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National Parliaments in the European Constitutional Order: Political Accountability Beyond Borders?

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1. INTRODUCTION: NATIONAL PARLIAMENTS AS EU ACTORS

As relative newcomers to the EU decision-making scene, national parliaments are invited to contribute to the good functioning of the Union.¹ To facilitate this, the Lisbon Treaty gives them a set of powers. These encompass a number of activities, such as monitoring the Union's observance of the principle of subsidiarity, participating in the procedures for Treaty amendment, scrutinising and evaluating Europol and Eurojust, and receiving various documents, notifications and reports from EU institutions.²

Yet none of these powers applies to the EU decision-making process proper. Once a proposal for an EU act reaches the Union legislature, the European Parliament takes over and national parliaments are excluded and have no direct say in the negotiations. But the latter may voice their opinions through their own means and methods.³ Many domestic legislatures carry out *ex ante* scrutiny of legislative and non-legislative proposals according to the procedures that they have crafted autonomously from the EU. Not only does this scrutiny involve informal communication with MEPs, EU officials and other national parliaments, it often does not cease until a policy objective has been achieved or until the proposal has assumed a final form. This means that national parliaments do not perforce resign on their controlling functions because the European Parliament is involved or because the Treaties do not formally grant them the right to participate in interinstitutional bargaining. The Treaties do, however, envisage an *active* contribution of national parliaments, which are expected to enhance the Union's credentials in terms of democratic legitimacy and political accountability.

These considerations challenge the hypothesis that national parliaments need to be understood as passive actors.⁴ They also raise the question of whether the national parliamentary scrutiny of draft EU decisions is directed exclusively to government representatives in the Council or also to the participating EU institutions. Are national parliaments merely the representative bodies of the Member States or are they part of a broader constitutional landscape of the Union?

This paper attempts to shed light on these issues by means of a qualitative empirical study of the manner in which the parliaments of the United Kingdom and France have scrutinised two politically salient EU proposals: the Services Directive and the European External Action Service Decision. We proceed with a theoretical and methodological embedding of this exercise, after which we present the case studies.

2. NATIONAL PARLIAMENTS IN A HETERARCHICAL UNION: ROOM FOR INTERDEPENDENT ACTION?

Contemporary theoretical depictions of the European constitutional order typically espouse heterarchical approaches to constitutionalism, whereby national and EU institutions exercise public power within an interdependent public law realm defined as pluralist, multilevel or

¹ Article 12 TEU.

² See more comprehensive insights in: Wyrzykowski, Mirosław et al. "General report: the role of national parliaments in the European Union," in *The role of national parliaments in the European Union: proceedings of the FIDE XXIV Congress Madrid 2010 - Vol. 1*, by Gil Carlos Rodríguez Iglesias and Luis Ortiz Blanco (eds), Madrid: Universidad Complutense de Madrid, 2010: 1-78; Gennart, Martin. "Les parlements nationaux dans le Traité de Lisbonne: évolution ou révolution," *Cahiers de Droit Européen*, Vol. 46, No. 1-2, 2010: 17-46; Barrett, Gavin. "'The King is dead, long live the King': the recasting by the Treaty of Lisbon of the provisions of the Constitutional Treaty concerning national parliaments," *European Law Review*, Vol. 33, No. 1, 2008: 66-84; Delcamp, Alain. "Les parlements nationaux et l'Union européenne: de la reconnaissance à l'engagement," *Revue du Marché Commun et de l'Union Européenne*, No. 544, 2011: 7-12.

³ See more recent accounts in: Tans, Olaf et al. (eds). *National parliaments and European democracy: a bottom-up approach to European constitutionalism*, Groningen: Europa Law Publishing, 2008; Barrett, Gavin (ed.). *National parliaments and the European Union: the constitutional challenge for the Oireachtas and other member state legislatures*, Dublin: Clarus Press, 2008.

⁴ See for instance: Kiiver, Philipp. *National parliaments in the European Union: a critical view on EU constitution-building*, The Hague: Kluwer Law International, 2006.

composite. This paper incorporates national parliaments into these visions of EU constitutionalism.

The concept of *constitutional pluralism* originates in the idea that the EU's and the Member States' claims to ultimate legal authority are not exclusive but coexistent.⁵ Accordingly, the relations between the Member States are structured heterarchically (i.e. horizontally) rather than hierarchically (i.e. vertically).⁶ In such a constellation, national and supranational institutions act outwardly towards each other regardless of the existence of legal borders. They may do so to increase their own capacity of action, but also to reduce or perhaps corroborate that of the other actors within the Union.⁷ This opens the door to national parliaments acting as counterparts of EU institutions.

According to *multilevel constitutionalism*, the EU is a *Verfassungsverbund*, a compound consisting of the constitutions of the Member States and of the Treaties. Though formally separate, EU and national institutions are tightly interlinked and mutually dependent.⁸ In Pernice's words, while the European Parliament is a primary source of EU legitimacy, "national parliaments acting as European parliaments are complementary and indispensable for the functioning of the European Union".⁹ A more specific approach understands the EU as a multilevel parliamentary field in which both national and European parliaments share the function of democratic representation.¹⁰ Depending on their role perceptions, MPs and MEPs interact, consult and cooperate.¹¹

Akin to this model is that of *composite constitutionalism*. As Besselink has argued, constitutional interdependence is inherent in the EU, which is cast in "a set of mutually interdependent and communicating constitutions within an overarching composite constitutional order which renders these constitutions coherent".¹² Due to its polycentric character, the relations between national and EU institutions are more dynamically hypothesised. National parliaments are free to interact with the EU level to obtain information or seek account for the decisions taken.¹³ As Amtenbrink put it, these interactions "may in the future enhance the democratic legitimation of Union activities while at the same time adding to the accountability of the Council, the European Commission and the European Parliament".¹⁴ After all, disqualifying member-state parliaments would "deny at least three centuries of European democratic and parliamentary tradition".¹⁵

⁵ Walker, Neil. "The idea of constitutional pluralism," *Modern Law Review*, Vol. 65, No. 3, 2002: 346.

⁶ Walker, Neil. "The idea of constitutional pluralism," *Modern Law Review*, Vol. 65, No. 3, 2002: 337.

⁷ Rodin, Siniša. "Constitutional pluralism and the original idea," *Revista General de Derecho Público Comparado*, No. 7, 2010: 3.

⁸ Pernice, Ingolf. "Multilevel constitutionalism and the Treaty of Amsterdam: European constitution-making revisited," *Common Market Law Review*, Vol. 36, No. 4, 1999: 707 and 710.

⁹ Pernice, Ingolf. "The role of national parliaments in the European Union," *Walter Halstein Institute Paper 5/01*, p. 17.

¹⁰ Crum, Ben and Fossum, John E. "Multilevel parliamentary field: a framework for theorising representative democracy in the EU," *European Political Science Review*, Vol. 1, No. 2, 2009: 252 and 260.

¹¹ Fossum, John Erik. "The future of the European order," in *The European Union legal order after Lisbon*, by Patrick Birkinshaw and Mike Varney (eds), Alphen aan den Rijn: Kluwer Law International, 2010: 54.

¹² Besselink, Leonard. "Case C-145/04, Spain v. United Kingdom, judgment of the Grand Chamber of 12 September 2006; Case C-300/04, Eman and Sevinger, judgment of the Grand Chamber of 12 September 2006; ECtHR (Third Section), 6 September 2007, Applications Nos. 17173/07 and 17180/07, Oslin Benito Sevinger and Michiel Godfried Eman v. the Netherlands (Sevinger and Eman)," *Common Market Law Review*, Vol. 45, No. 3, 2008: 803.

¹³ Besselink, Leonard. *A composite European constitution*, Groningen: European Law Publishing, 2007: 18-19; Besselink, Leonard. "National parliaments in the EU's composite constitution: a plea for a shift in paradigm," in *National and regional parliaments in the European constitutional order*, by Philipp Kiiver (ed.), Groningen: Europa Law Publishing, 2006: 119 and 125.

¹⁴ Amtenbrink, Fabian. "The multidimensional constitutional legal order of the European Union – a successful case of cosmopolitan constitution-building?," *Netherlands Yearbook of International Law*, Vol. 39, 2008: 57.

¹⁵ Besselink, Leonard and Mourik, Brecht van. "The roles of the national parliament and the European Parliament in EU decision-making: the approval of the Lisbon Treaty in the Netherlands," *European Public Law*, Vol. 15, No. 3, 2009: 316.

Fed by these theoretical models, this paper uses the method of what we will call *parliamentary interdependence* to determine the extent to which national parliaments can be considered actors within the European constitutional order. The analysis of parliamentary interdependence relies, beside other things, on the institutional role perceptions of the parliaments involved in EU decision making. These role perceptions furnish the ideational context as opposed to the physical context in which parliamentary scrutiny takes place. With this in mind, we define parliamentary interdependence as *a set of processes within the European constitutional order in which parliamentary bodies, with a view to fulfilling their prescribed or perceived constitutional tasks, not only directly interact with institutions established outside their own legal system but also shape their action in relation to that performed by or attributable to these institutions*. Pliakos offers an explanation of why such inquiry is relevant:

The limitation of the parliamentary control on national bodies loses its meaning. The protection of the interests of the citizens they represent cannot be achieved anymore, but only through the control of the Union's bodies.¹⁶

The key added value of parliamentary interdependence is that it liberates the analysis from the shackles of the Treaty provisions by exploring the potential causality in the exercise of constitutional competences by national parliaments, on the one hand, and the European Parliament and the Commission, on the other. The analysis focuses on the claims, i.e. political and legal arguments made by political groups represented in parliament regarding the participation of national governments and EU institutions in the process of EU decision making.

To operationalise the concept of parliamentary interdependence, we will pose several questions for each case study. These refer to the performance, substantive outcome and accountability process of scrutiny and are classified into five categories:

- (A) *Scrutiny*: was a given dossier scrutinised and, if not, what caused the lack of scrutiny?
- (B) *Controversy*: did a politically contentious issue arise and, if so, what was it and why?
- (C) *Information*: what were the sources of information for scrutiny, i.e. did a given parliament rely only on the information furnished by the government or did it also seek information from relevant EU institutions and with what goal?
- (D) *Outcome*: were any recommendations or suggestions made for EU institutions to amend the dossier and, accordingly, was the government or an EU institution held responsible for the solutions proposed or adopted in a given dossier?
- (E) *Parliamentary interdependence*: was the participation or exclusion of the European Parliament from decision making a relevant factor in the scrutiny process and, if so, what position did a given national parliament adopt towards the European Parliament and what was the rationale behind such a position?

These questions draw a relatively complete image of the European scrutiny process in a national parliament. The descriptive part on the existence and contents of the scrutiny activities (questions A and B) lays the ground for the analytical part (questions C, D and E) on the constitutional context within which scrutiny unfolded. Under the following headings we carry out the case studies, which comprise the descriptive and analytical parts.

3. THE SERVICES DIRECTIVE: THE CURIOUS CASE OF MARKET LIBERALISATION

3.1. France

¹⁶ Pliakos, Asteris. "National parliaments and the European Union: necessity of assigning a supranational role," *European Review of Public Law*, Vol. 19, No. 3, 2007: 778.

3.1.1. Assemblée nationale

A. Scrutiny claims

The scrutiny of the Services Directive in the *Assemblée nationale* began with the adoption by the Delegation for the European Union of a report on 2 February 2005. Whereas the pursuit of a more complete internal market in services was cheered as a legitimate and desirable goal for the Union, the Commission incurred a flurry of criticisms for the legislative solutions proposed.

