

# The National Parliaments in the European Union

A Critical View on EU  
Constitution-Building

*Kluwer* 50

EUROPEAN MONOGRAPHS

Philipp Kiiver

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**KLUWER LAW**  
INTERNATIONAL

**A C.I.P Catalogue record for this book is available from the Library of Congress.**

ISBN 9041124527

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Published by Kluwer Law International,  
P.O. Box 85889, 2508 CN The Hague, The Netherlands  
sales@kluwerlaw.com  
<http://www.kluwerlaw.com>

Sold and distributed in North, Central and South America  
by Aspen Publishers, Inc.  
7201 McKinney Circle, Frederick, MD 21704, USA

Sold and distributed in all other countries by  
Turpin Distribution Services Ltd.,  
Stratton Business Park,  
Pegasus Drive, Biggleswade, Bedfordshire,  
SG18 8TQ, United Kingdom

*Printed on acid-free paper*

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Printed in The Netherlands

**The National Parliaments  
in the European Union**

## **EUROPEAN MONOGRAPHS**

*Editor-in-Chief Professor David O'Keeffe*

In this series *European Monographs* this book  
*The National Parliaments in the European Union: A Critical View on  
EU Constitution-Building* is the fiftieth title.

*The titles published in this series are listed at the end of this volume.*

## **Preface**

When the EU Constitutional Treaty was put to a popular vote in France and the Netherlands, the result was a rejection so shattering that it called into question the very fundamentals of European integration. Arguably, the ‘no’ was not so much directed against that particular treaty, or even against European integration as such, but, among other things, at the dissatisfactory way in which the EU is functioning today. If the referendum on a new treaty meant an opportunity for the citizens to let off steam, they clearly used it. And obviously they had a point: what kind of Europe is it, where the only means of democratic input is the occasional treaty rejection? Where are the representative bodies that engage in day-to-day scrutiny of EU policies, and that are themselves subjected to recurring expressions of the popular will? Enter the national parliaments, who are increasingly addressed, courted and encouraged to play a bigger part in the European Union: either next to the European Parliament, or in its stead; either with new formal powers and privileges as included in the Constitutional Treaty, or with competences that would go far beyond that. This book seeks to shed light on the balance between national parliamentarism and European integration, and on the political and constitutional implications of demands to give the national parliaments a greater role in the EU. It raises the question whether the national parliaments truly deserve our unequivocal support. It is a question to which everybody seems to know the answer, but also one that is rarely seriously asked.

I am grateful to all those who have directly or indirectly contributed to my work and to the completion of this book, in particular Monica Claes, Deirdre Curtin, Adam Cygan, Bruno de Witte, Elvier Geurink, Aalt Willem Heringa, Ron Holz hacker, Jit Peters, Tapio Raunio, Joop van den Berg, Luc Verhey, as well as David O’Keeffe, who provided valuable comments as he reviewed the manuscript for publication. Thanks to Ewa Szkatula, Karel van der Linde and Vincent Verschoor at Kluwer, and to Julie Box for the language review.

Special thanks go to my wife Hannah, and her family, for their love and support throughout.

Philipp Kiiver

Maastricht, September 2005

## Summary

This book addresses the question whether national parliaments deserve a greater role in the European Union. It is set against the trend in the current debate – before and after the EU Constitutional Treaty project – towards emphasizing a primary or complementary role for the national parliaments in EU democracy and parliamentarism. The book distils and exposes the different perspectives from which stronger national parliaments might appear desirable in the first place, and thereby creates a reference framework from which to assess the feasibility and desirability of stronger national parliaments as against the possible objectives as identified under the different perspectives. The book thereby questions the shallow academic and political consensus that currently supports an enhanced role for national parliaments in the EU and shows that, depending on the point of view, it is not necessarily the most desirable cause to subscribe to. Without providing any final answers as to the appropriate role of national parliaments, it contributes to the analytical sobriety that is essential to any discussion on whether the national parliaments truly deserve our encouragement and support.

