

The French Parliament and the EU: Progressive Assertion and Strategic Investment

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I. The not-at-all-glorious first thirty years of French parliamentarism in European policy-making: a difficult quest for accommodation

The political and European culture in France

From 1960 up to the 1990s French politics have been extraordinarily non-parliamentarian. Since the founding years of the European/Economic Community coincided with the first years of the Fifth Republic, political elites – parliamentarians as well as bureaucrats and ministers - have been impregnated by the behavioural routines of de 'Gaullian policy' style when it came to interactions with the 'exterior'. First of all, after the painful experience of national split under Vichy, a leading principle was the preservation of national unity and coherence in policy making 'à tout prix'. Secondly, the alienation of the general will through party battles and conflicts among social groups needed to be banned from the political arena. France's elites and bureaucrats had a mission to fulfil: the modernisation of society and the furthering of the competitiveness of a nation that was an industrial 'late-comer'. The Marshall plan and the creation of the European Communities have been the unrivalled opportunity to accomplish this difficult task.¹

France's political culture is characterized by the common belief that a strong and independent nation state plays an essential role for the preservation of the "one and indivisible" Republic.² Moreover Lijphart stipulates that France is one of the few West European countries (like Italy Denmark, the UK and Portugal) where foreign policy is an issue (of medium salience) for party system cleavages.³ With regard to Europe such cleavages are even more salient because they not only are shaped by inherited perceptions about France's rank in the Western World but also by a certain understanding of the role that the state should play in the making and the implementation of public policy decisions. Today these beliefs still explain to a large extent political cleavages and public attitudes toward integration.⁴ And indeed: France is characterised by a unique cross-cut of old party system

¹ Milward, Alan, *The European Rescue of the Nation State*, London, Routledge, 1992.

² Flynn, George, *Remaking the Hexagon. The New France in the New Europe*, Boulder, Westview, 1995.

³ Lijphart, Arend, *Patterns of Democracy. Government Forms and Performance in Thirty-six countries*, New Haven, Yale University Press, 1999, pp. 79f., table 5.3.

⁴ Dupoirier, Elisabeth; Grunberg, Gerard, "La Déchirure Sociale", in: *Pouvoirs* 73, avril 1995, pp. 143-157.

cleavages such as the traditional division between republicans and liberals⁵ and a “European” cleavage brought about by bitter political choices that profoundly reorient the ruling state capitalist model.⁶ The state still remains the French’s focus of demands for social protection. The disentanglement of that state from the European level was a main reason for the - occasionally - conflictual adaptation processes during the 1990s.⁷

Hence the impact of the ‘Maastricht’-conflict on public opinion and on party-political cleavages remained perceivable until the 1995’s presidential election and the third cohabitation (since May 1997). The entire process from the Maastricht-referendum in 1992 and the following strong downward trend in the first half of the nineties up to the conclusion of the Amsterdam Treaty and its ratification in March 1999 reflects a development from refusal to accommodation with the inevitable. Nevertheless this process is not linear. More than other member states French public opinion suffers from a kind of ‘overload’ with regard to the European dimension, so that from time to time conflictual issues tend to provoke eruptive system shocks that may alienate a generally positive tendency and hide a basically low interest in European matters. As a result today French public opinion is at an average with regard to the general support for the European integration process. According to Eurobarometer 53 (April 2000) 49 % of the French population think that EU-membership is “a good thing” for France.⁸ The importance ascribed to ‘self governance’ and national sovereignty is still high and an important feature of French political culture, but it is not as far reaching and as strongly attached to the idea of parliamentary sovereignty as in Great Britain. In the eyes of French citizens parliament and parties represent a source of political legitimacy among others, namely the direct expression of the political will through referenda.⁹

The French party system and the European issue

The French party system has become more and more complex for the last twenty years. Of course the multiplication of political parties does not primarily result from the European challenge. But political parties’ attitudes toward European integration have also

⁵ Rémond, René, *Les droites en France*, Paris, Aubier Montaigne, 1982. See for a more general account: Marks, Gary; Wilson, Carole J., “The Past and the Present: A Cleavage Theory of Party Response to European Integration”, in: *British Journal of Political Science* 30, 2000, 433-459.

⁶ See Hooghe, Liesbet; Woolcock, Stephen, “Atlantic Capitalism versus Rhine Capitalism in the European Community”, in: *West European Politics* 16, 3, 1993, pp. 329-344. See also: Wilks, Stephen, „Regulatory Compliance and Capitalist Diversity in Europe“, in: *Journal of European Public Policy* 3,4,1996, pp. 536-559.

⁷ Szukala, Andrea, *Die Öffnung der politischen Entscheidungsprozesse in Frankreich: Ein Umbau des Staates in europäischer Absicht?*, in: *Deutsch-Französisches Institut (ed.), Frankreich-Jahrbuch 1999*, Opladen: Leske, 1999, pp. 145-159.