First, the impact assessment was assessed as insufficient, because it failed to take account of the facts, on the one hand, that many services, due to the nature of the activity or the type of enterprise concerned, were not conducive to cross-border trade; and, on the other, that very dynamic economic sectors, such as finance and transport, were to be excluded from the scope of the Directive.¹⁷

Second, the country of origin principle was fiercely opposed for carrying a number of serious risks, such as social and legal dumping, which could lead to unfair competition, the lowering of the quality of the services offered and the diminution of the level of consumer protection. The risk of legal uncertainty was especially pronounced. In the field of penal law, the prohibition for the French judiciary to apply French penal law to a service provider from another Member State which engages in an activity that is legal in the Member State of origin but illegal in France, would violate the French principles of the territoriality of law and equality before the law, which fall under the essential conditions for the exercise of national sovereignty. A similar problem would arise in the field of private international law. While French law would apply to a French service provider offering services in another Member State, the divergences in the jurisprudence between France and the host Member State would make it unlikely that French law would be interpreted in the same fashion in the host Member State as it would in France. Moreover, the country of origin principle was judged incompatible with the existing disparities between the Member States and any sweeping regulation of services had to be preceded by the harmonisation of relevant national sectors.¹⁸

Third, the scope of the Directive needed to be limited by excluding the economic services of general interest from the application of the freedom of establishment, certain services provided by persons whose provision is only allowed upon being appointed by an official act of government (such as notaries and bailiffs), audiovisual and cultural services, healthcare services, social services and gambling.¹⁹

The draft Services Directive also gave rise to a more general appraisal of the Commission as such. While the Commission presided over by Romani Prodi displayed elements of "malfunctioning", that presided over by José Barroso was praised for the introduction of new working methods. These methods include: the placement of all commissioners in the Berlaymont building; their organisation in workgroups to spur exchanges of views of a more political nature as opposed to technical consultations between directorates-general favoured previously; the holding of regular internal political debates; the focusing of the Commission's weekly meetings

¹⁷ *Assemblée nationale, Délégation pour l'Union européenne, Rapport d'information no. 2053 sur la proposition de directive du Parlement européen et du Conseil relative aux services dans le marché intérieur* of 2 February 2005, rapporteur Anne-Marie Comparini (UDF), pp. 13-14.

¹⁸ *Assemblée nationale, Délégation pour l'Union européenne, Rapport d'information no. 2053 sur la proposition de directive du Parlement européen et du Conseil relative aux services dans le marché intérieur* of 2 February 2005, rapporteur Anne-Marie Comparini (UDF), pp. 33-36.

¹⁹ *Assemblée nationale, Délégation pour l'Union européenne, Rapport d'information no. 2053 sur la proposition de directive du Parlement européen et du Conseil relative aux services dans le marché intérieur* of 2 February 2005, rapporteur Anne-Marie Comparini (UDF), pp. 37-39.

on crucial matters so as to allow more thorough discussion; and a more systematic recourse to impact analyses and public consultations.²⁰

Finally, it was underlined that French MEPs of all political affiliations were mobilised to defend numerous amendments to the proposal and that the codecision procedure, in conjunction with the increased political weight of the European Parliament after the 2004 election, gave hope that the Directive would be profoundly amended. The report concluded with a recognition of the importance of national parliamentary scrutiny for the Union:

This strong mobilisation of our colleagues from all the Member States, triggered by the Delegation for the European Union of the *Assemblée nationale*, could indeed foreshadow a lasting reinforcement of the control exercised by national parliaments over European affairs, thanks to the new impetus that the future Constitutional Treaty will bring to Europe.²¹

A further confirmation of this statement came from Christian Philip (UMP) during the meeting of the Delegation for the European Union at which the report was examined in the presence of several French MEPs:

The mobilisation around the Services Directive is not symptomatic of Europe's malfunctioning; *it is indeed the role of the European Parliament and national parliaments to say 'no' to the Commission when it gets astray.*²²

The central argument at the meeting, advanced by both MPs and MEPs, was that the Commission's proposal infringed subsidiarity.²³ The Committee for Economic Affairs came to the same conclusion.²⁴

Based on the Delegation's report, the *Assemblée nationale* adopted a European resolution on 15 March 2005. The resolution endorsed most of the recommendations from the report, such as those on the desirability of creating an internal market in services, on the need for prior harmonisation, the exclusion of certain sectors from the scope of the Directive and the preservation of national penal and social law. Significantly, it assessed the draft Directive as "unacceptable" and "resolutely demanded" its reconsideration, the abandonment of the country of origin principle and the retention of the requirement of declaration for posted workers to enable the host Member State to maintain control over their service activities.²⁵ Another resolution, tabled mainly by Socialist MPs, which requested the Commission to withdraw the proposal altogether, to first draft a directive on the public services or the economic services of general interest and to respect the path of sectoral harmonisation, was not adopted.²⁶ In questions to the

²⁰ *Assemblée nationale, Délégation pour l'Union européenne, Rapport d'information no. 2053 sur la proposition de directive du Parlement européen et du Conseil relative aux services dans le marché intérieur* of 2 February 2005, rapporteur Anne-Marie Comparini (UDF), p. 31.

²¹ *Assemblée nationale, Délégation pour l'Union européenne, Rapport d'information no. 2053 sur la proposition de directive du Parlement européen et du Conseil relative aux services dans le marché intérieur* of 2 February 2005, rapporteur Anne-Marie Comparini (UDF), p. 52.

²² *Assemblée nationale, Délégation pour l'Union européenne, Compte rendu no. 112, Réunion du mercredi 2 février 2005 à 16h 15*, p. 5 (emphasis added).

²³ This was invoked by Jérôme Lambert (PS), Christian Philip (UMP), Pierre Lequiller (UMP), Jean-Marc Ayrault (PS) and Jacques Toubon (EPP, France). *Assemblée nationale, Délégation pour l'Union européenne, Compte rendu no. 112, Réunion du mercredi 2 février 2005 à 16h 15*, pp. 4-8.

²⁴ *Assemblée nationale, Commission des affaires économiques, de l'environnement et du territoire, Rapport no. 211 sur la proposition de directive du Parlement européen et du Conseil relative aux services dans le marché intérieur* of 1 March 2005, rapporteur Robert Lecou (UMP), p. 16.

²⁵ *Assemblée nationale, Résolution no. 402 sur la proposition de directive du Parlement européen et du Conseil relative aux services dans le marché intérieur* of 15 March 2005.

²⁶ *Assemblée nationale, Proposition de résolution no. 2048 sur la proposition de directive du Parlement européen et du Conseil relative aux services dans le marché intérieur* of 1 February 2005.

Government, the Socialists and Communists reiterated their stance, but the Government did not go beyond agreeing that the unamended version of the Directive was unacceptable.²⁷

The plenary debate of 15 March 2005, which preceded the adoption of the resolution, revealed a wide political consensus on the fallacies of the Commission's proposal not only among the political parties represented in the House but also among Government ranks. In fact, Claudie Haigneré, the Minister for European Affairs, recalled that European Parliament rapporteur Evelyne Gebhardt (S&D, Germany) largely shared the same preoccupations and assured the present MPs of the value of their effort:

Joint action by the Government, the European Parliament, but also by the *Assemblée nationale* and the *Sénat*, which have strongly reacted, for which I am grateful, has raised the awareness in the Commission of the numerous difficulties posed by this proposal for a directive.²⁸

As examples of influence, she adduced, on the one hand, the announcement by Commission President Barroso in favour of finding a consensus regarding both the country of origin principle and the scope of application of the Directive; and, on the other, the intention of the Commissioner for Internal Market, Charlie McCreevy, to revise the text upon the European Parliament's pronouncement.

In harmony with Minister Haigneré's statement, Marc Laffineur (UMP) claimed that:

If any lesson is to be drawn from this controversy, it is the enhancement of the role of parliaments [...] The Commission has committed an error of judgment, but representative democracy, through the action of parliaments, has succeeded to make its voice heard.²⁹

That the democratic legitimacy of the Union was a factor in the French Parliament's scrutiny of EU decision-making processes flows from the interventions of several MPs. Pierre Lequiller (UMP), the Chairman of the Delegation for the European Union, explained that the purpose of adopting a European resolution was to place at the Government's disposal the support of the citizens' direct representatives for the defence of the interests not only of France but also of Europe.³⁰ Pierre Cohen (PS) submitted that it was fundamental for national parliaments to act *ex ante*, since reliance on the national and European parliaments added a democratic dimension to often secretive intergovernmental or technocratic deals.³¹ For Léonce Deprez (UMP), the plenary debate was a sign that the French Parliament could and had to play a role in the European politics of tomorrow, as "it is very important to be known at the European level that the representatives elected by the French nation disagree and consider this Directive unacceptable".³² Surely these claims, due to a lack of formal accountability links with EU institutions as such, amount to peer pressure, which, in the circumstances such as those engendered by the Services Directive, can be just as effective.

These references to cross-level interparliamentary cooperation were not empty declarations. The Delegation for the European Union held a meeting in Brussels with French MEPs and rapporteur Gebhardt on 30 November 2005, a week after the vote in the European

²⁷ See *Question au Gouvernement no. 1859* by Pierre Cohen (PS), JORF, 3.2.2005, p. 606 and *Question au Gouvernement no. 2005* by Alain Bocquet (PCF), JORF, 30.3.2005, p. 2501.

²⁸ *Assemblée nationale, Compte rendu intégral, 2^e séance du mardi 15 mars 2005, 175^e séance de la session ordinaire de 2004-2005, JORF [2005] A.N. (C.R.) 24[2], 16.3.2005, p. 2021.*

²⁹ *Assemblée nationale, Compte rendu intégral, 2^e séance du mardi 15 mars 2005, 175^e séance de la session ordinaire de 2004-2005, JORF [2005] A.N. (C.R.) 24[2], 16.3.2005, p. 2023.*

³⁰ *Assemblée nationale, Compte rendu intégral, 2^e séance du mardi 15 mars 2005, 175^e séance de la session ordinaire de 2004-2005, JORF [2005] A.N. (C.R.) 24[2], 16.3.2005, p. 2029.*

³¹ *Assemblée nationale, Compte rendu intégral, 2^e séance du mardi 15 mars 2005, 175^e séance de la session ordinaire de 2004-2005, JORF [2005] A.N. (C.R.) 24[2], 16.3.2005, p. 2030.*

³² *Assemblée nationale, Compte rendu intégral, 2^e séance du mardi 15 mars 2005, 175^e séance de la session ordinaire de 2004-2005, JORF [2005] A.N. (C.R.) 24[2], 16.3.2005, p. 2036.*

Parliament's Committee for the Internal Market but before the plenary session. The opportunity was seized to gather first-hand information on the evolution of the dossier and to reiterate the concerns of the French Parliament. It was noted that certain of the requests made by the resolution of the *Assemblée nationale* were beginning to take shape at the European level, among which significant progress was being made towards limiting the scope of the Directive.³³

On 2 March 2006, the Communist and Republican MPs, discontent with the substantive outcome of the European Parliament's first reading vote, tabled a draft resolution on the Services Directive. It primarily called for an explicit rejection of the country of origin principle and requested the Commission to withdraw its proposal.³⁴ The Committee for Economic Affairs published a report on this draft resolution a week later, concluding, on the basis of an analysis of the amendments adopted and rejected by the European Parliament, that ambiguity remained as to the consequences of refusing to enact the application of the country of destination principle and that the list of sectoral exclusions was still incomplete and lacked clarity especially with regard to services of general interest.³⁵ It was, therefore, "more necessary than ever to rally against the Services Directive", argued its rapporteur, Alain Bocquet (PCF).³⁶ The Committee, nonetheless, refused to support the draft resolution. So did the Delegation for the European Union after its own appraisal, since the dominant view was that the text adopted by the European Parliament was balanced and corresponded well to the concerns of the *Assemblée nationale*. Chairman Lequiller expressed satisfaction about the fruitful collaboration on several occasions with MEPs, praising particularly the accomplishment of Jacques Toubon (EPP, France) in lobbying in favour of "the French positions" with numerous MEPs.³⁷

After a plenary debate along the lines of the discussions held in these two committees, the draft resolution was rejected. The opposition tried to infuse the debate with the argument that the French citizens' rejection of the Constitutional Treaty in the referendum of 29 May 2005 should also decide the fate of the Services Directive. In order to fortify its insistence that the country of origin principle could, despite its deletion, still apply by implication, the opposition also invoked the fact that an amendment tabled in the European Parliament by the European United Left/Nordic Green Left group, seeking explicitly to enshrine the country of destination principle, was straightforwardly refused.³⁸ However, none of it convinced the majority, which were adamant that the European Parliament's achievement at first reading met the objections of the *Assemblée nationale*. Indeed, rapporteur Anne-Marie Comparini (UDF) claimed that:

The similarity between the recommendations from the report and the amendments adopted by the European Parliament show that the contribution of national parliamentarians is indispensable for

³³ *Assemblée nationale, Délégation pour l'Union européenne, Compte rendu no. 149, Réunion du mercredi 30 novembre 2005 à 15h au Parlement européen*, pp. 4 and 11.

³⁴ *Assemblée nationale, Proposition de résolution no. 2923 sur la proposition de directive du Parlement européen et du Conseil relative aux services dans le marché intérieur* of 2 March 2006.

³⁵ *Assemblée nationale, Commission des affaires économiques, de l'environnement et du territoire, Rapport no. 2939 sur la proposition de résolution (n° 2923) de M. Alain Bocquet et des membres du groupe député-e-s communistes et républicains sur la proposition de directive du Parlement européen et du Conseil relative aux services dans le marché intérieur* of 8 March 2006, rapporteur Alain Bocquet (PCF), pp. 23-24.