The book combines political reasoning with concepts from European and comparative constitutional law; furthermore, findings of empirical and analytical political science research on the effect of European integration on national parliaments are incorporated in the analysis. The book tackles the questions of what role national parliaments play in the EU already; what is the constitutionally and methodologically most sensible manner to address the national parliaments at treaty level; how the national parliaments of the EU-25 have organized their domestic scrutiny mechanisms; what makes a national parliament ‘strong’, what factors contribute to its ‘weakness’. It then goes on to assess as to how far is it feasible and desirable, in the light of the different perspectives on the issue, to sharpen national parliamentary scrutiny of EU affairs, to enhance inter-parliamentary co-operation, to set up a new EU institution comprising national MPs, to have the national parliaments elect the European Commission, to turn the parliaments collectively into guardians of the principle of subsidiarity; finally, and more fundamentally, the book addresses the question in how far support for the national parliaments can be reconciled with ever closer union?

A national parliament’s attitude towards oversight on EU affairs is to a large extent determined by its pre-existing institutional role and its relation to its government, as well as the degree to which European integration is salient among political parties and the electorate itself. The roles, competences and self-perception of parliaments differ from one Member State to another, and self-constraint in EU affairs can have valid reasons and even be a conscious choice; consequently the conclusion that one particular parliament is too permissive as regards EU affairs does not

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mean that *all* national parliaments can, should, or even want to develop greater activity in that field.

Generally, the addressing of ‘the’ national parliaments as a category of institutions turns out to be highly problematic. In the light of the heterogeneity and constitutional autonomy of the Member States, national parliaments can neither be easily defined, nor, at least in the case of lower chambers, singled out as actors independent from their governments, or presumed to act as a collective in sustainable solidarity as against their own governments. The term ‘national parliaments’ itself at present covers several assemblies that are either not elected, or not parliamentary in character, that do not control the government, or that in the presence of regional assemblies do not always have legislative competence; the term is, for the purpose of the allocation of concrete powers and privileges by virtue of EU treaty provisions, too vague. Unlike the European Union, the European Convention on Human Rights, where it addresses the right to vote, refers to the national ‘legislature’, and not ‘national parliaments’, and thereby features a workable term for its particular needs. For EU purposes, where parliaments are addressed in a broader capacity than just law-makers, and where actual powers and privileges are to be allocated, an authoritative and exhaustive list of addressed institutions, annexed to the relevant EU instrument, would not only be methodologically sound, it would also make the underlying policy choices visible and trigger reflection about the purpose of the entire exercise.

The exercise of strengthening national parliaments at the EU level is a measure that is neither impossible nor prohibited, but artificial as it requires a conscious effort. The exercise can be easily fitted into an agenda favouring national sovereignty, statehood and intergovernmentalism. It might seem desirable for the purpose of strengthening democracy at the national level, enhancing control over delegated competences and, pragmatically, for the purpose of consolidating national policy or co-opting (or implicating) MPs, including the opposition, into government bargaining. Embracing both the European Parliament and the national parliaments as fulfilling complementary functions in the EU as a constitutionally pluralist multi-level polity is meanwhile highly reconciliatory, but deceptive: national parliamentary activity is carried out in accordance with the parliaments’ national constitutional representative mandate and election-based incentives. The accountability process revolves around the question as to how far the government has stuck to, and fought for, the pre-determined national standpoint in EU bargaining, and whether it succeeded in preventing policies that are detrimental to the national interest. National interest is of course always present, but it needs to be reconciled with the preferences of other Member States; routinely sharpened domestic parliamentary polarization in the run-up to negotiations emphasizes the national stakes, and generally the intergovernmental element in EU decision-making, while decreasing EU decision-making efficiency and eclipsing left-right discourse on EU level with domestic we-they debates. Genuine European parliamentarism does not emerge from particularized debates, if such debates emerge at



all, and the EU will not become more parliamentary either if national MPs leave their deliberative forum behind, convene in Brussels, and merely duplicate the tasks of existing EU institutions. Duplication could apply to the functions of the Council (if an inter-parliamentary conference is divided into national delegations), the European Parliament (if such conference is divided by political colour, also for the purpose of electing the Commission) or the Intergovernmental Conferences (via the hardly less detached Convention method).

