

THE ROLE OF NATIONAL PARLIAMENTS IN THE SCRUTINY OF EUROPEAN UNION LEGISLATION-UK CASE

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ABSTRACT

This paper explains scrutiny, which is realised by the national parliaments in the decision-making process of the European Union and also how the national parliaments function, by making use of the UK Model. In addition to the model in the House of Lords which is analysed in details, the model in the House of Commons has also been investigated. In this context, the working procedures of the sub-committees in the House of Lords, the scrutiny of the three pillars of the European Union (the European Community and its legislation, common foreign and security policy and justice and home affairs) that were defined in the Maastrich Treaty which entered in to force as of 1993, the stages of scrutiny, the main differences between the scrutiny in the House of Lords and House of Commons have been studied. Besides, the scrutiny which is practiced in Germany, France and Denmark have been looked in to. Also the strengths and weaknesses of the national parliaments in the scrutiny process have been analysed. The paper ends with a section in which recommendations exist on how to better run the scrutiny of EU legislation which is realised by the national parliaments.

Keywords: *Scrutiny, EU legislation, subsidiarity, national parliaments, sub-committees, sift process, explanatory memorandum, scrutiny reserve.*

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ÖZET

Bu çalışma, Avrupa Birliği karar alma sürecinde ulusal parlamentolar tarafından gerçekleştirilen izlemenin ne olduğunu ve bu çerçevede ulusal parlamentoların nasıl bir fonksiyon yerine getirdiklerini, İngiltere örneğinden yola çıkılarak açıklamaktadır. Referans olarak alınan ve ayrıntılı bir biçimde analiz edilen Lordlar Kamarasındaki modele ek olarak Avam Kamarasındaki model de incelenmiştir. Bu çerçevede Lordlar Kamarası için alt komisyonların çalışma usulleri, Avrupa Birliği' nin temel taşları olan Avrupa Topluluğu ve mevzuatı, ortak dış ve savunma politikası ve adalet ve içişleri (ki bunlar 1993 tarihinden itibaren geçerli olan Maastricht Anlaşması' nda tanımlanmıştır) nin izlenmesi, izlemenin safhaları ve Lordlar Kamarasındaki izleme ile Avam Kamarasındaki izleme arasındaki temel farklılıklar irdelenmiştir. Bunun yanında Almanya, Fransa ve Danimarkada ulusal parlamentolarca gerçekleştirilen izleme ele alınmıştır. Ayrıca ulusal parlamentoların izleme sürecindeki güçlü ve zayıf tarafları analiz edilmiştir. Çalışmanın son kısmında ulusal parlamentolarca gerçekleştirilen Avrupa Birliği mevzuatının izlenmesi sürecinin ne şekilde daha iyi işler hale getirilebileceğine ilişkin öneriler yer almaktadır.

***Anahtar kelimeler:** İzleme, AB mevzuatı, yakınlık ilkesi, ulusal parlamentolar, alt komisyonlar, eleme prosedürü, açıklayıcı zabit, izleme rezervi.*

1. INTRODUCTION

The decision making process in the European Union (EU) is quite a complex practice which involves more than one institution most of the times. Within this complex and multi-party process the European Council, the European Parliament and the European Commission are the key players. Nonetheless there are other important elements, which affect the functioning of the system like the Court of Justice of the European Communities and the national parliaments(NPs).

Although the NPs are not directly involved in EU related issues most of the times, as the national governments are in charge of EU legislation, the role of the NPs in the EU legislative process should not be underestimated.

First of all the NPs can effectively monitor the proper implementation of the subsidiarity principle. "Subsidiarity" means, action takes place at EU level only if the Union is really able to act more effectively than the member states individually. For example a regulation in the common agriculture policy can only be adopted if the subject matter is a general issue in the EU context and if it is the best way to implement that specific policy by a regulation, which would govern the whole Union.

