

May 2008

**Ninth bi-annual report:**

**Developments in European Union**

**Procedures and Practices**

**Relevant to Parliamentary Scrutiny**



Prepared by the COSAC Secretariat and presented to:

XXXIX Conference of Community  
and European Affairs Committees  
of Parliaments of the European Union

7-8 May 2008  
Bled – Brdo pri Kranju

**Conference of Community and European Affairs Committees of Parliaments  
of the European Union**

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## Introduction

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This is the ninth bi-annual report from the COSAC secretariat.

### COSAC's bi-annual reports

The XXX COSAC decided that the COSAC secretariat should produce factual bi-annual reports, to be published ahead of each plenary conference. The purpose of the reports is to give an overview of the developments in procedures and practices in the European Union that are relevant to parliamentary scrutiny.

All the bi-annual reports are available on the COSAC website <http://www.cosac.eu/en/documents/biannual/>

The five chapters of this report are based on information provided by the national parliaments and the European Parliament. The COSAC secretariat is very grateful to them for their cooperation.

**Chapter one** describes in different aspects the involvement of national parliaments in the ratification process of the Treaty of Lisbon. Noting that every parliament plays a role within the national ratification process, it gives a state of play of the on-going procedures before tackling the question of ratifying the Treaty of Lisbon with or without a consolidated version of the Treaty on European Union and the Treaty establishing the European Community (consolidated version of the Treaties). Finally, it investigates to which extent and how parliaments developed a communication strategy in order to provide citizens with information of the new Treaty.

**Chapter two** outlines the provisions contained in the Treaty of Lisbon that refer to the parliamentary dimension of the European Union. It provides an overview of the Treaty provisions concerning the role of national parliaments in the EU and the strengthening of the powers and functions of the European Parliament. Following the replies given by parliaments to the questionnaire, an attempt is made to take a strategic look at the practical ways in which parliaments might exert the influence on European affairs that the Treaty gives them.

**Chapter three** builds on the findings of the 8th Bi-annual Report (October 2007) which analysed the role of national parliaments and the European Parliament in the Lisbon Strategy. Against this background it provides factual information on the progress of the Strategy in view of the commencement of the new cycle (2008-2010), present the relevant results of the upcoming Spring European Council, and highlight the broad trends in parliamentary positions as they became apparent in annual inter-parliamentary dialogue between national parliaments and the European Parliament in the run-up to the Spring Council.

**Chapter four** aims to examine the degree to which parliaments of the European Union are involved in the Schengen process, concerning scrutiny procedure, definition of security rules and defending individual freedoms.

**Chapter five** aims to establish whether and how the national parliaments and the European Parliament are involved in the accession negotiations with candidate countries. The chapter also seeks to identify special features of national constitutions which would be required for the ratification of an Accession Treaty.

### **A note on numbers**

Of the 27 Member States of the European Union, 14 have a unicameral parliament and 13 have a bicameral parliament. Due to this mixture of unicameral and bicameral systems, there are 40 national parliamentary chambers in the 27 EU Member States.

Although they have bicameral systems, the national parliaments of Austria, Ireland, Italy and Romania each sent a single response to the COSAC questionnaire. The COSAC secretariat received a response to its questionnaire from all national parliaments of the 27 Member States. These answers are published in a separate annex which is also available on the COSAC website.

## Summary

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After signing the Reform Treaty in Lisbon (Portugal), Heads of State and Government called on 14 December 2007 for “*a swift completion of national ratification processes with a view to allowing entry into force of the Treaty on 1 January 2009*”. As of today, **8 Member States have ratified the Treaty of Lisbon**: Hungary (17 December 2007), Slovenia (29 January 2008), Malta (29 January 2008), Romania (4 February 2008), France (8 February 2008), Bulgaria (21 March 2008), Slovakia (10 April 2008) and Portugal (23 April 2008)<sup>1</sup>. Almost every Member State of the European Union as these eight will complete ratification through a parliamentary vote; Ireland is the only one expected to hold a referendum.

**The Treaty of Lisbon** amends the European Union’s two main Treaties. It is acknowledged that an amending Treaty is far less clear and understandable than a codified Treaty. **Without any consolidated version of the Treaties provided by the EU institutions, many Member States have produced such a document themselves.** This decision was taken in many States although there were no legal requirements for possessing a consolidated version for completion of the ratification procedure. A consolidated version is however necessary in a couple of Member States for legal reasons.

Considering the importance of the Treaty of Lisbon, many national parliaments have undertaken **communication strategies in order to provide the public with information about the content of the Treaty** in general or by highlighting specific topics like the new arrangements regarding the role of national parliaments. The communication activities reported by the respondents show a variation of practices, ranging from implementation of common parliamentary procedures to more ambitious information programs in partnership with other institutions committed to the European Affairs or without them. Sometimes European Affairs Committees play a significant role in those matters.

**It is the first time ever that a Treaty contains a specific article acknowledging the role of national parliaments in the EU.** Article 12 of the Treaty on European Union (TEU) reads that “*National Parliaments contribute actively to the good functioning of the Union*”, through some specified ways: receipt of information and all draft legislation direct from the EU institutions; ensuring compliance with the principle of subsidiarity; taking part in the evaluation of EU policies in the area of freedom, security and justice (new Article 70 of the Treaty on the Functioning of the European Union (TFEU)); monitoring and scrutinizing EUROPOL (Article 88 of the TFEU); involvement in the activities of EUROJUST (Article 85 of the TFEU); taking part in any future Treaty revision (Article 48 of the TEU); being notified of any applications to join the EU (Article 49 of the TEU); taking part in the inter-parliamentary cooperation both with other national parliaments and with the European Parliament.

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<sup>1</sup> As of 23 April 2008

The Treaty of Lisbon (TEU and TFEU) includes two annexed **Protocols on national parliaments** that mostly follow what was already envisaged in the Protocols annexed to the Treaty Establishing a Constitution for Europe, signed in Rome on 29 October 2004. One innovation however is worth noting, namely the so-called '*orange*' card procedure.

**The Treaty of Lisbon substantially enhances the role of the European Parliament**, which acquires powers of co-decision in virtually all areas of Union policy, gains a status of full parity with the Council as budgetary authority, obtains concurrent right of initiative for new ordinary procedure for the revision of the Treaties and elects the President of the Commission by a majority of its component members on a proposal by the European Council, taking into account the results of the European Parliament elections.

**An overwhelming majority of parliaments considers that the Treaty of Lisbon will enhance the way the parliaments deal with European Affairs**, since it contains the potential to lend new quality to their involvement in the policy formulation process. Three main suggestions were put forward as to develop further the cooperation among parliaments: the focus that **COSAC** should put on this, the more intensive use of **IPEX** and the strengthening of the **informal network of national parliament representatives in Brussels**.

Since its launch **the Lisbon Strategy** has evolved into important policy tool to steer, activate and monitor economic reform in the European Union. Following the mid-term review of the Lisbon Strategy in 2005, which lead to a refocusing on the achievement of stronger, lasting growth and the creation of more and better jobs, the strategy has become more coherent. Entering into **the new cycle of the Lisbon Strategy**, against a worsening global economic outlook the targets of the previous cycle have been reconfirmed. At the same time both the European Commission and the European Council have highlighted the importance of better implementation especially with regards to the **National Reform Programmes and the Integrated Guidelines for Growth and Jobs**.

**National parliaments and the European Parliament monitor the Lisbon Strategy** and its implementation, *inter alia*<sup>2</sup>, in the form of Joint Parliamentary Meetings since 2005. These annual meetings have become an established forum of parliamentary exchange ahead of the Spring European Council, addressing overarching political questions of joint interest. This has led the European Parliament to explicitly refer to these meetings as a source of reference and inspiration, when it adopts its annual resolution on the **input for the Spring European Council** as regards the Lisbon Strategy.

**The role of national parliaments in Schengen matters** differs according to the level of integration a Member State has in the Schengen area. Whilst national parliaments of old Member States focus their scrutiny procedure on the oversight of the technical

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<sup>2</sup> Notice should be taken of the different scrutiny systems of European Union affairs in the national parliaments of the 27 Member States as presented in the Eighth Bi-annual Report of COSAC, published on the COSAC website: <http://www.cosac.eu/en/documents/biannual/>

aspects of Schengen's evolution, national parliaments of new Member States cooperate closely with their governments during the accession process.

**National parliaments stress the lack of protection of the European citizens' rights** due to the automated data processing being proposed for which there is a need of stronger scrutiny. They suggest that **COSAC should identify an appropriate form of control and evaluation that could be applied to Europol's and Eurojust's activities.**

**Parliaments of the EU are actively involved throughout the accession process of candidate countries.** The chapter by chapter negotiations phase is examined in a more detailed manner by the parliaments of the Member States that joined the EU in 2004. The phase of concluding the negotiations and signing of the Accession Treaty is usually scrutinised by the European Affairs Committee, mostly with the Foreign Affairs Committee.

During the **ratification phase of the Accession Treaty** the parliamentary political decision is made in the plenary, while the main committee reporting to the plenary is the Foreign Affairs Committee. The European Affairs Committee only has an advisory role.

Most of the constitutional systems of the Member States do not foresee **different procedures for ratification of an Accession Treaty or of a Founding Treaty**, which are both a part of primary legislation of the EU, while some of the national parliaments do foresee a different ratification procedure under the condition that it provides for a transfer of certain powers from the national to the EU level.



# Chapter 1: Involvement of national parliaments in the ratification process of the Treaty of Lisbon

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This chapter gives different insights into the ratification process of the Treaty of Lisbon by national parliaments.

The Reform Treaty or Treaty of Lisbon was officially signed on 13 December 2007 by the Heads of State and Government the 27 Member States in Lisbon (Portugal).

To come into force, the Treaty of Lisbon has to be ratified by all 27 Member States. In the conclusions of the European Council on 14 December 2007, Heads of State and Government called for “*a swift completion of national ratification processes with a view to allowing entry into force of the Treaty on 1 January 2009*”. The goal is to allow the provisions of the Treaty to apply before the European Parliament elections in June 2009.

Given this target date, it is up to each country to choose the procedure for ratification, in line with its own constitutional system. This chapter aims to give a state of play of the on-going procedures in the Member States as they seek to ratify the Treaty of Lisbon by the end of 2008. Therefore, a table in the appendix sets out the timetable and the legal and institutional requirements in each State.

Among the questions about the ratification process, one of the first that comes to mind is to know whether a Member State chose to ratify the Treaty through a referendum or through a parliamentary vote. At the time being, only Ireland is expected to hold a referendum. The other Member States should complete their ratification through a parliamentary vote. The table in the appendix gives details on the thresholds for approval in each national parliament. It also presents the outcome of the ratification procedures achieved by several countries. 8 Member States have so far ratified the Treaty of Lisbon: Hungary (17 December 2007), Malta (29 January 2008), Slovenia (29 January 2008), Romania (4 February 2008), France (8 February 2008), Bulgaria (21 March 2008), Slovakia (10 April 2008) and Portugal (23 April 2008)<sup>3</sup>.

- The purpose of this chapter is also to describe how national parliaments as institutions put at the centre of the ratification process of the Treaty of Lisbon might have taken initiatives with a view to providing citizens with information on the Treaty of Lisbon. The following statements set out the means and the content of their communication strategy on this matter.

- At first, this chapter provides a presentation about the way national parliaments handle the ratification of an amending Treaty.

## 1.1 RATIFICATION OF AN AMENDING TREATY

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<sup>3</sup> As of 23 April 2008

Changes to the European Union's Treaties have always come through amendments to previous Treaties: this was true of the Single European Act, as well as the Treaties of Maastricht, Amsterdam and Nice. The Treaty of Lisbon uses the same technique.

As far as this technique is concerned it has an important drawback. Without a consolidated version of both modified Treaty on European Union and Treaty establishing the European Community<sup>4</sup>, the text of the amending Treaty by itself is hardly readable and comprehensible for anyone, whether he or she is an expert, MP, MEP or an ordinary citizen. In this respect, the Committee on Constitutional Affairs of the European Parliament (EP), in its Resolution of 20 February 2008 on the Treaty of Lisbon<sup>5</sup>, called for “*the rapid publication of the consolidated Treaties as revised by the Treaty of Lisbon, which would provide citizens with a clearer basic text of the Union*”.

The European Union institutions finally published a consolidated version of the Treaties in all official languages of the European Union on 15 April 2008 on the website of the Council<sup>6</sup> and will publish them in paper version on 9 May 2008. This initiative should considerably facilitate the work of the governments and the parliaments within their ratification procedure.

