The French Parliament and European Integration

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Through successive constitutional reforms over the past two decades, French parliamentarians have gained new rights and instruments to monitor policy-making at EU level and to exert tighter scrutiny over the executive branch. Yet the more structural and long-standing obstacles to the repartimentarisation of EU issues have not been removed, which explains why the reforms have failed to deliver the hoped for Europeanization of parliamentary debates. While some progress has undoubtedly been made – notably with respect to MPs’ access to information and expertise on EU legislative proposals – Parliament’s overall influence in EU matters remains low and the innovations introduced by the Lisbon Treaty are unlikely to bring about any significant change to this state of affairs.

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Introduction

European integration affects national institutions in asymmetrical fashion. Some institutions have benefited while others have seen their influence decline as competences were shifted to the supranational level and governance and policy-making processes were rearranged in the domestic arena. Clearly on the winning side of European integration are national governments and ordinary courts. Ministers and heads of government may like to blame EU technocrats for all the unpopular constraints and regulations brought by the integration process. But the reality is that, through the European Council and the Council of Ministers, they are often the ones who call the shots in Brussels. Meanwhile, thanks to the twin doctrines of supremacy and direct effect of EU law, ordinary courts have gained the power to challenge domestic legislation. On the losing side of integration, the situation of national parliaments and constitutional courts is almost the mirror image of that of governments and ordinary courts. Forced to relinquish their monopoly of judicial review, constitutional courts have lost the unchallenged authority they used to hold over ordinary judges. The Court of Justice’s transformation of the Rome Treaty into something akin to a supranational Constitution has also occurred at their expense. Yet national

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Legislatures have undoubtedly been the most conspicuous losers of European integration. Not only have many of their competencies been transferred to the supranational level. Integration has also upset executive-legislative relations and accelerated the deparlimentarization experienced by Western European democracies since the Second World War. Left with less say over the content of legislation and little ability to control the executive as ministers make policies behind closed doors in the Council, backbenchers, it would seem, are deservedly seen as the main political victims of integration.⁴

Power and prestige, however, are not prerogatives that political actors renounce cheerfully. So, as one would expect, parliamentarians have tried to fight back. Parallel to constitutional judges – some of which have attempted to reassert authority over what they regard as their home turf in the face of a strongly activist Court of Justice – MPs have put their act together and sought to regain a measure of control over the conduct of European affairs.

**Figure 1 here**

Inasmuch as we can speak of a resurgence of national parliaments on the European stage, it seems to coincide with the 1990s when new European Affairs Committees were instituted or existing ones were revamped and had their status and powers upgraded (Figure 1). Some scholars have even suggested that this resurgence may have helped national legislatures reverse the deparlimentarization trend that national political systems have been

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undergoing since the beginning of the post-war period. While European integration initially aggravated deparliamentarization, concerns over the EU democratic deficit may now give MPs the chance to reclaim some of the influence lost to the executive branch.⁵

The continuous expansion of parliaments’ formal powers to monitor and scrutinize the executive in the conduct of European affairs observed in the Member States since the Maastricht Treaty seems to lend support to the reparliamentarization thesis. But the two protocols attached to the Lisbon Treaty, the Protocol on the Role of National Parliaments in the European Union and the Protocol on the Application of the Principles of Subsidiarity and Proportionality, appear to provide even stronger evidence of the resurgence of national legislatures. In addition to the much touted “Early Warning Mechanism”, which promises to give parliaments a formal say in the application of the subsidiarity principle, the protocols guarantee the right of MPs to be informed about the EU lawmaking process and to oppose the application of the so-called passerelle clauses.

Nevertheless, the example of the French Parliament shows there are two major obstacles to the reparliamentarization of EU politics and policies. The first is the MPs’ lack of incentive to grapple with the nitty-gritty of EU legislative proposals. Citizens tend to regard European issues as tediously technical and

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their representatives do not find Europe very sexy either. The policies that attract the attention of citizens – taxation, welfare, law and order – are still largely in the hands of national parliaments. So MPs primarily concerned with gaining re-election or simply desirous to address the actual concerns of their constituencies have little incentive to use their time and resources monitoring law-making at EU level. What is more, the logic of modern partisan organizations means that MPs belonging to the party in power will tend to be reluctant to hold their ministers to account. Ministers are often simultaneously party leaders. From a constitutional viewpoint they are supposed to be accountable to the legislature. But they stand above those who are supposed to hold them in check in the party hierarchy. Hence, no matter how many formal powers they are granted, parliamentarians in the ruling coalition are unlikely to show much appetite to use them against their government.