Moreover, as none of the institutions of the EU namely the Council of Ministers, the Parliament, the Commission, the Court of Justice, the Court of Auditors is answerable to any national parliament, NPs can exercise their powers and influence

directly only upon their own Ministers as national representatives (rather than delegates) in the Council of Ministers.¹

On the other hand, the influence of an effective scrutiny system may be far reaching. For example it can highlight legislative proposals and pinpoint flaws in them. It can provide an additional source of analysis and opinion for members of the European Parliament (MEPs) and for the wide range of lobby groups, which seek to influence the European Parliament. It can encourage the meeting of deadlines and the better organization of business by the institutions.

More importantly, the involvement of the NPs in the scrutiny of EU legislation more effectively and in a transparent manner can also be conceived as a means of decreasing the concerns about the democratic legitimacy of the EU as a legislator.

The European Convention had appointed a working group on the role of NPs. The final report of the working group and the recommendations in that report will be discussed in the related parts of this work.

This paper explains what scrutiny is and how the work is carried out by the NPs in this context, giving a special emphasis on the UK case. The House of Commons model in the UK Parliament is described in addition to the House of Lords model, which is analysed in more details as the reference model. In this respect the working method of the sub-committees, scrutiny of the three pillars of the EU, stages of scrutiny and the main differences between the scrutiny in the House of Lords and House of Commons are dealt with. National parliamentary scrutiny in other member states like Germany, France and Denmark is further explained. An analysis of the NPs scrutiny process is then provided wherein the strengths and the weaknesses of the process are discussed in details. The paper ends with the conclusions part in which recommendations are also made on how to improve the scrutiny process.

2. The Definition and Purpose of Scrutiny

NPs have little direct input in the European legislative process. EU legislation is made by the Council of Ministers, often in co-decision with the European Parliament or by the Commission under delegated powers. NPs are not involved directly in this legislative process. So in this context, “*scrutiny*” can be defined as a process of examination and analysis of the proposals and actions of those responsible for government, with a view to ensuring they are accountable to Parliament for their actions.²

On the other hand, there are other interpretations of scrutiny as well. For example, Dr. Adam Cygan, lecturer in law-Leicester University stressed that scrutiny is

¹ House of Commons, **The European Scrutiny System in the House of Commons**, June 2001, p. 4.

² House of Lords, **Review of Scrutiny of European Legislation**, Select Committee on the European Union, Session 2002-03 1st Report, 3 December 2002, p. 9.

“*substitute sovereignty*”. When we take into account the fact that the nation states leave considerable amount of their sovereignty to the EU by being a member of it, scrutiny might be regarded as a substitute sovereignty as it enables the NPs to interact the legislative process in the EU. As none of the institutions of the EU is directly answerable to the NPs, the members of the NPs can only affect the decision-making process in the EU by trying to influence the process directly only upon their own Ministers as national representatives in the Council of Ministers.

Lord Howell of Guildford argued that the UK Parliament needed a greater influence over decisions taken at EU level to help bridge the gap that challenged the democratic legitimacy of the Union³. The proposal of Lord Howell, to increase the influence of the NPs in order to address the problem of democratic legitimacy of the Union makes sense as far as the current structure of the EU is concerned, because most of the important decisions in the EU are taken either by the European Council alone or by the Parliament and the Council jointly in the co-decision procedure. In the co-decision procedure, the Parliament and subsequently the MEPs which are being elected by the European citizens are involved to a certain degree, so the concerns about the democratic legitimacy of the EU is less but in the case of the decisions which are solely taken by the Council, these concerns are increasingly brought in to attention as the Council of Ministers consists of only the ministers of the member states and additionally individual member states are being represented by ambassadors in the COREPER (Comité des Représentants Permanents) who are not directly answerable to their public as they are not politicians.

The purpose of scrutiny was defined as twofold by Baroness Williams of Crosby (Leader of the Liberal Democrats in the House of Lords)⁴. One is to hold Ministers to account and the other is to ensure that citizens are aware of the impact of EU legislation. In this respect, it is possible to say that scrutiny also serves as a useful means of informing the citizens about the ongoing policy developments in the EU and their implications.

The definition of the purpose of the scrutiny system in the House of Commons is set out as⁵: “To ensure that members are informed of EU proposals likely to affect the United Kingdom, to provide a source of information and analysis for the public, and to ensure that the House and the European Scrutiny Committee, and through them other organizations and individuals, have opportunities to make Ministers aware of their views on EU proposals, seek to influence Ministers and hold Ministers to account”.