Given this background, it was interesting to know if a consolidated version of the Treaties was required by the constitutional system of a Member State in order to complete the ratification of the Treaty of Lisbon.

Practically all the respondents indicate that, from a constitutional point of view, a consolidated version of the Treaties is not necessary when it comes to the approval the Treaty of Lisbon. That is why, in most cases, the bill of ratification deposited by the governments only includes the text of the Treaty as it was signed by the EU Member States in December 2007.

Nevertheless, it is worth noting that a consolidated version is necessary in two Member States: Belgium and the Netherlands. In Belgium, such a requirement is not based on a written constitutional rule but was laid down by the *Conseil d'Etat* which concluded in its statement that MPs needed to have a consolidated version in their possession in order to be able to fully understand the Treaty of Lisbon. This opinion is rather similar to the EP's, as mentioned above.

Despite the fact that, in a large majority of Member States, there are no legal requirements for a consolidated version, several national parliaments report that a consolidated version has actually been made available or is about to be made available in their country (12 parliaments exactly, in addition to the Belgian and Dutch ones).

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<sup>4</sup> The Treaty establishing the European Community will be renamed the Treaty on the Functioning of the European Union

<sup>5</sup> European Parliament resolution of 20 February 2008 on the Treaty of Lisbon (2007/2286(INI)): <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2008-0055+0+DOC+XML+V0//EN>

<sup>6</sup> Consolidated versions of the Treaty on European Union and the Treaty on the functioning of the European Union: <http://www.consilium.europa.eu/showPage.asp?id=1296&lang=en&mode=g>

The Treaty of Lisbon is such a complex text that a consolidated version of the Treaties is regarded as a necessity allowing MPs to make a responsible decision in the ratification process. The European Affairs Committee of the German *Bundestag* expressly asked the Minister of Foreign Affairs on behalf of its Chairman that the Federal Government make sure that the *Bundestag* is provided with a consolidated version of the Treaties without further delay.

Without a consolidated version at the EU level, Member States have been put in a situation where they have had to count on their own resources to produce a consolidated text. In a majority of Member States, the document is produced by the government (frequently by the Ministry of Foreign Affairs). France and Denmark are the only Member States where the consolidated version has a parliamentary origin. In the case of the Czech Republic, there was a co-operation between the parliament and the government. In Ireland, the Netherlands, Poland and Sweden, some academics or institutes committed to European Affairs contributed to the production of the consolidated version or built it entirely.

The publication and the distribution of such a document – when it is decided – is carried out before the launch of the national ratification process in order to allow parliamentarians to vote with a clear vision of what the adoption of the Treaty of Lisbon entails.

Four parliaments (France, Hungary, Portugal and Slovakia) out of eight that have already ratified the Treaty of Lisbon had a consolidated version of the Treaties at their disposal.

## **1.2 PROVIDING CITIZENS WITH INFORMATION ABOUT THE NEW TREATY**

### *A non parliamentary issue*

A number of parliaments say that they don't plan any initiative in order to inform citizens on the content of the Treaty of Lisbon. There are different reasons for this kind of situation. For instance, in Finland, it would not be appropriate for the services of *Eduskunta* to engage in a public debate on a subject that the parliament itself will have to vote on. Besides such information is provided by Finland's EU Information Bureaux (19 regional offices), which are administratively attached to the Ministry of Foreign Affairs. There is a similar context in Sweden, where The EU Information Centre is entrusted by the *Riksdag* to provide the public with politically impartial information about the European Union, which includes the content of the Treaty of Lisbon.

In Slovakia, the government made the EU institutional reform a “communication priority of the Government of the Slovak Republic”. On this basis, the main activities designed to inform the public on the Treaty of Lisbon will be performed under the auspices of the government in association with other bodies such as the European Commission Representation in the Slovak Republic, the EP Information Office in the Slovak Republic, NGOs or universities.

### *Informing within the scope of regular practices*

Many parliaments respond that they provide public information through their regular parliamentary practices and procedures. As an example, the Slovenian *Državni zbor* underlines that its European Affairs Committee plays a significant role in informing citizens through the engagement of the Committee as a whole as well as activities of its Chairman.

Debates in plenary or in European Affairs Committees (EAC), hearings of members of government or experts by EAC or standing committees (usually the Committee on Foreign Affairs or the Committee on Constitutional Affairs) are the most frequent answers by national parliaments. Under these circumstances, transparency is always the rule: these meetings are often held in public and at minimum minutes are published on parliaments' website in order to make them accessible for anyone interested; press statements or short memos summarising the main discussion points are other kinds of documents made available.

### *Special Events*

Apart from their regular activities, a large number of parliaments also decided to host, organize or participate in special events that aim to raise public interest towards the provisions of the new Treaty. Conferences or seminars are the most frequent tools used in this respect.

Below is a list of special events arranged by several parliaments with regard to the Treaty of Lisbon:

#### **Austria**

Series of public discussions on "The Treaty of Lisbon - Facts and Assessments" were held by the *Nationalrat* and the *Bundesrat* on 22 February 2008 and 2 April 2008.

#### **Bulgaria**

The parliament organized on 19 March 2008 a conference entitled "The Treaty of Lisbon: the Citizens, the Parliaments, and the Union". The main topics of the Conference were "Charter of fundamental rights of the European Union" and "The role of the national parliaments in the European Union".

#### **The Czech Republic**

The EAC will hold a seminar on the Treaty of Lisbon in May 2008 with the participation of the EU experts of parliamentary political parties as well as academic experts.

#### **Germany**

The EAC of the *Bundestag* has held three special hearings, open to the public, on the Treaty of Lisbon with experts devoted to the developments in the following areas:

- Common Foreign and Security Policy/European Security and Defence Policy;
- Area of Freedom, Security and Justice;
- Basic structure of the Treaty of Lisbon and institutional reform.

#### **Greece**

The EAC of the Hellenic Parliament was in charge of the organisation of a round table entitled: "The Reform Treaty and the Role of national parliaments". This round table was open to the public and attended by MPs and MEPs.

#### **Ireland**

After a series of meetings with a number of the social partners, the Joint EAC of the *Oireachtas* organised regional public sittings throughout the country to inform people about the contents of the Treaty and to encourage and stimulate debate in public fora and in the media.

#### **Poland**

A conference on the Treaty of Lisbon under the auspices of both the Polish assemblies took place in the *Sejm* of the Republic of Poland on 12 March 2008.

#### **Portugal**

The *Assembleia da República* presides over a triad of decentralised conferences, held with the aim of promoting an open and plural debate about the content of the Treaty of Lisbon. The first conference took place in Porto (North Portugal) on 17 March 2008, the second in Faro (South Portugal) on 2 April 2008, and finally the third one was hosted in Lisbon, on 9 April 2008, on the premises of the *Assembleia da República*.

#### **Slovenia**

At the end of 2007, the Slovenian *Državni zbor* held a symposium entitled "Treaty of Lisbon - Towards better efficiency of the EU at home and abroad" to give citizens an insight into the new Treaty.

*In addition, the Belgian Chambre des députés, the Cypriot Vouli ton Antiprosópon and the Dutch Eerste Kamer report that they intend to hold special public debates or events on the Treaty of Lisbon in the next future.*

These conferences or meetings are all open to the public and covered by the media. More specifically, they gathered representatives of NGOs, think tanks, universities, Europe Direct network and other institutions involved in European affairs.

Some parliaments chose to organize their communication on the Treaty of Lisbon with a slightly different strategy. For instance, the Lithuanian *Seimas* reports that among different kinds of activities such as public debates throughout the country (similar to the Portuguese decentralised strategy), it runs specific seminars and presentations targeting identified groups like social partners, NGOs, media or academic community.

In the same way, the Luxembourg *Chambre des députés* focused its communication strategy on young people. The choice of this target group was a direct consequence of the analysis of the polls after the referendum on the Constitutional Treaty. It clearly showed that many youngsters had a bad perception of the EU. That is why, on the occasion of the ratification of the Treaty of Lisbon, the Luxembourg *Chambre des députés* decided to invite in November 2007, January 2008 and February 2008

secondary school pupils and students to meet MPs from the standing Committee on Foreign and European Affairs and Luxembourg MEPs.

Some parliaments took initiatives to slightly diverge from a one-way communication in order to involve the public more closely. The Portuguese *Assembleia da República* set up a consultation to organisations that represent several segments within civil society and local authorities with the aim of collecting their contribution with regard to the innovative and/or most relevant parts of the Treaty. With the help of its website on which a special page on the Treaty of Lisbon has been created, the Dutch *Eerste Kamer* tries to communicate interactively with third parties, ranging from institutions to citizens.

### *Publications*

Within the framework of ordinary parliamentary practices or on this special occasion, a number of national parliaments published and distributed reports or summaries dealing with the Treaty of Lisbon and which sometimes also included their own opinions.

The EACs of the French *Assemblée nationale* and *Sénat* both elaborated reports which are first and foremost intended for MPs in order to allow them to make a responsible decision in the ratification process, but are also available to the public. The Romanian Parliament will soon distribute a similar document to MPs. The Parliamentary Institute of the Czech Chamber of Deputies has published a report entitled “What is new in the Treaty of Lisbon?” for all MPs at the beginning of January 2008. In all these cases, the reports contain and explain all the major changes brought by the Treaty of Lisbon.

The Danish *Folketing*'s EU Information Centre prepared a booklet on the Treaty of Lisbon providing background information and facts about the most important elements of the new Treaty. The booklet was made available to the public in January 2008, free of charge.

The Dutch *Eerste Kamer* publishes every news-item about the Treaty on a special webpage dedicated to the Treaty and made all possible documents from the negotiations phase until ratification available.

### *Partnerships*

A number of national parliaments have led joint communication activities towards the public with other national or European institutions. The government, usually the Ministry of Foreign and European Affairs, the European Commission through its national representations and Europe Direct Centres, MEPs and local authorities are regular partners with which national parliaments take concerted actions on some occasions. Among national parliaments, the Lithuanian *Seimas* is the sole whose activities are explicitly within the scope of a grand joint national public information campaign developed together with the Ministry of Foreign Affairs and the Government Office in cooperation with the European Commission Representation in Lithuania.

### *Involvement of European Affairs Committees*

Drawing a clear assessment of the activities of the European Affairs Committees with regard to informing citizens on the content of the Treaty of Lisbon is not easy. However it is possible to report a few simple statements:

- a great majority of EACs developed information activities regarding the Treaty of Lisbon within the limits of what they are entitled to do according to the rules of procedure of their parliament;
- a few EACs on behalf of their parliaments organized or participated in the organisation of special conferences, designed to draw the attention of the public to the new treaty;
- Chairpersons of EACs or mere members have usually made themselves available to take part in debates or round tables about the Treaty of Lisbon promoted by universities, think tanks or the media;
- in a number of national parliaments EACs are not the adequate structure for informing the public about EU matters. There are offices specifically devoted to this task such as the European information office in the Lithuanian *Seimas* and the EU information Centre of the Latvian *Saeima*. In other countries (see the Finnish and Swedish situations) non-parliamentary organisations take care of this kind of information.

### **1.3 GENERAL OR SELECTIVE INFORMATION ABOUT THE TREATY?**

Throughout their communication activities, a great number of national parliaments provided an overview of the provisions of the Treaty of Lisbon. This kind of approach is explicitly endorsed by the Czech *Poslanecká Sněmovna* which considers that it would be misleading to limit the debate over the Treaty of Lisbon to some specific questions. Its conviction is that the text of the Treaty of Lisbon contains so many changes that it must be considered in its complexity and entirety.

Whilst they do not express the same strong conviction, the Hungarian *Ország Háza* and the Portuguese *Assembleia da República* are however assemblies that share the opinion that topics related to the Treaty of Lisbon are of great importance.

The French *Assemblée nationale* and *Sénat* and the Romanian Parliament developed an original approach embracing the Treaty as a whole by comparing the current treaties with the provisions of the Treaty of Lisbon. The French *Sénat* made a comparison between the new Treaty and the Constitutional Treaty.

Even if they enlighten the public on the Treaty of Lisbon in general, a number of parliaments decided also to centre their communication on specific topics. The following topics were highlighted by several parliaments: Common Foreign and Security Policy, aspects of the institutional reform (mainly increased efficiency of the decision-making process), the role of the civil society in the European Union and also the EU Charter of Fundamental Rights, as it was adopted at the same time as the Treaty of Lisbon.