⁸ Eurobarometer 53, April-May 2000.

⁹ Schmidt, Vivien, “Discourse and (Dis)Integration in Europe: The Cases of France, Germany, and Great Britain“, in: *Daedalus* 126, 3, 1997, 167-198.

become more complex. Today the French conservatives – except from the extreme right which is deeply opposed to Europe - is divided in four factions. Choosing to present a separate list for the 1999 European elections the centrist wing UDF (Union Pour la Démocratie Française created by the former President Valéry Giscard d'Estaing) positions itself as euroenthusiastic. DL (Démocratie libérale), the 'liberal party' in the French sense of the term, is favourable to European integration but very opposed to the development of a “European State”. The gaullist RPR (Rassemblement Pour la République) has always been deeply divided on European questions, as proved by the various shifts of President Chirac during his career. The European conflicts within RPR became uncontrollable after J. Chirac's election at the presidency in 1995 when he decided to follow the former President Mitterrand's European orientations. The “souverainistes” – so-called in reference to the partisans of the autonomy of Quebec – chose to break up with the RPR during the 1999 European elections and created their own party, the RPF (Charles Pasqua's Rassemblement pour la France). Thus, the French right is severely disoriented and unable to deal coherently with European challenges. Solely a voter oriented perspective permits the preservation of some kind of common bottom line, namely with regard to the important rural interests. But when it came to a parliamentary vote on another core issue, the passage to the third stage of EMU¹⁰, Gaullists appeared once again unable to keep up a partisan cohesion adequate to the problem at stake: obeying their party leader Séguin RPR-MPs risked to refuse categorically the passage to the third stage, had not the intervention of president Chirac prevented the worst.

Left political parties are less perturbed by European issues. The socialist party (PS) can be seen as largely pro-integrationist. But even if key members of the actual Jospin government have solid European convictions (e.g. E. Gigou, H. Védérine), the post-1997 socialist governmental policy differs from the ‘old’ approach: Whereas Mitterrand's European policy was characterised by a functionalism combined with a great deal of voluntarism and symbolism¹¹, the new approach reveals to be more pragmatic in terms of interest formulation vis-à-vis other European governments. L. Jospin's four conditions to the achievement of EMU during the 1997 election campaign, the Delor concept of “federation of national States” as well as the bizarre Amsterdam-TEU ratification law¹² that conditions the further development of the EU's institutional system on the fulfilment of certain French demands elucidate a shift of political mentalities within the French left and within the French political

¹⁰ National Assembly, 24 April 1998.

¹¹ La Serre, Françoise de : ‘La politique européenne de François Mitterrand: innovante ou réactive?’, in: Cohen, Samy, (ed.), Mitterrand et la sortie de a guerre froide, Paris, PUF, 1998, pp. 109-125, pp. 112ff.

class in general. A new European rhetoric is gaining ground, underlining no longer that Europe is a challenge for the French nation (like during the Mitterrand years), but that the importance of a genuine French contribution to the European project is growing: “Exporting the French model can, in the French’s government’s (and President’s) view, provide the basis of a new European synthesis markedly less favourable to the neo-liberal, free market solutions en vogue since the mid1980s.”¹³ Therefore Jospin tries to convince his European partners and public opinion of a political reorientation of the EU in favour of social and employment concerns. Inevitably the very unhomogenous PS still has great capacities for the articulation of resistance against the European integration process within the left wing ‘courants’ (factions). And the communist party – even in “mutation” - as well as the Greens and the left wing of the PS are not satisfied with the perceived “ultraliberal” orientation of the EU either. But the predominant position of social democrats within the governing coalition makes sure that the largely Pro-European orientation of the current “gauche plurielle”-cabinet does not really suffer from those critics.

Finally the majority of the left as well as the majority of the right is – on a more or less enthusiastic mood – favourable to the pursuit of the European integration process. Unless some attempts to bring eurosceptics from both sides of the political landscape together they remain deeply divided: between a right concerned about sovereignty and the preservation of the “one and indivisible republic” and a left worried about social consequences of the EU and the neo-liberal “pensée unique internationale”.

Table 1 European Orientation of French Parties and results form the 1999 European elections

	PC	PS	Green	UDF	RPR / DL	RPF	Extreme right	Hunting party
Euro- enthusiasm	-	++	+	++	+ -	- -	- -	- -
European elections ¹⁴	6,8 %	22 %	9,7 %	9,3 %	12,8 %	13 %	9 %	6,8 %

The French political system

¹² Loi n° 99-229 du 23 mars 1999

¹³ Cole, Alistair; Drake, Helen, The Europeanization of the French Polity, in: Journal of European Public Policy 7, 1, 2000, pp. 26-43, p. 34.

¹⁴ European elections of the 13 June 1999. This “second order” election explain the of the dispersion of the votes in favour of non governmental parties.

