hardly any of the strategies observed either in the UK or Germany. The powerful position of the Committee prevents the government from exploiting its gatekeeper position, for example from manipulating the flow of information to the committee or the justification of issues and policies, because otherwise it runs the risk of a parliamentary veto to its mandate. The flow of information also includes the opposition, as the government cannot rely on its own majority in the Committee. Fully explaining the negotiations situation at the European level and the strategic options open to the government is therefore a win-win-situation, because the Committee has the possibility to deny the mandate as long as it is not satisfied with the information and explanations by the government.

¹³ The Conservatives (Konservative Folkeparti), the Liberals (Venstre), the Social-liberal Democrats (Radikale Venstre) and the Social Democrats (Socialdemokratiet i Danmark).

¹⁴ “The Danish People’s Party wishes friendly and dynamic cooperation with all the democratic and freedom-loving peoples of the world, but we will not allow Denmark to surrender its sovereignty. As a consequence, the Danish People’s Party opposes the European Union” (Party Program of the Danish People’s Party, English version, online: http://www.danskfolkeparti.dk/sw/frontend/show.asp?parent=6549&menu_parent=&layout=0, 27.4.2003).

¹⁵ This put the Danish Peoples Party in quite an uncomfortable situation, since the publication of voting records revealed that in at least 60% of the cases even this openly anti-European Party did not explicitly oppose the government’s mandate. As the DPP had to suffer some severe criticism from its voters, the party is now trying to decide on a more strategic voting behaviour in the Committee. The dilemma is, however, that while the DPP has to satisfy its anti-European voters it cannot act too openly against the government that it supports in domestic policies (interview with opposition MP, 24.3.2003).

Indeed, one strategy of the Committee is to use selective vetoes, i.e. to refuse to give the minister any kind of mandate, in cases where it has felt not properly informed or involved. As interviews revealed, this had been the main reason in at least three cases where the Committee refused to give any mandate to a minister since the last election in November 2001. A further incentive for the government to provide the Committee with all relevant information is the fact that giving incorrect, missing or misleading information to parliament ranks among a minister's breaches of duty liable to prosecution (article 5-1 of the Danish Constitution). "If it comes up that the minister hasn't properly informed the committee, informed them too little or wrongly, he has to pay. [...] the worst thing you can do is trying to hide something. When it comes out that you have been trying to hide something, you are in big trouble" (interview with opposition MP and former minister, 21.3.2003). Therefore, the Committee members do not feel the need, for example, to open up independent information sources by establishing informal inter-parliamentary networks or contacts to European Union institutions.¹⁶

In addition to its rights of ex ante influence, the Committee also has the possibility of controlling ex post whether the government has stayed within the parliamentary mandate. Both features combined generally make it unnecessary for the Committee to bind the government to very narrow mandates as the members are aware of the negotiation situation and the government's options and objectives. "One of the greatest benefits of this scrutiny system is that it forces the government to identify problems, or potential problems, at a very early stage" (interview with opposition MP, 21.03.2003).

The German Bundestag: Bypassing the national executive

In the German working parliament with its sophisticated standing committee structure, the legislative function and the involvement in governmental policy-making clearly dominates. This is also reflected in the parliamentary participation procedure, giving parliament not only the right to obtain comprehensive information on all European matters but also the right to draft a resolution on European decisions, and thus to become involved in the process before the final stage of ratification or implementation of European law. Accordingly, article 23 of the German Basic Law speaks of "participation" ("*Mitwirkung*"), the respective accompanying law of "cooperation" ("*Zusammenarbeit*") of the *Bundestag* with the German government in European affairs. Consequently, the resolutions of the *Bundestag*, although not legally binding, can have a quite significant effect.