Subsidiarity enforcement via the national parliaments may be subtly drafted, and remind the Commission of its duty to justify its proposals under that heading, but awarding the national parliaments binding 'red-card' vetoes and direct access to the ECJ, beyond a more informal setup, in that context triggers the same concern about over-emphasizing national stakes, disrupting the EU decision-making process, eclipsing left-right cleavages in the European Parliament, distorting national constitutional government-parliament and centre-regions relations with clumsy intrusions and rights-conferrals from EU level, as well as carrying domestic political battles between government, opposition or a hostile upper chamber to the EU level and, once there, to court. It is recalled instead that the normative priority in EU constitution-building can very much remain the consolidation of the weight of the European Parliament, and of left-right cleavages as appropriately expressed at the EU level. Proponents of that integrationist cause, who might otherwise embrace the alleged capacity of national parliaments to 'bring Europe closer to the citizens' or to enhance the stability of the EU via transparency and subsidiarity, should be careful about expressing their support for stronger national parliaments in the European Union too hastily.

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## Introduction

The role of the national parliaments in the European Union has become a salient political and constitutional question, a question that represents a top item on the agenda of European integration. Attracting growing political and scholarly attention throughout the 1990s, addressed in the Nice Declaration on the future of the Union,<sup>1</sup> and featuring prominently before, during and after the first ratification attempt for the EU Constitutional Treaty, the national parliaments find themselves in the middle of an intriguing debate as to what their role should be in the EU. Calls for stronger or more active national parliaments abound, and their advocates emerge from the most unlikely quarters: Eurosceptics and Europhiles, scholars as well as pragmatics, in both Brussels and the national capitals, seem for various reasons to have acquired a taste for greater national parliamentary involvement in the European Union. All the more reason for us to take a closer look at the national parliaments, at their character and their qualities, and also at those who call for an enhancement of their role in the EU. What exactly do all these advocates expect of the national parliaments? Can the national parliaments really be all things to all men? There is a strong tendency in the ongoing debate to embrace the national parliaments for vaguely defined purposes, such as ‘more democracy’ or ‘more transparency’, without clarifying what effects and what side-effects might be triggered; a tendency to support the cause without asking whether, and for what purpose, stronger national parliaments would be desirable to have in the first place; a tendency, in short, to take the second step and skip the first. The purpose of this volume is to finally make that very first step. It will develop a theoretical reference framework to analyze the actual desirability of stronger national parliaments in the EU, from different distinguishable perspectives, so that from there on we can take the next steps with the necessary analytical sobriety. This work will not definitely answer the question whether the national parliaments deserve a greater role in the European Union’s constitutional architecture, but it will raise that question in the first place, and thereby do what is all too often omitted. And it will finally show that supporting stronger national parliaments in the EU is not such self-evident a cause as it might seem, that it is not a cause that everyone can or should hastily subscribe to. At a time when the European Union engages in ambitious and perhaps over-ambitious constitution-building exercises, it is all the more important, with respect to the national parliaments, to ask the right questions – and to think twice before answering them.

Of course, those who are attached to national sovereignty and statehood will not think twice, and will keep putting forward the national parliaments as the

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1 Nice Final Act, Declaration No. 23 (5).

## *Introduction*

only true source of democratic legitimacy in the European Union. For too long now, or so their argument goes, national parliaments have been giving away powers to Brussels, allowing their governments to pass binding EU legislation in the Council while escaping all public scrutiny and democratic accountability. Only if national parliaments retain legislative competences of their own and otherwise strictly call their governments to account for what they decide in Brussels, perhaps even participate directly in EU decision-making, or so the argument would continue, can democracy in the European Union be preserved. Europhiles, on the other hand, who traditionally emphasize the importance of strengthening the European Parliament, rather than the Member States' parliaments, also increasingly understand that more national parliamentary involvement, and more lively domestic debates about European integration, may perhaps bring Europe closer to the citizens. It might make the decision-making process more transparent and thereby stabilize the system as a whole. At the same time it might be useful to court the national parliaments in order to prevent them, or their electorate, from turning hostile to European integration – for instance when it comes to treaty ratification. Scholarly advocates of multi-level governance, multi-level constitutionalism or constitutional pluralism should rejoice if the national level of parliamentarism would effectively complement the European Parliament and the other loci of EU decision-making. Even to the national governments, a greater involvement of their parliaments might for pragmatic reasons appear attractive. With such broad support, it seems that the national parliaments are bound to get a bigger part in the play or, if not a bigger part, at least more attention, a more visible place on the stage.