Also it is clear that the constitutional responsibility for legislation is of the NPs due to the separation of powers in modern democracies. Some of the EU legislation like the regulations are directly becoming a part of the domestic legislation after they are being adopted by the EU and others like directives and decisions have to be reflected in the national legislation by individual member states taking in to account the specific

³ Ibid.,

⁴ Ibid.,

⁵ Ibid.,

conditions wherein the general objectives of the directive set out by the EU have to be met in the end. So once European regulations, directives and decisions are adopted by the EU, it is in practice too late for the NPs to seek to reverse them. In this respect, scrutiny of NPs has a *constitutional purpose* and it is crucial to make *scrutiny at an early stage* as effective as possible.

In the light of the definition and purpose of scrutiny, there are some basic features, which the scrutiny of NPs should have. These are:

- The accumulation, presentation and summary of relevant material including information, statistics, explanation and analysis
- The provision of information to the House of Lords and to the public as a contribution to transparency
- Drawing the attention of the House of Lords, the Government, European institutions and the public to significant matters contained within that information and especially making recommendations, focusing the debate
- Contributing to the law-making process by detailed analysis of draft texts, by exposing difficulties and proposing amendments
- An examination of the Government and its role in agreeing European legislation and as part of that process, compelling the Government not only to think through what it is doing or has done but sometimes to account for it
- An examination of the Commission and its policies

3. Scrutiny in the House of Lords

Scrutiny in the House of Lords is realised by the Select Committee on the European Union. The Select Committee on the European Union is the successor to the European Communities Committee which was first set up in 1974 after a thorough analysis by a specially appointed Committee of the House in to what parliamentary scrutiny of European legislation would be required when Britain joined the European Community (1973). The Committee's title was changed in December 1999 to reflect the changes agreed in the treaties of Maastricht and Amsterdam.

The Committee is appointed at the beginning of every parliamentary session. Its terms of reference are: "To consider European Union documents and other matters relating to the European Union."

The Committee is chaired by a salaried officer of the House (the Principal Deputy Chairman of the Committees). It has 19 members, each of whom (other than the chairman) serves on one or more of the subject-area sub-committees through which the Committee conducts its investigations. Other members of the House are also co-opted to

the sub-committees, so that a total of around 70 members are actively involved in the work of the Committee or sub-committees.

The sub-committees are:

- Economic and Financial Affairs, Trade and External Relations (A)
- Energy, Industry and Transport (B)
- Common Foreign and Security Policy (C)
- Environment, Agriculture, Public Health and Consumer Protection (D)
- Law and Institutions (E)
- Social Affairs, Education and Home Affairs (F)

Additional sub-committees may be set up ad hoc to examine specific proposals.

3.1. How the Sub-Committees Work

The sub-committees meet regularly when the House of Lords is in session to conduct inquiries based either on the scrutiny of EU documents or into subjects chosen by the sub-committees from within their field of activity. The sub-committees are assisted by clerks and by consultant specialist advisers appointed for their expert knowledge of the subject under inquiry. The sub-committees invite written and oral evidence from government departments, Community institutions and other interested bodies and individuals in order to consider a wide range of points of view before reaching conclusions. Draft reports setting out conclusions and recommendations are then prepared and agreed by the sub-committees and approved by the Select Committee before they are published.

Around half of the reports published are subsequently debated in the House. The Government has undertaken to reply to all reports, whether debated or not, within two months of publication.

3.2. Scrutiny of the Three Pillars of the European Union

The Treaty of Maastricht, which came into effect in 1993, set up the European Union comprising three “pillars”:

1. The European Community and Its Legislation
2. A Common Foreign and Security Policy
3. Justice and Home Affairs

Scrutiny of the first pillar was the Committee's main activity from 1974 to 1993. The second and third pillars are based on inter-governmental co-operation. Instruments adopted under these two inter-governmental pillars, where they are legally binding, are binding under international law not as Community law.

From 1993 to 1998, the Committee scrutinised "pillar documents" on an informal basis. Following a review of procedures in the House of Commons, the arrangements for scrutiny of the pillars were formalised in November 1998. Since then arrangements for the deposit of "pillar" documents have been formalised and a scrutiny reserve has applied to proposals under the inter-governmental pillars.