However, as parliamentarians are aware of the dilemma connected to parliamentary participation in multi-level structures, they use their rights quite strategically. Generally, the government's request for a broad scope of action in the European negotiations is respected. The majority either completely abstains from drafting a parliamentary resolution or drafts it in close cooperation with the government in order to strengthen the latter's negotiation position in Brussels. Only in exceptional situations does the *Bundestag* use its powers very effectively against the government to force it into adopting the parliamentary position.¹⁷ This is, albeit in

¹⁶ The Folketing did, however, propose a reform for the COSAC to make it more effective. For details see http://www.cosac.org/eng/previous/copenhagen_2002/contribution.pdf.

¹⁷ For example, a conflict erupted between the government and parliament with regard to the European Convention. While Chancellor Schröder had preferred a more executive based Convention, the MPs demanded a stronger representation of national parliaments. After the European Affairs Committee had

a weaker sense, also true for the opposition. Due to the basic consensus on European integration among all German parties (Bulmer, Jeffery and Patterson 1998: 16n.), exploiting important integration questions for party competition seems no appropriate option. This does not imply that the opposition completely abstains from criticising the government's European policy. Still, when it comes to European affairs the opposition is much more reticent than in the domestic battle.

At the same time, however, internal coordination within the majority parties offers opportunities for influencing the government beyond the drafting of formal resolutions. The most important coordination bodies in the *Bundestag* are the sectoral working groups of the parliamentary party groups consisting of the party members that sit on the respective standing committees. The main purpose of these meetings is the preparation of the upcoming committee meeting and the coordination of the party line to be represented there. "Generally, we get prepared for the standing committee meetings in form of a parliamentary party meeting, a working group meeting, and if there is any influence on the government then this is done through these meetings [...] where we really fight for positions. Here, the government will most likely be willing to make concessions"¹⁸ (interview with majority MP, 26.06.2002).

Independent access to information is the most important precondition for effectively influencing the government. Therefore, several MPs have built up inter-parliamentary networks as well as contacts to European institutions. "In terms of transparency, much is still to be desired, so you have to get active as an MP to get the information, either through the government or through other sources"¹⁹ (interview with majority MP, 26.6.2002). Especially MEPs, but also European Commission officials serve as a kind of "burglar alarm" to some German MPs by informing them on important Commission initiatives as early as possible. Building up inter-parliamentary networks with other national parliamentarians, too, is primarily used to access independent information, especially on the negotiation positions of other Member States to help MPs to evaluate the negotiation situations in the run-up to the Council meetings. For the opposition, networking with MPs from member states where the respective "sister party" is in government is especially beneficial to compensate for the information head start of the government. "Quite interestingly, Austrian government members

voted a respective resolution according to § 93 a of the Bundestag's Standing Orders on behalf of the plenary (Deutscher Bundestag 2002: 241 ff.) it formed alliances with other Member States' parliaments to enhance the pressure on the government. „That is something, we used quite deliberately. This was about forcing the government to accept the parliamentary position“ (“Das haben wir als Parlamentarier sehr bewusst genutzt. Da ging es darum, die Bundesregierung zu einer politischen Position zu zwingen“; interview with majority MP, 2.7.2002, transl. K.A.). The bilateral cooperation with the French Assemblée Nationale had been especially intensive, but the MPs also activated the COSAC on this question. The outcome of their efforts is well known.

¹⁸ „Es ist so, dass wir uns ja auf die Sitzungen vorbereiten, in Form einer Fraktionssitzung, in Arbeitsgruppen, und wenn es einen Einfluss gibt auf die Bundesregierung, dann läuft es in der Regel über diese Arbeitsgruppen [...] da ringt man schon um Positionen. Da ist die Bundesregierung auch am ehesten bereit, Zugeständnisse zu machen“ (translation K.A.).

¹⁹ „Die Transparenz lässt zu wünschen übrig, also muss man initiativ werden als nationaler Parlamentarier, um die Informationen auch an Land zu ziehen. Entweder über die Regierung oder eben aus anderen Quellen“ (translation K.A.).

or colleagues again and again provided us with information that the German government had denied us”²⁰ (interview with opposition MP, 25.6.2001).