Second, even if MPs were really interested in EU affairs, powerful reasons speak against giving national MPs the power to issue mandating instructions to the ministers and government permanent representatives in Brussels. EU legislation typically involves complex package deals. Directives and regulations are the result of extensive horse-trading and back-scratching: “If you give me your vote on the working directive, you’ll get the commissioner for the internal market and he’ll give you his vote on the battery directive, etc.” For better or worse, this is how the European sausage factory works. That no government can hope to wield any influence in policy-bargaining at EU level if it comes to the negotiation table with its hands tied is part of the game. A government cannot
hope to get anything if it has nothing to offer. So there seems to be a point beyond which expanding the prerogatives of MPs may become counterproductive.

The reforms introduced in France over the past two decades have given French parliamentarians new rights and instruments to monitor policy-making at EU level and exert tighter scrutiny on the executive branch. But, as we shall see, the reforms have fallen short of overcoming these two obstacles. They have failed to deliver the Europeanization of parliamentary debates some had hoped for. Although some progress has been made – MPs have better access to information and expertise on EU legislative proposals – Parliament’s overall influence in EU matters remains low and the innovations brought by the Lisbon Treaty are unlikely to make any significant change to this state of affairs.

To assess the role of the French legislature in EU matters as well as the goal and impact of the recent institutional reforms, we need first to replace them within the broader context of the Fifth Republic, whose advent and history have come to be associated with the systematic marginalisation of Parliament. Under the Fifth Republic, the French legislature is a structurally weak institution (Section 1). Yet, despite this lingering structural weakness, the rules and procedures governing parliamentary scrutiny of European issues have gradually been brought into line with those of more powerful European legislatures. An evolution spurred as much by the desire to adapt to the reality of European integration as by a perception that parliamentary prerogatives had to be reinforced to counter-balance the dominance of an all-powerful and ubiquitous president (Section 2). However, constitutional reforms that fail to alter the
prevailing political equilibria are bound to be more symbolic than real. This seems to apply for some of the reforms introduced by the French constituent power but perhaps even more for the Lisbon Treaty. It establishes new mechanisms and guaranties that look nice on paper, but that are unlikely to achieve much in practice (Section 3).

**The Structural Weakness of Parliament under the Fifth Republic**

The literature on national parliaments emphasizes three factors as critical in determining the capacity of MPs to scrutinize and influence the executive branch in the conduct of negotiations at EU level:

(1) One is the overall weight of the legislative branch in the political system. Weak legislatures tend to be equally weak on Europe. Conversely, when a parliament is strong, its strength tends to spill over to EU issues.6

(2) The second factor is the public’s attitude towards European integration: a more widespread Eurosceptic attitude, the argument goes, creates demand for scrutiny and incentives for MPs to exert more control on the executive.7

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(3) The third factor is the nature of the governing coalition: coalition and minority cabinets produce more scrutiny than majority governments.\textsuperscript{8}

As to the second factor, the Eurobarometer survey shows that French voters are close to the EU average in their attitude towards European integration.\textsuperscript{9} But the first and third factors clearly suggest that parliamentary influence in EU affairs should be especially low in France. Whereas coalition governments are the norm in most of Europe, they are the exception in France. More importantly though, most cross-national studies rank the French Parliament as one of Western Europe’s weakest legislatures (Norton 1998; Döring 1995; Liebert 1995).\textsuperscript{10}


\textsuperscript{9} To assess public support for European integration, EU scholars commonly rely on the following Euro-barometer question: \textit{Generally speaking, do you think that (your country’s) membership in the European Community (Common Market) is 1) A good thing; 2) A bad thing; 3) Neither good nor bad}. For the year 2004 to 2009 the number of respondents giving the first answer averages 52\% for France and 56\% for the EU-27. Meanwhile, for the same period, the number of French respondents professing Euroscepticism is 16\%, compared with an EU-wide average of 13\%.