3.3. Stages of Scrutiny

The Committee considers a wide range of documents under all three pillars. These documents are not only proposals for legislation under the first pillar and proposals for binding legal instruments under the second and the third pillars, but also discussion documents such as white and green papers.

These documents are deposited in the United Kingdom Parliament by the Government. More than 1000 documents are deposited each year, along with an explanatory memorandum, signed by a Government Minister. The explanatory memorandum sets out the legal, financial and policy implications of every document and the procedure and the timetable for its consideration and adoption. Many of the documents are routine or of comparatively minor importance (for example, minor adjustments to existing policies); in any case the number of documents is too great for the Committee to give detailed consideration to them all. Because of this reason, the Chairman of the Committee conducts a "sift". The Chairman considers all the explanatory memoranda, sifts the more significant documents from the less important ones and decides which should be referred to the sub-committees for further examination. About a quarter of the documents deposited are referred to the sub-committees.

After this "sift" process, each sub-committee examines the documents referred to it. A sub-committee usually takes note of many of them, choosing a few each year on which to conduct a substantial enquiry and make a report.

The Committee may clear the document from scrutiny with no further action (after noting the contents). The Committee may also clear the document from scrutiny but write to the Minister expressing particular points of view.

The Committee may retain the document under scrutiny and write to the Minister: correspondence continues until the sub-committee is satisfied and clears the document from scrutiny.

The Committee also hears regular sessions of evidence from Foreign Office ministers, particularly following each European Council.

The scrutiny system rests on an undertaking given by the Government that they will not, except in special circumstances, agree to any proposal in the Council until it has been cleared by the Committee. This “*scrutiny reserve*” gives the House an opportunity to influence the position, which the Government adopts on the proposal in negotiation with other member states of the EU.

3.4. The Main Differences Between the Scrutiny in the House of Lords and House of Commons

The European Scrutiny Committee in the House of Commons operates on the basis of a similar Scrutiny Reserve Resolution to that which applies in the Lords. The Committee receives the same Explanatory Memoranda and the same documents for consideration but there are some significant differences what they do with them.

First of all, the Committee’s purpose in the House of Commons is not to examine the merits of documents but to report to the House whether they are legally or politically important and so worthy of a debate. Also there is no sifting of documents, all the documents are considered by the Committee. In this respect, it is possible to say that the model in the House of Lords enables the sub-committees to carry out a more focused approach and an in-depth analysis of the issues. Another significant difference in the House of Commons’ model is that there are no specialist sub-committees looking at particular policy areas.

4. National Parliamentary Scrutiny in Other Member States

4.1. German Model

Germany has a bicameral parliamentary system. The Bundestag is the equivalent of the Commons in the UK model. Committee on the Affairs of the European Union of the German Bundestag in its function as a “committee on integration”, is responsible for fundamental questions relating to European integration, such as institutional reform of the EU, other amendments to the Community Treaties, EU enlargement, and cooperation with the European Parliament and the NPs of the other member states.⁶

The members of the second parliamentary chamber, the Bundesrat represent the German federal Laender. The Committee on European Union Affairs has a long tradition in the Bundesrat. As early as December 1957 the Bundesrat set up a special committee on the Common Market and the Free Trade Area, which in 1965 became a Standing Committee for Questions pertaining to the European Communities⁷. (The constitutional role of Bundesrat is to take decisions in the interest of the second political level which is the federal Laender) The Bundesrat is composed of cabinet members from the 16 Laender delegated by the Laender governments, which provides a forum for intergovernmental cooperation between the regional and national political level.

⁶<http://www.bundestag.de/htdocs_e/orga/03organs/04commit/02commper/comm20/comm20_fuaction.html>

⁷<<http://www1.bundesrat.de/coremedia/generator/Inhalt/DE/>>

Both the Bundestag and the Bundesrat have EU Committees. The Bundestag EU Committee links the national level to Europe by consisting of 14 MEPs and 36 MPs. The MEPs do not have the right to vote in the committee. The Bundestag has the same system of Explanatory Memorandums as the UK Parliament.