And indeed, various proposals are on the market to strengthen the national parliaments in EU context. Most of them do not even require treaty amendments. Proposals range from greater awareness of the European dimension in national parliamentary debates, to stricter parliamentary oversight on individual governments at EU policy; from more interest in the EU policy process, to a more efficient organization of parliamentary committee systems; from more intensive inter-parliamentary co-operation and networking, to forms of direct and collective input of the national parliaments in the EU decision-making process. In line with the trend, the EU Constitutional Treaty project<sup>2</sup> represents a major effort to explicitly address the national parliaments on treaty level. The Convention that drafted the Constitutional Treaty already comprised national parliamentarians,<sup>3</sup> and the document it came up with turned out to be the first treaty to explicitly recognize the national parliaments' contribution to the democratic legitimacy of the EU, next to the European Parliament;<sup>4</sup> in fact, this was the first treaty in fifty

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2 Treaty establishing a Constitution for Europe (hereinafter TCE), text as of 29 October 2004, CIG 87/2/04 REV 2. All references to the TCE are based on this version.

3 See also Article IV-443 (2) TCE.

4 Article I-46 (2) TCE.

years to mention the term ‘national parliaments’ in its text proper in the first place. The text as adopted by the Convention and the subsequent intergovernmental conference expanded existing notification mechanisms to keep national parliaments in the loop of EU affairs.<sup>5</sup> Going a step further, the text included two immediate veto mechanisms for the national parliaments in EU decision-making: an early warning system against alleged breaches of the principle of subsidiarity in EU legislative proposals, with the possibility to force the initiator – typically the Commission – to reconsider a proposal if enough national parliaments have filed complaints,<sup>6</sup> as well as the possibility for any national parliament to veto the application of the passerelle clause, and thereby to block a unanimous vote in the European Council to move towards qualified majority voting or towards co-decision with the European Parliament in a given policy area.<sup>7</sup>

Not all of the Constitutional Treaty features were that innovative when the Convention and the IGC adopted them, not all of them are even terribly significant by themselves, and not all of them would strictly require a new treaty in order to work. Experiments with collective subsidiarity control in the national parliaments have, for instance, already started before the ratification process for the Treaty was even fully unfolded.<sup>8</sup> We should note, however, that even a formally modest or mere symbolic involvement of the national parliaments in the EU may stimulate political desire on the part of the parliaments to become more active in other areas, and to become more conscious of the powers they already have as regards EU affairs. New treaty provisions addressing the national parliaments are thus merely evidence of a larger phenomenon, namely that national parliaments seem to have become indispensable in the European Union’s present and future constitution-building ambitions.

What is all too often omitted in this constitution-building enterprise, before and after the Constitutional Treaty, however, is the question whether the assumed benefits from greater national parliamentary involvement can be gained in the

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5 Articles 1 and 2 of the TCE Protocol on the role of national parliaments in the European Union (distribution of all EU consultation papers and legislative proposals among the national parliaments), Article I-18 (2) (notification prior to the application of the flexibility clause), Articles I-42 (2), III-260, III-261, III-273 and III-276 (national parliamentary monitoring of the activities of Europol and Eurojust), Article I-58 (2) (notification about incoming EU membership applications), Article IV-443 (1) (notification of Treaty revision initiatives) and Article IV-444 (3) (notification prior to the intended application of the passerelle clause) TCE.

6 Articles I-11 (3) and III-259 TCE, as well as TCE Protocol on the role of national parliaments in the European Union and TCE Protocol on the application of the principles of subsidiarity and proportionality.

7 Article IV-444 (3) TCE.

8 See 7.4 *infra*.

first place, and at what price they would come. As noted at the outset, where endorsement of national parliaments has entered the mainstream, and where such ideas are woven into EU treaty drafting, a critical reflection about the underlying thoughts and the consequences of such an endorsement is very much in order. This is exactly the purpose of this book. It will explore from various perspectives what addressing the national parliaments in the EU means in theory, what it means in practice, where the deficiencies of concrete suggestions to that effect lie, and, more fundamentally, in how far stimulation of national parliamentarism is compatible with European parliamentarism and progressive European integration.