The classification of the French political system is problematic due to the originality of the institutional model of the Vth Republic. The duality of the two heads of the executive constitutes a specific feature, because the respective influence of the President and of the Prime Minister depends on the conformity of the parliamentary majority with the presidential one. Therefore the Lijphartian classification of democracies has to be slightly modified in the case of France.¹⁵ His underlying argument that stipulates a causal link between vertical and horizontal power distribution within a political system and a typical decision making style is not unambiguous. The case is quite clear with regard to the degree of hierarchical distribution of power, since France – despite all decentralisation efforts – counts surely still among the most vertically integrated countries in Europe.¹⁶ But unlike a traditional majoritarian system the concentration of executive power (one party government with cabinet dominance)¹⁷ is not an invariable factor, since there is a paradoxical French share of competencies between Prime Minister and the President¹⁸ that may actually lead to quite different configurations and a structural division of executive power.

Although – like the British House of Commons - the National Assembly as well as the Senate are more talking than working parliaments¹⁹ in power political terms they can be classified as “loyal workhouses but poor watchdogs”.²⁰ Indeed the basic pattern of French Vth Republic’s ‘parliamentarisme rationnalisé’ is not very conducive to an effectiveness in the exercise of the functions of control, legislation and interest aggregation. Legislative functions are delegated competencies, the Parliament has no organisational autonomy and the Government disposes of a set of strong instruments to overrule a disobedient assembly (e.g. ‘Vote bloqué’, ‘Question de confiance’). The president can dissolve the National Assembly. In case of conformity between the political colour of the President and the parliamentary majority, the National Assembly is largely deprived of the choice of the PM. In case of “cohabitation” the PM tends to appropriate for himself a part of the political supremacy of the President.

Even if the French institutional model has been analysed as strongly limiting parliamentary prerogatives, the various instruments of the ‘parlementarisme rationnalisé’ and the scrutiny mode have also contributed to the strengthening of the cohesion of the parliamentary majority, be it in favour of the whole executive or in favour of the government in case of

¹⁵ Lijphart, *Democracies*, p. 190.

¹⁶ Ibid., but see processes of change due to European integration: Balme, Richard; Jouve, Bernard, *Building the Regional State: Europe and Territorial Organization in France*, in: Hooghe, Lisbeth (ed.), *Cohesion Policy and European Integration: Building Multi-Level-Governance*, Oxford, OUP, 219-255.

¹⁷ Lijphart, *Democracies*, pp. 10ff.

¹⁸ Above all in foreign and European policy making, see Articles 5, 15, 20, 21, 52 of the French constitution

¹⁹ Steffani, Winfried (ed.), *Parlamentarismus ohne Transparenz*, Opladen, Westdeutscher Verlag, 1971.

cohabitation.²¹ Finally France's deputies have quite stable 'electoral connections'²², since the electoral system creates a strong link between a MP and his constituency. This close relationship constitutes one of the major reasons for the deputies to demand more competencies as to the control and the making of European politics in France.

French European policy-making

The core element of French European policy-making is the strong proclivity to an executive dominated style when it comes to political intercourse with the 'exterior'.²³ The anxiety to preserve a homogenous image of the 'national interest' and sovereignty towards the outside stands in the centre of a quite 'Rousseauian' concept of interest representation. That is why the competence-share between the PM and the President always attracts a lot of foreign policy analysts. But today more and more students of French foreign policy tend to recognise that the political and academic perception of the President's role in European politics was not free from intentionalism.²⁴ Indeed the reality of genuine European policy-making in the 1990s was not as strongly affected by 'cohabitation' as some may have stipulated: in "high politics" a very firm sense of solidarity regarding the preservation of France's rank and influence on its European partners helps to surmount the potential cleavages between the PM and the president in almost any situation.²⁵ Due to the changing character of European day-to-day-politics the President's policy-making functions are constantly diminishing. The relative insufficiency of Elysées's information tools and the President's isolation from the interfaces of ministerial co-ordination – the SGG and the SGCI²⁶ – have contributed to the strengthening of the Prime minister's role in European affairs for the last fifteen years. The central role played by the SGCI

²⁰ Frears, John, "The French Parliament: loyal workhouse, poor watchdog", in: *West European Politics* 13, 3, 1990, 32-51.

²¹ Huber, John D., *Rationalizing Parliament, Legislative institutions and party politics in France*, Cambridge, Cambridge University Press, 1996.

²² Mayhew, David R., *Congress: The electoral connection*, London, Yale University Press, 1974.

²³ The following analysis is based on: Andrea Szukala, *The European Transformation of the French Model*, in: Maurer, Andreas; Wessels, Wolfgang; Mittag, Jürgen (ed.), *Fifteen Into One. The European Union and the Member States*, Manchester, MUP, 2001.

²⁴ Kessler, Marie-Christine, *La politique étrangère de la France. Acteurs et processus*, Paris, Presses de Sciences Po, 1999, p. 193.