Contacts to the European level not only serve as information sources but also as channels of direct influence on European policy-making. A small but growing number of parliamentary “euro-wizards” try to influence European drafts at a very early stage through contacts with Commission officials, MEPs and even other national MPs. “One example is, of course, the development of EU directives. There you have the possibility to influence this process by informally contacting Commissioners or Commission officials that share our views. This has worked astonishingly well”²¹ (interview with majority MP, 26.06.2002/2). At the same time, contacts to the European level generally present the only opportunity for opposition MPs to influence European policy-making. Although there is less “institutionalized enmity” between the parliamentary parties opposition MPs have a relatively low influence on government policies. Only exceptionally does the government look for an all-party consensus, so amendments drafted by opposition MPs generally remain without any effect. Thus, opposition MPs are more active in trying to influence European decisions during the decision-making process at the European level and less through domestic procedures.

5. Conclusion

Our empirical study provides evidence that European integration does not inevitably turn national parliaments into powerless institutions in the European policy process as proponents of the “de-parliamentarisation“-hypothesis have assumed. Parliaments are well aware of the shift in power due to the executive’s gate-keeper position between the national and the European arena. Thus, they tried to counterbalance this shift in power through institutional reforms and they adjusted their procedures and strategies to manage the challenges of multilevel policy-making.

Regarding their central role for guaranteeing democratic legitimacy, it is quite understandable that parliaments tried to recover the rights they hold in the nation state. However, in the face of the problematic consequences of external interventions in the multilevel process, the simple strategy of strengthening parliamentary veto rights or of threatening to make use of a veto right generally seems not very promising. Even increasing the institutional capacities to participate in European policy-making may end up in pure symbolic policy. Therefore, members of European Affairs Committees had to develop adequate strategies to exploit the opportunity structures provided by the institutional reforms during the European integration and at the same time avoid the dilemma described above.

²⁰ „Es war ja interessant, dass wir immer wieder Informationen von österreichischen Regierungsmitgliedern und Kollegen erhalten haben, die uns von der Bundesregierung vorenthalten worden sind“ (translation K.A.).

²¹ „Ein Beispiel ist natürlich die Entwicklung von EU-Richtlinien. Da gibt es dann die Möglichkeit, auf informellem Wege mit uns nahe stehenden Kommissarinnen und Kommissaren den Prozess auch ein Stück weit mit zu beeinflussen. [...] Ist auch gelungen, in für mich erstaunlich hohem Maße sogar“ (translation, K.A.).

As the comparative study has revealed the institutional and strategic adjustment of national parliaments to European integration is “path-dependent”. How they deal with the gatekeeper position of their executive depends very much on the particular parliamentary-executive relations in the respective “institutional regime” (Kaiser 1998: 541). In Germany, the *Bundestag* is directly involved in policy-making processes and adopts the *function of a law-making parliament*. It is therefore not surprising that in the European policy process, parliamentarians have the objective to be involved in policy-making, too, and consequently implemented institutional reforms to safeguard their involvement. Yet, these institutional provision are not only insufficient in counterbalancing the government’s gatekeeper position, but also counterproductive. In order to avoid the dilemma of multilevel policy-making caused by binding mandates MPs therefore resort to informal cooperation with the government through the internal parliamentary party working groups. As the effectiveness of informal influence is hampered by problems of late involvement, incomplete information and information overload, members of the German *Bundestag* establish mostly informal contacts to European actors or other national parliaments to open up independent information resources and to even have some direct influence in early stages of policy-making. These strategies are aimed at influencing European policies without tying the government’s hands in the European negotiation process, partly by informal cooperation and partly by bypassing the government.