Both the Bundestag and the Bundesrat are participating in European affairs according to Act 23 of the German Basic Law.⁸ They have the right to be consulted on European legislation. On the other hand, the German government is legally obliged to provide all information on European matters to both chambers as soon as possible, to hear and to take into consideration the view of both chambers before it goes to a European Council and to account for any deviance from the agreed view at a European Council and give clear reasons for it.

If there is a case of impingement on exclusive Laender competencies as set out in the Basic Law, government action is subject to Bundesrat opinion. The Bundesrat can veto Bundestag's decision to cede sovereignty to European level, as such a decision would have clear ramifications for the Laender. The Bundesrat is permitted time to debate and review proposals before the German negotiation position for the European Council is determined.

The role of the Bundesrat as a constitutional representative of the Laender at the federal level has led to equal degrees of scrutiny in both the Bundestag and the Bundesrat. In cases where European legislation is deemed to impinge on exclusive Laender competencies, there is even scope for a representative of the Bundesrat to take part in Council meetings.

4.2. French Model

France has a bicameral parliamentary system composed of National Assembly and the Senate. The mechanism for examining EU legislation by the national parliament has only been in place for the last 10 years. It involves a "delegation" of each chamber. The aim of the national parliamentary scrutiny system in France is to allow the National Assembly and the Senate to adopt a position on legislation in preparation.

The delegations in the Assembly and the Senate are at the centre of the process and are like committees. They comprise 26 Parliamentarians representing all the political groupings.

Delegation for the European Union in the National Assembly exercises above all political scrutiny over the government's European activities. It intervenes upstream of the decision-making process, in the negotiation phase of Community texts.⁹

The examination of EU related documents are very similar in both Houses. The initial sift is done by the Conseil d'Etat separating texts which have an impact on national law from the rest. After the sift of documents to the delegations, most of them are of minor importance and are subject to written procedure only. For each EU related

⁸ *Ibid.*,

⁹ <<http://www.assemblee-nat.fr/english/european-delegation.asp>>

document, the secretariat provides the members of the delegation with a summary note outlining the contents and the reasons why an extensive scrutiny is not necessary. If, within eight days, a member feels that further scrutiny is necessary, then the text is retained for the following meeting and reclassified for examination. A reporter who carries out an in-depth analysis of the proposal examining its influence on French legislation, the consequences for French interests and the Government position, is appointed. The reporter may ask for further information from the officials and have meetings with the permanent representation in Brussels. When the reporter is ready, the text is examined by the delegation. If the delegation is satisfied with the progress of the proposal and the Government's position, the scrutiny ends there. On the other hand, if the delegation considers the proposal raises a question of significant political importance, the text itself is unsatisfactory, or it would like to question the Government further, they will propose a resolution. The proposal for a resolution is sent to the permanent competent committee and a final resolution is adopted by the committee, or the plenary.

Because of the sifting process, the Parliamentarians can have the advantage of focusing on the most important texts, which might be regarded as a positive element of the scrutiny system. On the other hand, there are some delays to provide timely comments from the Senate occasionally, which might have an adverse effect on the EU decision-making process.

4.3. Nordic Model (Denmark case)

Denmark, Finland and Sweden have similar systems for scrutinising their Governments' European policy, sometimes referred to as the Nordic Model. In the Nordic Model, a high priority is given to openness and transparency by the Parliaments. 95% of the documents dealt with by the Committees are made public on their websites.

The Danish Parliament is unicameral. The European Affairs Committee deals with questions related to the EU; it is this Committee, which gives the Ministers their mandates for negotiation.¹⁰ The Committee may consider all proposals for legislative acts from the European Commission, regardless of subject. The Danish Government must submit memoranda indicating the nature and purpose of the proposal within four weeks of formal circulation by the Council. The Government must also submit a mandate for negotiations for all Justice and Home Affairs issues whereas it does not have to do this for the second pillar although it often confers with the Committee on Common Foreign and Security Policy (CFSP).

The Danish Prime Minister is obliged to report to the Committee, in person, prior to and after participating in the European Councils and Intergovernmental Conferences.