²⁵ Any of the three difficult European negotiations during the three cohabitation periods (1986-88 SEA, 1993-1995 GATT, 1997 Stability Pact) has been achieved in a consensual mode. See as well: Jean Massot, *Alternance et Cohabitation sous la Vième République*, Paris, La Documentation Française, 1997.

²⁶ The general secretary of government (SGG) is in charge of the co-ordination of the government, specially the dispatching of information. Under the supervision of the PM, the SGCI (Secrétariat général du Comité interministériel pour les questions de coopérations économiques européennes) provides the ministerial co-ordination for European affairs.

in the institutional framework in European decision-making also stands for the traditional administrative centralism of French bureaucracy.²⁷

The modest pre-history of parliamentary intervention in European policy-making

During the first decades of the Vth Republic, the Parliament paid very limited attention to European integration. The progressive awakening of the two assemblies is undoubtedly due to the fear to lose prerogatives. The unfavourable situation of the legislative power has contributed to make MPs sensible to that issue. The first direct elections of the European Parliament in 1979, the Single Market Program and above all the progressive recognition of the superiority of EC legislation by the Council of State (Conseil d'Etat) and the Constitutional Council had fostered the awareness of deputies and senators. The first functional organ that monitors French European policy-making at the parliamentary level – the Delegation for European Affairs - was created very early by the Senate in 1973, the National Assembly came next in 1979.²⁸ As the number of permanent committees is constitutionally unchangeable and as the existing committees hadn't been very open to make use of the expertise provided by those new “Délégations pour les Communautés Européennes” (18 members/chamber), their performance had been more or less a failure. They had no relevant competencies and were permanently overlooked by governments, which felt absolutely unbounded in their diplomatic practice of “foreign policy”-making at Brussels.

At the beginning of the 1990s, parliamentary elite progressively awakened. Obsessed by J. Delors assertion that “in the future, eighty percent of the legislation will come from the EC”, they felt that a growing part of parliamentary work was explicitly induced from the 'above', i.e. the EC. A first step consisted in a rudimentary reform of the delegation's general role to inform parliament on European matters: in 1990 membership of the Delegation for European Affairs doubled, governmental information policy became more systematic and the Ministers for European Affairs gained an informed parliamentary forum to present governmental policy via the organisation of periodic auditions.²⁹ But the real break-through occurred in the context of the constitutional reform, on which the final ratification/referendum of the Maastricht-Treaty was conditional. The preceding decision of the Constitutional Council³⁰ had stated non-conformity with the constitution because certain Treaty provisions such as the formulation of a common visa-policy affected “the essential conditions for the

²⁷ Lequesne, Christian, Paris-Bruxelles. Comment se fait la politique européenne en France ?, Paris, Presses de Sciences Po, 1993.

²⁸ Loi n° 79-564 du – juillet 1979.

²⁹ Loi 90-385 du 10 mai 1990.

³⁰ DC 92-308 du 9 avril 1992.

exercise of national sovereignty”. This ruling brought the two chambers of parliament into a veto-position, that they – above all the Senate - used in a quite proficient way and against the government’s initial dispositions.³¹ As a result emerged an extension of parliament’s power to call into question the constitutional conformity of ratification laws and a revised system of parliamentary screening and controlling of European secondary law-making, which is based on “the 88-4”, a new article in the French Constitution.³²

II. The practice and evaluation of parliamentary involvement in EC/EU affairs 1993 – 1999

A bounded and complex procedure

The 1992’s article 88-4 dispositions provide the Parliament for the first time with the constitutional right to be informed, to scrutinise, and to intervene – via the tabling of parliamentary resolutions – into the conduct of French European Community policy.³³ These ‘resolutions’ allowed the two chambers to give to the government their views about EC draft acts. Normally a proposal for an act is communicated by the European Commission to the Permanent Representation of France to the European Union, which transmits it by fax to the SGCI. Before the proposal is officially forwarded to the assemblies a kind of preselection has to be accomplished. Up to 1999 the Parliament was only allowed to adopt resolutions on 'legislative' proposals in terms of the French constitution (Cf. 34 and 53). These decisions on the legislative quality of EC-acts are provided by the Council of State (Conseil d’Etat), an important national actor, as it is playing today a core role for determining the chances of the parliament to get fully involved into the EC legislative process.³⁴ The evaluation-work of the Council of State is also fundamental in the sense that the legislative or regulative quality of a proposal may prefigure the parliamentary or administrative way of future transposition measures into national law. That is why today the reports of the Conseil d’Etat on the legislative or simply regulative quality of a proposal have to be published.³⁵ It has seven days to provide its analysis. In case of emergency, this delay can be abridged up to three days or even to twenty four hours. When receiving the note of the Council of State, the SGG sends the EC-

³¹ LO 92-554 du 25 juin 1992.