Norton’s comparative study ranks the French Parliament, together with the Irish, as the weakest in terms of general “policy effect” (Norton 1998).

**Figure 2 here**

On two common measures of parliamentary influence, agenda-setting control and attractiveness to lobbyists, the French Parliament also consistently trails other legislatures from Northern and even Southern Europe. Figure 2 depicts the results of two cross-national studies, by Döring on agenda-setting power\(^\text{11}\) and Liebert on interest-group attractiveness.\(^\text{12}\) The French Parliament does poorly on both indicators. Together with the Irish and British legislatures, it ranks among the least attractive to interest-groups and the least independent in terms of agenda-setting.

The French Parliament’s structural weakness is in large part the product of deliberate constitutional design. The Fifth Republic’s founding fathers sought to remedy what they viewed as the Fourth Republic major flaws, namely governmental instability and executive weakness. So in a bid to rationalize parliament – “parlementarisme rationalisé” became the mantra of the day – and to streamline the legislative process, they introduced a string of new rules and restrictions. The number of standing committees in each chamber was limited to six. The domain of statutory legislation was narrowed down. Legislators were

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\(^{11}\) See note above.

\(^{12}\) See note 10 above.
barred from proposing bills increasing spending or decreasing revenues. Also the executive was given the power to control the items on the legislative agenda, to block unwanted amendments (package vote) and to force the adoption of unpopular policies in the lower house, the National Assembly, through the famous confidence vote procedure. Under the latter procedure, the government could put through a bill without an actual vote taking place on the assembly’s floor. When invoked, the procedure meant that a bill was to be regarded as automatically adopted unless an absolute majority of deputies managed to submit and adopt a motion to censure the government. In other words, the procedure presented the deputies with a choice between enduring an unpopular measure and bringing down the entire government. 13 Two additional factors, the electoral system and the emergence of the imperial presidency, further contributed to lower the status and influence of Parliament. The two-round system used for legislative elections spurred a reorganization of the partisan landscape with more cohesive and better disciplined parties competing in an increasingly bipolarized setting. Starting with General de Gaulle, the successive presidents were able to use the legitimacy flowing from direct election to act as party leaders and present legislative elections as a referendum on the president or as a way of supplying him with a majority to implement his campaign.

manifesto. Thus, consistent with the original intent of the regime's founding fathers, the institutions of the Fifth Republic have given French politics a strongly majoritarian outlook. Presidents (and prime ministers in cohabitation periods) have enjoyed the support of more stable, docile and, in some cases (as centre-right governments in 1993-1997 and since 2002), large parliamentary majorities. When elections failed to deliver an absolute majority, minority governments could not only survive but also preserve executive dominance thanks to the battery of procedural weapons made available by the parlementarisme rationalisé.

Executive dominance has in effect robbed the function of MP of much of its prestige and significance. With Parliament increasingly looking like a rubber-stamp legislature and members of the governing coalition derided as puppets of the executive branch (“députés godillots”), French MPs, who often hold multiple political offices simultaneously at national and local level, have often elected to focus on their local mandate – in effect deserting parliamentary sessions.

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15 See Huber above note 10.
Nevertheless, with the Fourth Republic receding into memory, the French public has become less sympathetic to the idea of unfettered executive dominance. Scholars and politicians with an interest in institutional issues had long insisted on the necessity to revalue the role and function of Parliament in the French political system. Soon presidential candidates began to pay attention as well. In 1995, the Constitution was revised to grant MPs a measure of agenda-setting autonomy to fulfil President Chirac’s campaign pledge to restore Parliament to its strength and power. Reinforcing the rights and prerogatives of legislators also featured in good place in Nicolas Sarkozy’s campaign manifesto in the 2007 election. It translated into the constitutional reform of July 2008, which constitutes the most far-reaching attempt to overhaul parliamentary institutions and procedures so far under the Fifth Republic. MPs now share control of the legislative agenda with the executive (albeit not yet on a fully equal footing). Besides limiting the circumstances in which the government may resort to the confidence vote procedure, the reform extended the number of permanent committees from six to eight as well as the power of Parliament to issue resolutions. In the meantime, scholars have observed some signs that MPs are responding to these reforms and may be willing to play a more proactive role in the political process.