³⁶ *Assemblée nationale, Commission des affaires économiques, de l'environnement et du territoire, Rapport no. 2939 sur la proposition de résolution (n° 2923) de M. Alain Bocquet et des membres du groupe député-e-s communistes et républicains sur la proposition de directive du Parlement européen et du Conseil relative aux services dans le marché intérieur* of 8 March 2006, rapporteur Alain Bocquet (PCF), p. 38.

³⁷ *Assemblée nationale, Délégation pour l'Union européenne, Compte rendu no. 162, Réunion du mercredi 8 mars 2006 à 9h 30*, pp. 11-13. In a plenary session a week later, he informed the members that the discussions with MEPs were of "remarkable quality" and that the French MEPs have made a "major contribution" to the European Parliament's "true counter-proposal". *Assemblée nationale, Compte rendu intégral, 1^{re} séance du mardi 14 mars 2006, 168^e séance de la session ordinaire de 2005-2006*, JORF [2006] A.N. (C.R.) 23[1], 15.3.2006, pp. 1783 and 1782.

³⁸ See the speeches by Marc Dolez (PS) and Alain Bocquet (PCF) in: *Assemblée nationale, Compte rendu intégral, 1^{re} séance du mardi 14 mars 2006, 168^e séance de la session ordinaire de 2005-2006*, JORF [2006] A.N. (C.R.) 23[1], 15.3.2006, pp. 1783 and 1792.

the approximation of laws. [...] We are counting on the highest French authorities to defend the proposals of the European Parliament: because the majority of our demands are taken into account therein, but also because the authority acquired by the European Parliament must be supported. To affirm and reinforce that authority is to guarantee a Europe in which the voice of the people is heard.³⁹

On 10 May 2006, the Delegation for the European Union held a meeting, which assessed that the Commission accepted some 95% of the European Parliament's amendments and, apart from minor remaining points of contestation, invited the Government to support the Commission's revised proposal.⁴⁰

B. Analysis

(A) *Scrutiny*. The *Assemblée nationale* carried out detailed substantive, policy scrutiny of the Services Directive, zooming in on the contents of the policy that the Union intended to pursue.

(B) *Controversy*. The controversy broke out regarding the application of the country of origin principle and the wide scope of the Directive. These were vehemently opposed in order to protect French economic interests.

(C) *Information*. To achieve this goal, however, the MPs did not restrict themselves to the information provided by the French Government. They placed great emphasis on establishing close contact with the European Parliament, particularly with the French MEPs but also with the European Parliament rapporteur for the Directive. The reason for this primarily lay in sharpening their scrutiny claims towards the Union.

(D) *Outcome*. The *Assemblée nationale* provided clear and concise suggestions for the modification of the contents of the Directive. The main goal was to change the Commission-sponsored policy of the liberalisation of the services market. The direction that the Union had taken was disapproved of and the Government was but one channel for communicating the House's policy preferences. The main target of criticism was the Commission, whose work was assessed both regarding this particular dossier and, more broadly, regarding its functioning as an EU institution. Since MPs passed judgments about the Commission rather than about the French Government, it could be argued that the Commission was the addressee of the scrutiny.

(E) *Parliamentary interdependence*. The participation of the European Parliament in the moulding of the Services Directive was highly relevant for the *Assemblée nationale*, as it was seen as a suitable medium through which to vent opposition to some of the key elements of the Bolkestein proposal. The MPs joined forces with their counterparts in the European Parliament to strike out the country of origin principle. They actively and, reportedly, successfully lobbied in favour of their position through French MEPs.⁴¹ Comments by a number of MPs show that this was indeed an important channel for participating in the decision-making process.

In conclusion, it should be held that the *Assemblée nationale* acted beyond the French constitutional system and understood its role as being an integral part of the Union's decision-making machinery.

3.1.2. Sénat

³⁹ *Assemblée nationale, Compte rendu intégral, 1^{re} séance du mardi 14 mars 2006, 168^e séance de la session ordinaire de 2005-2006, JORF [2006] A.N. (C.R.) 23[1], 15.3.2006, p. 1784.*

⁴⁰ *Assemblée nationale, Délégation pour l'Union européenne, Compte rendu no. 171, Réunion du mercredi 10 mai 2006 à 16h 15, pp. 2 and 5.*

⁴¹ It has also been argued that the French negative position on the Bolkestein proposal had an impact on EU politics and the codecision procedure itself. Crespy, Amandine. "When 'Bolkestein' is trapped by the French anti-liberal discourse: a discursive-institutionalist account of preference formation in the realm of European Union multi-level politics," *Journal of European Public Policy*, Vol. 17, No. 8, 2010: 1262 and 1265.

A. Scrutiny claims

In November 2004, a cross-party working group was formed within the Delegation for the European Union to evaluate the Bolkestein proposal. In the course of its work, its members held hearings with, among others, MEPs and officials of the Commission.⁴² Its report, published on 18 February 2005, identified largely the same pitfalls as the *Assemblée nationale* had done concerning the width of the scope of the Directive, the need to abandon the country of origin principle and the threat to the application of the French penal law and the rules of private international law. The Commission was criticised for failing to prepare an adequate impact assessment, as the only study that it did carry out merely summarised the state of affairs in the services market. It was, therefore, impossible to appraise the consequences of the future growth of this market in light of the country of origin principle and the administrative simplification envisaged. Such an appraisal was, above all, frustrated by the absence of any comparative study of the relevant laws and regulations of the Member States, which "the Commission must have undertaken before presenting its proposal for a directive".⁴³

On 3 February 2005, the Socialist senators tabled a draft resolution virtually identical to that tabled by their counterparts in the *Assemblée nationale*, demanding the withdrawal of the Directive.⁴⁴ About a month later, the Communists followed suit with essentially the same request in their own draft resolution.⁴⁵ Yet another draft resolution,⁴⁶ tabled by UMP, was withdrawn and re-tabled in an amended form as part of the report of the Committee for Economic Affairs on the three draft resolutions. This Committee urged, *inter alia*, that the gap that indisputably existed in the legal regulation of the internal market in services had to be filled by the texts debated and adopted democratically by political institutions instead of by the piecemeal and sometimes excessively liberal jurisprudence of the Court of Justice.⁴⁷ The rapporteur further stated that his hearings with Commission officials in Brussels allowed him "to fully grasp the evolution" of the position of the Barroso Commission away from the rigid standpoint of its predecessor.⁴⁸

In its answers to parliamentary questions on the Services Directive in mid-February and early March 2005, the Government concurred that the proposal was unacceptable and expressed its determination to have it modified.⁴⁹

Building on the said draft resolutions, the *Sénat* adopted a consolidated, more comprehensive resolution on 23 March 2005.⁵⁰ Holding that the Directive was unacceptable as it

⁴² *Sénat, Délégation pour l'Union européenne, Réunion du jeudi 17 février 2005, Communication du groupe de travail présidé par Denis Badré et composé de Robert Bret, Marie-Thérèse Hermange et Serge Lagache*, available at: <http://www.senat.fr/europe/r17022005.html>, accessed on 1 March 2011.

⁴³ *Sénat, Délégation pour l'Union européenne, Rapport d'information no. 206 sur la proposition de directive relative aux services dans le marché intérieur* of 18 February 2005, rapporteurs Denis Badré and others, p. 21-22.

⁴⁴ *Sénat, Proposition de résolution no. 177 sur la proposition de directive du Parlement européen et du Conseil relative aux services dans le marché intérieur* of 3 February 2005.

⁴⁵ *Sénat, Proposition de résolution no. 209 relative à la proposition de directive du Parlement européen et du Conseil relative aux services dans le marché intérieur* of 1 March 2005.

⁴⁶ *Sénat, Proposition de résolution no. 182 sur la proposition de directive du Parlement européen et du Conseil relative aux services dans le marché intérieur* of 9 February 2005.

⁴⁷ *Sénat, Commission des affaires économiques et du plan, Rapport no. 230 sur les propositions de résolution nos. 177, 182 et 209* of 9 March 2005, rapporteur Jean Bizet (UMP), pp. 29 and 33.

⁴⁸ *Sénat, Commission des affaires économiques et du plan, Rapport no. 230 sur les propositions de résolution nos. 177, 182 et 209* of 9 March 2005, rapporteur Jean Bizet (UMP), p. 32.

⁴⁹ Namely, senator Jean Louis Masson (UMP) put a written question to the Minister for European Affairs, asking whether the Government had opposed the Directive from the very beginning and, if so, how. In her reply, Minister Haigneré assured him that the Directive was unacceptable and that the difficulties had been signalled at the European level ever since the Competitiveness Council of 11 March 2004. See *Question écrite no. 16090* (JO Sénat of 17.2.2005, p. 428) and *Réponse du Ministère délégué aux affaires européennes* (JO Sénat of 21.4.2005, p. 1131). Challenging the Government on its stance on the Directive, Gérard le Cam (PCF) also criticised the Commission claiming that its intention to maintain the Directive was a sign of its "omnipotence that escapes democratic control". See *Question d'actualité au gouvernement no. 0461G* and *Réponse du Ministère délégué aux affaires européennes* (JO Sénat of 4.3.2005, p. 1243).

was, the resolution demanded that the primacy of sectoral Community law be instantly affirmed and that posted workers remain subjected to the requirement of a prior declaration of their service activities. The Directive also needed to be harmonised with the 1980 Rome convention on the law applicable to contractual obligations, the then draft Rome II Regulation on the law applicable to non-contractual obligations and the then draft Directive on the recognition of professional qualifications. Like the *Assemblée nationale*, the *Sénat* requested the exclusion of certain enumerated types of services from the scope of the Directive. While the country of origin principle was generally refuted, its application to the professional activities sanctioned by penal law was sought to be explicitly excluded.

The two plenary sessions leading to the adoption of this resolution, besides the discussions of the merits, provided fodder for several senators to express their understanding of the boundaries of national parliamentary scrutiny of EU matters. In the first plenary debate, which took place on 15 March 2005,⁵¹ Denis Badré (MoDem), who chaired the aforesaid working group for the Services Directive, described the *Sénat's* role as being not only to send their reading of the Directive to the Government and thereby bolster its negotiating position at the European level, but also:

[T]o elucidate as much as possible the discussion, by allaying the concerns of our fellow citizens when they are not founded and by taking them into account when they are, in order to present them to the Government together with our comments. It should always be remembered [...] that Europe is not an abstraction for Brussels. [...] Europe is [...] also and, above all, the Europeans, who express themselves in a regular way through their national parliaments. Such is the case today with this sensitive topic.

Senator Marie-Thérèse Hermange (UMP), a member of the working group, stressed the proactive dimension of the *Sénat's* European scrutiny:

[T]he role of our House, today and even more so tomorrow, must be [...] to suggest improvements, in collaboration and harmony with all the competent institutions, in the spirit of pragmatism and common sense, and taking into account the aspirations of the national collectivities, while pursuing the path of integration, to which the future Constitution invites us.

Similarly, senator Bernard Murat (UMP) added:

[W]e gathered this morning to acknowledge, take a position and adopt a resolution that, I hope, will feed the work ahead, particularly that of the Commission, and resonate with our colleagues in the European Parliament. [...] It is up to us formally to take charge of this dossier and support the Government's action at the European level [...].

None of these claims, however, runs counter to the fact emphasised by Bruno Retailleau (MPF) that while Parliament votes on resolutions, decisions are taken elsewhere. Yet the *Sénat* does not seem barred from taking action, when the opportunity arises, precisely where decisions are taken. As reported in the second plenary session on the Services Directive, a senatorial delegation attended an interparliamentary meeting in the European Parliament on the Lisbon Strategy on 17 March 2005. The senators took advantage of the presence of Commission President Barroso and asked him whether he was still attached to the idea of re-examining the Services Directive, to

⁵⁰ *Sénat, Résolution no. 89 sur la proposition de directive du Parlement européen et du Conseil relative aux services dans le marché intérieur* of 23 March 2005.