³² See Annex

³³ Rizzuto, Franco: ‘The French Parliament and the EU: Loosening the Constitutional Straitjacket’, in, Norton, Philip, (ed.), *National Parliaments and the European Union*, London, Cass, pp. 46-59.

³⁴ Aguila, Yann, *Le rôle du Conseil d’Etat*, in Roussillon, Henri (ed.), *L’article 88-4 de la constitution française: le rôle du parlement dans l’élaboration de la norme européenne*, Toulouse, Presse de l’Université des Sciences Sociales de Toulouse, 1995, pp. 161-171.

draft proposals which are of legislative nature - and therefore demand an involvement of parliament - to the Presidents of the two assemblies supplemented by the report of the Council of State. The draft proposals are notified and published as parliamentary documents and mentioned in French Official Journal. The SGCI also sends the proposals that are of non-legislative to the delegations of the two assemblies – be they regulative or “without object”.

Table 2. Statistic on the legislative impact of European proposals following the rulings of the Conseil d'Etat (88-4)

		1993	1994	1995	1996	1997	1998
1 st pillar	<i>total</i>	542	483	488	439	357	316
	<i>Legislative</i>	179	172	213	192	214	177
2 nd pillar	<i>Total</i>	0	0	0	3	0	0
	<i>legislative</i>	0	0	0	1	0	0
3 rd pillar	<i>Total</i>	0	0	0	95	90	80
	<i>legislative</i>	0	0	0	44	52	50
Schengen	<i>Total</i>	0	0	0	14	42	17
	<i>legislative</i>	0	0	0	4	1	0

Source : Sauron, Jean-Luc, «Le contrôle parlementaire de l'activité gouvernementale en matière de droit communautaire en France», Revue trimestrielle de Droit européen, 35 (2), avril-juin 1999, p. 179.

35 See: Letter from the Prime Minister to President of Assembly's Delegation, 10 july 1995, in Assemblée Nationale, L'Assemblée Nationale et l'Union Européenne, Paris, pp. 121f.

Theoretically, any deputy or senator can table a proposal for a resolution. Seen the great number of legislative proposals the assemblies had to find a way to cope with the risk of an 'European overload' ~~and of too many solitary initiatives of individual deputies~~. A modification in the National Assembly's standing orders (RAN) in 1994 underlined the eminent function of the parliamentary Delegation in this context.³⁶ The National Assembly's Delegation examines all texts that have been transmitted by the SGG. In most cases, the delegation concludes that it is not necessary to continue the parliamentary scrutiny procedure. The same is true for the Senate, but here the President of the Delegation transmits a written comment to the members of the Delegation for the less important proposals. For the more important drafts both Delegations can draw proposals of resolutions. The delegations may also express their opinion on a more informal way, by adopting "conclusions" or by sending a written note to the minister in charge of the draft proposal in question. When there is agenda pressure (which is quite often the case) the first chamber's Delegation may nominate instantly an own "rapporteur d'information", who is competent to submit an immediate proposal for a resolution. Two thirds of the resolutions tabled at the National Assembly have this origin.³⁷

The analysis of the Delegation, with or without recommendations, or the information report of the Delegation whose recommendations may be made in the form of a motion for a resolution are transmitted to one of the six permanent Commissions. Indeed, any proposal has to pass through a permanent Commission to come into force. The scrutiny of European proposals by the Permanent Commissions constitutes the major transformation introduced by the 88-4 procedure. Before 1992 the Permanent Commissions hadn't been involved into the European decision-making process because they did not examine European texts prior to their transposition into national law. As one European proposals may provoke several parliamentary initiatives, they are pooled at the concerned Commission's level. Other Commissions and the Delegation, if they have decided to give an opinion, and any deputy must move amendments before the Commission responsible makes know its view. At the National Assembly a Commission has one month to examine the proposals for resolutions if the motion was tabled by a rapporteur from the Delegation.

After the distribution of a report of a Commission recommending that a motion for a resolution should be carried, the resolution is considered effective if the government and the presidents of commissions, delegations and political groups do not call for a further inscription

³⁶ Assemblée Nationale, *Le Nouveau Règlement de l'Assemblée Nationale*, Paris, 1994. The evolution had been different at the Senate's delegation but the new Senate's 1999 standing orders gave it the right to review all proposals, too.

³⁷ During the 1998-99 session, the National Assembly Delegation has registered 31 reports. BAN, *Statistiques*, 1998-1999.

at the agenda for a floor session (within a delay of eight days at the National Assembly and ten days at the Senate). If the motion is set down on the agenda, it is debated in public sitting before being voted upon. The debate on the floor has the advantage to give to the adoption of a resolution a more solemn feature, to implicate a larger number of MPs and to lead the government to express its official position on an European issue. During the Xth legislature (1993 – 1997), 33 resolutions that is to say nearly half of the resolutions had been debated on the floor. The situation has changed since 1997: no more than 7 resolutions has been debated on the floor and all the resolutions has been approved with no debate since June 1999. The SGCI always has to be informed at an earlier stage, immediately when it comes to the tabling of a resolution.