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17 See Kerrouche note 14 above.
The dynamic characterising parliamentary involvement in EU matters is in part endogenous to these developments. As we shall see, these successive reforms have benefited those who seek to reparlamentarize the conduct of EU affairs. Yet the changes brought to Parliament’s scrutiny arrangements and procedures have also been inspired by a felt necessity to adapt the constitution to the context of European integration which seems independent from the broader discussion over the role of Parliament in French politics. In this sense, European integration has been a factor on its own in loosening the constitutional straitjacket in which the Fifth Republic’s founding fathers had placed the legislature.18

Coming to Grips with European Issues: The Treatment of EU Affairs within the French Parliament

The influence of a parliamentary assembly over EU matters can be analysed along three dimensions: access to information, \textit{ex ante} control and \textit{ex post} control. Effectiveness here does not turn solely on the range and extent of the formal powers available to MPs. Crucial too is the extent to which procedural arrangements and organisational structures create incentives for MPs to get involved in processing European issues.

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European Affairs Committees, Permanent Committees and Plenary

As in other European legislatures, EU matters are rarely discussed in the plenary. So the main actors within Parliament are the specialized committees and, above all, the European Affairs Committees (EACs).

As seen above, under the 1958 Constitution, the number of permanent committees in the two chambers of the French legislature, the National Assembly and the Senate, had been initially limited to six. For this reason, the parliamentary bodies set up in 1979 in the two chambers to scrutinize EU affairs were not committees but mere “delegations”. Not until the July 2008 constitutional reform were the delegations granted the status of committee in full standing. As the constitutional revision raised the maximum number of permanent committees in each chamber from six to eight, there are now eight permanent committees in the National Assembly in addition to the Commission des affaires européennes. The Senate has its own EAC, though it has yet to make use of its constitutional right to create new permanent committees. The National Assembly’s EAC has 48 members while the Senate has 36. Both apply the


principle of double membership. Members of the EAC are all simultaneously member of a permanent committee and all permanent committees are represented in the EAC. Double membership is meant to foster the Europeanization of Parliament. Cross-national comparisons do suggest that parliamentary influence on EU matters is higher where MPs with relevant expertise over the specific policy areas under consideration are more involved in the scrutiny process.\textsuperscript{21} The Finnish experience, however, demonstrates that making it mandatory for specialised committees to report to the EAC on European issues, as the Finnish Constitution does, is a far more efficient way to bolster Europeanization than double membership.\textsuperscript{22}

\textit{Information}

The policy-making process at EU level is complex and often opaque to outsiders. The risk is always that governments exploit asymmetrical information to escape scrutiny at the domestic level. It is why access to EU documents is crucial for

\textsuperscript{21} See Raunio, “Holding Government Accountable in the European Union...” above note 6 at 321; Raunio and Hix note 5 at 150.

national legislatures. Both the timing and scope of information are important. The timing matters because the window during which parliamentarians may hope to influence the decision-making process is very short. EU institutions negotiate in informal trialogues and in the overwhelming majority of cases the Council’s position is in fact decided in the Working Groups or in Comité des Représentants Permanents (COREPER). In general, policy deals are already locked in by the time they are officially put on the agenda of a Council meeting. To make their voice heard and respond to the position of the various actors in the negotiation process, MPs also need comprehensive access to EU documents. This means not only legislative proposals but also Green and White papers, memoranda, consultation documents from the Commission, etc.

Table 1 here

As Table 1 shows, the French Parliament’s right to information was initially very limited but has been gradually extended. The 1992 constitutional revision that followed the adoption of the Maastricht Treaty spelled out for the first time a right for Parliament to be informed about EU issues. The new right was narrow in scope, however. Only draft EU acts of a “legislative nature” within the meaning of Article 34 of the French Constitution had to be transmitted. In practical terms, this meant that énarques in the Conseil d’État would decide which documents MPs were entitled to review. As a result, the volume of documents transmitted to Parliament was significantly lower than in other
Member States. But since then, the French Parliament has caught up. The 2008 constitutional reform removed the restriction to acts of "legislative nature". This had an immediate impact on the number of documents transmitted to the Parliament, which increased sharply in the year following the reform, as we see in Figure 3.