⁵¹ *Sénat, Compte rendu intégral des débats, Séance du 15 mars 2005*, available at: <http://www.senat.fr/seances/s200503/s20050315/s20050315001.html#SOM5>, accessed on 3 March 2011.

which he replied: "The Commission is ready to work with the European Parliament in order to make any necessary adjustments to meet the concerns expressed in France".⁵²

On 16 June 2005, an unusual indirect 'attack' was launched against the Bolkestein proposal. At the last plenary session of the *Sénat's* first reading of the Government bill bolstering the legal position of small and medium-sized enterprises, the Government introduced an amendment completing the transposition of the 1996 Directive on the Posting of Workers by inserting a chapter on the transnational posting of workers into the Labour Code (*Code du travail*).⁵³ Unlike the Bolkestein proposal, this Directive commands the application of the law of the country of destination to workers employed in one Member State but posted temporarily to work in another Member State, which safeguards workers in the host Member State from unfair competition. Initially, it was deemed that the existing French legislation fully complied with the contents of the Directive and the deadline for the transposition expired on 16 December 1999.⁵⁴ No action had been taken until 2000, when two Government decrees transposed an article of the Directive.⁵⁵ The amendment of the Labour Code, successfully finalised on 2 August 2005 in the form of the Act in Favour of Small and Medium Enterprises,⁵⁶ was, hence, to a great extent aimed at countering the draft Services Directive. Several parliamentarians in both Houses of Parliament explicitly affirmed this in plenary discussions.⁵⁷

The year 2006 witnessed the tabling of two draft resolutions on the Services Directive, neither of which was adopted. The first one was proposed by the Communist senators some fortnight before the European Parliament's first reading. It mirrored their previous request for the withdrawal of the Directive, this time hoping to profit from linking the Directive with the French citizens' rejection of the Constitutional Treaty.⁵⁸ The second one came from UMP more than a month after the Commission revised its proposal. It essentially welcomed the inclusion in the proposal of the majority of the amendments made by the European Parliament, notably the abandonment of the country of origin principle and the respect for sectoral Community legislation, but opposed the regime of tacit authorisation foreseen for service providers' establishment since it was contrary to French law.⁵⁹

⁵² *Sénat, Compte rendu intégral des débats, Séance du 23 mars 2005*, available at:

<http://www.senat.fr/seances/s200503/s20050323/s20050323004.html#SOM5>, accessed on 3 March 2011.

⁵³ See amendment no. 436 in: *Sénat, Compte rendu intégral, Séance du jeudi 16 juin 2005, 96^e séance de la session ordinaire de 2004-2005*, JORF [2005] S. (C.R.) 52, 17.6.2005, pp. 4309-4310.

⁵⁴ Bilous, Alexandre. "Travailleurs détachés et mise en oeuvre de la directive", 28.09.1999, available at: <http://www.eurofound.europa.eu/eiro/1999/09/study/tn9909233s.htm>, accessed on 28 February 2011.

⁵⁵ See Enterprise Europe Network, "Fiche pratique – Détachement des travailleurs: Européens en France", available at: <http://www.entreprise-europe-sud-ouest.fr/sfx/assets/documents/uploaded/general/Detachement%20%20des%20travailleurs%202009.pdf>, accessed on 28 February 2011.

⁵⁶ See Article 89 of *Loi no. 2005-882 en faveur des petites et moyennes entreprises* of 2 August 2005.

⁵⁷ For example, senator Bernard Dussaut (PS) said that "the Government's amendment is manifestly the direct consequence of the mobilisation of the French around the dreadful draft Bolkestein Directive. It permits us at least to establish that the mobilisation of our fellow citizens was not pointless [...]". *Sénat, Compte rendu intégral, Séance du jeudi 16 juin 2005, 96^e séance de la session ordinaire de 2004-2005*, JORF [2005] S. (C.R.) 52, 17.6.2005, p. 4310. Similarly, Patrick Ollier (UMP), Chairman of the Committee for Economic Affairs of the *Assemblée nationale*, declared that "even if Mr Bolkestein is no longer involved in this matter, it is good to underline, in order to show public opinion, that these amendments testify to the will of the majority and of the Government to reject what Mr Bolkestein had then proposed". *Assemblée nationale, Compte rendu intégral, 1^{re} séance du mardi 14 mars 2006, 168^e séance de la session ordinaire de 2005-2006*, JORF [2006] A.N. (C.R.) 23[1], 15.3.2006, p. 1779. That such was the objective of this amendment was also maintained in: *Assemblée nationale, Commission des affaires économiques, de l'environnement et du territoire, Rapport no. 2939 sur la proposition de résolution (n° 2923) de M. Alain Bocquet et des membres du groupe député-e-s communistes et républicains sur la proposition de directive du Parlement européen et du Conseil relative aux services dans le marché intérieur* of 8 March 2006, rapporteur Alain Bocquet (PCF), pp. 19 and 31.

⁵⁸ *Sénat, Proposition de résolution no. 186 sur la proposition de directive du Parlement européen et du Conseil relative aux services dans le marché intérieur* of 31 January 2006.

⁵⁹ *Sénat, Proposition de résolution no. 349 sur la proposition de directive du Parlement européen et du Conseil relative aux services dans le marché intérieur* of 11 May 2006.

Finally, it is noteworthy that the Delegation for the European Union convened to take stock of the evolution of the dossier at all its critical phases: (a) after the adoption of a report by the European Parliament's Committee for Internal Market and Consumer Protection;⁶⁰ (b) after the European Parliament's first reading;⁶¹ and (c) after the Commission had revised its proposal.⁶² As the Delegation's Chairman, Hubert Haenel (UMP), pointed out, it was necessary to react to EU initiatives as early as possible, but also to follow their development before their definitive adoption and transposition. The aim of these meetings was to establish the extent to which the *Sénat's* recommendations had been taken into account and, once it was acknowledged that they had been, the scrutiny process was terminated.

B. Analysis

(A) *Scrutiny*. Like the *Assemblée nationale*, the *Sénat* carried out a substantive, policy scrutiny of the Services Directive, concentrating on the contents of the proposal. Scrutiny was carried out through a variety of instruments, including, peculiarly, legislative activity in a different field of law with the aim of countering the essence of the Bolkestein proposal. This is notable because it signifies the *Sénat's* responsiveness to the developments in EU decision making and depicts its proactive attitude to scrutiny.

(B) *Controversy*. The *Sénat*, above all, deplored the method of liberalising the services market. Clashing with the Commission's approach, it argued against horizontal legal regulation and in favour of sectoral harmonisation. Just as the MPs, the senators rejected the country of origin principle and requested the narrowing of the scope of the Directive. These scrutiny claims were predominantly made to safeguard the interests of French economic actors.

(C) *Information*. Information was sought not only from the French Government, but also from MEPs and Commission officials. As in the case of the *Assemblée nationale*, it appears that the *Sénat* made these information contacts to make their scrutiny claims crisper.

(D) *Outcome*. The senators clearly formulated recommendations for policy change. The bulk of their criticism was directed at the EU level, particularly the Commission, which was, like in the *Assemblée nationale*, reprimanded for failing to justify its legislative initiative by means of an appropriate impact assessment. Commission President Barroso was personally made aware of the *Sénat's* position during an interparliamentary meeting in Brussels. That the addressee of the scrutiny was the Commission is further evidenced by the fact that the decision-making process was followed until it was concluded that the Commission satisfactorily met the *Sénat's* concerns. The reason for terminating scrutiny was, therefore, not the performance of the French Government in the Council but the Commission's action in the EU legislative process. The senators wished, as they claimed, to feed the work of the Commission and the European Parliament in the spirit of pragmatism, while concomitantly supporting the Government's efforts at the EU level.

(E) *Parliamentary interdependence*. The *Sénat* attached considerable importance to the relationship with the European Parliament, for which purpose a meeting was organised with MEPs. Yet a difference in the degree of cross-level interparliamentary contact is perceptible in comparison to the *Assemblée nationale* insofar as the *Sénat* was more reserved in this respect. Namely, the senators put less effort into asserting their views within the European Parliament than did the MPs.

On the basis of the foregoing, it can be concluded that the *Sénat* took a broader approach in interpreting its role in EU decision making and acted within the European constitutional order.

⁶⁰ *Sénat, Délégation pour l'Union européenne, Réunion du mercredi 7 décembre 2005*, available at: <http://www.senat.fr/europe/r07122005.html>, accessed on 3 March 2011.

⁶¹ *Sénat, Délégation pour l'Union européenne, Réunion du mercredi 8 mars 2006*, available at: <http://www.senat.fr/europe/r08032006.html>, accessed on 3 March 2011.

⁶² *Sénat, Délégation pour l'Union européenne, Réunion du mercredi 12 avril 2006*, available at: <http://www.senat.fr/europe/r12042006.html>, accessed on 3 March 2011.

3.2. The United Kingdom

3.2.1. House of Commons

A. Scrutiny claims

The House of Commons initiated the scrutiny of the Bolkestein proposal in March 2004, two months after its publication. The European Scrutiny Committee assessed the proposal as politically important and agreed with the Government that it was potentially of significant benefit to British consumers and businesses.⁶³ In January 2005, the Committee received a detailed response from the Government, in which the latter strongly supported the objectives of the Directive and the country of origin principle "as critical to delivering liberalisation", but warned that it was "vitaly important" to safeguard the British standards of health and safety and to ensure the protection of workers, consumers, the environment and animals.⁶⁴ The Committee then recommended the proposal for debate in the competent European Standing Committee, suggesting that it should examine the scope of the Directive, the possible pitfalls and the need for the Commission to review its policy three years after the Directive's entry into force.⁶⁵

The Commission's revision of the proposal did not make the Government waver in its strong support for the Directive. In its correspondence to the European Scrutiny Committee, the Government indeed confirmed that many of its negotiation aims had been met by the amended proposal, with further changes to be sought to uphold British standards in health and safety and sensitive policy areas.⁶⁶ Having obtained a revised Regulatory Impact Assessment from the Government, the European Scrutiny Committee repeated its request for a debate in the European Standing Committee.⁶⁷

This debate took place on 16 May 2006, a fortnight before the Council reached a political agreement on the common position at first reading. There was a broad consensus across the political spectrum on the support for the Directive and the discussion unwound, for the most part, in a non-partisan tone.⁶⁸ A significant portion of it was devoted to a cost-benefit analysis of the proposal and the financial costs of its implementation, in which respect Ian McCartney, the Minister for Trade, submitted that the United Kingdom would be one of the main beneficiaries of the Directive, whose economy would gain some £5 billion a year.⁶⁹ While not a predominant point of discussion, some divergence surfaced between the Conservatives and Labour as to the desirability of the country of origin principle, whose removal was regretted by the former and greeted by the latter.⁷⁰ For example, the Labour participants in the two tripartite meetings of MPs,

⁶³ House of Commons, European Scrutiny Committee, "Documents considered by the Committee on 10 March 2004", *HC 42-xii, 12th Report of Session 2003-04* of 25 March 2004, para. 4.11, p. 13.

⁶⁴ House of Commons, European Scrutiny Committee, "Documents considered by the Committee on 12 January 2005", *HC 38-iii, 3rd Report of Session 2004-05* of 27 January 2005, para. 1.8, p. 5.

⁶⁵ House of Commons, European Scrutiny Committee, "Documents considered by the Committee on 12 January 2005", *HC 38-iii, 3rd Report of Session 2004-05* of 27 January 2005, paras 1.11 and 1.12, p. 6.

⁶⁶ House of Commons, European Scrutiny Committee, "Documents considered by the Committee on 26 April 2006", *HC 34-xxvi, 26th Report of Session 2005-06* of 8 May 2006, paras 3.13 and 3.14, p. 19.

⁶⁷ House of Commons, European Scrutiny Committee, "Documents considered by the Committee on 10 May 2006", *HC 34-xxviii, 28th Report of Session 2005-06* of 18 May 2006, paras 2.3 and 2.5, p. 8.

⁶⁸ See the speeches to that effect by Graham Brady (Con.) and Jeremy Browne (Lib.Dem.) in: House of Commons, European Standing Committee, Debate of 16 May 2006, col. 7, available at: <http://www.publications.parliament.uk/pa/cm200506/cmstand/euro/st060516/60516s01.htm>, accessed on 4 March 2011.

⁶⁹ House of Commons, European Standing Committee, Debate of 16 May 2006, col. 4, available at: <http://www.publications.parliament.uk/pa/cm200506/cmstand/euro/st060516/60516s01.htm>, accessed on 4 March 2011.

⁷⁰ See the interventions by Graham Brady (Con.) and Michael Connarty (Lab.) in: House of Commons, European Standing Committee, Debate of 16 May 2006, cols. 18 and 19, available at:

Lords and MEPs on the Services Directive were reported to have praised British MEPs for their work on the deletion of the country of origin principle and for assisting MPs in grasping the intricacies of the dossier.⁷¹ These differences were not pronounced, however, and they did not tarnish the overall cross-party acceptance of the Bolkestein proposal. The discussion in the European Standing Committee ended with the adoption of a motion to resolve that the House take note of the amended draft Services Directive and support "the Government's approach to securing practical and proportionate legislation that promotes economic growth, competitiveness and job creation within the context of an internal market for services".⁷²

By means of parliamentary questions, MPs sought account from the Government on several occasions, such as in December 2004 on the outcome of the first Competitiveness Council that addressed the Services Directive,⁷³ then in July 2005 on the scope of the Directive and the Government's definitions of the ambiguous terms used therein,⁷⁴ and in January 2006 on the applicable timetable and the Government's view of the Directive as amended by the European Parliament.⁷⁵

B. Analysis

(A) *Scrutiny.* The House of Commons performed the procedural scrutiny of the Services Directive. MPs did not devote as much attention to examining the contents of the proposal as to enforcing national ministerial accountability.