A complete examination of EC documents by the delegations for European affairs

The National Assembly and the Senate opted for a system, which is based on European Affairs Delegation as the major pillar. Often described of the “European watchtowers” of the assemblies³⁸, the Delegations have a very important role to play, as they are supposed to select the proposals which are judged to be politically significant. The Delegations are composed of 36 members representing proportionally the political groups and permanent commissions. The members of the delegations share a common interest in European affairs. Although they have adopted a quite consensual working-style the cleavage between eurosceptics and euroenthusiasts should not be neglected. The majorities of the Senate’s Delegation do not vary a lot and an important number of the – mostly centre right – senators at the Delegation are favourable to European integration. At the National Assembly the majority is more fluctuating and the chamber’s Delegation has rallied some influent right wing anti-European MPs during the 1990s. Within parliament the reputation of the Delegations has progressively improved. They now meet about three times a month at the Senate and once a month at the National Assembly. The meetings last more than two hours.³⁹ About a dozen MPs are habitually present. Both delegations are supported by an important administrative staff. About fifteen civil servants are employed at the European affairs service of the National Assembly and nine at the Senate. Only the British Parliament has a comparable staff. The technical competence of the “administrateurs” is generally recognised. The Delegation performs frequent hearings of personalities and particularly of the Minister for European affairs. During the Xth legislature (1993-1999), 45 auditions of members of the

³⁸ “La délégation, vigie européenne de l’Assemblée”, Assemblée Nationale, L’Assemblée Nationale et l’Union Européenne, Paris, 1998, p. 73.

Government have been realised.⁴⁰ Representatives of the European institutions and various personalities are also heard. In total, about twenty persons are auditioned each year.⁴¹ The minutes of those meetings as well as the other activities of the Delegation are published as written reports, which are published on the internet. Hence the Internet site of the National Assembly and of the Senate grant an important room to European affairs.

The six permanent Commissions of each Assembly are not affected in the same way by the scrutiny of European proposals.⁴² Two technical Commissions examine most of the proposals of resolutions. During the Xth Legislature (1993-1997), 74 resolutions were adopted by the National Assembly and the Commission for Production and Exchange examined 32 proposals. During the same period, the Commission for Economic Affairs and the plan examined 24 of the 43 proposals for resolutions. The two Financial Commissions also consider a large number of European proposals. European affairs can also be raised at a floor session. But MPs hardly ever ask questions to the government about Europe at the general question time. Floor sessions specifically dedicated to European questions have been tested in 1994 and in 2000 but it seems that the parliamentary opposition tends to talk more about 'national' affairs. Public debates about French European policy including governmental general declarations seem to be a more efficient way to evoke EU-related issues. Even if it is the government that decides on the tabling of those debates and even if the exchanges are often purely formal, the proceeding make a larger number of MPs participate in the examination of European matters. The debates are also a rare opportunity for the Government to present publicly its opinion about European issues, especially before European Council meetings. Thus, public debates on 'Europe' at the National Assembly have increased from five (1984-1990) to 15 (1991-1997).⁴³ This development testifies the changing political mentalities and the strengthening of the link between Parliament and the Government in European policy making.

The delegation of the National Assembly scrutinises European proposals on the basis of the following criteria⁴⁴ :

- Treaty basis of proposal, voting procedures at the Council, involvement of EP;

³⁹ The National Assembly Delegation met 34 times during the session 1998-99 which represents 65 hours. BAN, Statistiques, 1998-1999.

⁴⁰ Assemblée Nationale, *L'Assemblée Nationale...*, pp. 82-84.

⁴¹ Fifteen persons has been heard by the National Assembly Delegation during the session 1998-99, seven of them were members of the government. BAN, Statistiques, 1998-1999.

⁴² Nuttens, Jean-Dominique; Sicard, François, *Assemblées parlementaires et organisation européennes*, Paris, La Documentation française, 2000, pp. 68-69.

⁴³ BAN, Statistiques 1984-1997.

- date of transmission at the Council/date of reception at the parliament's presidency;
- reasons for EU activity (respect of the subsidiary principle) / subject matter / content;
- national legislation engendered;
- French and other member states positions;
- agenda.

The parliamentarians made a regular but not excessive use of the new instrument as show the following statistics. As a medium, 5 to 10 % of the proposals transmitted are subject to a resolution.

Table 3. The parliamentary Resolutions (1993-99)

	1993	1994	1995	1996	1997	1998	1999
Proposals transmitted to the Assemblies	143	171	206	201	231	206	181
Resolutions adopted by the National Assembly	11	23	18	18	12	12	13
Resolutions adopted by the Senate	7	13	9	13	3	9	12

Source: Nuttens, Jean-Dominique; Sicard, François, *Assemblées parlementaires et organisation européennes*, Paris, La Documentation française, 2000, p 73.