¹⁰ <<http://www.folketinget.dk/BAGGRUND/00000047/00232627.htm>>

5. Analysis of NPs' Scrutiny Process- Strengths & Weaknesses

It is worthwhile mentioning that this analysis is to a great extent depending on the UK scrutiny model. On the other hand, not only the written information in the relevant literature, but also the points of view of a staff in the House of Lords has also been taken into account during the whole analysis.

First of all, a *wide coverage* of EU documents are scrutinised in the process. Not only the proposals but also policy papers like white papers and green papers are also included in the scrutiny. This should be regarded as an advantage of the system. Most of the EU documents and policies are scrutinised and thus the NPs have the possibility to affect the legislative process in this context whenever an intervention is deemed necessary on their side.

On every document, which is subject to scrutiny, the *written evidence* provided by the Ministers is a valuable resource not only for the members of the parliament but also for business circles and the public. These pinpoint the political, economic and social implications of individual EU legislation and therefore inform the society about the consequences of the envisaged legislation. Although the level of transparency is limited in the UK case compared to the Nordic Model, it is still very useful for different interest groups and individuals to be informed prior to the adoption of a EU legislation or policy. Transparency is ensured by the public access to explanatory memoranda and Scrutiny Committee's Reports.

Sifting of documents for legal and political importance is a remarkable feature of the system. This enables the EU Scrutiny Committee to focus on more important issues rather than routine documents. An in-depth analysis and a thorough discussion of the subject matter is possible by the process of sifting.

The *scrutiny reserve*, as an instrument in which the Government, except in special circumstances, undertakes not to agree to any proposal in the Council until it has been cleared by the Scrutiny Committee, gives the Committee a unique opportunity to influence the position which the Government adopts on the proposal in negotiation with other member states of the EU. On the other hand, this may as well turn out to be a burden on the EU integration process if not to be used in a proper way. It may slow down the pace of EU integration and cause delays in the adoption of some policy measures in the EU.

Pre and post Council scrutiny is also very important in terms of accountability. The European Council meetings are the ones in which important decisions are taken, so the justification of the Government strategy pre-Council and the explanation of the outcome post-Council enables the Government to account for what it has done.

One of the important issues, which was highlighted by the staff of the House of Lords as a strength of the scrutiny system in the UK, is the fact that the members of the Scrutiny Committee have *broad experience and expertise* in scrutiny. Some of these are

former Commissioners and the others also held important positions in EU institutions, which increase the quality of the work carried out in the context of scrutiny.

Another issue is the *well-established procedures* in the scrutiny process that was mentioned by the staff of the House of Lords as a positive element in the system. The procedures are clear and they are strictly followed in the scrutiny process.

However effective the scrutiny system may be, two points should be borne in mind¹¹. Firstly, the system provides information and seeks to ensure accountability, but it is *in addition to, and not instead of*, all the other means by which the members of the parliament are able to consider European issues.

Secondly, the scrutiny system is *not an end in itself*. Its product needs to be used in a wider political forum in order to complete the process of parliamentary accountability.

The difference with the UK case and the Nordic model is that, the Nordic model is seeking for more transparency and interaction with the citizens whereas the UK model although seems to be transparent to a certain extent is not that much concerned about informing the public opinion in a more transparent manner. This can also be understood from the fact that almost 95% of the documents is made public in the Nordic Model whereas an important rate of documents are shared with the public only on an individual demand from the citizens in the UK Model-the public is not in a transparent manner-in the sense of the Nordic Model-informed.

Also, the *networking with the counterparts in other countries is very limited* which is not the weakness of only the UK scrutiny system. The differences in the political systems (unicameral /bicameral) and the scrutiny structures of the individual NPs might be a limiting factor in this respect.

6. The role of NPs in the Draft Treaty Establishing a Constitution for Europe

In exercising the competences conferred on it in the Constitution, the Union shall use as legal instruments, in accordance with the provisions of Part 3, European laws, European framework laws, European regulations, European decisions, recommendations and opinions.¹²

A European law shall be a legislative act of general application. It shall be binding in its entirety and directly applicable in all Member States.¹³

A European framework law shall be a legislative act binding, as to the result to be achieved, on the Member States to which it is addressed, but leaving the national authorities entirely free to choose the form and means of achieving that result.¹⁴

¹¹ House of Commons, *The European Scrutiny System in the House of Commons*, June 2001, p. 36.