The new provisions regarding national parliaments also appear as a topic to which parliaments decided to give special attention. The Bulgarian National Assembly, the Danish *Folketing*, both French assemblies, the Hellenic Parliament, both Italian chambers, the Latvian *Saeima* and the Slovenian *Državni zbor* expressly report an emphasis put on the special arrangements allowing national parliaments to become more closely involved in the work of the Union.

#### **1.4 CONCLUSIONS**

After reading the views of national parliaments about the ratification of the Treaty of Lisbon, it is obvious that the fact that there are no legal requirements for a consolidated version of the Treaties in almost every Member State does not mean that there is no need for such a document. Common sense commands that MPs should have a consolidated version at their disposal in order to adopt the treaty with full knowledge of the facts. Without any consolidated version prepared at the EU level, many Member States have resigned themselves to elaborate their own version, sometimes involving the national parliament in this technical work.

Providing citizens with EU information can not be considered as regular occupation of national parliaments. However, given the importance of the Treaty of Lisbon for the future of Europe and their role with regard to its ratification, many national parliaments involved themselves in an attempt to raise public interest and to give citizens ownership of the current reforms. The communication strategies, summarised above, show a variation of practices, ranging from implementation of common parliamentary practices to more ambitious programs in partnership with other interested institutions or not.

An overwhelming majority of national parliaments dealt with the Treaty of Lisbon as a whole with the aim of providing exhaustive information to MPs and the public. However, besides general information, specific topics have been highlighted by several parliaments. Among these, particular emphasis has often been laid on the acknowledgment by the Treaty that national parliaments are a part of the democratic fabric of the European Union.



## Ratification of the Treaty of Lisbon in EU-27

(As of 23 April 2008)

Member State	Procedure	Timetable
Austria	<b>Parliamentary.</b> 2/3 majority in both chambers	Ratification Bill approved by the <i>Nationalrat</i> on 9 April 2008 (151 votes in favour, 27 against)
Belgium	<b>Parliamentary.</b> Simple majority in both federal chambers and in 6 regional and community assemblies	On 6 March the Senate voted in favour of the Treaty of Lisbon (42 in favour, 8 against); The House of Representatives voted on 10 April 2008 (116 in favour; 18 against and 7 abstentions). Regional parliaments still have to approve the Treaty. The procedure as a whole should be finished at the end of June 2008.
<b>Bulgaria</b>	<b>Parliamentary.</b> Simple majority	Ratified on 21 March 2008
Cyprus	<b>Parliamentary.</b> Absolute majority. President and Council of Ministers can veto parliament's decision.	April 2008
Czech Republic	<b>Parliamentary.</b> Simple majority if no transfers of powers, or 3/5 majority in both chambers otherwise	The Chamber of Deputies should discuss the ratification Bill in April or May
Denmark	<b>Parliamentary.</b> Simple majority with at least 50% of the members present	June 2008
Estonia	<b>Parliamentary.</b> Simple majority in the parliament	May 2008
Finland	<b>Parliamentary.</b> 2/3 majority in parliament (transfer of powers)	Ratification Bill presented in March; Adoption expected before Summer 2008
<b>France</b>	<b>Parliamentary.</b> Two steps : 1) Constitutional amendment voted by simple majority in each	Ratified on 8 February 2008 (National Assembly - 336 votes in favour and 52 against; Senate - 265 votes in favour, 42 against and 13

	chamber and then a 3/5 majority in Congress (National Assembly and Senate together) 2) Ordinary ratification bill voted by simple majority in each chamber then.	abstentions)
Germany	<b>Parliamentary.</b> 2/3 majority in both federal chambers	Final readings of the ratification Bill by both chambers expected to be completed at the end of May 2008.
Greece	<b>Parliamentary.</b> Simple majority (no transfer of powers)	Not yet announced
<b>Hungary</b>	<b>Parliamentary.</b> 2/3 majority of voters, in the presence of at least 50% of the members.	Ratified on 17 December 2007 (325 votes in favour, 5 votes against and 14 abstentions)
Ireland	<b>Parliamentary and Referendum</b> Simple majority in both chambers and 50% of votes in referendum (Constitutional amendment)	Ratification Bill presented on 6 March 2008. Vote in parliament expected in April; Referendum scheduled to take place on 12 June 2008
Italy	<b>Parliamentary.</b> Simple majority in both chambers	Not yet announced
Latvia	<b>Parliamentary.</b> Simple majority of parliament with two readings.	May 2008
Lithuania	<b>Parliamentary.</b> Simple majority in the parliament.	May 2008
Luxembourg	<b>Parliamentary.</b> Simple majority in parliament	June 2008
<b>Malta</b>	<b>Parliamentary.</b> Simple majority in parliament	Ratified on 29 January 2008 (voted unanimously)
Netherlands	<b>Parliamentary.</b> Simple majority in both chambers	Autumn 2008
Poland	<b>Parliamentary.</b> 2/3 majority in the presence of at least 50% of the members of both chambers	<i>Sejm</i> voted in favour of the Treaty on 1 April 2008 (384 votes in favour, 56 against and 12 abstentions);

	if defined as a transfer of powers, otherwise simple majority	The Senate voted in favour on 2 April 2008 (74 votes in favour, 17 against and 6 abstentions); The Polish President has still to sign the Bill.
<b>Portugal</b>	<b>Parliamentary.</b> Simple majority of votes in the parliament	Ratified on 23 April 2008 (188 votes in favour and 23 against). The formal ratification procedure will be completed with the Portuguese President's signature.
<b>Romania</b>	<b>Parliamentary.</b> 2/3 majority in a joint sitting of the Chamber of deputies and the Senate	Ratified on 4 February 2008 (387 votes in favour, one vote against and one abstention)
<b>Slovakia</b>	<b>Parliamentary.</b> 3/5 of members of parliament	The Slovak Parliament approved the Treaty on 10 April 2008 (103 votes in favour, 5 against and 1 abstention); The Slovak President is expected to sign the Bill.
<b>Slovenia</b>	<b>Parliamentary.</b> 2/3 majority	Ratified on 29 January 2008 (74 votes in favour, 6 votes against)
Spain	<b>Parliamentary.</b> Simple majority from both chambers	2 <sup>nd</sup> semester 2008
Sweden	<b>Parliamentary.</b> Simple majority in the parliament	Autumn 2008
United Kingdom	<b>Parliamentary.</b> Simple majority in both houses. Rejection by the House of Lords would require an additional reading in the House of Commons	The House of Commons voted in favour of the Treaty on 11 March 2008 (346 votes in favour, 206 votes against); On-going debates in the House of Lords. Ratification expected in May 2008

## **Chapter 2: The Treaty of Lisbon - implementation and its consequences for the national parliaments of the EU**

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This chapter aims to provide an overview of the strengthening of the parliamentary dimension of the European Union (EU) envisaged by the Treaty of Lisbon. It shall firstly focus on the role of national parliaments in the EU according to the provisions of the Treaty - not only what is foreseen by the Protocol on the role of national parliaments in the EU and by the Protocol on the application of the principles of subsidiarity and proportionality, but also all the other relevant dispositions of the Treaty concerning the influence of national parliaments in European affairs. Secondly, an outline of the new powers and functions of the European Parliament (EP) that the Treaty of Lisbon brings will also be addressed. Finally, particular attention will be given to the way parliaments are preparing themselves for the challenges to come and to how do they foresee the cooperation and exchange of information and best practice among themselves should occur under the Treaty of Lisbon framework. Following the replies given by parliaments to the questionnaire, an attempt is made to take a strategic look at the practical ways how parliaments can exert the influence on European affairs that the Treaty gives them.

### **2.1. THE TREATY OF LISBON AND NATIONAL PARLIAMENTS**

As laid down in its Preamble, the Treaty of Lisbon aims to enhance "the democratic legitimacy of the Union", which has been a topic always present in the process that lead up to the signing of this Treaty. Therefore, the Treaty includes a new section dedicated to *Provisions on Democratic Principles*, under Title II, addressing issues like EU citizenship and the connection between EU institutions and society at large. It is in this context that the Treaty of Lisbon presents substantially new provisions concerning national parliaments.

First and foremost, it is the first time ever that a Treaty contains a specific article acknowledging the role of national parliaments in the EU. Article 12 of the TEU reads that "*National Parliaments contribute actively to the good functioning of the Union*". This is a very important article to understand what the Treaty of Lisbon actually brings in terms of innovations about the role of national parliaments in the EU. Whilst the two Protocols (*Protocol on the role of national Parliaments in the European Union* and *Protocol on the application of the principles of subsidiarity and proportionality*) mostly follow what the Treaty Establishing a Constitution for Europe, that came out of the 2004 IGC, already envisaged (even though with some fine-tuning, namely concerning the extension of the period to issue a reasoned opinion from 6 to 8 weeks, and the strengthened mechanism that the 'orange' card represents), there is a set of new provisions throughout the both the TEU and the TFEU that give national parliaments a power to actively contribute to the above-mentioned good functioning of the EU.

This Article 12 sets out briefly those specified ways through which this contribution is to be carried:

- receipt of information and all draft legislation direct from the EU Institutions;
- ensuring compliance with the principle of subsidiarity;
- taking part in the evaluation of EU policies in the area of freedom, security and justice (new Article 70 of the TFEU);
- monitoring and scrutinizing EUROPOL (Article 88 of the TFEU);
- involvement in the activities of EUROJUST (Article 85 of the TFEU);
- taking part in any future Treaty revision (Article 48 of the TEU);
- being notified of any applications to join the EU (Article 49 of the TEU);
- taking part in the inter-parliamentary cooperation both with other national parliaments and with the EP.

Therefore, this chapter will provide an overview of the mechanisms envisaged in the Protocols, concerning the monitoring of the compliance with the subsidiarity principle, and the other provisions of the Treaties that refer to national parliaments which do not relate specifically to subsidiarity. This shall include the above-mentioned topics contained in Article 12.

### **2.1.1. The Protocols annexed to the Treaty of Lisbon**

The Treaty of Lisbon (TEU and TFEU) includes two annexed Protocols on national parliaments that mostly follow what was already envisaged in the Protocols annexed to the Treaty Establishing a Constitution for Europe, signed in Rome on 29 October 2004. One innovation however is worth noting, namely the so-called '*orange*' card procedure.

#### **a) Protocol on the role of national parliaments in the European Union**

This Protocol, while acknowledging in its preamble that the way in which national parliaments scrutinise their governments in EU affairs is a matter for the particular constitutional organisation and practice of each Member State, also defines a general obligation on the EU institutions to provide national parliaments with all the necessary and relevant information to carry out their work. Therefore, the following documents shall be sent directly to national parliaments:

- all Commission consultation documents (green and white papers and communications), upon publication, as well as its Legislative and Work Programme or any other instrument of legislative planning (Article 1). These are sent to national parliaments by the Commission;
- all draft legislative acts that are sent to the EP and to the Council, comprising proposals from the Commission, initiatives from a group of Member States, initiatives of the EP, requests from the Court of Justice (ECJ), recommendations from the European Central Bank (ECB) and requests from the European Investment Bank (EIB) for the adoption of a legislative act (Article 2). These documents are sent to national parliaments either by the EP (when it refers to an EP initiative) or by the Council (for all the other initiatives).

- the agendas and minutes of the meetings of the Council, including those where deliberations are made on draft legislative acts, shall also be forwarded to national parliaments at the same time as to Member States' governments.

- a very important aspect is the one mentioned in Article 6 of the Protocol, that states that when the European Council intends to make use of the first or second subparagraph of Article 48 (7) of the TFEU, national parliaments shall be informed at least six months before any decision is adopted. This refers to the so-called '*passerelle*' clause, which is to be analysed further down in this chapter.

Article 3 refers to the procedure laid down in the Protocol on the application of the principles of subsidiarity and proportionality, through which national parliaments may send to the Presidents of the Commission, the Council and the EP a reasoned opinion on whether a draft legislative act complies with the principle of subsidiarity. Moreover, Article 4 specifies that an eight week period shall elapse between the moment when a draft legislative proposal is made available to national parliaments in all the official languages of the Union and the date when it is placed on a provisional agenda for the Council for its adoption or for adoption of a position under a legislative procedure. Therefore, no formal position on a proposal can be adopted by the EU institutions within this eight week period.

Finally, this Protocol also addresses the issue of inter-parliamentary cooperation, by stressing the role of "the Conference of Parliamentary Committees for Union Affairs" (COSAC) (Article 10) and stating that the EP and national parliaments shall together determine the organisation and promotion of an effective inter-parliamentary cooperation.