In the UK, parliament traditionally acts as an institution controlling government. While the agenda-setting function in legislation is monopolised by the executive, the House of Commons is a typical veto-player. Corresponding to this type of government regime, the parliament focuses its resources on its *control function*. This predominant parliamentary function is mirrored in the institutional reforms, which strengthen parliamentary control, but provide only weak participation possibilities. The strategies therefore do not serve to substitute the institutional provisions but to make them more effective. This is well reflected in the fact that the strategies are aimed less at influencing the negotiation process or at circumventing the government in multilevel governance but at holding the government accountable. The objective is less to challenge the central position of the executive as the gatekeeper, but to make the use of this position more transparent to the electorate. Consequently, parliament develops strategies aimed at publicity. Thus it forces the government to respect parliamentary rules, to fully expose, explain and defend its negotiation position as well as the respective decisions achieved in the European negotiations.

In the Danish consociational democracy, government and parliament are regularly involved in negotiations designed to find a majority for the government’s policies, a pattern that continues in European policy-making. Due to the particular institutional reforms the *Folketing’s* Committee of European Affairs is in the position of a powerful partner of the government. These institutional provisions allow for a close cooperation on a binding mandate for government in European policy-making and for adjusting this mandate when it seems suitable for improving decisions, procedures that enable the responsible Members of Parliament to search for agreements with the minister in the Committee. Therefore, members of the Danish *Folketing* do not feel the need to develop strategies to either make the institutional reforms more effective or to substitute them by more informal forms of parliamentary participation and control. Indeed the only strategy observed in the *Folketing* is the strategic use of its veto power to remind the government of its power.

The strategies we observed in the three parliaments have all been developed to both allow for participation of national parliaments and to avoid hampering the effectiveness of

multilevel policy-making in the EU at the same time. From the point of view of normative democratic theory, however, the different ways of parliamentary cooperation and co-decision have their flaws if we take into consideration the need for transparency and public control. In the *Bundestag*, the close relationship between the government and its parliamentary majority leads to informal and non-public cooperation. Cooperation is transferred in internal and therefore private parliamentary party working groups, rendering the parliamentary process opaque, which cannot be counterbalanced by the committees as they meet in private as well. This is even more true for the Danish European Affairs Committee. The mandating procedure requires confidentiality among the partners and therefore rules out public ex post scrutiny in plenary sessions of the parliament. In addition, as the opposition generally takes part in the forming of a mandate, it cannot critically scrutinise the government's policy-making in European Affairs. In both parliaments, this opaqueness of the parliamentary process is not counterbalanced by parliamentary debates in the plenary. Both parliaments therefore cannot adequately fulfil their functions of public control and deliberation. In the European multi-level system, however, with its intransparent inter-institutional decision-making processes the function of public control and scrutiny are ever more important (Benz 2001; 2003a). Insofar, the British House of Commons, in spite of its much weaker institutional position, seems to be a more important actor with regard to democratic legitimacy in European Affairs because it concentrates exactly on these functions and forces the government to explain and defend its negotiations position publicly.