Figure 3 here

Moreover, even before the 2008 revision and the entry into force of the Lisbon Treaty, the government had started to forward Green and White papers and the Commission Annual Work Programme systematically.

Article 88-4 of the Constitution requires the government to lay draft and drafts proposals of EU acts before the Senate and the National Assembly as soon as they are transmitted to the Council. Altogether, despite noticeable improvements (one being the elimination of the bureaucratic filter represented by the Conseil d'Etat), government services still appear less diligent than in other Member States in complying with their information duty. For example,

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24 See Prime Minister’s memorandum of 22 November 2005.
unlike in Nordic countries or Germany, they do not attach explanatory memoranda to the documents they send to the legislature.\textsuperscript{25}

To get information on the position and negotiation strategy of the government, backbenchers may use their more traditional interpellation rights to direct questions at government members and at the minister for European affairs in particular.\textsuperscript{26} The EAC in the National Assembly and its counterpart in the Senate may also hear cabinet members as well as experts, MEPs or Commission officials. The annual number of hearings carried by each EAC varies between 15 and 20.

\textit{Ex Ante Control}

Inside each chamber, the EAC helps MPs and permanent committees sift EU documents by providing explanatory memos and by making available its expertise on EU matters. Figure 4 summarizes the scrutiny procedure in the National Assembly, which more or less parallels the procedure in the Senate.

\textbf{Figure 4 here}

Once they know what is going on in Brussels, parliamentarians may present their views to the government. They may do it informally on the occasion of a committee hearing or through the exercise of their interpellation rights. But they

\textsuperscript{25} Sprungk note 23 above at 141; Raunio, “Holding Governments Accountable in the European Union…” note 5 above at 322.

\textsuperscript{26} Sprungk note 23 at 144-5.
may also do it formally by tabling a proposal for a resolution. Reacting to what was regarded as a pernicious practice under the Fourth Republic, the 1958 Constitution originally precluded Parliament from passing resolutions. Yet a constitutional amendment adopted in the wake of the ratification of the Maastricht Treaty reintroduced this prerogative, precisely with regard to EU matters. (In a remarkable spill-over from EU affairs to the broader parliamentary agenda, the right to issue resolutions was later extended to non-EU policies.) Some national parliaments have the authority to issue voting instructions. The most prominent example is certainly the Danish Folketinget, although the Austrian Nationalrat and the German Bundesrat in areas falling into the jurisdiction of the Länder have acquired the power to “mandate” ministers before they travel to Brussels. In France, constitutional reformers, presumably held back by the desire to preserve executive flexibility in EU-level negotiations, have so far refused to grant deputies and senators the power to issue mandating instructions. Unlike the voting instructions of the Folketinget or the Nationalrat, the resolutions of the French Parliament are non-binding. They express a position from which ministers are allowed to deviate.

The power to issue resolutions belongs to each chamber as such. Both the EAC and individual MPs may make proposals. Figure 5 depicts the procedure for the passage of resolutions in the National Assembly.

**Figure 5.1 here**
The procedure in the Senate is similar to that followed in the National Assembly, except that resolution proposals are not systematically reviewed by the EAC.\footnote{\textit{See Standing Order of the Senate, Article 73 quinquies.}} Both chambers make relatively frequent use of their power to issue resolutions. Figure 5.2 shows the number of resolutions presented and adopted in the Senate since the constitutional reform of summer 1992.

\textless\textit{Figure 5.2 here}\textgreater

The number of resolutions issued by the National Assembly over the same period is roughly comparable.\footnote{Sprungk note 23 at 145; Andrea Szukala and Olivier Rozenberg (2001), “The French Parliament and the EU: Progressive Adaptation and Strategic Involvement,” in A. Maurer and W. Wessels (eds.), \textit{National Parliaments on their Way to Europe: Losers or Latecomers?}, Baden-Baden: Nomos Verlagsgesellschaft,, pp. 223-250, at 233.} Figure 5.3 shows the number of resolutions adopted in each annual parliamentary session from 1997-1998 to 2008-2009.