In a recent study⁴⁵, two Senate civil servants, Jean-Dominique Nuttens and François Sicard, have established a synthetic presentation of the content of the resolutions. Institutional questions are at the centre of the assemblies interests, because MPs are strongly attached to the respect of Member States prerogatives. Thus, the delegation of the National Assembly systematically analyses the legislative basis of a European proposal and one of the most important criteria for parliamentary evaluation of a proposition at the Senate is the attention paid to the subsidiarity principle.⁴⁶ In a sectoral perspective the parliamentary interest for European matters affects agriculture, trade issues, budgetary questions and proposals related to public utilities. The preservation of the CAP and of the community preference are the major characteristics of the resolutions regarding agriculture. D. Nuttens and F. Sicard indicate that about one third of the resolutions have been related with agriculture from 1993 to 1999. The preservation of France's interests in international trade – namely in the agricultural and cultural sector and vis-à-vis the United States - is another important issue. In the context of the economic crisis of the middle of the 1990s, the two assemblies have been very keen on restrictions of European Communities' budgets. The frauds related to EC-subventions have been periodically denounced. MPs also have expressed concerns about the development of

⁴⁴ Assemblée Nationale, *L'Assemblée Nationale...*, pp. 124-125.

⁴⁵ *Assemblées parlementaires et organisation européennes*, Paris, La Documentation française, 2000, pp. 73-83.

⁴⁶ Senate Civil Servant, Interview 4, 2 October 1998.

competition policy in various strategic fields, such as the energy and communication sector. The special interest of France regarding the preservation of certain monopolies and public utilities ('Service public') against European competition policy as well as regarding the social consequences of the progression of deregulative policies in the Single Market have been constantly stressed.

The parliamentary matters of interest reflect both concrete electoral concerns – for instance in agriculture – and a specific way of apprehending Europe through 'national lenses'. Thus, the interest for public utilities and international trade is related to the conception of the European integration as an answer to the 'danger' of globalisation. The European construction is generally justified in the public debate as a protection against various global threats that could affect France's social and economic health and lead to the dilution of French culture. Reflecting this national perception parliamentary resolutions turn out to be ambiguous regarding the support for European integration: Europe is both considered as a symptom and a possible remedy against the nasty consequences of major world-wide evolutions.

The extent of parliamentary scrutiny, the delays and the access to information

The interpretation of article 88-4 had first been quite restrictive. The right to adopt resolutions initially concerned solely EC proposals - excluding the IInd and the IIIrd pillar policies – having 'legislative' quality according to the analysis of the Council of State. Inter-institutional agreements and European Commission communications for example were excluded from that definition. However there was a great readiness of parliament to step into fields outside the EC-framework and therefore to violate the boundaries of article 88-4, e.g. when potential additional EU/EC competencies appeared in Commission's Green or White papers or when Agenda 2000 was published in 1997. Important EC-decisions may not have touched the legislative domain at all while being very incendiary in political terms, e.g. the decisions on prices and market organisation in CAP. French governments progressively decided to enlarge the field of examination of the Assemblies during the 1990s. Since the adoption in 1994 of a new law modifying the "loi Josselin" of 1990⁴⁷, the government had to provide to the assemblies all documents concerning the EU including the IInd (Common Foreign and Security Policy) and IIIrd pillar (Justice and Home Affairs). However the transmission had only an informative value. In a letter to the President of the Assembly's Delegation in 1995⁴⁸ Prime Minister Alain Juppé indicated that all legislative proposals - even

⁴⁷ Loi n°94-476 du 10 juin 1994.

⁴⁸ See: Letter from the Prime Minister to President of Assembly's Delegation, 10 July 1995, in *Assemblée Nationale, L'Assemblée Nationale et l'Union Européenne*, Paris, 1998, pp. 166-170.

IInd and IIIrd pillar ones – would be transmitted to the assemblies. The latter were not allowed to table resolutions on non EC-proposals but they could adopt “conclusions”.

At the beginning of the 1990s the delays for the parliamentary examination of European proposals have been too short. A few proposals have been even adopted by the Council before their transmission to the National Parliament. Nevertheless, the situation has progressively improved. The average delay of examination by the Council of State has been reduced from nine days in 1993 to six days in 1998. In 1999 one quarter of the European proposals were analysed within three days.⁴⁹ The two Assemblies now estimate that they receive European legislative proposals in due time. As concerns the time left for the examination by the assemblies, a major reform has been introduced by a circulaire of the Prime Minister in 1994⁵⁰: This letter outlines that the assemblies shall have one month to let the government know if they want to adopt a resolution on a proposal. During that time the government is obliged to evoke a parliamentary reserve at the Council. The follow-up at the Brussels-level is two-fold:

1. If the Council intends to put the subject matter on its agenda in less than fourteen days (before the meeting of the Council), the SGCI instructs the RP to intervene and to declare a “parliamentary reserve”.
2. If the Council intends to put the subject matter on its agenda in more than fourteen days, the SGCI instructs the RP to try to demand a postponement of the vote till a “prise de position du Parlement français”.