References

- Arter, David, 1996: The Folketing and Denmark's 'European Policy': The Case of an 'Authorising Assembly', in: Philip Norton (ed.): National Parliaments and the European Union, London: Frank Cass, 111-123.
- Auel, Katrin/Benz, Arthur, 2000: Strength and Weakness of Parliaments in EU Multilevel Governance. Accountability in a Compounded Representative Democracy, Paper presented at the IPSA World Congress, August 1-5, 2000 in Quebec.
- Baker, David, 2001: Britain and Europe: the Argument Continues, in: Parliamentary Affairs 54, 276-288.
- Benz, Arthur, 1998: Ansatzpunkte für ein europafähiges Demokratiekonzept, in: Beate Kohler-Koch (ed.): Regieren in entgrenzten Räumen (PVS-Sonderheft 29), Opladen, 345-368.
- Benz, Arthur, 2000: Politische Steuerung in lose gekoppelten Mehrebenensystemen, in: Raimund Werle/Uwe Schimank (eds.): Gesellschaftliche Komplexität und kollektive Handlungsfähigkeit, Frankfurt a.M., New York: Campus, 99-126.
- Benz, Arthur, 2001: Postparlamentarische Demokratie und kooperativer Staat, in: Claus Leggewie/Richard Münch (eds.): Politik im 21. Jahrhundert, Frankfurt a.M.: edition suhrkamp, 263-280.
- Benz, Arthur, 2003: Konstruktive Vetospieler in Mehrebenensystemen, in: Renate Mayntz/Wolfgang Streeck (eds.): Die Reformierbarkeit der Demokratie. Innovationen und Blockaden, Frankfurt/New York: Campus, 205-236.
- Benz, Arthur, 2003a: Demokratie in der Europäischen Union, in: Ines Katzenhagen/Wolfgang Lamping (eds.): Demokratien in Europa. Der Einfluss der europäischen Integration auf Institutionenwandel und neue Konturen des demokratischen Verfassungsstaates, Opladen: Leske und Budrich, 157-180.
- Bila, Jacqueline/Gehlen, Uwe/Groos, Hartmut/Hasenjäger, Beate, 1998: Der Ausschuss für die Angelegenheiten der Europäischen Union des Deutschen Bundestages, Bonn (2. ed.).
- Bulmer, Simon/Jeffery, Charlie/Paterson, William E., 1998: Deutschlands europäische Diplomatie: die Entwicklung des regionalen Milieus, in: Werner Weidenfeld (ed.): Deutsche Europapolitik. Optionen wirksamer Interessenvertretung, Bonn: Europa Union Verlag, 103-127.
- Collins, Lawrence, 1990: Community Law in the United Kingdom, London: Butterworths.
- Cowley, Philip, 2000: Can Sheep Bark? British Labour MPs and the modification of Government policy, Paper presented at the ECPR Workshop on Parliamentary Control of the Executive, Copenhagen, Denmark, 14-19 April 2000.
- Cygan, Ian, 2001: National Parliaments in an Integrated Europe - An Anglo-German Perspective, Den Haag: Kluwer.
- Czada, Roland, 1997: Vertretung und Verhandlung. Aspekte politischer Konfliktregelung in Mehrebenensystemen, in: Arthur Benz/Wolfgang Seibel (eds.): Theorieentwicklung in der Politikwissenschaft - eine Zwischenbilanz, Baden-Baden: Nomos, 237-260.
- Dahl, Agnete/Næss, Tom/ Angen, Kristian, 2001: Europeanisation in Denmark: Participation in EU Energy and Environmental Policy Processes, FNI (Fridtjof Nansen Institute) Report 03, Lysaker, Norway.