COSAC may communicate with the Council, the EP and the Commission, even though obviously not binding or prejudging national parliaments' positions. COSAC shall also promote exchange of information and best practice, as well as organise inter-parliamentary conferences.

## **b) Protocol on the application of the principles of subsidiarity and proportionality**

This protocol lays down the procedures through which national parliaments are entitled to ensure that the principle of subsidiarity is complied with, as stated in the new Article 5 of the TEU and also in Article 12 of the TEU, as described above.

By quoting these two articles we wish to provide some clarification regarding what national parliaments are actually entitled to look at under the Treaty provisions.

Article 5 reads "*The institutions of the Union shall apply the principle of **subsidiarity** as laid down in the Protocol (...). National Parliaments ensure compliance with the principle of **subsidiarity** in accordance with the procedure set out in that Protocol.*" Article 12 states that "*National Parliaments contribute actively to the good functioning of the Union: (...) b) by seeing to it that the principle of **subsidiarity** is respected in accordance with the procedures provided for in the Protocol on the application of the principles of subsidiarity and proportionality*".

But in fact, by looking at the title of the Protocol one might find that both subsidiarity and proportionality are to be addressed. Furthermore, the Preamble of the Protocol defines that "*Resolved to establish the conditions for the application of the principles of **subsidiarity** and **proportionality** (...) and to establish a system for **monitoring the application of these principles.**" Thus, one could presume that the system described thereafter would be designed as to see to it that both principles are complied with.*

A close analysis of the described procedures suggests that they confer national parliaments the remit of only considering subsidiarity and not proportionality. The envisaged procedure (the so-called '*yellow*' and '*orange*' cards) refers only to the monitoring of the compliance with the principle of subsidiarity. This is a very important point because the reasoned opinions that national parliaments might send to the EU institutions shall be issued on the grounds of a non compliance with the subsidiarity principle.

### ***- The 'yellow ' and 'orange' card procedures***

Article 4 of this Protocol stresses that all information concerning draft legislative acts shall be forwarded to national parliaments, these comprise not only the initiatives from the Commission, from a group of Member States, the ECJ, the ECB or the EIB, but also all the amended drafts, the resolutions of the EP and the positions of the Council.

Moreover, all the draft legislative acts shall be justified with regard to the principles of subsidiarity and proportionality, namely through a detailed statement that makes it possible to appraise the compliance with these principles (Article 5).

Article 6 outlines the general procedure for this subsidiarity monitoring mechanism, for both the '*yellow*' and '*orange*' cards: *any national Parliament or any chamber of a national Parliament may, within 8 weeks from the date of transmission of a legislative act, in the official languages of the Union, send to the Presidents of the EP, the Council and the Commission a reasoned opinion stating why it considers that the draft in question does not comply with the principle of subsidiarity.*

Each national parliament has two votes and in the case of bicameral systems, each of the two chambers has one vote. In the EU 27, this means a total of 54 votes.

Article 7 of this Protocol outlines the two procedures commonly referred to as *yellow* and *orange* cards.

The so-called '*yellow*' card procedure consists of the following:

1. where reasoned opinions on a non compliance of a draft legislative act with the principle of subsidiarity represent at least 1/3 of all the votes allocated to the national parliaments, the draft must be reviewed (i.e. 18 votes out of 54);
2. if the draft legislative act is about the area of freedom, security and justice (Article 76 TFEU), this threshold shall be 1/4 (i.e. 14 votes out of 54);
3. after such review, the Commission or, where appropriate, the group of Member States, the EP, the ECJ, the ECB or the EIB may decide to maintain,

amend or withdraw the draft. Furthermore, reasons must be given for whichever decision is taken.

The '*orange*' card procedure (Article 7, Part 3) states that:

1. under the ordinary legislative procedure (co-decision), if the reasoned opinions regarding subsidiarity represent at least a simple majority of the votes allocated to national parliaments (28 votes out of 54), the draft legislative act must be reviewed;
2. after this review, the Commission may decide to maintain, amend or withdraw the proposal;
3. if the option is to maintain the proposal, the Commission shall issue a reasoned opinion justifying why it considers that the proposal is in compliance with the principle of subsidiarity;
4. this reasoned opinion, together with the reasoned opinions from national parliaments, shall be submitted to the Union legislator (Council and EP), for consideration in the procedure. At this stage, the following takes place:
  - before concluding the first reading, the legislator shall consider whether the legislative proposal is in accordance with the subsidiarity principle;
  - if, by a majority of 55% of the members of the Council or a simple majority of the votes cast in the EP, the legislator is of the opinion that the proposal does not comply with the principle of subsidiarity, no further consideration shall be given to it.

Through this procedure, that applies only to the ordinary legislative process (i.e. co-decision), national parliaments have a strengthened role because they are to pronounce themselves even before the legislator can have a say about a proposal, and the potential consequences are more stringent.

#### ***- The Court of Justice of the EU and subsidiarity***

Adding to the procedures described above, another important innovation is that with the Treaty of Lisbon the ECJ has jurisdiction to deal with actions brought to it on grounds of infringement of the principle of subsidiarity by a legislative act. These actions might be brought to the ECJ by Member States or notified by them on behalf of their national parliaments, according to their internal legal order.

#### **2.1.2. The active contribution of national parliaments to the good functioning of the EU**

In this section, we shall look into all the other provisions of the Treaty of Lisbon concerning national parliaments that are not in the Protocols. As seen above, Article 12 TEU sets out specified ways through which national parliaments are involved in certain domains. A more detailed view of these provisions and also other relevant ones concerning national parliaments is displayed below.

- **Future Treaty revision:** according to Article 48 of the TEU, national parliaments are involved in the foreseen revision procedures for the EU Treaties. In the ordinary procedure, all the proposals to amend the Treaties shall be notified to national parliaments. If the European Council decides to



examine these proposals, a Convention composed of Members of national parliaments, representatives of the Heads of State and Government, the Commission and the EP might be convened<sup>7</sup>. This Convention shall adopt by consensus a recommendation to the IGC.

Article 48 TEU also foresees some simplified revision procedures. According to paragraph 7 of this Article, in all cases where the TFEU or Title V of the TEU provides for the Council to act by unanimity, the European Council may decide to authorise the Council to act by a qualified majority in that area or case<sup>8</sup>. Where the TFEU states that legislative acts should be adopted by a special legislative procedure, the European Council may adopt a decision allowing that such acts shall fall under the ordinary legislative process. This is the so-called '*passerelle*' clause. In both cases, any initiative of this sort taken by the European Council shall be notified to national parliaments. If a national parliament opposes to it within six months of the date of such notification, the decision shall not be adopted.

- **Applications to join the EU:** article 49 of the EU defines that national parliaments shall be notified of all applications to join the EU;
- **Evaluation of EU policies in the area of freedom, security and justice (AFSJ):** Title V of the TFEU about AFSJ contains a set of provisions aiming to ensure an evaluation by national parliaments of the EU policies in this area.
  - **Articles 69, 70 and 71** TFEU contain the general provisions with this regard, stating that national parliaments are to ensure the compliance with the subsidiarity of the proposals submitted in this area. If the Council decides that Member States shall conduct impartial and objective evaluations of the implementation of the EU policies in this domain, national parliaments shall be informed of the content and results of this evaluation. Finally, national parliaments shall be kept informed of the proceedings of the standing committee to be established under Article 71, which shall ensure that operational cooperation on internal security is promoted and strengthened.
  - **Article 81 Part 3** refers to judicial cooperation in civil matters, namely measures concerning family law with cross-border implications, that shall be adopted by the Council under a special legislative procedure. It contains however a '*passerelle*' clause that allows the Council to decide – by unanimity and after consulting the EP – which aspects may be adopted under the ordinary legislative procedure. Any proposal to do so shall be notified to national parliaments. If a national parliament makes known its opposition within six months of the date of such notification, the decision shall not be adopted.

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<sup>7</sup> Nevertheless, the European Council may decide by a simple majority, after obtaining the consent of the EP, not to convene a Convention should this not be justified by the extent of the proposed amendments.

<sup>8</sup> Except when it applies to decisions in the area of defence.

- **Article 85 Part1** refers to judicial cooperation in criminal matters and states the Council and the EP shall adopt regulations determining the structure and task of Eurojust. These regulations shall also determine arrangements so that national parliaments are involved in the mechanisms of evaluation of Eurojust's activities.
- **Article 88 Part 2** concerns police co-operation and follows the same logic as Article 85 Part1, but now referring to the involvement of national parliaments in the procedures for scrutinising Europol's activities.
- **Flexibility clause** – Article 352 TFEU replaces current Article 308 of the Treaties on the European Community, which provides a Treaty basis for action at EU level which is necessary to attain a Community objective but for which there is no other Treaty basis. Article 352 TFEU introduces some changes. Article 308 currently applies only to the Community, i.e. first pillar. As amended by the Treaty of Lisbon, it shall apply to the Union, with the exception of Common Foreign and Security Policy: Article 352 Part 1 reads “(...) *within the framework of the policies defined in the Treaties, to attain one of the objectives set out in the Treaties (...)*”. National parliaments' attention to any proposal based on this article shall be drawn by the Commission, so that the 'yellow' and 'orange' card procedures can be used with this regard.

## 2.2. THE ENHANCED ROLE OF THE EUROPEAN PARLIAMENT IN THE TREATY OF LISBON

The Treaty of Lisbon substantially enhances the role of the European Parliament, the only European institution directly elected by its citizens. The European Parliament acquires powers of co-decision in virtually all areas of Union policy. Basically, this is a matter of putting into practice the twofold legitimacy of the European Union as a Union of States and of citizens, which, despite the lack of any explicit recognition of its importance in the new Treaties, is the basis for the European integration process. The Treaty of Lisbon thus represents a significant enhancement of the democratic dimension of the Union.

The main changes to the existing provisions include the following:

- The European Parliament's role as a co-legislator is fully recognised, due to the general application of the existing co-decision procedure, which is elevated to the rank of the ordinary legislative procedure, but also due to an increase in Parliament's participation in special legislative procedures. In the field of international agreements its approval will also be required as a general rule. As to its competences in the field of comitology, the European Parliament will have the same powers as the Council on the definition of the modalities of control of delegated and implementing acts.
- The European Parliament acquires a concurrent right of initiative for new ordinary procedure for the revision of the Treaties and participation in that

procedure through its involvement in the Convention convened to prepare the revision (its approval is required for the Council to decide not to convene the Convention).

- As budgetary authority, a new budget procedure ensures full parity between the European Parliament and the Council in the approval of the whole budget and of the multi-annual financial framework, which becomes legally binding. The budgetary powers of the European Parliament are now extended to all European Union expenditure.
- As a political body, the Parliament will elect the President of the Commission by a majority of its component members on a proposal by the European Council, taking into account the results of the European Parliament elections and after having held the appropriate consultations. It will also vote on the investiture of the whole Commission. This further enhances its powers of political scrutiny.
- Various decisions which hitherto have rested solely with the Council are now also subject to approval by the European Parliament: the decision to initiate enhanced cooperation; the use of the flexibility clause enabling the Union to take measures not provided for in the Treaties in order to attain ends for which they do provide; decisions on the use of the general 'bridging clauses' (*'passerelles'*) substituting qualified majority voting for unanimous voting or replacing special legislative procedures with the ordinary legislative procedure; certain decisions making it possible to extend the scope of legal bases provided for in the Treaties, such as those concerning the European Public Prosecutor's Office or judicial cooperation in criminal matters.
- In the field of the common foreign and security policy, where it has no decision-making powers, the European Parliament acquires a general right to be informed and consulted.

The number of Members of the European Parliament is limited to 751<sup>9</sup>. The amended TEU does not state how the seats are to be distributed among Member States, but instructs the European Council, acting on the initiative of the European Parliament and with its assent, to decide, before the 2009 elections, what its composition should be, on the basis of the principle of 'digressively proportional' representation, with a minimum of six and a maximum of 96 seats per Member State (the Convention on the Future of Europe proposed a minimum of four and no maximum). This solution will make it possible to respond more flexibly to the future development of the EU, whilst preserving the interests of each Member State.

### **2.3 VIEWS AND EXPECTATIONS FROM PARLIAMENTS CONCERNING THE IMPLEMENTATION OF THE TREATY OF LISBON**

The questions put to national parliaments had the threefold objective of trying to assess the way parliaments perceive their future role according to the provisions of the Treaty of Lisbon, how they are preparing themselves to deal with its implementation

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<sup>9</sup> More exactly 750 'plus the President', to employ the wording of Article 14 of the TEU.

and also to consider the practical mechanisms parliaments envisage to cooperate further in the exchange of information and best practice.