(B) *Controversy.* The Services Directive was, despite minor differences of opinion, uncontroversial thanks to a large consensus among the political parties from both the Government and the Opposition on the sizeable benefits of the Directive for Britain. The Bolkestein proposal was indeed warmly welcomed.

(C) *Information.* In line with the method of scrutiny employed, the Commons relied on the information received from the Government. Although the MPs did formally gather with MEPs during a tripartite meeting with peers, the purpose was seemingly not to influence the European Parliament's decisions but to become better equipped in holding the Government to account.

(D) *Outcome.* The House of Commons concentrated on receiving information and account on the dossier rather than on offering concrete recommendations for amending the proposal. The main object of the Commons' scrutiny was undoubtedly the British Government and its opinion of the merits of the proposal. The motion adopted in the European Standing Committee testifies to this conclusion.

(E) *Parliamentary interdependence.* The aforementioned tripartite meeting revealed the active engagement of some of the British MEPs against the country of origin principle. While this was greeted in Parliament, there is no evidence that the MEPs' actorship was a direct consequence of the MPs' lobbying. It can, for that reason, be argued that the Commons did not place itself in a relation of interdependence with the European Parliament.

These observations point to the conclusion that the House of Commons remained within the bounds of the British constitutional order and did not extend the outreach of its scrutiny claims to the Union's decision-making arena.

<http://www.publications.parliament.uk/pa/cm200506/cmstand/euro/st060516/60516s01.htm>, accessed on 4 March 2011.

⁷¹ House of Commons, European Standing Committee, Debate of 16 May 2006, col. 19, available at: <http://www.publications.parliament.uk/pa/cm200506/cmstand/euro/st060516/60516s01.htm>, accessed on 4 March 2011.

⁷² House of Commons, European Standing Committee, Debate of 16 May 2006, col. 22, available at: <http://www.publications.parliament.uk/pa/cm200506/cmstand/euro/st060516/60516s01.htm>, accessed on 4 March 2011.

⁷³ House of Commons, Written Answers to Questions, 8 December 2004, Vol. 428, cols. 586W-587W.

⁷⁴ House of Commons, Written Answers to Questions, 7 July 2005, Vol. 436, cols. 592W-594W.

⁷⁵ House of Commons, Oral Answers to Questions, 31 January 2006, Vol. 442, cols. 170-172.

3.2.2. House of Lords

A. Scrutiny claims

In the House of Lords, the Services Directive was the object of two in-depth inquiries, both of which profited from a wide public consultation of stakeholders and from the written and oral evidence collected from both the Government and certain MEPs and Commission officials. The purpose of gathering with EU representatives was to receive information, clarifications and guidance on the practical operability of the legislative solutions envisaged by the proposal.⁷⁶ Correspondence with the Government was maintained by means of letters throughout the scrutiny process.

The results of the *first inquiry* were published in July 2005, after the competent committee of the European Parliament had adopted a draft report on the Bolkestein proposal. Besides many other aspects, the Lords addressed the method of regulation, the scope of the directive and the repercussions of the country of origin principle. We present them in turn.

The Commission's approach of enacting a horizontal directive was favoured primarily because sector-by-sector harmonisation would take a long time to achieve if it were to meet the targets set in the Lisbon Agenda. Another reason against harmonisation lay in the inherent differences between goods and services, with the latter often involving an idiosyncratic element and escaping straightforward definition.⁷⁷

The Lords disagreed with the European Parliament that all services of general interest should be explicitly excluded. On the contrary, any blanket exclusion was ill-advised, because it would hinder competition. Instead, the Directive should cover the cases in which national public bodies purchase services from suppliers for remuneration even where they further make them available to recipients for reduced or no charge.⁷⁸

The country of origin principle was assessed as the essential pillar of the Directive and a realistic legal basis for the temporary cross-border provision of services. Their Lordships discarded as unfounded the arguments that health and safety sectors should be exempted from this principle and that the Directive would threaten employment rights, public healthcare and consumer rights. The benefits for small and medium-sized enterprises of being able to test the markets in other Member States without having to establish themselves there outweighed the fact that British health and safety standards were higher than those prescribed by the EU.⁷⁹ Yet the lack of a clear definition of "temporary" service provision was seen as ushering in uncertainty for small and medium-sized enterprises as to the legal regime applicable to them and, thus, posed a barrier to intra-EU trade in services.⁸⁰

The Lords concluded with a strong message in favour of the Directive, arguing that the circumstances of high unemployment, the pressures of economic restructuring caused by the accession of ten new Member States and the debate on the Constitutional Treaty made it "all the

⁷⁶ See the careful language used by Lord Woolmer, the Chairman of the EU Sub-Committee B, when their Lordships visited Commission officials in Brussels to take evidence: "We appreciate that we are meeting you at a sensitive time on these matters, and therefore perhaps the way in which you may feel you are able to respond will be even more measured than usual. You will understand, however, that if we are asking questions, it is to seek clarification and to seek guidance". House of Lords, EU Committee, "Completing the internal market in services", *HL Paper 23, Minutes of Evidence of 15 March 2005*, Q443, p. 119.

⁷⁷ House of Lords, EU Committee, "Completing the internal market in services", *HL Paper 23, 6th Report of Session 2005-06* of 21 July 2005, paras 67, 74-75, pp. 22-24.

⁷⁸ House of Lords, EU Committee, "Completing the internal market in services", *HL Paper 23, 6th Report of Session 2005-06* of 21 July 2005, para. 27, p. 14.

⁷⁹ House of Lords, EU Committee, "Completing the internal market in services", *HL Paper 23, 6th Report of Session 2005-06* of 21 July 2005, paras 106-112 and 189, pp. 30-31 and 47.

⁸⁰ House of Lords, EU Committee, "Completing the internal market in services", *HL Paper 23, 6th Report of Session 2005-06* of 21 July 2005, para. 58, p. 20.

more important for the European Union to be bold and resolute in its embrace of the single market".⁸¹

This report was debated in the plenary and warmly endorsed by all political parties in October 2005. Such was the consensus among the peers that Lord Sainsbury, Parliamentary Under-Secretary of State at the Department of Trade and Industry, commented that "to have complete unanimity on a debate on Europe is unheard of".⁸² Although the discussion centred on the merits of the Directive and mainly rehearsed the points made in the report, several interventions hinted at cross-level cooperation. For example, Lord Roper, arguing in favour of the country of origin principle, expressed hope that "the Labour Members of this House and of another place, including the Minister, will be able to have useful discussions on the issue with the British Labour MEPs before the appropriate votes take place".⁸³ Also, Lord Woolmer, the Chairman of EU Sub-Committee B on the Internal Market, Energy and Transport, stated in his concluding speech that MEPs "would do well to read today's debate before their considerations in November and January".⁸⁴

The *second inquiry* into the Services Directive was reported on in July 2006, after the Council had reached the political agreement on the revised proposal. Having examined largely the same witnesses as the year before, the Lords thought it significant that none of them remained opposed to the Directive.⁸⁵ For their Lordships themselves, the revised Directive still constituted a "significant step forward", as it was a "workable compromise" designed to meet "real concerns about issues wider than the single market".⁸⁶

The Lords considered that the country of origin principle had been abandoned in favour of the country of destination principle. While this change did not coincide with their preference, they were reassured that the right to provide services on a temporary or occasional basis in another Member State was firmly entrenched in the Directive and that sensible safeguards were secured against placing an excessive onus on the realisation of this right.⁸⁷ They further welcomed the keeping of the horizontal approach to the services market regulation and assessed that the lists of exclusions and derogations did not prevent the Directive from covering a substantial part of the market in services and from making a "useful contribution to the growth of cross-border services provision within the EU".⁸⁸ In addition, speedy and full implementation of the Directive across the Member States was pressed for.⁸⁹ The scrutiny reserve had not been breached and was lifted in virtue of this report. It should be noted, however, that the EU Committee had given the green light to the Government to consent to the political agreement in the Council prior to the formal lifting of the scrutiny reserve.⁹⁰

B. Analysis

⁸¹ House of Lords, EU Committee, "Completing the internal market in services", *HL Paper 23, 6th Report of Session 2005-06* of 21 July 2005, para. 180, p. 45.

⁸² House of Lords, Debate of 14 October 2005, Vol. 674, col. 519.

⁸³ House of Lords, Debate of 14 October 2005, Vol. 674, col. 517.

⁸⁴ House of Lords, Debate of 14 October 2005, Vol. 674, col. 522.

⁸⁵ House of Lords, EU Committee, "The Services Directive revisited", *HL Paper 215, 38th Report of Session 2005-06* of 24 July 2006, para. 103, p. 22.

⁸⁶ House of Lords, EU Committee, "The Services Directive revisited", *HL Paper 215, 38th Report of Session 2005-06* of 24 July 2006, para. 113, p. 23.

⁸⁷ House of Lords, EU Committee, "The Services Directive revisited", *HL Paper 215, 38th Report of Session 2005-06* of 24 July 2006, paras 24-25, 50, 68 and 72, pp. 10, 15 and 17-18.

⁸⁸ House of Lords, EU Committee, "The Services Directive revisited", *HL Paper 215, 38th Report of Session 2005-06* of 24 July 2006, paras 43 and 80, pp. 14 and 19.

⁸⁹ House of Lords, EU Committee, "The Services Directive revisited", *HL Paper 215, 38th Report of Session 2005-06* of 24 July 2006, para. 102, p. 22.

⁹⁰ House of Lords, EU Committee, "Correspondence with ministers – January 2006 to September 2006", *HL Paper 187, 40th Report of Session 2006-07* of 23 October 2007, p. 130.

(A) *Scrutiny*. Unlike the House of Commons, the House of Lords carried out an in-depth substantive scrutiny of the Services Directive. Many of the legislative solutions from the proposal were critically assessed against both the British and the Union's interests.

(B) *Controversy*. Being proponents of a liberal approach to the regulation of the Union's services market, their Lordships strongly defended the Bolkestein proposal, the country of origin principle and the wide scope of the services that were to be encompassed by the Directive. In doing so, they collided with the European Parliament's position. Since their support for the Services Directive was overwhelming across the political spectrum, this EU legislative act was rather uncontroversial.

(C) *Information*. While the Lords gathered information not only from the British Government but also from the Commission and MEPs, through evidence-taking sessions and the said tripartite meetings, the purpose was not to hold the Commission to account but merely to seek clarifications on the proposed text.

(D) *Outcome*. The Lords' two thorough inquiries into the Services Directive recommended certain policy improvements at the EU level. Yet since the peers were already more than content with the original proposal, their recommendations did not touch upon the core of the Directive. The views expressed by the Lords represented an independent piece of expertise on the regulation of services in the internal market. The Lords seem to have wished merely to inform the debate rather than to exert direct influence on the outcome of the negotiations.

(E) *Parliamentary interdependence*. Though their Lordships hinted at cooperation with the European Parliament, this was made *en passant* and was not the objective of the scrutiny. This conclusion is amplified by the fact that the Lords preferred to leave it to the Government to brief British MEPs on the need to prevent the dilution of the market-opening elements of the Service Directive. The Government indeed did so by sending written briefs and making telephone calls to influential MEPs and reporting back to the EU Sub-Committee B on the Internal Market, Energy and Transport.⁹¹

Therefore, the context to which their Lordships' scrutiny claims referred was primarily national. Nevertheless, the broad scope of their analysis and their examination of officials from the relevant EU institutions justify the conclusion that the House of Lords partially acted beyond the British constitutional order.