We shall start our analysis by clarifying the theoretical background, and the constitutional-law implications, of addressing national parliaments at EU level (chapter 1). Who exactly are 'the national parliaments' to begin with? The term is typically, for the sake of convenience, used as a self-explanatory catch-all denomination, but it actually points to a quite heterogeneous group, if we can speak of a group at all. How can these national parliaments then be sensibly addressed at EU level, such as by virtue of treaty provisions? These are questions that are not only relevant to treaty drafters, but to anyone who seeks to make an analytically credible argument on the role of national parliaments in the EU, whether as a proponent or detractor of the cause to enhance their role.

Once we have set out the theoretical fundamentals, we shall then turn to the practical side of the story (chapter 2), which is again something that is too often overlooked, especially in legal scholarship which could profit much more than it does from the empirical work of political scientists. In what will be a comparative overview, we shall examine the ways in which different national parliaments in the EU-25 are dealing with European integration today. At what stage do parliaments become active at scrutinizing their governments and their EU policies? How do parliamentary committee systems function in practice? On what national legal bases is European scrutiny in the parliaments conducted? What is it that makes a parliament eventually a strong and critical scrutinizer, what makes it a permissive rubber-stamp? How do we measure that, and can we speak of 'weakness' and 'strength' in the present context at all? That factual overview, which will draw *inter alia* on findings from, indeed, political science, will help us identify existing similarities and variations and, crucially, the underlying reasons for the particular shape of scrutiny mechanisms, and for the particular behaviour of national parliamentarians. This will allow us to draw broader conclusions as to the capacities of national parliaments to deliver what is increasingly demanded of them in EU context. For there are not only theoretical obstacles concerning the stimulation of the national parliaments in EU affairs, there are also practical ones: not all parliaments are alike, not all of them have the same agenda, there are reasons why they behave like they do, and these reasons are worth considering for both supporters and sceptics.

Bearing in mind the theoretical and practical caveats that will have been distilled at that point, we shall then ask what exactly can be demanded of the national



parliaments. For that purpose we shall critically assess a set of prominent proposals on how to give the national parliaments a greater role in the EU: the proposal that national parliaments should sharpen their domestic scrutiny of EU affairs (chapter 3), the proposal to step up inter-parliamentary co-operation, between national parliaments themselves and with the European Parliament (chapter 4), the occasionally floated proposal to create a ‘Third Chamber’ at EU level comprising national parliamentarians, next to the European Parliament and the Council, as well as the idea to resort more often to the Convention method of treaty revision (chapter 5), the proposal to promote accountability of the European Commission to the national parliaments (chapter 6) and the proposal, as it had been incorporated in the EU Constitutional Treaty but as it would also to a large extent work without a new treaty, to turn the national parliaments into guardians of the principle of subsidiarity, perhaps at some point to equip them with absolute veto powers and *locus standi* before the European Court of Justice (chapter 7).

It should be noted that nothing hinges on the strict separation of the above ideas from each other. In fact, they can very much overlap. Consider the following scenario: a group of national parliamentarians examines an incoming Commission proposal; they check it for compliance with the principle of subsidiarity; they go on and meet with their colleagues from other Member States in an inter-parliamentary conference to discuss it; they decide to write a complaint to the Commission on grounds of a perceived violation of subsidiarity; and they do that against the will of their own government, which intends to support the Commission proposal in the Council in its original form. Here we have in fact a blend of almost all of the above aspects: parliamentary scrutiny of EU documentation; subsidiarity control; inter-parliamentary co-operation; an inter-parliamentary gathering as a form of an EU-level body comprising national MPs; a confrontation between national parliaments and the Commission which may call into question the underlying hierarchies; and a tension in domestic government-parliament relations over the course of European integration. It is nonetheless helpful to consider the various elements one by one, not just for the sake of convenience and structure in *this* discussion, but in *any* discussion on the subject, because the elements’ individual assessment allows to better evaluate what they eventually add up to.

Our assessment of the national parliaments’ capacity to deliver what is expected of them under the various headings, the desirability of such delivery (which depends on the expectations), in short the sought reference framework for any future debate on the national parliaments, will essentially be based on two distinct perspectives on the matter. Assuming (1) a national constitutional point of view, we will consider what a stronger parliament (i.e. one that scrutinizes more sharply, networks more effectively, etc.) could mean for an individual Member State, for national players, and for an individual parliamentary system facing the challenge of European integration. From (2) a European perspective, we will then take a global view on the issue and consider what sharper scrutiny and stronger national parliaments could mean for the EU institutions and the EU architecture as a whole.