When asked to assess whether the Treaty of Lisbon will enhance the way the parliament deals with European Affairs, an overwhelming majority of parliaments responded affirmatively. The Danish *Folketing*, for instance, stresses that the subsidiarity mechanism has a strong potential to engage national parliaments since it encourages them to get involved in the early stages of the decision making process. Several parliaments, like the Romanian Parliament or the Polish *Senat* e.g., highlighted the fact that the scope of activity of national parliaments under the Treaty was broadened, especially with regard to the area of freedom, security and justice. Also the extension of the period – from 6 to 8 weeks - that parliaments dispose to issue their reasoned opinions was warmly welcomed. The French *Assemblée nationale* considers that through the mechanisms established in the Treaty it will be possible to ‘politicize’ the texts at a very early stage, which allows the parliament to make the government aware of its positions in due time. The German *Bundestag* reminded that the ECJ will have jurisdiction to pronounce itself on actions brought to it on the grounds of subsidiarity.

Amongst those parliaments who share the feeling that the Treaty of Lisbon might enhance their influence, some made, however, some remarks concerning its practical implementation. The Portuguese *Assembleia da República* has stressed that the actual increase of influence depends on the practice followed by each parliament when applying the new possibilities provided for in the Treaty, but also with the capacity of cooperation and exchange of information between parliaments. The French *Sénat* believes that the Treaty of Lisbon provisions have the potential to enhance the influence of national parliaments, but it reckons that coordination among parliaments is crucial if they wish to strengthen their collective influence.

The reply from the German *Bundesrat* sums up the view of this overwhelming majority of parliaments about the Treaty of Lisbon: “*This lends a new quality to the role of national Parliaments in the process of European policy formulation*”.

Very few parliaments consider that the Treaty of Lisbon will bring nothing new, namely the Finnish *Eduskunta* and the Estonian *Riigikogu*. The UK House of Commons finds that the provisions of the Treaty of Lisbon regarding national parliaments can be easily exaggerated – in its view, “*the required thresholds for preventing further consideration of a proposal must be much lower if the procedure is to have any real utility*”.

Concerning any change or adaptation with regard to the internal procedures in the light of the provisions of the Treaty of Lisbon, a relevant number of parliaments has already done so or is preparing the necessary changes. The French Parliament has changed the Constitution as to enshrine therein the subsidiarity mechanisms, the possibility of appeal to the EJC, the simplified procedures for the revision of the Treaties and the dispositions concerning family law. In Spain, the Joint Committee for EU affairs has tabled a series of measures to not only prepare the parliament to deal with what the Treaty of Lisbon brings, but also, more broadly, its relation with the government. The Finnish *Eduskunta* will add a specific procedure for subsidiarity to the Rules of Procedure. The Belgian *Chambre des Représentants* has introduced in its

Rules of Procedure a new article to deal with the subsidiarity checks. Besides, its staff will be reinforced with three new members.

The *Chambre des Députés* of Luxembourg is in the process of formalizing a written understanding with the Government on European Affairs, which was already being done regardless of the Treaty of Lisbon. The Hellenic Parliament has established a working group composed of MPs, parliamentary officials and academics to address these issues and come forward with specific proposals.

The majority of parliaments is still, however, considering to what extent changes or adaptations of this sort are required. The ratification process is still ongoing and the assessment of these adaptations is, in some cases, to be done only after the ratification is completed.

Finally, some parliaments felt no need to change their internal procedures since their framework legislation in this regard was recently approved (Portugal and Bulgaria) and is already prepared for what the Treaty of Lisbon foresees, and others simply because adaptation are not needed (Slovenian *Državni zbor*, Maltese *Kamra Tad Deputati*, Estonian *Riigikogu*, e.g.).

In the case of the EP, the implementation of the Treaty of Lisbon requires a full revision of the European Parliament's Rules of Procedure. A report proposing this revision will be drawn up by the Committee on Constitutional Affairs (AFCO) for consideration by the European Parliament, probably at its plenary session in November 2008.

Cooperation among national parliaments is essential to ensure the effective exercise of parliamentary competences in the monitoring of the principle of subsidiarity and to promote the exchange of information and best practice according to the opinion of the overwhelming majority of parliaments that replied to the questionnaire. As far as the mechanisms deemed needed to improve this cooperation further, three main suggestions were made: the focus that COSAC should put on this, the more intensive use of IPEX and the strengthening of the informal network of national parliament representatives in Brussels.

Concerning COSAC, some national parliaments consider that it should deepen a role that it is already presently playing, that is to invite national parliaments to identify which of the proposals contained in the Commission's Legislative and Work Programme should be jointly checked in the framework of COSAC.

For that purpose, all parliaments that consider that the cooperation should be enhanced also indicate that IPEX should be developed further and used to the fullest extent.

The importance of the informal network of national parliament representatives in Brussels was mentioned by a significant majority of parliaments. They should work as a crucial channel of communication and information, not only with regard to the EU initiatives that each parliament is planning to scrutinize, but also any other concerns relating to inter-parliamentary cooperation. This, combined with the information

made available on the IPEX website, allows each parliament to have information in real time about the activities being carried out in all other parliaments.

The Latvian *Saeima* proposes a specific and detailed framework using all these three mechanisms:

- a) after the presentation of the Commission's Annual Work and Legislative Programme, national parliaments could identify not only the initiatives they consider should be jointly checked by COSAC, but also the initiatives that they will check regardless of the actions from other parliaments. This would enable parliaments to know the activities planned by other parliaments and, if necessary, to review their own priorities;
- b) during the regular meetings of national parliaments representatives in Brussels, they could inform each other about the state of play of these activities and eventual changes to the initial list;
- c) then, IPEX should have all the updated information available, namely to know which parliaments are carrying out subsidiarity checks on a certain proposal, as well as the progress in the scrutiny process.

Some other ideas were also put forward. The Italian Parliament and the French Senate consider that a joint reflection is needed to discuss these mechanisms, especially to determine the role of national parliament representatives in Brussels and how to make a better use of IPEX.

Other parliaments/chambers, like the Slovak *Narodna Rada* or the Polish *Senat* and *Sejm* consider that deepened cooperation between groups of States is also a useful tool, like the Visegrad Group. The Cypriot *Vouli ton Antiprosopon* reckons that ties between national parliaments should also be strengthened through regular meetings of the competent committees of national parliaments with the relevant committees of the EP and with the Commission.

As far as the EP is concerned, the competent Committee (AFCO) considers that the Treaty of Lisbon requires improvements in the field of inter-parliamentary cooperation. It is envisaged that a specific report of this Committee will deal with the full range of questions relating to the future cooperation between the European Parliament and the national parliaments under the Treaty of Lisbon.

## 2.4. CONCLUSIONS

The Treaty of Lisbon introduces a series of innovations concerning the role and the influence of national parliaments in the EU that are acknowledged by an overwhelming majority of parliaments as an added value, since it has the potential to enhance their participation in the policy formulation process.

In fact, the Treaty of Lisbon is the first Treaty in the European integration project that contains a specific article acknowledging the role of national parliaments in the EU (Article 12 of the TEU). It states that "*National Parliaments contribute actively to the good functioning of the Union*", not only through the subsidiarity mechanism ('yellow' and 'orange' card) envisaged in the two annexed Protocols, but also via all the other

features enshrined in the Treaty that give national parliaments a say in several different domains, where they were not involved before through a Treaty legal basis.

The *'yellow'* and *'orange'* card procedures are welcomed by the majority of parliaments since the Treaty enables them to pronounce themselves even before the legislator can have a say about a proposal, and the potential consequences are more stringent.

Almost every parliament agrees that the cooperation should be deepened further through three main mechanisms: COSAC, IPEX and the informal network of national parliament representatives in Brussels.

The Treaty of Lisbon substantially enhances the role of the European Parliament, which acquires powers of co-decision in virtually all areas of Union policy, therefore acknowledging the twofold legitimacy of the European Union as a Union of States and of citizens. Even as far as comitology is concerned, the EP will have the same powers as the Council in defining the modalities of control of delegated and implementing acts. The EP gains a status of full parity with the Council as budgetary authority, and obtains concurrent right of initiative for new ordinary procedure for the revision of the Treaties and elects the President of the Commission by a majority of its component members on a proposal by the European Council, taking into account the results of the European Parliament elections.

By analysing all the elements described in this chapter, we might conclude that the Treaty of Lisbon has the potential to represent a significant enhancement of the democratic dimension of the Union.

## Chapter 3: The Lisbon Strategy

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This contribution will provide factual information on the progress of the Lisbon Strategy in view of the start of the new cycle (2008-2010), present the relevant results of the Spring European Council and highlight the broad trends in parliamentary positions with regard to the Lisbon Strategy as apparent in the inter-parliamentary dialogue.<sup>10</sup>

### 3.1 PROGRESS OF THE LISBON STRATEGY IN VIEW OF THE START OF A NEW CYCLE (2008-2010)

With the re-launch of the Lisbon Strategy in 2005, the EU and its Member States committed themselves to a new partnership for sustainable growth and jobs. The end of the first three-year cycle of the revised strategy has been a particular occasion to look at the results of the first cycle and at areas where further improvements may be achieved in the upcoming new cycle.

Europe's economic and business situation has improved significantly since 2005. Some factual evidence<sup>11</sup>:

- Average annual real GDP growth since 2005 has been 2.6%. More specifically, economic growth has risen from 1.8% in 2005 and is expected to reach 2.9% in 2007 and 2.4% in 2008. While most of the underlying upturn is cyclical, structural reforms in the Member States have also contributed.
- Budget deficits have been reduced from 2.5% of GDP in 2005 to 1.1% in 2007. Public debt has declined from 62.7% in 2005 to just below 60% in 2007.
- Almost 6.5 million extra jobs have been created in EU27 in the last two years, with 5 million more projected to be created by 2009. Unemployment in EU27 is now below 7% (6.8% in January 2008), the lowest level since the mid-80s.
- The employment rate, currently at 66%, has moved much closer to the overall Lisbon target of 70%. There is also a large and sustained increase in the employment rate of older workers, although the 50% target is still some way off. The employment rate for women has increased significantly (at 57.2%, it is approaching the 60% target).
- Productivity growth reached 1.5% in 2006, compared to an annual growth rate of 1.2% between 2000 and 2005.
- The euro has been an anchor of stability. It has facilitated the functioning of the single market to the benefit of the euro area and the EU as a whole. The potential estimated growth rate of GDP in the euro area has increased by 0.2

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<sup>10</sup> This note draws on the European Commission's strategic Lisbon package of December 2007 as well as on summaries made of for the Joint Parliamentary Meeting on the Lisbon Strategy in February 2008.

<sup>11</sup> Source: Eurostat; European Commission.



percentage points since 2005 to 2.25%, which is partly due to the effects of structural reforms.

- The business environment has benefited from a series of structural reforms. The EU's better regulation agenda is gradually being put into place, although many Member States still need to implement the necessary instruments, including impact assessments and methods to measure and reduce administrative burdens. It is now much easier and cheaper to start a business in almost all Member States.

The European Commission, in its recent strategic Lisbon package, highlighted remaining issues and identified areas where the efforts of the past three years have been insufficient:

- In some Member States, improving growth conditions have been accompanied by a gradual build-up of imbalances with signs of overheating, large current account deficits, a loss of competitiveness, increasing household indebtedness and rapidly increasing house prices.
- The opportunity to use the relatively strong growth conditions to reduce structural deficits has not been fully seized, especially in the euro area.
- Europe is still lagging behind other leading economies both in investment in information and communication technologies and in terms of their use to enhance productivity. Opening up network industries and services to competition has been slow and important obstacles to market entry remain.
- Despite improvements in the business environment, Europe does not yet have a dynamic, entrepreneurial culture. Efforts to improve the business environment are often made in a piecemeal way as opposed to being part of an integrated approach geared towards the growth of SMEs.
- Member States have set targets to significantly increasing R&D investments. The evidence does not yet reflect this ambition to reach the 3% of GDP target by 2010. The rate stood at 1.84% of GDP in 2006<sup>12</sup>.
- About half of the Member States have developed - or are developing - policies on the basis of a *flexicurity* approach. Yet the policy response remains fragmented. More flexible labour contracts for particular categories (e.g. new entrants) have been introduced but not backed up sufficiently by opportunities to acquire new skills. The difficult task of reforming the rules governing other kinds of contracts has received little attention. As a result, many labour markets remain segmented.
- Lifelong learning falls far short of what is required, particularly among the low-skilled. Education and training systems are not yet sufficiently responsive to labour market needs.
- Some Member States lag behind with the implementation of internal market directives. Efforts to improve the intellectual and industrial property framework and to speed up standardisation have not been successful.