4. EUROPEAN EXTERNAL ACTION SERVICE: EU DIPLOMACY AT THE CROSSROADS

4.1. FRANCE

4.1.1. Assemblée nationale

A. Scrutiny claims

On 26 May 2010, a month after the High Representative published her proposal, the *Assemblée nationale* held a joint meeting on the EEAS with French MEPs and senators. This was an opportunity not only to take stock of the negotiations, but also to discuss the respective roles of the European and national parliaments in EU external relations. In this sense, Jacques Blanc, a UMP senator and the Vice-Chairman of the *Sénat's* Foreign Affairs Committee, claimed that:

The external policy of the European Union remains intergovernmental in nature. We should tell the European Parliament that each of us should stay within our competences and that we must together envisage the establishment of this Service. The Treaty of Lisbon also accentuates the

⁹¹ House of Lords, EU Committee, "Correspondence with ministers – January 2006 to September 2006", *HL Paper 187, 40th Report of Session 2006-07* of 23 October 2007, pp. 132 and 135; House of Lords, EU Committee, "Correspondence with ministers – October 2006 to April 2007", *HL Paper 184, 30th Report of Session 2007-08* of 2 December 2008, p. 130.

competences of national parliaments. The European Parliament cannot be the sole democratic interlocutor in this debate. [...] I want to say that there is no intention in the *Sénat* to block the European Parliament but to be involved and to participate, since we believe that this is how we will progress towards the necessary coherence in the external policy of the European Union.⁹²

Josselin de Rohan, also a UMP senator and the Chairman of the the *Sénat's* Foreign Affairs Committee, agreed arguing that national parliaments have an essential role to play in the foreign and defence policies because there is as yet no European nationality. As the Union is not going down the path of federalism, he resolutely rejected the Brok-Verhofstadt approach on the involvement of the European Parliament as being in dissonance with reality. In his view, the EEAS also had to render account to national parliaments.⁹³

Acknowledging the timeliness of the meeting, Constance Le Grip (EPP, France) further elaborated the European Parliament's position:

National parliaments must understand that the discussion on the institutional architecture of the future Service was an occasion for the European Parliament to engage in a power struggle with other institutions and to put into it all the new weight and responsibilities that the Treaty of Lisbon confers on it. [...] For us, members of the European Parliament, at this stage, the reports and resolutions of national parliaments [...] constitute very precious documents. For beyond the current debates on the intergovernmentalist conception of foreign policy and a more communitarian conception of the European Parliament, the opinion of national parliaments should, regardless of the solution adopted, be heard and taken into account, if not in the texts, then at least in practice. We should always make sure that we are connected with each other. This is why MEPs must listen to national parliaments in this area that largely remains a part of sovereign powers.⁹⁴

For Arnaud Danjean (EPP, France), the fact that the action of some EU Special Representatives and policies concerning certain regions are no longer directed by the national capitals but by the Council Secretariat indicates that the political control of the EEAS cannot be exercised only by national parliaments.⁹⁵

On 16 June 2010, the European Affairs Committee adopted a report on the reform of the governance of the Union's external policy, within which it presented its analysis of the EEAS. In the Committee's view, the advantages of establishing an External Action Service lay primarily in centralising the coordination of EU external action and, concomitantly, in reducing the actors in charge of the external and internal representation of the Union.⁹⁶ Nonetheless, the EEAS proposal was assessed as being deceptive, principally because the High Representative was not to enjoy the full scope of powers that the Lisbon Treaty allowed. The reticence, however, was understandable given that the Service represented a "true revolution for all institutions and Member States".⁹⁷ On the basis of this report, a draft resolution was tabled.

⁹² *Assemblée nationale, Commission des affaires européennes, Compte rendu no. 152, Réunion du mercredi 26 mai 2010 à 16h 30*, p. 16.

⁹³ *Assemblée nationale, Commission des affaires européennes, Compte rendu no. 152, Réunion du mercredi 26 mai 2010 à 16h 30*, p. 18.

⁹⁴ *Assemblée nationale, Commission des affaires européennes, Compte rendu no. 152, Réunion du mercredi 26 mai 2010 à 16h 30*, p. 17.

⁹⁵ *Assemblée nationale, Commission des affaires européennes, Compte rendu no. 152, Réunion du mercredi 26 mai 2010 à 16h 30*, p. 19.

⁹⁶ *Assemblée nationale, Commission des affaires européennes, Rapport d'information no. 2631 sur la réforme de la gouvernance de la politique extérieure de l'Union européenne* of 16 June 2010, rapporteurs Elisabeth Guigou (PS) and Yves Bur (UMP), pp. 38 and 42.

⁹⁷ *Assemblée nationale, Commission des affaires européennes, Rapport d'information no. 2631 sur la réforme de la gouvernance de la politique extérieure de l'Union européenne* of 16 June 2010, rapporteurs Elisabeth Guigou (PS) and Yves Bur (UMP), pp. 71-72.

The following day, the Foreign Affairs Committee published its own report on the EEAS. The Committee was content that the proposal espoused the French concept of central administration with a strong Secretary-General at the Service's helm.⁹⁸ Yet while the political orientation reached in the Council was supported, the European Parliament was seen as exceeding its Treaty powers:

It would be fallacious to purport that with the EEAS we are creating a situation in which solely the European Parliament would be competent to exercise democratic control, which national parliaments would no longer exercise at their level: this is not a case of a transfer of competences from the Member States to the European Union.⁹⁹

Hostility towards the European Parliament could also be registered in discussions in this Committee. Rapporteur Nicole Ameline (UMP) was resolute that "the European Parliament should not feel invested with extra powers".¹⁰⁰ In a similar vein, Jean-Michel Boucheron (PS) found it absurd to vest foreign policy prerogatives in the European Parliament, whose legitimacy, in his view, was feeble and unrecognised by the citizens.¹⁰¹ Not all Committee members, however, were against the European Parliament's primacy in the control of the EEAS. For example, Hervé de Charette (NC) viewed the empowerment of the European Parliament as the only way forward in shaping authentic European diplomacy, with which the EU executive should conform.¹⁰² The Foreign Affairs Committee then tabled a draft resolution slightly amending that of the European Affairs Committee. In the discussion of this draft resolution, the Chairman of the Foreign Affairs Committee, Axel Poniatowski (UMP), made it plain that the objective of the resolution was to support the Government's negotiating position.¹⁰³ Rapporteur Ameline feared that not reacting would lead to the European Parliament reducing even more the few gains made.¹⁰⁴ The rapporteur of the European Affairs Committee, Elisabeth Guigou (PS), agreed:

It seems important to me to make our position known to the European Parliament [...], which always wants to increase its power of control. Yet one can understand this institutional logic. In parallel, the same European Parliament takes undue credit for seeking agreements with national parliaments. If we disagree with certain of its standpoints, for example as regards the High Representative, this resolution can have a real effect in relaying it.¹⁰⁵

On 21 July 2010, the Government requested the European Affairs Committee to conduct urgent scrutiny, because a political compromise had just been reached on the EEAS and the House had initiated, but not completed, the scrutiny procedure. The following day, Pierre Lequiller (UMP),

⁹⁸ *Assemblée nationale, Commission des affaires étrangères, Rapport no. 2633 sur la proposition de résolution européenne (no. 2632) sur la réforme de la gouvernance de la politique extérieure de l'Union européenne* of 17 June 2010, rapporteurs Nicole Ameline (UMP) and Gaëtan Gorce (PS), p. 15.

⁹⁹ *Assemblée nationale, Commission des affaires étrangères, Rapport no. 2633 sur la proposition de résolution européenne (no. 2632) sur la réforme de la gouvernance de la politique extérieure de l'Union européenne* of 17 June 2010, rapporteurs Nicole Ameline (UMP) and Gaëtan Gorce (PS), pp. 24-25 and 29.

¹⁰⁰ *Assemblée nationale, Commission des affaires étrangères, Compte rendu no. 72, Réunion du mardi 15 juin 2010 à 18h*, p. 4.

¹⁰¹ *Assemblée nationale, Commission des affaires étrangères, Compte rendu no. 72, Réunion du mardi 15 juin 2010 à 18h*, p. 7.

¹⁰² *Assemblée nationale, Commission des affaires étrangères, Compte rendu no. 75, Réunion du jeudi 17 juin 2010 à 10h 30*, p. 2.

¹⁰³ *Assemblée nationale, Commission des affaires étrangères, Compte rendu no. 72, Réunion du mardi 15 juin 2010 à 18h*, p. 4.

¹⁰⁴ *Assemblée nationale, Commission des affaires étrangères, Compte rendu no. 75, Réunion du jeudi 17 juin 2010 à 10h 30*, p. 4.

¹⁰⁵ *Assemblée nationale, Commission des affaires étrangères, Compte rendu no. 75, Réunion du jeudi 17 juin 2010 à 10h 30*, p. 5.

the Chairman of the European Affairs Committee, lifted the scrutiny reserve to allow the Government to adopt a position in the Council.¹⁰⁶

On 2 November 2010, after the Council passed the EEAS Decision, the draft resolutions of the European and Foreign Affairs committees were merged and adopted as a single resolution. In it, the *Assemblée nationale* recognised the challenge of unifying the areas of EU external policy governed by intergovernmental and Community decision-making procedures and called for a cessation of the institutional controversies between federalists and intergovernmentalists.¹⁰⁷ As regards the scope of the Service, preference was given to a model of the EEAS that would permit the High Representative fully to exercise the totality of her powers, which should not be exhausted in the management of crisis but should instead ensure a larger coordination of the Union's external action.¹⁰⁸ Accordingly, it was regretted that neighbourhood policy, commercial policy, enlargement and development aid were left outside the High Representative's purview.¹⁰⁹ In fact, the establishment of the Service was seen as an occasion to reflect on the organisation of the Member States' consular networks and to set out a process of converging national foreign and security policies under the annual supervision of the European and national parliaments.¹¹⁰ Furthermore, in contrast to the European Parliament's standpoint, the *Assemblée nationale* supported the budgetary and administrative autonomy of the EEAS from the Commission, because the purpose of the Service was precisely to overcome the dichotomy between the CFSP and the Community's external action.¹¹¹ Importantly, the *Assemblée nationale* endorsed the Government's position in the EEAS negotiations, requesting it to lobby for a sufficient representation of France and the French language in the Service.¹¹² Finally, the *Assemblée nationale* proposed interparliamentary cooperation in guaranteeing the political monitoring of EU external relations.¹¹³

The EEAS arrangements were also debated in the plenary. For example, questions were posed to the Government on the consequences of the new Service for the organisation and functioning of the French Ministry of Foreign Affairs.¹¹⁴ Furthermore, in anticipation of the December 2009 European Council meeting, when the Swedish Presidency had already presented

¹⁰⁶ *Assemblée nationale, Commission des affaires européennes, Rapport d'information no. 2847 sur des textes soumis à l'Assemblée nationale en application de l'article 88-4 de la Constitution du 1^{er} juillet au 29 septembre 2010* of 6 October 2010, p. 29.

¹⁰⁷ *Assemblée nationale, Résolution no. 552 sur la réforme de la gouvernance de la politique extérieure de l'Union européenne* of 2 November 2010, recital 1 and point 1.

¹⁰⁸ *Assemblée nationale, Résolution no. 552 sur la réforme de la gouvernance de la politique extérieure de l'Union européenne* of 2 November 2010, points 3 and 6.

¹⁰⁹ *Assemblée nationale, Résolution no. 552 sur la réforme de la gouvernance de la politique extérieure de l'Union européenne* of 2 November 2010, point 5.

¹¹⁰ *Assemblée nationale, Résolution no. 552 sur la réforme de la gouvernance de la politique extérieure de l'Union européenne* of 2 November 2010, points 10 and 11.

¹¹¹ *Assemblée nationale, Résolution no. 552 sur la réforme de la gouvernance de la politique extérieure de l'Union européenne* of 2 November 2010, point 4; *Assemblée nationale, Commission des affaires européennes, Rapport d'information no. 2631 sur la réforme de la gouvernance de la politique extérieure de l'Union européenne* of 16 June 2010, rapporteurs Elisabeth Guigou (PS) and Yves Bur (UMP), p. 46.

¹¹² *Assemblée nationale, Résolution no. 552 sur la réforme de la gouvernance de la politique extérieure de l'Union européenne* of 2 November 2010, points 2 and 8.

¹¹³ *Assemblée nationale, Résolution no. 552 sur la réforme de la gouvernance de la politique extérieure de l'Union européenne* of 2 November 2010, point 12.

¹¹⁴ See the questions by Dominique Souchet (MPF) in: *Assemblée nationale, Compte rendu intégral, 1^{re} séance du mardi 2 juin 2009, 254^e séance de la session ordinaire 2008-2009, JORF [2009] A.N. (C.R.) 67[1], 3.6.2009, pp. 4758-4759; Assemblée nationale, Compte rendu intégral, 1^{re} séance du mardi 3 novembre 2009, 41^e séance de la session ordinaire 2009-2010, JORF [2009] A.N. (C.R.) 127[1], 4.11.2009, p. 8944.*

a set of guidelines for the Service, information was sought from the Government on its positions and recommendations on the EEAS.¹¹⁵

B. Analysis

(A) *Scrutiny*. The *Assemblée nationale* scrutinised the draft EEAS Decision from both substantive and institutional perspectives. Besides the contents of the Decision, the MPs delved into the implications of the new Service for the institutional balance in the Union.