¹² <<http://europa.eu.int/eur-lex/lex/JOHtml.do?uri=OJ:C:2004:310:SOM:EN:HTML>>

¹³ *Ibid.*,

A European regulation shall be a non-legislative act of general application for the implementation of legislative acts and of certain specific provisions of the Constitution. It may either be binding in its entirety and directly applicable in all Members States, or be binding, as regards the result to be achieved, on all member states to which it is addressed, but leaving the national authorities entirely free to choose the form and means of achieving that result.¹⁵

A European decision shall be a non-legislative act, binding in its entirety. A decision, which specifies those to whom it is addressed, shall be binding only on them.¹⁶

Recommendations and opinions adopted by the institutions shall have no binding force.¹⁷

In the Draft Treaty Establishing a Constitution for Europe¹⁸, although the way in which individual national parliaments scrutinise their own governments in relation to the activities of the Union is a matter of particular constitutional organisation and practice of each Member State, there is an ambition to encourage greater involvement of NPs in the activities of the EU and to enhance their ability to express their views on legislative proposals as well as on other matters which may be of particular interest to them.

In this context, the flow of information from one institution of the EU to the others will be at the same time to the NPs and to that of the Members States' Governments to a great extent which will enable the NPs to consider the European issues in a broader scope having less time pressure on them.

In line with this approach, all Commission consultation documents (green and white papers and communications) shall be forwarded directly by the Commission to the Member States' NPs upon publication.¹⁹ The Commission shall also send Member States' NPs the annual legislative programme as well as any other instrument of legislative planning or policy strategy that it submits to the European Parliament and to the Council of Ministers, at the same time as to those Institutions.

All legislative proposals sent to the European Parliament and to the Council of Ministers shall simultaneously be sent to Member States' NPs.²⁰

Member States' NPs may send to the Presidents of the European Parliament, the Council of Ministers and the Commission a reasoned opinion on whether a legislative proposal complies with the principle of subsidiarity, according to the procedure laid

¹⁴ *Ibid.*,

¹⁵ *Ibid.*,

¹⁶ *Ibid.*,

¹⁷ *Ibid.*,

¹⁸ *Ibid.*,

¹⁹ *Ibid.*,

²⁰ *Ibid.*,

down in the Protocol on the application of the principles of subsidiarity and proportionality.²¹

A six-week period shall elapse between a legislative proposal being made available by the Commission to the European Parliament, the Council of Ministers and the Member States' NPs in the official languages of the EU and the date when it is placed on an agenda for the Council of Ministers for adoption of a position under a legislative procedure, subject to exceptions on grounds of urgency, the reasons for which shall be stated in the act or position of the Council of Ministers. Save in urgent cases for which due reasons have been given, no agreement may be established on a legislative proposal during those six weeks. Ten days must elapse between the placing of a proposal on the agenda for the Council of Ministers and the adoption of a position of the Council of Ministers.²²

The agendas for and the outcome of meetings of the Council of Ministers, including the minutes of the meetings where the Council of Ministers is deliberating on legislative proposals, shall be transmitted directly to Member States' NPs, at the same time as to Member States' governments.²³

When the European Council intends to make use of the provision of Article 1-24(4), first subparagraph of the Constitutions, NPs shall be informed in advance.²⁴

When the European Council intends to make use of provision of Article 1-24(4), second subparagraph of the Constitutions, NPs shall be informed at least four months before any decision is taken.²⁵

The Court of Auditors shall send its annual report to Member States' NPs, for information, at the same time as to the European Parliament and to the Council of Ministers.²⁶

All these provisions prove that the European Union is seeking for more transparency and accountability. It is also of no doubt that the EU is trying to include the NPs to the legislative process more and more and looking for further interaction with them.