- Damgaard, Erik, 1997: The political Roles of Danish MPs, in: *Journal of Legislative Studies* 3 (1), 79-90.
- Damgaard, Eric/Nørgaard, Asbjørn Sonne, 2000: The European Union and Danish Parliamentary Democracy, in: *Journal of Legislative Studies* 6 (1), 33-58.
- Deutscher Bundestag (ed.), 2002: *Der Weg zum EU-Verfassungskonvent, Berichte und Dokumentationen*, Berlin: Referat Öffentlichkeitsarbeit.
- Döring, Herbert, 1994: Parlament und Regierung, in: Oskar W. Gabriel/Frank Brettschneider (eds.): *Die EG-Staaten im Vergleich. Strukturen, Prozesse, Politikinhalt*, 2. ed, Opladen: Westdeutscher Verlag, 336 – 358.
- Dosenrode, Søren Z. von, 1998: Denmark: The Testing of a Hesitant Membership, in: Kenneth Hanf/Ben Soetendorp (eds.): *Adapting to European Integration: Small States and the European Union*, London/New York: Longman, 52-68.
- ESC 2001: *The European Scrutiny System in the House of Commons - A short guide for Members of Parliament by the Staff of the European Scrutiny Committee*, London: House of Commons.
- Eysell, Maria, 1996: Der dänische Minderheitsparlamentarismus der achtziger Jahre, in: *Zeitschrift für Politikwissenschaft* 6 (2), 375-407.
- HC 36-vi/96: Select Committee on European Legislation sixth Report on “European Documents on Economic and Monetary Union: The Scrutiny Process”, 9.12.1996.
- HC 791/98: Select Committee on the Modernisation of the House of Commons seventh Report on „The Scrutiny of European Business“ 17.06.1998.
- HC 152-xxx/02: European Scrutiny Committee thirtieth Report on “European Scrutiny in the House of Commons”, 22.05.2002.
- HC 1308-i/02: Evidence presented by Rt Hon Michael Meacher MP on 6 November 2002 on Scrutiny Reserve Breaches.
- HC 63-viii/03: European Scrutiny Committee 8th report on “The Committee's Work in 2002”, 15.01.2003.
- Helms, Ludger, 2002: *Politische Opposition. Theorie und Praxis in westlichen Regierungssystemen*, Opladen: Leske und Budrich.
- Héritier, Adrienne, 1999: *Policy-Making and Diversity in Europe. Escaping Deadlock*, Cambridge: Cambridge University Press.
- Hilf, Meinhard/Burmeister, Frank, 1996: The German Parliament and European Integration, in: Eivind Smith (ed.): *National Parliaments as Cornerstones of European Integration*, London: Kluwer Law, 64-79.
- Hölscheidt, Sven, 2000: Mitwirkungsrechte des Deutschen Bundestages in Angelegenheiten der EU, in: *Aus Politik und Zeitgeschichte* B 28, 31-38.
- House of Commons, 2002: *Standing Orders of the House of Commons, Public Business*, London.
- Ismayr, Wolfgang, 2001: *Der Deutsche Bundestag im politischen System der Bundesrepublik Deutschland*, Opladen: Leske und Budrich.
- Jensen, Olaf/ Steffani, Winfried, 1991: Königreich Dänemark, in: Winfried Steffani (ed.): *Regierungsmehrheit und Opposition in den Staaten der EG*, Opladen: Westdeutscher Verlag, 93-125.

- Jesse, Eckhard, 1994: Wahlsysteme und Wahlrecht, in: Oskar W. Gabriel/Frank Brettschneider (ed.): Die EG-Staaten im Vergleich. Strukturen, Prozesse, Politikinhalt, 2. überarb. u. erw. Aufl., Opladen: Westdeutscher Verlag, 174-193.
- Judge, David, 1995: The Failure of National Parliaments?, in: West European Politics 18 (3), 79-100.
- Kaiser, André, 1998: Vetopunkte der Demokratie. Eine Kritik neuerer Vorschläge der Demokratietypologie und ein Alternativvorschlag, in: Zeitschrift für Parlamentsfragen 29, 525-541.
- Kamann, Hans-Georg, 1997: Die Mitwirkung der Parlamente der Mitgliedstaaten an der europäischen Gesetzgebung, Frankfurt a.M. u.a.: Peter Lang.
- Laursen, Finn, 1995: Parliamentary Bodies Specializing in European Union Affairs: Denmark and the European Committee of the Folketing, in: Finn Laursen/Spyros A. Pappas (eds.): The changing role of parliaments in the European Union, Maastricht: European Institute of Public Administration, 43-60.
- Laursen, Finn, 2001: The Danish Folketing and its European Affairs Committee: Strong Players in the National Policy Cycle, in: Andreas Maurer/Wolfgang Wessels (eds.): National Parliaments on their Ways to Europe: Losers or Latecomers? Baden-Baden: Nomos, 99-115.
- Laursen, Finn/Pappas, Spyros A. (eds.), 1995: The changing role of parliaments in the European Union, Maastricht: European Institute of Public Administration.
- Lijphart, Arend, 1999: Patterns of Democracy: Government Forms and Performance in Thirty-six Countries, New Haven et al.: Yale University Press.
- Madgwick, Peter James, 1991: British Government: The Central Executive Territory, London/New York: Philip Allan.
- Mather, Janet, 2000: The European Union and British Democracy: Towards Convergence, Houndsmill, Basingstoke/London: Macmillan.
- Maurer, Andreas/Wessels, Wolfgang (eds.), 2001: National Parliaments after Amsterdam: From Slow Adapters to National Players?, Baden-Baden: Nomos.
- Mény, Yves/Knapp, Andrew, 1998: Government and Politics in Western Europe: Britain, France, Italy, Germany, Oxford et al: Oxford University Press.
- Montesquieu, Charles Louis de Secondat, [1748] 1989: The Spirit of Laws (ed. by Anne M. Mohler, Basia C. Miller and Harold S. Stone), Cambridge: Cambridge University Press.
- Moravcsik, A., 1994: Why the European Community Strengthens the State: Domestic Politics and International Cooperation, Center for European Studies Working Paper Series # 52 (Cambridge MA: Center for European Studies, Harvard University).
- Nannestad, Peter, 2003: Das politische System Dänemarks, in: Wolfgang Ismayr (ed.): Die politischen Systeme Westeuropas, Opladen: Leske und Budrich, 55-92.
- Norton, Philip, 1990: Parliaments: A Framework for Analysis, in: Philippe Norton (ed.), Parliaments in Western Europe, London: Frank Cass, 1-9.