\textless\textit{Figure 5.3 here}\textgreater

One sign of the failure to involve the specialised committees in EU matters is the fact that most resolutions are proposed by the EACs. Of the 117 resolution proposals presented in the Senate from 2000 to 2009, for example, 71 (61%) were made by the Senate’s EAC. Another indication of the lack of interest of MPs outside the EACs for EU issues is the rarity with which the plenary debates resolution proposals. In the Senate only 28 out of 143 (20%) were adopted after a debate in the plenary between 1993 and 2009. The participation of the plenary
has not improved over time. For the 2000-2009 period, the figures are even worse: only 7 out of 75 resolutions (a mere 9%) were adopted by the Senate in a plenary session. Similarly, out of the 58 resolutions issued by the National Assembly between June 2002 and June 2009 only 6 (10%) were discussed on the floor of the plenary.

Ex Post Control

When parliamentarians do not have the power to bind ministers ex ante, ensuring executive accountability will essentially depend on their ability to exert ex post control. The only way for backbenchers to influence the government is to compel ministers to report on the outcome of EU-level negotiations and to appear before parliament when they decided to deviate from a resolution.

Assessing a legislature’s effectiveness in ex post control is difficult at best. Regarding the French Parliament, the little evidence available would suggest that, if anything, ex post control is virtually nonexistent. In contrast to other Member States where the law mandates that ministers report on the outcome of the EU decision-making process, cabinet members are under no comparable duty in France. The only means parliamentarians have at their disposal to make the government accountable are their interpellation rights and the possibility to grill ministers during committee hearings.

The Lisbon Treaty: A Whimper More Than a Bang

29 Szukala and Rozenberg above at 239-41; Sprungk note 23 at 145.
As we have seen, the capacity of a legislature to influence its own government when it conducts negotiations at EU level is essentially a matter of domestic politics and domestic constitutional arrangements. Arguably though, parliamentary scrutiny and executive accountability at the domestic level is not the only way through which national MPs may get a say in the EU policy-making process. An alternative avenue is direct participation. This means turning national parliaments into actors in their own right of the EU policy-making process. As a matter of fact, until 1979 when it was directly elected for the first time, the European Parliament was composed of representatives sent by national legislatures. Although the EP had very limited powers then, this arrangement ensured that national parliaments had a voice in the policy process at the supranational level.

No one is seriously contemplating a return to this appointment procedure. However, starting with the Maastricht Treaty, the role of national parliaments at EU level has received more attention as many have increasingly come to regard them as part of the solution to Europe’s democratic deficit. The Maastricht Treaty included two declarations “encouraging greater involvement of national Parliaments in the activities of the European Union”. The Amsterdam Treaty went one step further with a first “Protocol on the role of the national parliaments in the European Union”. The Protocol conferred an EU-level right to information on national legislatures. Henceforth “all Commission consultation documents (green and white papers)” had to be forwarded to national parliaments within six weeks, while “Commission proposals for
legislation as defined by the Council” were to be made available “in good time so that the Government of each Member State may ensure that its own national parliament receives them as appropriate”. While extending the right to information introduced by the Amsterdam Treaty, the Lisbon Treaty also gives national parliaments new prerogatives such as the power to veto the use of passerelle clauses or the right to compel the Commission to reconsider a legislative proposal viewed as contravening subsidiarity.

Still, despite all the publicity made about the innovations introduced by Lisbon, there are good reasons to think their impact will be marginal.

First, some of the rights created by the new Treaty are already enjoyed, de iure or de facto, by national MPs. This applies above all for the new Protocol on the Role of National Parliaments in the European Union. In addition to the documents already enumerated in the Protocol annexed to the Amsterdam Treaty, it specifies that all draft European acts – regardless of whether they emanate from a group of Member States, the European Central Bank, the Commission or the European Parliament – must be transmitted to national parliaments as the same time as to the Council and the European Parliament. Yet such a right means little for a legislature that already enjoys a comprehensive right to information under its own constitution, as does the French Parliament since 2008.