(B) *Controversy*. The issue of greatest political concern was that of harmonising the institutional prerogatives of the French and European parliaments in the areas of foreign, security and defence policies. As the European Parliament was viewed as trespassing into areas not covered by the Union's constitutional settlement, the *Assemblée nationale* strongly reacted in order to halt this course of action.

(C) *Information*. Apart from Government-provided information, the MPs formally met with MEPs to exchange views on the creation of the Service. This was of particular significance in this dossier, because MPs attempted directly to raise awareness among MEPs of the *Assemblée nationale*'s disapproval of the positions furthered by the European Parliament.

(D) *Outcome*. Although the *Assemblée nationale*'s scrutiny of the EEAS Decision yielded recommendations for substantive changes in the arrangements for the Service's establishment, these seemed to be overshadowed by the institutional squabble with the European Parliament. The primary addressee of scrutiny, therefore, appears to be the European Parliament. Crucially, the House's constitutional relationship with the Government was not seen as posing an obstacle to this. Rather, the Government was a means of communicating the MPs' disquiet to the EU level.

(E) *Parliamentary interdependence*. The involvement of the European Parliament in the establishment of the External Action Service was of major relevance for the *Assemblée nationale*. The aforesaid consultation with MEPs was an opportunity for the MPs to claim the 'territory' and to send a signal to the European Parliament that encroachments on the French sovereign powers will not be tolerated. The *Assemblée nationale*, therefore, openly confronted the European Parliament in order to ensure respect for the delimitation of powers envisaged in the founding treaties, which favoured the former's institutional position. This reflected the actorship of the *Assemblée nationale* as a direct counterpart of the European Parliament. Moreover, the cooperation between the national and European parliaments in effecting the accountability of the Union's action in external relations was embraced, which means that this House did not wish to remain compartmentalised at the French level and be excluded from future evaluations of the Service's operation.

With these remarks in mind, it is fair to conclude that, although the projected result of the scrutiny was to materialise in the national constitutional order, the *Assemblée nationale*, nevertheless, acted within the European constitutional framework to accomplish it. It also explicitly accepted the role of the provider of democratic legitimacy and accountability on the Union plane.

4.1.2. Sénat

A. Scrutiny claims

On 5 May 2010, the *Sénat*'s Foreign Affairs Committee tabled a draft resolution on the EEAS.¹¹⁶ As one of its most significant reactions to the creation of the Service, the Committee condemned

¹¹⁵ See the questions by Michel Delebarre (PS) and Axel Poniatowski (UMP) in: *Assemblée nationale, Compte rendu intégral, 1^{re} séance du mercredi 9 décembre 2009, 81^e séance de la session ordinaire 2009-2010, JORF [2009] A.N. (C.R.) 148[1], 10.12.2009, pp. 10380 and 10382.*

¹¹⁶ *Sénat, Commission des affaires étrangères, de la défense et des forces armées, Proposition de résolution européenne no. 433 sur le projet de décision du Conseil fixant l'organisation et le fonctionnement du service européen pour l'action extérieure et la proposition de règlement modifiant le règlement (CE, Euratom) no. 1605/2002 portant*

the European Parliament's assertion of powers beyond the Treaties, despite an unambiguous Lisbon Treaty declaration to the contrary.¹¹⁷ "There is a tendency within the European Parliament to get involved in all issues and to exclude national parliaments from European matters", observed senator Robert del Picchia (UMP). For senator Jean-Pierre Chevènement (MRC), entrusting the European Parliament with control over the Service and foreign policy was out of the question, because the latter does not represent a sovereign European people.¹¹⁸ As Josselin de Rohan (UMP), the Committee's Chairman, claimed:

This is a very political problem. The European Parliament wishes to increase its political power over the shaping and execution of the common foreign policy through its budgetary power. [...] This would give the European Parliament the right of veto of a political nature over the choice of Heads of Delegations or EU Special Representatives. However, the power of appointment belongs to the High Representative.¹¹⁹

In a subsequent debate in the European Affairs Committee, he held that the European Parliament's demands were abusive and could lead to negative consequences. For instance, the legitimacy and credibility of an appointee to a senior EEAS post would be harmed if he were declared incompetent in the European Parliament hearings but would nonetheless keep the post.¹²⁰ He therefore called for prudence and vigilance:

If national parliaments do not pay attention, they will find themselves one day before a *fait accompli* of a European defence policy crafted in Brussels, on which they would not be able to pronounce themselves.¹²¹

On 21 May 2010, the *Sénat* adopted a resolution on the EEAS.¹²² Therein, it argued that the Treaties do not confer on the European Parliament the rights to intervene in the activities of the Service and to participate in the appointment of Heads of Delegation and EU Special Representatives. It was thus essential for national parliaments to maintain close relations with the Service. The resolution further invited the Government to ensure that the Council took into account the principles of the Service's *sui generis* nature, of its complete budgetary and administrative autonomy and of the widest possible scope of competences. The EEAS should also manage security and defence matters and take the lead in the elaboration of the strategic guidelines for different financial instruments of the Union. Five days later, as presented above, senators took part in a joint meeting on the EEAS organised by the *Assemblée nationale*.

règlement financier applicable au budget général des Communautés européennes en ce qui concerne le service européen pour l'action extérieure of 5 May 2010.

¹¹⁷ Declaration no. 14 annexed to the Lisbon Treaty states that "the provisions covering the Common Foreign and Security Policy do not give new powers to the Commission to initiate decisions *nor do they increase the role of the European Parliament*" (emphasis added).

¹¹⁸ *Sénat, Commission des affaires étrangères, de la défense et des forces armées, Compte rendu, Réunion du mercredi 5 mai 2010*, available at: <http://www.senat.fr/compte-rendu-commissions/20100503/etr.html#toc3>, accessed on 24 March 2010.

¹¹⁹ *Sénat, Commission des affaires étrangères, de la défense et des forces armées, Compte rendu, Réunion du mercredi 12 mai 2010*, available at: <http://www.senat.fr/compte-rendu-commissions/20100510/etr.html#toc3>, accessed on 24 March 2010.

¹²⁰ *Sénat, Commission des affaires européennes, Compte rendu, Réunion du mercredi 19 mai 2010*, pp. 6-7, available at: <http://www.senat.fr/europe/r19052010.html>, accessed on 24 March 2011.

¹²¹ *Sénat, Commission des affaires européennes, Compte rendu, Réunion du mercredi 19 mai 2010*, p. 8, available at: <http://www.senat.fr/europe/r19052010.html>, accessed on 24 March 2011.

¹²² *Sénat, Résolution européenne no. 106 sur le projet de décision du Conseil fixant l'organisation et le fonctionnement du service européen pour l'action extérieure et la proposition de règlement modifiant le règlement (CE, Euratom) no. 1605/2002 portant règlement financier applicable au budget général des Communautés européennes en ce qui concerne le service européen pour l'action extérieure* of 21 May 2010.

The EEAS was discussed in plenary debates mostly prior to relevant European Council meetings. Before the Council adopted the EEAS decisions, the senators queried the Government about the nature, scope and composition of the Service as well as about the repercussions thereof for French embassies worldwide.¹²³ Interventions thereafter sought information on the extent to which the results achieved addressed the concerns expressed in France.¹²⁴

B. Analysis

(A) *Scrutiny*. Just as the *Assemblée nationale*, the *Sénat* carried out a mixture of substantive and institutional scrutiny of draft EEAS Decision.

(B) *Controversy*. The most controversial and politically contentious issue was the European Parliament's excessive assertiveness in striving to extend its powers beyond the Treaties. Most of the senators judged it important to preserve their influence over the political decision making in EU external action.

(C) *Information*. While information mostly came from the French Government, the senators, together with MPs, met with MEPs to exchange their views. The opportunity was also seized to vent their criticism of what they perceived as the European Parliament's unjustified power grabbing.

(D) *Outcome*. Formulating a number of requests for EU institutions, which were similar to those of the *Assemblée nationale*, the *Sénat* intended to guard France's scope of powers in foreign policy making and reaffirm that EU external action is a matter for the Member States' decision. Yet it should be underlined that although the goal was to protect national constitutional powers, the senators held the European Parliament and not the Government responsible for the evolution of the dossier.

(E) *Parliamentary interdependence*. As for the MPs, the European Parliament's action in the decision-making process was evidently of high relevance for the senators. Even more than the *Assemblée nationale*, the *Sénat* assumed the function of a gatekeeper, chiding the European Parliament for usurping the EU constitutional setup. It did so both directly in communication with MEPs and indirectly by means of a resolution. Understanding itself as a counterpart of the European Parliament, the *Sénat* acted interdependently with the EU level.

It ought to be concluded, therefore, that the *Sénat* took a broader approach to scrutinising the creation of the External Action Service and acted beyond the bounds of the French constitutional order.

4.2. UNITED KINGDOM

4.2.1. House of Commons

A. Scrutiny claims

The draft EEAS decision being deposited only five days after publication, the European Scrutiny Committee praised the Government's timely provision of information on this politically important EU initiative.

The European Parliament was seen as "the elephant in the room" with "demonstrable leverage". Its proposal that three Deputy Secretaries-General, as political figures broadly reflecting the political balance in the European Parliament, should deputise for the High

¹²³ See the interventions by Hubert Haenel (UMP), Jacques Blanc (UMP), Yves Pozzo di Borgo (NC), Jean-Pierre Chevènement (MRC) in: *Sénat, Compte rendu intégral, Séance du mardi 27 octobre 2009, 11^e séance de la session ordinaire 2009-2010, JORF [2009] S. (C.R.) 107, 28.10.2009, pp. 8967, 8969, 8973 and 8976*; and by Richard Yung (PS) and Aymeri de Montesquiou (PR) in: *Sénat, Compte rendu intégral, Séance du mardi 8 décembre 2009, 45^e séance de la session ordinaire 2009-2010, JORF [2009] S. (C.R.) 141, 9.12.2009, pp. 12459 and 12461*.

¹²⁴ See the inquiry by Robert del Picchia (UMP) in: *Sénat, Compte rendu intégral, Séance du mardi 26 octobre 2010, 18^e séance de la session ordinaire 2010-2011, JORF [2010] S. (C.R.) 106, 27.10.2010, p. 9074*.

Representative and be embodied in the Service to perform the functions classifiable as being between those of a permanent under secretary and the High Representative's staff was found to be "a bizarre notion".¹²⁵

The Committee's other principal concerns were the division of duties between the Service and the Commission in the programming of the Union's external cooperation programmes and the impact of the Service on Britain's capacity to promote its own bilateral interests in global affairs.¹²⁶ As the creation of the EEAS was "likely to be the most significant change in the conduct of British foreign policy in many years", the Committee recommended the proposal for a debate on the Floor of the House.¹²⁷

The accountability of the EEAS to the British Parliament was subsequently the object of a parliamentary question. The Government replied that Westminster would be able to scrutinise Council decisions and hold the Government to account through evidence sessions and plenary debates.¹²⁸

The EEAS was indeed debated in the plenary on 14 July 2010, less than a week after the European Parliament had adopted a favourable opinion on the Service but before the Council took the final decision. David Lidington, the Minister for Europe, expressed satisfaction with the outcome of the negotiations on the Service's accountability, which was achieved in cooperation with France and other like-minded Member States. He stressed that if the European Parliament's demands had been accepted, they would have represented "a major encroachment by both the European Parliament and the Commission" into policy areas pertaining to the Member States.¹²⁹ In this regard, the intervention by Michael Connarty, the Chairman of the European Scrutiny Committee, exposed the rivalry between Westminster and the European Parliament in the scrutiny of intergovernmental areas of EU decision making:

We now need assurances from the Government that they will defend not just the common foreign and security policy and common security and defence policy, but the right of this Parliament to scrutinise what they do and hold them to account when they go to the Council. That might serve as a small *protection against a European Parliament that might otherwise take complete control* of this policy and this service in the future.¹³⁰

Other MPs' preoccupations ranged from the financial costs of the establishment of the Service to the consequences thereof for the independence of British foreign policy. The House finally resolved to support the Government's policy to agree to the draft Council Decision on the EEAS.¹³¹

On 8 September 2010, the European Scrutiny Committee cleared the document from scrutiny but requested further information from the Government, *inter alia*, on the practical meaning of the High Representative's declaration on accountability, given that it embodies the European Parliament's belief that it would enjoy greater oversight of EU external action.¹³² In a letter sent to the Committee a fortnight later, the Government explained that the declaration, itself a non-binding document, did not confer additional powers on the European Parliament but was a

¹²⁵ House of Commons, European Scrutiny Committee, "Documents considered by the Committee on 7 April 2010", *HC 5-xvii, 18th Report of Session 2009-10* of 8 April 2010, para. 1.32, p. 11.