- Norton, Philip, 1991: Parliament I – The House of Commons, in: Bill Jones et. al. (Hrsg.): Politics UK, New/York, London et al.: Philip Allan, 314 – 355.
- Norton, Philip 1996: Conclusion: Addressing the Democratic Deficit, in: Philip Norton (ed.): National Parliaments and the European Union, London: Frank Cass, 177-193.
- Norton, Philip (ed.), 1996a: National Parliaments and the European Union, London: Frank Cass.
- Norton, Philip, 1998: Conclusion: Do Parliaments make a Difference?, in: Philip Norton (ed.): Parliaments and Governments in Western Europe, London: Frank Cass, 190-208.
- Ostrom, Elinor, 1998: A Behavioral Approach to the Rational Choice Theory of Collective Action (Presidential Address, American Political Science Association, 1997), in: American Political Science Review 92 (1), 1-22.
- Raunio, Tapio/Wiberg, Matti, 2000: Parliaments' Adaptation to the European Union, in: Peter Esaiasson/Knuut Heidar (eds.): Beyond Westminster and Congress: The Nordic Experience, Columbus: Ohio State University Press, 344-364.
- Rush, Michael, 2000: Parliamentary Scrutiny, in: Robert Pyper/Lynton Robins (eds.): United Kingdom Governance, Houndsmill, Basingstoke/London: Macmillan, 107-137.
- Scharpf, Fritz W., Bernd Reissert, Fritz Schnabel 1976: Politikverflechtung. Theorie und Empirie des kooperativen Föderalismus in der Bundesrepublik Deutschland, Kronberg.
- Schmidt, Manfred G., 2000: Demokratietheorien, Opladen: Leske und Budrich.
- Schütt-Wetschky, Eberhard, 2000: Gewaltenteilung zwischen Legislative und Exekutive?, in: Aus Politik und Zeitgeschichte, B–28, 5-12.
- Steffani, Winfried, 1981: Parlamentarische und präsidentielle Demokratie. Strukturelle Aspekte westlicher Demokratien, Opladen: Westdeutscher Verlag.
- Smith, Eivind 1996 (ed.): National Parliaments as Cornerstones of European Integration. London, 39-48.
- Sturm, Roland, 2003: Das politische System Großbritanniens, in: Wolfgang Ismayr (ed.): Die politischen Systeme Westeuropas, 3rd ed., Opladen: Leske und Budrich, 225-262.
- Turner, John, 2000: The Tories and Europe, Manchester/New York: Manchester University Press.
- Weber-Panariello, Philippe A., 1995: Nationale Parlamente in der Europäischen Union, Baden-Baden: Nomos.

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