The European Union enters the new Lisbon cycle against a background of slowing global growth and risks arising from the financial turmoil and rising commodity

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<sup>12</sup> 2006 is the latest data available from Eurostat.

prices. The Commission has therefore suggested improving the implementation of the Lisbon Strategy to bolster confidence and strengthen economic fundamentals in the light of a possible economic downturn, in particular by:

- pressing ahead with reforms at national level;
- strengthening economic policy co-ordination;
- reforms at Community level, including the Community Lisbon Programme;
- shaping the external agenda;
- integrating national, Community and international action into an effective policy response.

### **3.2 RELEVANT RESULTS OF THE SPRING EUROPEAN SUMMIT**

With a view to the recent deterioration of the global economic outlook as a result of a slowdown of economic activity in the United States, higher commodity prices, and ongoing turbulence on the financial markets, the Spring European Summit therefore found that it is all the more essential for the European Union to avoid complacency and sustain reform efforts through the full implementation of the National Reform Programmes and the Integrated Guidelines for Growth and Jobs.

In the light of the above, the European Council confirmed that the current Integrated Guidelines remain valid and should serve for the period 2008-2010. Furthermore, it endorsed the country-specific recommendations for the economic and employment policies of the Member States and the Euro area.

The European Council put the focus of the new cycle on implementation:

- Better exploitation of synergies among the four 2006 priority areas (knowledge and innovation, unlocking business potential, investing in people and modernising labour markets, energy/climate change);
- Stepping up the exchange of best practices, in particular by making full use of existing methods of open coordination;
- Stronger involvement of relevant stakeholders in the Lisbon process;
- Recognition of the role of the local and regional level in delivering growth and jobs;

Recognising the importance of investing in knowledge and innovation the European Council found that further efforts must be made, including in the private sector, with a view to investing more, and more effectively, in research, creativity, innovation and higher education and achieving the 3% R&D investment target. In order to become a truly modern and competitive economy, it called on Member States and the EU to remove barriers to the free movement of knowledge by creating the so-called "fifth freedom". The education element of the knowledge triangle "research-innovation-education" should be strengthened as providing high-quality education is crucial for Europe's success in a globalised world.

A further priority was seen in unlocking the business potential, especially of SMEs. Further efforts are needed to deliver crucial improvements to the competitiveness of

EU business, in particular SMEs, which form the backbone of the European economy contributing significantly to creating more growth and jobs. Subsequently, the need to reinforce the EU's SME policy and to allow SMEs to operate more effectively in the Single Market was articulated. Better regulation was considered a high priority.

The European Council clearly stated that the Single Market remains a crucial driver for enhancing living standards of citizens and Europe's competitiveness in a globalised world. Therefore, it was concluded that the functioning of the Single Market must be further improved.

With a view to the contribution of open markets and a sound international environment to reciprocal benefits in the area of jobs and growth the European Council called on the EU to continue its endeavours to shape globalisation by reinforcing the external dimension of the renewed Lisbon strategy.

The European Council welcomed the Commission's proposal to come forward with a renewed Social Agenda which should play a key role in strengthening the social dimension of the Lisbon Strategy covering issues such as new social and labour realities, youth, education, migration and demography. In this context, combating poverty and exclusion, promoting active inclusion for those furthest from the labour market are of major importance.

Considering that economic migration can play a role in meeting the needs of the labour market and can contribute to help reduce skills shortages, the European Council therefore considered that the employment and social impact of migration of third-country nationals also needs to be addressed.

Last but not least the European Council recognized that there is no single *flexicurity* model. It therefore called on the Member States to implement the agreed common principles on flexicurity. According to the European Council intergenerational solidarity should be considered within all four components of flexicurity. It called for continued attention to the area of youth employment, the employment of disabled persons and the availability and affordability of quality child care, which should be increased. In addition efforts should be pursued to reconcile work with private and family life, substantially reduce gender pay gaps and implement the European Pact for Gender Equality.

Finally the European Council stressed that a continued commitment at EU level to structural reforms, sustainable development and social cohesion will be necessary after 2010 in order to lock in the progress achieved by the renewed Lisbon Strategy.

### **3.3 BROAD TRENDS IN THE POSITION OF NATIONAL PARLIAMENTS AND THE EUROPEAN PARLIAMENT ON THE LISBON STRATEGY**

The European Parliament and national parliaments held their 4th Joint Parliamentary Meeting on the Lisbon Strategy on 11 and 12 February 2008 in Brussels. The debate focused on three topics chosen to be representative of the broad trends that are at the centre of current political debate in relation to the Lisbon Strategy:

- Internal Market and Strategies – Research and Development; Responses to Globalisation

- Investment in People and Labour Market
- Measuring progress towards and monitoring the Lisbon Strategy

During the inter-parliamentary debate the following broad trends emerged in the discussion:

### **3.3.1 Internal Market and Strategies – Research and Development; Responses to Globalisation**

The broad trend stressed under this headline included:

- The importance of reducing business and corporate taxation;
- The need to increase expenditure for R&D (up to 3% of GDP) and simultaneously reduce national allocations for other policies;
- The urgent introduction of a serious European competition market;
- The concern about the ongoing trend of reallocation of European business to other global areas;
- The call for checks and balances on the Lisbon Strategy taking place yearly or biennially;
- The establishment of a European information system to encourage national governments to achieve EU directives;

### **3.3.2 Investment in people and Labour Market**

The broad trend stressed under this headline included:

- Recognition of lifelong learning as an important element to strengthen the knowledge-based society.
- Improving R&D efforts by increasing the allocation of financial means (in terms of percentage of GDP) and also regarding the quality of universities and secondary education as well as the better cooperation between universities and companies.
- Reducing the rate of early school drops-out and adapting the training in and for some sectors that are restructuring. Paying more attention to improving the transition from school or university to work.
- Improving the integration of some groups of society into the labour market, in particular the elderly, young people and women.
- Reconciling family and working life and raising the birth rate through more childcare facilities.
- Recognition that due to the demographic change older workers will have to stay longer in the workplace.
- A negative impact on the quality of work, in the area of part time jobs and temporary employment, could result if people have to accept these contracts involuntarily and if they become working poor subsequently.
- Emigration causing skills gaps identified as a major problem for a few Member States; in this case, cross-border cooperation and structures for labour migration have been proposed as a solution.

### 3.3.3 Measuring progress towards and monitoring the Lisbon Strategy

The broad trend stressed under this headline included:

- The necessity to involve in the Lisbon Strategy institutions at European and national level as well as the regional and local level and the civil society.
- The Lisbon Treaty is needed if Europe wants to shape globalisation. The institutional framework of the Lisbon Strategy requires the Lisbon Treaty including an enhanced role for national parliaments.
- The Lisbon Strategy is a response to globalisation. Europe needs to shape globalisation. It is possible to overcome the risk of protectionism with a proactive approach to globalisation.
- Better coherence of policies between EU and national level: EU and national budgets will need to be restructured to follow the Lisbon Strategy.
- There is a need for qualitative and quantitative indicators to assess the process. There must be a clearly demonstrable link between more jobs and the Lisbon Strategy if the Strategy is to be successful.
- Regional policy, cohesion policy and structural funds play an important role in the Strategy. There is a need for some flexibility when adapting Lisbon to the different levels of development.

### 3.4 CONCLUSIONS

Since its launch in Lisbon Strategy has evolved into important policy tool to steer, activate and monitor economic reform in the European Union. Following the mid-term review of the Lisbon Strategy in 2005, which lead to a refocusing on the achievement of stronger, lasting growth and the creation of more and better jobs, the strategy has become more coherent. Entering into the new cycle of the Lisbon Strategy, against a worsening global economic outlook the targets of the previous cycle have been reconfirmed. At the same time both the European Commission and the European Council have highlighted the importance of better implementation especially with regards to the National Reform Programmes and the Integrated Guidelines for Growth and Jobs.

National parliaments and the European Parliament monitor the Lisbon Strategy and its implementation, *inter alia*,<sup>13</sup> in the form of Joint Parliamentary Meetings since 2005. These annual meetings have become an established forum of parliamentary exchange ahead of the Spring European Council, addressing overarching political questions of joint interest. This has led the European Parliament to explicitly refer to these meetings as a source of reference and inspiration, when it adopts its annual resolution on the input for the Spring European Council as regards the Lisbon Strategy.

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<sup>13</sup> Notice should be taken of the different scrutiny systems of European Union affairs in the national parliaments of the 27 Member States as presented in the Eighth Bi-annual Report of COSAC, published on the COSAC website: <http://www.cosac.eu/en/documents/biannual/>

## Chapter 4: Enlargement of the Schengen Area

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This chapter aims to examine the degree to which parliaments of the European Union are involved in the Schengen process. It will define the ways that national parliaments seek to exercise control. The establishment of a single area with free movement of persons, to be successful, requires a definition of security rules inside the new external borders. Therefore this chapter will emphasize not only the understanding that national parliaments have of the criteria for enlargement, but also the role they intend to play in defining the security rules which aim to maintain public order inside the Schengen area (data exchange, measures dealing with migration topics or fight against terrorism). However such security rules may also undermine individual freedoms (for instance the respect for private life). This chapter will gather the views of national parliaments on this question to give an overview of the national debates on these issues.

### 4.1. DECISION MAKING PROCESS: SCRUTINY PROCEDURE OF NATIONAL PARLIAMENTS

This paragraph does not only deal with the general scrutiny procedure that national parliaments use to control their government. This aspect has already been studied in the eighth biannual report considering the overview of the EU scrutiny systems of the national parliaments of the EU-27, and establishing two types of scrutiny systems (document-based scrutiny systems and procedural systems, sometimes both mixed). Even if both approaches can be applied to Schengen issues, this paragraph focuses more on the ways national parliaments influence their government on matters concerning the Schengen area. It tries to assess if, because of the sensitivity of Schengen issues (asylum and immigration, justice and home affairs, individual freedoms), national parliaments had to set up specific reinforced scrutiny procedures or not.

When asked about the practices the national parliaments have on this question, the big majority underlines a direct or indirect involvement in the decision-making process relating to Schengen topics. Only a small part considers it is not involved at all - the Belgian *Senate*, the Parliaments of Malta, Romania and Spain. But if some parliaments have a specific position, either because their State is not part of the Schengen area, or because they decided to create special structures or procedures, most of them use the normal scrutiny procedure. Apart from this, special attention has to be paid to the new Schengen Member States to find out the way their parliament used to scrutinise the accession procedure.

- **The common rule: the normal scrutiny procedure**

The common rule for national parliaments is to use their normal scrutiny procedures to deal with Schengen issues.

They declare themselves directly involved so far as they control their government by expressing national views prior to the meetings of the Justice and Home Affairs

Council. The Polish *Sejm*, for instance, exerts its influence by holding a discussion with the government's members concerned before these meetings. Similarly, the Parliaments of Finland or Sweden closely monitor their governments by requesting information ahead of the Council and agreeing to a mandate for the government to negotiate in the Council.

All national parliaments are more or less involved. Some consider their control as being an indirect one, when their role is limited to providing opinion given on the basis of an EU text submitted by their government (the French *Senat* and the *Assemblée nationale*), or when it is limited to an exchange of information with their government (the Parliament of Luxembourg, the *National Assembly* of the Republic of Slovenia). This may be a very informal exchange of information as in Greece (Members of Parliament individually express their views) or in Portugal (no formal intervention of the parliament in this matter, no formal cooperation with the government without an exchange of information).

Traditional control means are used by many parliaments (the Belgian *Chambre des représentants*, the German *Bundesrat*, the Cypriot *Vouli ton Antiprosópon*), in most cases without binding the government. The case of Denmark reflects a mixed position, in so far as it is up to the government to decide if the involvement of the *Folketing* is required or not.

- **Specific positions on Schengen issues**

Some national parliaments are in a specific position concerning the way they scrutinize the Schengen decision making process. Either because of a special scrutiny system they have decided to create, or because of the fact that they are not part of the Schengen area.