30 O’Brennan and Raunio above note 4 at 13.

31 See Article 2 of the Protocol on the Role of National Parliaments.
Second, the most widely publicised of all the novelties brought by the Lisbon Treaty, the Early Warning Mechanism, ignores the reality of legislative-executive relations in modern parliamentary regimes and raises collective action problems that appear insuperable. The so-called “yellow card” procedure enunciated in Article 7(2) of the Protocol on the Application of the Principles of Subsidiarity and Proportionality allows one-third of all national parliaments to force a review of a legislative proposal deemed to violate subsidiarity. A one-third threshold (9 out of 27 of the national legislatures) seems reasonable enough. But, from the date of transmission of a legislative proposal, MPs have only eight weeks to vet the proposal for subsidiarity, to put together an opinion and to consult the other parliaments to build the requisite coalition.\(^{32}\) Moreover, even if enough parliaments managed to coordinate their action to trigger a review, the Commission would still have the power to maintain the proposal unchanged. Indeed, its sole obligation under the yellow card procedure is to specify the reasons why it regards the contentious proposal as compatible with the subsidiarity principle. Added to the Protocol at the insistence of the Dutch government, the “orange card” mechanism established by Article 7(3) of the Protocol would seem to have potentially more bite on the policy-making process. It provides that if a simple majority of parliaments consider a proposal incompatible with subsidiarity, the Commission will not be allowed to maintain

its proposal if a simple majority of votes cast in the EP or a 55% majority in the Council regard the proposal as incompatible with subsidiarity. However, given the fusion of the executive and legislative branches in today’s parliamentary systems, national parliaments are unlikely to challenge proposals that have the support of their governments.\textsuperscript{33} Moreover, when the Commission knows that a policy will not be backed by a majority of the Member States’ governments, it is very likely that it will refrain from making a proposal in the first place. So it is hard to see how parliaments might want to use the mechanism, let alone to imagine a situation where they might be able to successfully challenge a Commission proposal.

Similar objections can be levelled at the passerelle clauses. The passerelle clauses give national parliaments the right to veto the decision to replace unanimous voting in the Council with Qualified Majority Voting. In principle, the veto of a single parliament is enough to prevent a move to qualified majority voting. Yet the decision to move to QMV requires a unanimous decision of national governments. Thus a parliament making use of its veto would necessarily go against the position of its own government. An unlikely prospect, for the reasons mentioned above. Note also that since their introduction by the Amsterdam Treaty the passerelle clauses are still waiting for their first application.

\textsuperscript{33} Raunio, “National Parliaments and European Integration…” note 19.
Surprisingly, the most promising of all the new instruments made available to national parliaments is perhaps one that has received less attention. Article 8 of the Protocol on Subsidiarity and Proportionality does not quite require, but nonetheless strongly recommends that Member States allow parliaments to bring a case before the ECJ. In some Member States, such as Spain\textsuperscript{34}, the law implementing the Protocol on Subsidiarity and Proportionality gives the executive the authority to refuse to transmit a case to the ECJ. By contrast, in Germany and France, the constitution has made it a matter of parliamentary right. Article 23 of the German Basic Law gives this power to MPs comprising $\frac{1}{4}$ of the Bundestag. The French Constitution is even more generous. Its new Article 88-6 gives the power to initiate proceedings to any group of 60 deputies or 60 senators. Hence the threshold may be low enough to allow Eurosceptic MPs from the ranks of opposition parties to challenge EU legislative acts alleged to violate subsidiarity. The importance of this new power should nevertheless be qualified in light of the ECJ’s track record on subsidiarity issues. Thus far the Court has proved very reluctant to invoke it against EU institutions.\textsuperscript{35} Unless the judges in the Duchy of Luxembourg take on a more


proactive approach, parliamentarians will quickly come to the conclusion that this new prerogative is as toothless as the others.

**Conclusion: Limits to the Reparliamentarization of EU Affairs**

The French Parliament has become more effective and now invests more resources in scrutinizing its government and in monitoring the EU policy-making process. However, its overall influence over European issues remains modest. When compared to other national legislatures, the French Parliament turns out to do better than some parliaments in Southern Europe and the British Isles but still lags behind the legislatures of Northern Europe and particularly Scandinavia. In a study by Törbjorn Bergman it ranked tenth among legislatures in the EU-15— a result broadly in line with the conclusions of other studies. Figure 6 shows a measure of parliamentary scrutiny in EU matters from an analysis conducted by the Finnish political scientist Tapio Raunio and based on

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37 See e.g. Andreas Maurer and Wolfgang Wessels (2001), *National Parliaments on their Way to Europe: Losers or Latecomers?*, Baden-Baden: Nomos Verlagsgesellschaft.
three indicators: the involvement of specialised committees, access to information and the power to issue voting instructions.\textsuperscript{38}

**Figure 6 here**

These results are not exactly flattering for French parliamentarians. But they should be viewed against the backdrop of legislative subservience towards the executive that has been the lot of French backbenchers under the Fifth Republic. In fact, seen from the broader perspective of executive dominance, which has been the defining characteristic of the French political system since the 1960s, the level of scrutiny achieved by the French Parliament looks almost remarkable. It surely appears to have done better than what one could predict on the basis of its overall weight in the political system and in light of the strongly majoritarian outlook of its party system.