Additionally, the European Parliament and the NPs shall together determine how inter parliamentary cooperation may be effectively and regularly organised and promoted within the EU.²⁷

²¹ *Ibid.*,

²² *Ibid.*,

²³ *Ibid.*,

²⁴ *Ibid.*,

²⁵ *Ibid.*,

²⁶ *Ibid.*,

²⁷ *Ibid.*,

The Conference of European Affairs Committees may submit any contribution it deems appropriate for the attention of the European Parliament, the Council of Ministers and the Commission. That Conference shall in addition promote the exchange of information and best practice between Member States' Parliaments and the European Parliament, including their special committees. The Conference may also organize inter-parliamentary conferences on specific topics, in particular to debate matters of common foreign and security policy and common security and defence policy.²⁸

CONCLUSIONS

A Working Group (WG) was established on the role of NPs in the framework of the European Convention. This working group made public its final report on the 22nd October 2002²⁹. The report outlines the results of the Working Group's debate on three main issues and presents a number of specific proposals. The three main issues are:

- The role of NPs in scrutinising governments (national scrutiny systems)
- The role of NPs in monitoring the application of the principle of subsidiarity
- The role and function of multilateral networks or mechanisms involving NPs at the European level

The work of the NPs in the context of scrutinising EU legislation has proved to be a very useful instrument in the EU integration process. In this context, it is very important that the *NPs should be involved in the work of the EU to a greater extent*. This issue was expressed also in the Declaration (No 13) of Heads of State and Government annexed to the Treaty of Maastricht and the Protocol annexed to the Treaty of Amsterdam regarding the role of NPs in the EU. Enhancing the involvement of the NPs in the scrutiny of EU work would strengthen the democratic legitimacy of the EU and bring it closer to citizens.

Moreover, *more openness and transparency in the work of the Council* is very important to facilitate and improve the active involvement of the NPs in the EU. The documents should be sent to the NPs in parallel to their transmission to governments. This would enable more time for the discussions in the NPs when it is deemed necessary.

Similarly, it is also important that all *Commission proposals for legislation should be transmitted directly to NPs* at the same time they are transmitted to the Council. This would ensure that the members of the NPs are timely informed and enable them to make in-depth analysis particularly on crucial issues.

²⁸ *Ibid.*,

²⁹ Final Report of Working Group IV on the Role of National Parliaments, CONV 353/02, 22 October 2002 (Source= <<http://register.consilium.eu.int/pdf/en/02/cv00/00353en2.pdf>>)

Besides, looking at four models of scrutiny of the NPs revealed that *individual member states have different systems*, which are reflected in the relations between the governments and the NPs in conformity with constitutional requirements. In this respect, it would not be appropriate to suggest an ideal model of national scrutiny system at European level.

Nonetheless, the *exchange of information between the NPs* about methods and experiences could be very helpful in increasing knowledge and awareness of European affairs and thus improve further the efficiency of national parliamentary scrutiny. In this respect, COSAC (Conference of the Community and European Affairs Committees of Parliaments of the EU), has an important role to play. Drafting guidelines for NPs setting out desirable minimum standards for effective national parliamentary scrutiny, providing the platform for a regular exchange of information, best practice and benchmarking of national scrutiny mechanisms would contribute to the improvement of the scrutiny systems of the NPs.

The *transmission of the Commission's Annual Policy Strategy and annual legislative and work programme* and *Court of Auditors' annual report* to the NPs at the same time that they are transmitted to the European Parliament and the Council would also be very instrumental for the effective scrutiny of the NPs.

On the other hand, while improving the scrutiny system of the NPs by introducing some measures in favor of the NPs, it is also important that necessary measures are taken in order to prevent the blocking of the EU decision-making process. In this respect, parliamentary scrutiny reserves should be given a clearer status within the Council's rules of procedure, namely they should have a specified time limit so as not to unnecessarily block the decision procedure.

Regarding the *monitoring the application of the principle of subsidiarity*, a mechanism could be set up to allow NPs to convey early on in the legislative process their views on the compliance of a legislative proposal with the principle of subsidiarity.

As a result, it is possible to say that the scrutiny of the NPs has been a valuable instrument in the EU integration process which has been used not only for the aim of bringing the governments into account but also one that has proved to be a key element which has contributed in many ways to the legislative process in the EU. In this respect, it is of crucial importance to take necessary steps both at EU level and at national level to further improve the national parliamentary scrutiny systems.