The most relevant example is the *ad hoc* Committee created by the Italian Parliament (Schengen and Europol Committee), a bicameral Committee in charge of monitoring the whole enlargement process, especially by gathering information on the establishment of an area of freedom, security and justice in Europe with enlarged borders. The normal scrutiny procedure is thus replaced by this special system, taking into account the specificities of the Schengen matters.

Another relevant case is the partly reinforced monitoring in some parliaments, as for instance in Germany (the *Bundestag*) or Austria (the *Nationalrat*), towards their government concerning Justice and Home Affairs issues. In the German *Bundestag*, the scrutiny of EU-documents relating to the Schengen area is firstly scrutinized by the Internal Affairs Committee, then the European Affairs Committee and finally in the plenary. The Federal government has to report before and after the meetings of the Justice and Home Affairs Council to the Internal Affairs Committee on the different aspects of the Schengen *acquis* and on the enlargement of the Schengen area. Moreover a delegation of MPs from the Internal Affairs Committee visits the external borders of the Schengen area to gather the information they need to control their government.

The special Committee created by the Dutch *Senate* must also be mentioned. Even if it just receives information and doesn't decide to debate the enlargement of the

Schengen area, it is important to underline the fact that it focuses its attention especially on all matters submitted to the Justice and Home Affairs Council.

The case of the British Parliament (the *House of Commons* and the *House of Lords*) should also be noted, not because of a unique scrutiny procedure especially for Schengen matters, but because of the fact that the United Kingdom is not part of the Schengen area and therefore has a limited interest in these issues. However, each Chamber scrutinizes the views of the government expressed on Schengen questions in an Explanatory Memorandum submitted to the concerned European Scrutiny Committee (the *House of Commons*) or to the Subcommittee dealing with Home Affairs (the *House of Lords*). The scrutiny system is maintained on controlled matters as normal EU topics. Similarly, Ireland is also not part of the Schengen area. If Ireland decided to join the Schengen area, its Government would need to require the approval of both *Houses of the Oireachtas*.

- **The specific case of new Schengen Member States**

The membership of the Schengen area was considered by these States as a priority. Hence all institutions cooperated to fulfil the conditions for accession and contributed to the decision joining the Schengen area. National parliaments regularly held hearings with the governments' members, the police or their border guards. As in the case of Latvia, Ministers had to submit status reports on developments regarding the enlargement of the Schengen area. Members of the Estonian Parliament visited the police headquarters in order to discuss the practical impact of the accession. In the Czech Republic, the cooperation with the government took the form of a regular exchange of information about the state of preparation.

All Chambers also concentrated on the compliance of their legislation with the Schengen provisions. In the Lithuanian *Seimas*, a Subcommittee was created and charged with the supervision of the preparation of the Republic of Lithuania for the implementation of the Schengen *acquis*. On the contrary, a standard legislative procedure was used in the Slovak Republic. And in Hungary, the accession gathered such a strong consensus between the parliamentary groups that cooperation with government was preferred to a high level of scrutiny.

After the accession, just a few of the new members have already had the opportunity to launch and apply a scrutiny procedure on Schengen issues (Hungary, Slovenia, Latvia).

Thus, the approach of the scrutiny procedure differs from one parliament to another and from one constitutional system to another, and new Member States are, at the moment and because of their recent accession, most actively involved in Schengen issues. For them it is a political question, whilst for the old Member States it has become rather a technical matter with, for instance, the improvement of SIS.

#### **4.2. DEFINITION OF SECURITY RULES: ROLE OF NATIONAL PARLIAMENTS**



The Schengen *acquis* was integrated in EU legislation by the protocol annexed to the Treaty of Amsterdam that came into force 1 May 1999. This "communitarisation" of the Schengen provisions was a big step forward in the establishment of common policies regarding visas, immigration, and security rules.

But, every time a State wishes to join the Schengen area, the fact that the border control moves to the new external borders requires new Member States to fulfil strict criteria as set out on article 3 of the Act of Accession and checked by the Schengen evaluation group. The good functioning of the border controls determines the security of all States inside the Schengen area, as it was noticed in the report of Mr Coelho adopted by the LIBE Committee of the European Parliament on 12 November 2007: "*In fact, the security of the Schengen area depends on the rigour and efficiency that each Member State applies to control at its external borders, and also on the quality and rapidity of the exchange of information via SIS*".

What is the role of national parliaments when it comes to the control of the external borders and inside the Schengen area itself? And, what is their opinion concerning the pertinence of the Schengen evaluation for the future?

#### **4.2.1. Defining security rules at the external borders of the Schengen area**

Almost all parliaments are aware of the necessity of reinforcing border controls at the new external borders. But a big majority have not really dealt with this issue.

When they express their opinion on this topic, national parliaments consider that the Schengen evaluation criteria checked at the external borders demonstrate the capacity of the newly accessed Member States to take in charge its new obligations (good equipment as a guarantee of an effective border control, according to the Dutch *Senate*, such as well organised teams among the border guards). New Member States – Bulgaria, Lithuania, Poland, Slovenia - confirm their satisfaction with this tool, qualified as a "transparent and fair" one, and obliging them to prove their ability to put their systems in compliance with the good functioning of the Schengen area requirement. Thus, the Committees of the Hungarian Parliament cooperated towards insuring the best control of the external borders that Hungary had to take charge of. And even if the conditions are fulfilled, everyone recognizes the importance stressed by the European Parliament of a follow up of the Schengen evaluation during the months following the accession. Frontex's support is very helpful, creating progressively the basis for a common border policy – as called for in a resolution of the French *National Assembly*.

Furthermore, most of the parliaments closely follow up this topic by debating the functioning and progress of the Schengen area by traditional means of control (the German *Bundestag*, the Austrian *Nationalrat*, the Polish *Sejm* and the *Senate*) and not just at the moment of the enlargement. And as the Parliament of the Czech Republic emphasized it, the distinction one has to mention is between technical issues, which parliaments can't really examine, and legal or political issues that parliaments must scrutinize.

Regarding the definition of common policies at the external borders, national parliaments rarely express their views. When they do, they conclude that a single

legislative framework would respond to the need for more transparency, especially for the border security, which would be better defined at EU level than Member State level. Concretely, enlargements show the financial difficulty that can frequently just be overcome with the support of the "Schengen facilities": on the basis of the solidarity principle, old Member States help the new ones to reach the requisite level of security, ultimately needed for the Schengen area to operate effectively.

#### **4.2.2. Defining security rules inside the new external borders of the Schengen area: SIS efficiency and other ways to maintain public order**

Each enlargement depends on the capacity of the candidates to the accession to completely integrate the *SIS* (Schengen Information System). Even if this data base system permits the sharing of data between national police authorities, it is being updated at the moment and extended to another called *SIS II*. Newcomers will be able to connect to a temporary data basis, *SISone4all*. They must supply information concerning personal identification such as passports, biometrical data, pictures that may be useful in all the Schengen area, to help the search for terrorists or criminals. A better visa policy should lead to a better management of migration inside the Schengen area. All these elements should contribute to the establishment of security rules inside the new external borders of the Schengen area by ensuring a better control of information and maintenance of public order.

Cross-border police cooperation is necessary, according to the Greek Parliament. Even though the national level is always the first priority in most of the Member States - as in Austria where the *Nationalrat* pays special attention to the impact of the enlargement of the Schengen area on the Austrian security situation - all parliaments recognize that cooperation is the best way to fight against newly merged danger situations. The framework decision against terrorism and the borders package proposed in February 2008 by the European Commission attest of this need for common security rules inside the Schengen area. A common migration policy might therefore come into force in the next years, as suggested in the report prepared in the context of the French Presidency's proposal concerning a "European common migration pact".

At the moment, as underlined by the Latvian Parliament, the main issue - to which the gathered data might also be helpful - is to consider the impact of migration on the European economy: on the one hand, there is the question of highly qualified labour force, considered as a priority by drafting legal migration policies, and on the other hand, there is the problem of illegal unemployment leading to illegal migration. According to the Latvian Parliament, only the question of illegal immigration requires a common policy, when legal migrations are to be dealt on a shared level - Community and State levels - with integration of the specificities of each national labour market.

### **4.3. DEFENDING INDIVIDUAL FREEDOMS: POSITION OF NATIONAL PARLIAMENTS**

#### **4.3.1. Role of national parliaments in the establishment of a "European Passenger Name Record (PNR) agreement"<sup>14</sup>**

The Commission's proposal on the Passenger Name Record (PNR) COM(2007)654 falls under scrutiny procedure of most of the national parliaments. Very few national parliaments have already dealt with the issue in their competent Committees: the European Affairs Committee of the Estonian Parliament (that supported the position of its government prior to the discussion in the Justice and Home Affairs Council), the Committee on Justice of the Swedish Parliament, the *Bundesrat* (opinion of 15 February 2008) and the Polish *Senate* (March 2008). The text is pending in the Committees of the German *Bundestag*, the Dutch *Senate* and in the Parliaments of Latvia, Hungary and Greece. It will also be examined in the other parliaments applying their standard scrutiny procedure. Hence, all parliaments will have the opportunity to take part, directly or indirectly, in the negotiations of an agreement which, because of the interests concerning individual freedoms, needs democratic scrutiny of the parliament towards the government.

The position of the EP should be finalised at the beginning of 2009 after the entry into force of the Treaty of Lisbon. The European Parliament is now verifying the legal basis of the proposed agreement by examining the different kinds of PNR in the European Union and abroad.

#### **4.3.2. Point of view of national parliaments on the ways of defending individual freedoms in the Schengen area**

All Member States have internal provisions foreseeing data protection procedures through specific authorities. But the balance required in the Schengen area between individual freedoms and the maintenance of public order is particularly delicate. A great majority of national parliaments (as the Dutch *Senate*) underline that there is a lack of protection of citizens due to the existence of big fragile personal data bases, due to the risk of disappearance or of stealing.

Therefore it is considered as essential to insert into the EU legislation provisions safeguarding elements of the proposals regulating the Schengen area. One of these guarantees of defending individual freedoms could be the adoption of the framework decision on data protection COM(2005)475 (the Hungarian *Magyar Országgyűlés*, the Dutch *Senate*). The Austrian *Nationalrat* supports, according to a Committee statement, the efforts made to conclude a data protection Council decision, and its permanent Subcommittee asked the Austrian government to strive for a decision on this framework decision as quickly as possible, based on the documents and agreements which already exist on this matter.

As noted by the German *Bundestag*, its political groups do not have a uniform position concerning the level of protection. The Committee on Internal Affairs of the *Bundestag* pays great attention to the main targets: transparency and citizen protection (Report on the motion "Creating a transparent and citizen-friendly Schengen Information System in the European Area of Freedom, Security and Justice").

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<sup>14</sup>

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0654:FIN:EN:PDF>

The Hellenic Parliament emphasizes the fact that the implementation of the legislation is the most crucial step in the defence of individual freedoms and protecting them from the power of administrative bodies striving towards the maintenance of public order. Therefore, the role of Independent Authorities in supervising the protection of human rights will have to be taken into account.

#### **4.3.3. Intentions of national parliaments concerning their future role in the evaluation and scrutiny of the activities Europol and Eurojust**

Article 12 Paragraph c of the TEU as well as Article 85 Paragraph c of the TFEU and Article 88 Part b of the TFEU confer special evaluation and control functions to the national parliaments on Europol's and Eurojust's activities. The majority of parliaments hold similar views on this matter. Conscious of the need for transparency of the activities of both institutions, every parliament supports the idea of improving the evaluation and scrutiny on Europol and Eurojust without having any concrete details of the future procedure they might establish. Latvia underlines the difficulty of finding a new procedure because of the methodology of supervision which would depend on the mission, tasks and structure of Europol and Eurojust. The Parliament of the Slovak Republic suggests that national parliaments draw up a common initiative through the COSAC's mediation. An involvement of COSAC is also called for by the Hellenic Parliament.

The Finnish *Eduskunta* is the only parliament already scrutinizing the activities of Europol and Eurojust. The Treaty of Lisbon does not increase their powers in this area.

#### **4.4. CONCLUSIONS**

To conclude, three points have to be set out.

First, regarding Schengen issues in general, national parliaments utilise, apart from very few exceptions, their normal scrutiny procedures by using their traditional control means in the decision making process. Only those national parliaments who were Schengen candidates reinforced their cooperation with their government to contribute to a successful integration in the Schengen area.

Secondly, concerning the screening of the accession criteria (definition of common security rules at the external border and improvement of security rules inside the Schengen area), a large majority of national parliaments have no specific idea if and how they could be modified; they just express their satisfaction with the actual evaluation tools and emphasize the necessity of framework decisions contributing to common policies at the external borders and inside the Schengen area.