French MPs have occasionally expressed frustration at their powerlessness in the face of blatant executive drift.\textsuperscript{39} Some seem to approve the position articulated by the German Constitutional Court in its Lisbon ruling, which insists that national parliaments remain the mainstay of the EU’s democratic legitimacy. Saying they dream of emulating the Danish model would

\textsuperscript{38} See Raunio, “Holding Governments Accountable in European Affairs,” above note 6.

\textsuperscript{39} See for instance the remonstrance of Senator Muguette Dini to the Secretary of State for European Affairs Bruno Lemaire on the government follow-up of a Senate resolution regarding a proposal for a new anti-discrimination directive, Plenary Debates 30 April 2009, J.O. 1 May 2009, p.4020.
be exaggerated, but at least they seem to regard the reforms introduced in Germany following the Court’s decision as an example of good practice.\textsuperscript{40}

The French example is consistent with the view that parliamentary adaptation to European integration is path-dependent upon established institutional and political structures.\textsuperscript{41} Established institutional arrangements induce certain political equilibria which in turn determine the distribution of costs and benefits among the political actors. Thus when the institutional changes required to increase parliamentary influence in EU matters have the potential to bring about a change in the prevailing political equilibrium, those who stand to lose most are likely to resist them. This is perhaps what may be happening in countries like France. Since the 1990s, the successive governments have regularly paid lip service to the idea that Parliament should have more say in EU matters. But in redesigning the rules and conditions of Parliament’s participation they have been careful to avoid disrupting the preexisting balance of powers. To a certain extent, the same logic applies at EU level. EU institutions and decision-makers may be willing to make symbolic gestures in the direction of domestic legislatures but not to turn them into real veto-players, let alone agenda-setters, of the policy-making process.


This suggests a rather cynical way of looking at these attempts to strengthen the position of national parliaments. Breeding a class of discontented MPs grumbling about European integration is neither in the interest of EU institutions nor of national governments. So making some symbolic changes at the margin may in fact be no more than a strategy to defuse criticism. This would explain why reforms in this area, whether at the domestic level or at the supranational level (Early Warning Mechanism), tend to be oversold. On this cynical view, the whole buzz about reinforcing the power of national parliaments appears to be little more than sugar-coating intended to make MPs swallow the pill of integration.

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Figure 1: Deparliamentarization and European Integration
Figure 2: Agenda-Setting Control and Interest-Group Attractiveness of National Parliament in EU-15

<table>
<thead>
<tr>
<th>SEA Period</th>
<th>Maastricht Period</th>
<th>Amsterdam Period</th>
<th>Lisbon Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>No systematic transfer of Council documents</td>
<td>EC/EU draft acts of legislative nature within the meaning of Articles 88-3 and 34 of the Constitution</td>
<td>All EC/EU documents of legislative nature within the meaning of Articles 88-3 and 34 of the Constitution</td>
<td>All EU draft acts and related documents without restriction</td>
</tr>
</tbody>
</table>

Table 1: Scope of Parliament’s Right to Information
Figure 3: Number of Drafts of EU Acts and Proposals Transmitted to Parliament

Figure 4: Procedure for Ex Ante Control in the National Assembly
Figure 5.1: Procedure Governing the Passage of Resolutions in the National Assembly
Figure 5.2: Resolutions on EU matters in the Senate, 1993-2009

Figure 5.3: Resolutions on EU matters in the National Assembly, 1997-2008\(^{43}\)

\(^{43}\) Figures for parliamentary session starting on October 1 of the indicated year and ending on September 30 of the following year.
Figure 6: Measure of Parliamentary Influence in EU Affairs (Raunio 2005)