¹²⁶ House of Commons, European Scrutiny Committee, "Documents considered by the Committee on 7 April 2010", *HC 5-xvii, 18th Report of Session 2009-10* of 8 April 2010, paras 1.33 and 1.34, p. 12.

¹²⁷ House of Commons, European Scrutiny Committee, "Documents considered by the Committee on 7 April 2010", *HC 5-xvii, 18th Report of Session 2009-10* of 8 April 2010, para. 1.36, p. 12.

¹²⁸ House of Commons, Written Answers to Questions, 12 July 2010, Vo. 513, col. 510W.

¹²⁹ House of Commons, Debate of 14 July 2010, Vol. 513, col. 1036.

¹³⁰ House of Commons, Debate of 14 July 2010, Vol. 513, col. 1054.

¹³¹ House of Commons, Debate of 14 July 2010, Vol. 513, col. 1059.

¹³² House of Commons, European Scrutiny Committee, "Documents considered by the Committee on 8 September 2010", *HC 428-i, 1st Report of Session 2010-11* of 22 September 2010, para. 64.49, p. 436.

means of "responding to the European Parliament's concerns without conceding too much on key issues of principle" in the EEAS Decision.¹³³

B. Analysis

(A) *Scrutiny*. Although the House of Commons scrutinised the draft EEAS Decision chiefly from the procedural angle, there were elements of substantive scrutiny. One of the central goals of the scrutiny was to ensure as broad an acquaintance of MPs with the contents of the dossier as possible.

(B) *Controversy*. Palpable contention was detected regarding both the European Parliament's involvement in foreign policy making and the arrangements envisaged for the Service's accountability to it through the High Representative's deputies.

(C) *Information*. The central source of information for scrutiny was the British Government. The House liaised neither with the European Parliament nor with the Commission.

(D) *Outcome*. Despite disagreeing with certain solutions adopted in the EEAS Decision, the MPs did not draw up a formal request for EU institutions to consider amending the issues that diverged from their preferences. This is a strong indicator that the framework within which they acted was purely national. The only addressee of the scrutiny was the British Government. Indeed, in the plenary debate on the EEAS, the Government was explicitly required to render account before its representatives departed for Brussels. The reason for this request, however, lay not only in tightening the reins on national executive action but also in staving off the threat of the looming intrusion of the European Parliament into British constitutional waters. Even so, this threat was dealt with using national parameters, namely by addressing the Government. Therefore, while the European Parliament provided the key impulse for the Commons' reaction, at no stage of the scrutiny procedure was this or any other EU institution deemed a relevant target for the MPs' concerns.

(E) *Parliamentary interdependence*. As demonstrated, the European Parliament's bold appearance in the decision-making process was of great relevance for the Commons' scrutiny. Yet even though the MPs did not subscribe to the European Parliament's position, they did not take their arguments any further than stating the fact that their respective views differed. The House of Commons, therefore, was not in a relationship of interdependence with the European Parliament.

All this warrants the conclusion that the House of Commons took a narrow, national approach to EU decision making and did not act within the European constitutional order.

4.2.2. House of Lords

A. Scrutiny claims

The Lords' scrutiny of the EEAS Decision took the form of correspondence with ministers and an inquiry through evidence sessions with the Government, the Commission and MEPs.

The correspondence with ministers began on the Government's initiative on 12 February 2010, well before the High Representative drafted the EEAS proposal. The Government confidentially sent the EU Committee the European Parliament's non-paper and other fiches and offered to meet peers informally to allow scrutiny to progress in anticipation of the official proposal.¹³⁴ In its reply of 7 April 2010, the EU Committee agreed on the main points under negotiation and waived the scrutiny reserve to enable the Government to give agreement in the Council.¹³⁵ The communication continued, however, about the bureaucratic nature of the process

¹³³ House of Commons, European Scrutiny Committee, "Documents considered by the Committee on 20 October 2010", *HC 428-iv, 4th Report of Session 2010-11* of 1 November 2010, para. 11.44, p. 52.

¹³⁴ House of Lords, EU Sub-Committee C – Foreign Affairs, Defence and Development Policy, "Correspondence with ministers – December 2009 to April 2010", pp. 26-27.

¹³⁵ House of Lords, EU Sub-Committee C – Foreign Affairs, Defence and Development Policy, "Correspondence with ministers – December 2009 to April 2010", p. 34.

of setting up the Service, recruitment and staffing, personnel management, budget, perceptions outside the Union about who represents the Union, development aid programming, the external aspects of internal EU policies, the reporting lines between EEAS officials, crisis management and the position of EU Special Representatives. Among their Lordships' observations was the caveat that:

Following the decision to phase out the WEU Assembly we would reiterate that future mechanisms for oversight of foreign, defence and security policies should be complementary and *should not lead to a marginalisation of national parliaments by the European Parliament*.¹³⁶

The Government agreed and underscored its opposition to any expansion of the European Parliament's competences in these policy fields.¹³⁷

On 14 July 2010, a delegation of the EU Sub-Committee C on Foreign Affairs, Defence and Development Policy went to Brussels to examine witnesses from EU institutions. Among them, they met with two British and one French MEP, who were rather satisfied with the compromise on the EEAS. As Andrew Duff (ALDE, UK) put it, "we were in effect in a codecision procedure despite the fact that our formal powers only instigate an *avis*, an opinion".¹³⁸ Charles Tannock (European Conservatives and Reformists, UK) was equally optimistic about the practical value of exchanging views with senior EEAS appointees:

It is not a confirmation hearing; it is an exchange of views, but I am quite sure that the *de facto* reality will be that if we found that they failed abysmally, were not properly briefed, did not know what their mandate would be, particularly the Special Representatives, they would have a problem in sustaining their position. I am not predicting that is going to happen but it could happen. We could write a letter of no confidence in this individual to Baroness Ashton and you wonder what the future of that individual would be.¹³⁹

The examined MEPs then underlined that the accountability of EU external action, including CFSP and CSDP, should necessarily involve the European Parliament and not only national parliaments.¹⁴⁰

At the beginning of November 2010, a parliamentary question was put on the means that the Government intended to employ to ensure that the establishment of the EEAS would not replace national diplomatic services and support the Member States' objectives. The Government gave the assurance that the Foreign and Commonwealth Office closely monitored the competence delimitation in this field.¹⁴¹

B. Analysis

(A) *Scrutiny*. The House of Lords' scrutiny of the EEAS Decision was of a procedural nature, although substantive analysis was also an important trait of the scrutiny procedure.

¹³⁶ House of Lords, EU Sub-Committee C – Foreign Affairs, Defence and Development Policy, "Correspondence with ministers – May to November 2010", p. 19 (emphasis added).

¹³⁷ House of Lords, EU Sub-Committee C – Foreign Affairs, Defence and Development Policy, "Correspondence with ministers – May to November 2010", p. 22. See also: House of Lords, EU Sub-Committee C – Foreign Affairs, Defence and Development Policy, Minutes of Evidence of 25 March 2010, p. 17; House of Lords, EU Committee, Minutes of Evidence of 6 April 2010, p. 27; House of Lords, EU Sub-Committee C – Foreign Affairs, Defence and Development Policy, Minutes of Evidence of 7 July 2010, p. 22.

¹³⁸ House of Lords, EU Sub-Committee C – Foreign Affairs, Defence and Development Policy, Minutes of Evidence of 14 July 2010, p. 6.

¹³⁹ House of Lords, EU Sub-Committee C – Foreign Affairs, Defence and Development Policy, Minutes of Evidence of 14 July 2010, p. 11.

¹⁴⁰ House of Lords, EU Sub-Committee C – Foreign Affairs, Defence and Development Policy, Minutes of Evidence of 14 July 2010, pp. 13-14.

¹⁴¹ House of Lords, Written Answers to Questions, 2 November 2010, Vol. 721, col. WA384.

(B) *Controversy*. Although a range of questions were examined, the establishment of the EEAS was not particularly controversial in the House of Lords. The peers were, hence, able to lift the scrutiny reserve without delay.

(C) *Information*. Apart from Government representatives, the Lords examined MEPs and Commission officials. The goal of establishing contact with EU institutions was to gather information and to better grasp the intricacies of the new Service and not to hold the Commission and the European Parliament accountable for the negotiating lines that they intended to follow. None of the evidence sessions held with EU officials on the EEAS unearthed the Lords' wish to influence the positions adopted by their witnesses.

(D) *Outcome*. Their Lordships' investigation of the establishment of the Union's diplomatic service was conducted with a view to keeping abreast of the development of the dossier rather than with a view to proposing alternatives for EU institutions' attention. What outstanding issues there were, they were settled in correspondence with the British Government, which was the only addressee of the scrutiny.

(E) *Parliamentary interdependence*. The European Parliament's posture in the EEAS negotiations was highly relevant for the Lords. They even thought it worthwhile to travel to Brussels and interview competent MEPs. Yet, as mentioned above, there is no evidence whatsoever that the Lords intended to make an influence or impress their opinions on their interlocutors. The House of Lords' scrutiny activities were, therefore, not interdependent with those of the European Parliament.

It should be concluded, consequently, that while it restricted the outreach of its scrutiny to the British constitutional order, it nonetheless partially acted with the European constitutional order.

5. CONCLUDING REMARKS

It has been shown in this paper that despite not having a direct role in the EU decision-making process as such, national parliaments can perform their constitutional prerogatives within the European constitutional order and thereby contribute both to the legitimacy of EU decisions and to the accountability of the executive actors involved. The transfer of powers from the Member States to the Union did not of itself disqualify national parliaments from the EU legislative game. The criticism or praise of the policy choices made by the Union may create a critical mass for their alteration or fortification. The exposure of European policies to the scrutiny by the representatives elected at the national level ought to be seen as an important element of EU democracy. Both case studies yield significant insights in this respect.

The *Services Directive* episode (Table 1) demonstrated that in circumstances of great political salience and policy impact, national parliaments do not shy away from employing a wealth of resources to effect policy change at the EU level. The French Parliament is a case in point. Both the *Assemblée nationale* and the *Sénat* acted beyond the confines of the French legal border to achieve their goals at the EU level. The British Parliament's approach was more inward-looking as it was aimed at effecting ministerial accountability for Council negotiations. The House of Lords more than the House of Commons sought to address the EU level but did so cautiously so as not to appear intrusive.

Table 1. *Scrutiny of the Services Directive in France and the United Kingdom*

	Scrutiny	Controversy	Information	Outcome	Parl. interd. & action beyond borders
Assemblée nationale	substantive	country of origin, scope	EU-oriented	policy recommend.	yes
Sénat	substantive	country of origin, scope	EU-oriented	policy recommend.	yes

House of Commons	procedural	-	Govt-oriented	ministerial responsibility	no
House of Lords	substantive	-	Govt & EU-oriented	policy recommend.	partially

The establishment of the *European External Action Service* (Table 2) unveiled that national parliaments can act as guardians of the Treaties, safeguarding the institutional balance anchored therein. Their interest in this task is understandable since national parliaments were the ones to approve the bounds of EU powers in the first place. Once this 'constitutional compact' is imperilled, they can be expected to react in order to restore the previously agreed limits. Virtually all four parliamentary chambers examined protested the European Parliament's determined request to be associated in the shaping of the Service. This furthermore means that although the European Parliament can be a partner of national parliaments where their institutional preferences and interests coincide, it can also be their foe where these diverge.

Table 2. *Scrutiny of the European External Action Service Decision in France and the United Kingdom*

	Scrutiny	Controversy	Information	Outcome	Parl. interd. & action beyond borders
Assemblée nationale	substantive	institutional powers	EU-oriented	policy recommend.	yes
Sénat	substantive	institutional powers	EU-oriented	policy recommend.	yes
House of Commons	procedural & substantive	institutional powers	Govt-oriented	ministerial responsibility	no
House of Lords	procedural & substantive	institutional powers	Govt & EU-oriented	ministerial responsibility	partially

Finally, the foregoing analysis warrants the conclusion that the meager powers envisaged for national parliaments in the Treaty texts do not preclude them from acting. More than one is led to believe, these parliaments tend to scrutinise EU decisions of fundamental importance, issue policy recommendations and closely follow the course of action that the Union intends to take. In doing so, they sometimes act interdependently with the European Parliament and other EU institutions. In these cases, their action is often shaped by that of EU institutions. Therefore, there can be a considerable degree of cross-border institutional observance. Much action is performed in relation to that of actors established outside the national parliaments' own constitutional orders. In this sense, national parliaments should be regarded as valuable contributors to the legitimacy and accountability of the European Union.