Thirdly, national parliaments stress the lack of protection for citizen's data due to the automated data processing being envisioned and therefore call for stronger controls. The balance between the protection of individual freedoms and security issues remains a delicate issue, so that the way the legislation is implemented is considered as the crucial step. Furthermore, the provisions of the Treaty of Lisbon concerning the evaluation and control of Europol's and Eurojust's activities are taken very seriously

by national parliaments. Some suggest that COSAC should help to find the appropriate form of control and evaluation that could be applied.

Thus, the role national parliaments intend to play in Schengen matters seems to depend on the level of integration they have in the Schengen area. Whilst national parliaments of the old Member States focus their scrutinizing on technical aspects, national parliaments of the new Member States are more involved in Schengen topics because of the significant political meaning they have for them.

## **Chapter 5: Involvement of the parliaments of the European Union in negotiations on accession to the EU**

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The aim of this chapter is to establish whether and how the national parliaments and the European Parliament<sup>15</sup> are involved in the accession negotiations with candidate countries. The chapter will also seek to identify special features of national constitutions which would be required for the ratification of an Accession Treaty.

The accession process could be seen as a manifold structure, comprised of an opening phase, a phase of monitoring the progress of the negotiations chapter by chapter, and a phase of concluding the accession with ratification of an Accession Treaty.

### **5.1. PHASES OF THE ACCESSION PROCESS**

#### **5.1.1. Opening phase**

A country that wishes to join the EU submits an application for membership to the Council, which asks the Commission to assess the applicant's ability to meet the conditions of membership<sup>16</sup>. If the Commission delivers a positive opinion, and the Council unanimously agrees a negotiating mandate, negotiations are formally opened between the candidate country and *all* the Member States.

#### **5.1.2. Chapter by chapter negotiations phase**

A candidate country submits a negotiating position. The Commission submits to the Council a Draft Common Position. The Council adopts a common position allowing opening of the chapters. Negotiating sessions are held at the level of Ambassadors or chief negotiators for the candidates and ministers or their deputies, Permanent Representatives for the Member States.

#### **5.1.3. Phase of concluding the accession**

When negotiations on all the chapters are completed to the satisfaction of both sides, the detailed terms and conditions are incorporated into a Draft Accession Treaty, which lists all transitional arrangements and deadlines, as well as details of financial arrangements and any safeguard clauses. If the Accession Treaty wins the support of the Council, the Commission, and the European Parliament, it is signed by the candidate country and the representatives of all the Member States.

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<sup>15</sup> Hereinafter referred to as parliaments of the European Union.

<sup>16</sup> Article 49 of the Treaty on European Union states that any European State which respects the principles set out in Article 6(1) of it may apply to become a member of the Union. It shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the assent of the European Parliament, which shall act by an absolute majority of its component members.

#### **5.1.4. Ratification phase**

Since every Accession Treaty is a part of primary EU legislation, it has to be ratified like every Founding Treaty or amendments thereof<sup>17</sup>, in accordance with the national constitutional requirements of each Member State.

### **5.2. INVOLVEMENT OF THE PARLIAMENTS OF THE EUROPEAN UNION IN THE ACCESSION PROCESS**

The parliaments of the EU can, in principle, scrutinise all the phases of the accession process. However, according to their respective constitutional provisions, most of the parliaments of the EU play a crucial role in the ratification phase.

This chapter will provide an overview of the practise of the parliamentary scrutiny of the phase of negotiations chapter by chapter, phase of concluding the accession with signing of the Accession Treaty and the role of the parliaments of the EU in the ratification phase.

#### **5.2.1. Parliaments of the European Union scrutinising the chapter by chapter negotiations phase**

The parliamentary scrutiny of this phase of the accession process could be motivated by the fact, that the EU institutions monitor the compliance with commitments throughout the whole process and that negotiations on any chapter are only provisionally closed when all the Member States are satisfied with the candidate's progress. Further motivation for the parliamentary scrutiny during the negotiations on the chapters could lie in the fact the definitive closure of negotiations occurs only at the end of the process. Namely, different chapters of the *acquis* are extensively interdependent and negotiations are conducted on the principle that "nothing is agreed until everything is agreed".

Quite a number of parliaments of the EU do perform a scrutiny at this stage. The majority of them are the parliaments of the Member States that joined the EU in 2004. The committee in charge of the scrutiny at this stage is the European Affairs Committee, sometimes holding joint sessions with the Foreign Affairs Committee. The Cypriot *Vouli ton Antiprosópon* and the Slovenian *Državni zbor* also involve sectoral committees, corresponding to the specific chapter. The outcome of such scrutiny varies from parliament to parliament, ranging from the committee being only informed on the state of play through politically binding resolutions (the Czech *Senate*, the Portuguese *Assembleia da República*) to legally binding positions (the Latvian *Saeima*, the Slovenian *Državni zbor*).

Only a small number of parliaments of the EU debate the accession process at this stage at the plenary level (the Czech *Chamber of Deputies*, the Cypriot *Vouli ton Antiprosópon*, the Portuguese *Assembleia da República*, the Luxembourg *Chambre des Députés*, the European Parliament).

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<sup>17</sup> Hereinafter the Founding Treaty.

The rest of the parliaments of the EU are either not involved in this phase at all or they are only informed by their governments on the state of play in the negotiations periodically<sup>18</sup> or in a less structured manner<sup>19</sup>.

It is worth mentioning that in most national practices the scrutiny of the negotiations chapter by chapter is not conducted systematically for each of the chapters. It is selective with the criterion being the political sensitivity of a particular negotiation chapter for a Member State. In some cases this can lead to inviting either a Commissioner (the German *Bundestag*) or the Ambassador of a negotiating candidate country to hearings (the German *Bundestag* and the Slovak *Narodna Rada*).

The European Parliament has at least one plenary debate a year on the progress of the accession negotiations and the enlargement strategy on the basis of reports for the Commission.

### **5.2.2. Parliaments of the European Union scrutinising the phase of concluding the accession**

The parliaments of the EU can also scrutinise this stage of the accession process by discussing the draft Accession Treaty with representatives of the executive branch of the Member States, before the latter sign it. While a majority of the national parliaments do so through their European Affairs Committee, there are five national parliaments that are not involved at this stage at all. The third category of the parliaments have no specific provisions that would oblige them to scrutinise this phase, but they are briefed about it by their governments at the plenary level, since the signing of the Accession Treaty is the agenda item of the European Council: the French *Assemblée nationale*, the Hellenic Parliament and the Portuguese *Assembleia da República*. The latter, for instance, can in principle consider the signing of the Accession Treaty either at the plenary level<sup>20</sup> or in the European Affairs Committee<sup>21</sup>.

As stated above, a majority of the parliaments of the EU scrutinise this phase of the accession process at the committee level. It is the European Affairs Committees that predominantly scrutinise this phase in combination with the Foreign Affairs Committees. The debate seldom reaches the plenary level.

After the decision of the European Council to conclude negotiations with a candidate country, the European Parliament has to give its formal assent to the country's applications to accede to the EU.

### **5.2.3. Parliaments of the European Union in the ratification phase**

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<sup>18</sup> Both chambers of the Polish Parliament receive biannual reports about Poland's participation in the activities of the EU, prepared by the government.

<sup>19</sup> The Italian Parliament has a practise of fact-finding investigations.

<sup>20</sup> That is the case when the signing is scheduled for the last European Council meeting of the presidency.

<sup>21</sup> In the remaining cases.



A great majority of the constitutional systems of the EU Member States envisage the parliamentary ratification as a politically decisive stage before the deposit of their instrument of ratification of international agreements. In other Member States the ratification is an act of the stable part of the executive branch (Crown in United Kingdom) or there is an obligatory referendum envisaged (Ireland). Since an Accession Treaty is by its legal nature an international agreement, the above stated applies to it as well.

At the ratification phase the decision is taken in the plenary. Whilst during the previous stages the European Affairs Committee usually played the lead role by either providing a horizontal overview of the process or even adopting a national position, at this stage it usually has a more advisory role than that of the Foreign Affairs Committee.

### **5.3. RATIFICATION OF THE ACCESSION TREATY AS A PART OF PRIMARY LEGISLATION OF THE EUROPEAN UNION**

An Accession Treaty is, like the Founding Treaties, a part of primary EU legislation and consequently an international agreement. Both types of agreements in principle imply a certain effect on national constitutional system by delegating competences from the national to the EU level. In the case of the Founding Treaties certain policy areas are completely or partially shifted from national to the EU level, or by a redistribution of voting rights in the institutions of the EU. The latter can also be contained in an Accession Treaty, which additionally usually contains different kinds of concessions or negotiated provisions with trans-national implications. Both kinds of primary legislation thus carry a certain degree of political sensitivity.

Most of the constitutional systems of the EU Member States do not envisage different procedures for the two kinds of primary legislation of the EU with the exception of Denmark, France, Hungary and Ireland.

The Danish Constitution does not envisage special procedures for the ratification of an Accession Treaty. The bill is approved with an ordinary relative majority<sup>22</sup>. However, when the *Folketing* gives its consent to the ratification of amendments to the Founding Treaties, a five sixths majority in parliament is required, if Denmark's accession to the treaty implies a transfer of competences from the Danish authorities to the EU.

The French Constitutional Act 204-2005 from 1 March 2005 states that a draft ratification act should be submitted to a referendum for each future accession with the exception of Croatia. Before 2005 the ratification for an Accession Treaty was conducted by an ordinary legislative procedure. The required threshold was an ordinary relative majority, with the *Assemblée nationale* having a final say in the legislative part. At the end of the ratification process the President of the Republic had a possibility to call for a referendum. At present, the committee for the modernisation of the institutions of the Fifth Republic proposes the modification of the ratification procedure in a way that the ratification act should be adopted by both parliamentary chambers and be later either submitted to a referendum or, in case the President

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<sup>22</sup> More than half of the deputies participating in the vote.

decides so, submitted to a vote in the *Congrès* (comprised of the *Assemblée nationale* and the *Sénat*) with a required threshold of three fifths of the votes cast.

Hungarian Constitution requires a qualified absolute majority vote<sup>23</sup> for the ratification and promulgation of a Founding Treaty, while an Accession Treaty is subject to an ordinary absolute majority vote<sup>24</sup> as the other international treaties are.

In Ireland, a Founding Treaty is ratified by way of a referendum, while the ratification of an Accession Treaty takes place through the *Houses of the Oireachtas* and consists of three steps - the adoption of a motion, the passage of a Bill amending the European Communities Act 1972 followed by the signature and deposition of the formal instrument of ratification.

The third group of national parliaments uses different procedures depending on the content of the Accession Treaty. If it provides for a transfer of certain powers to the EU level, the majority, required for a successful ratification is higher than in the case of an ordinary international agreement.

The Member States that, according to the answers to the questionnaire, fit in this group are the Czech Republic, Finland, Luxembourg, the Netherlands, Poland, Slovakia and Sweden.

#### **5.4. CONCLUSIONS**

Parliaments of the EU are actively involved throughout the accession process. At the earlier stages, the scrutiny takes place at committee level with the European Affairs Committee playing a coordinative role and providing the deputies with a horizontal overview of the accession process.

It could be said, that the chapter by chapter negotiations phase is examined in a more detailed manner by the parliaments of the Member States that joined the EU in 2004. This observation might be explained by their own experience of the accession process and the large number of negotiation chapters they had to navigate.

The phase of concluding the negotiations and signing of the Accession Treaty seldom reaches the plenary level, the main role thus pertaining to the European Affairs Committee, mostly with the Foreign Affairs Committee.

During the ratification phase of the Accession Treaty the parliamentary political decision is made in the plenary, while the main committee reporting to the plenary is the Foreign Affairs Committee. The European Affairs Committee only has an advisory role.

When ratification of the Accession Treaty is at stake, it is worth mentioning that most of the constitutional systems of the Member States do not foresee different procedures for ratification of an Accession Treaty or of a Founding Treaty, which are both a part of primary legislation of the EU. A number of national parliaments however do

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<sup>23</sup> That is two-thirds of all the deputies.

<sup>24</sup> More than half of all the deputies.

foresee a different ratification procedure under the condition that it provides for a transfer of certain powers from the national to the EU level. In this case the majority, required for a successful ratification is higher than in the case of an ordinary international agreement. Three national parliaments do distinguish the ratification procedure for an Accession Treaty from the ratification of a Founding Treaty.