Hence, the parliamentary reserves are implemented in a relatively informal way. The minister indicates at the beginning of a Council meeting that the Parliament has finished or not its scrutiny. The introduction of this procedure has contributed to resolve the problems of time lag. Further, at the national level, the French Government can always make use of the procedure of accelerated examination at the Parliament. Theoretically the competent minister has to declare the official reasons for this demand but the procedure is often handled in an informal way too. In practice rapid examinations are very frequent. Until today the Parliament has complied with each governmental demand for an accelerated examination but the delegations have recently point to the abuse of such procedure and the government has committed itself to be more careful. However the problems of delay do not have always a governmental origin. They can also be caused by problems of transmission between community institutions and France. When the European Commission produces temporary documents on delicate issues occasionally the

⁴⁹ Conseil d’Etat, Rapport public 1999, Paris, La Documentation française, pp. 136-137.

Council begins to work on those documents without any transmission to the parliament of France. Last but not least, the Parliament itself is often responsible for the problems of delay: The twofold system of scrutiny by the Delegation and then by a permanent Commission does not favour a quick examination of European proposals. A clear political bias emerges when the French government makes clear to the assemblies that it would be tactless to evoke the parliamentary scrutiny reserve during the French Presidency of the Council or on strategic texts, e. g. trade agreements, when France's protectionist reputation is at stake.

At first sight, the assemblies seem to have a complete access to information. On the basis of the 'Loi Josselin', the Parliament receives all the texts produced by European institutions.

Table 4. Texts transferred on the basis of the Loi Josselin

	Ist Pillar	IInd Pillar	IIIrd Pillar	<i>Total</i>
1993	994	0	0	994
1994	1038	0	141	1179
1995	1060	2	985	2045
1996	1221	77	1445	2743
1997	1136	78	1019	2233
1998	1144	145	926	2215

Source : Sauron, Jean-Luc, « Le contrôle parlementaire de l'activité gouvernementale en matière de droit communautaire en France », *Revue trimestrielle de Droit européen*, 35 (2), avril-juin 1999, p. 200.

Despite the elevated number of documents transferred to the parliament its main problem is information gathering. A National Assembly civil servant, Christophe Lescot⁵¹, points to the governmental reserve to deliver strategic information. This attitude, which is characteristic for the dominant position of the executive affects many types of documents, for instance diplomatic telegrams and working groups' agendas. Only the Council's agenda is transferred by the French Government, so that two thirds of the decision-making, the "A-points" decided at the COREPER-level, pass rather unnoticed.⁵² Contrary to the British procedure, the government does not transmit explanatory memoranda that could help the assemblies to seize early the relevant issues at stake and to question the official governmental position. According to the legal provisions Parliament should be informed of the evolution of the bargaining in Brussels but this information is not systematically given. The more delicate a project is, the more difficult it is to obtain written information. Thus, the former president of the National

⁵⁰ Circulaire du Premier ministre du 19 juillet 1994 sur la prise en compte de la position du Parlement français dans l'élaboration des actes communautaires. The new circulaire (circulaire du 13 décembre 1999) confirms these dispositions.

⁵¹ Lescot, Christophe, « Les interactions entre le Gouvernement et le Parlement dans le processus de décision communautaire », juin 2000, p. 8. XXX VOIR REFERENCES

Assembly Delegation had asked for the systematic transmission to the Parliament of the ministerial analysis and of the reports of the Council and of the COREPER.⁵³ However, beyond the lack of important texts, it is in practice impossible for the two delegations to cope with the mass of European documents. The assemblies remain dependent on governmental information if they want to qualify a proposal. Which projects are significant? Who is at the origin of a proposal ? What is France's position? Is the government isolated in the Council? Only the national government is competent to give answers to those questions. Regular working contacts between the sectoral specialists of the European affairs service of the two assemblies and their counterparts at the Permanent Representation of France to the European Union at Brussels or at the SGCI in Paris seem to be the dominant way of parliamentary information gathering.⁵⁴ Thus, the access to information may be judged as informal and efficient as well as sporadic, uncertain and therefore not always exhaustive. The quality of the delivered information depends on personal relationships, past practices and the rank of the questioner, a MP being better treated than a civil servant.

Parliamentary involvement without implications ?

The problems of timing and of access to information have not been fully solved but the situation has improved. Given the feeble equipment, of which the assemblies dispose in most of the "internal" policy-making domains, the resolutions are comparatively strong instruments. Despite from "motions of no confidence", resolutions are the only parliamentary instrument that allow a relatively spontaneous intervention of parliament into current executive decision-making.⁵⁵ In 1995, a constitutional reform⁵⁶ improved the opportunities of the Parliament to fulfil its role as a "European" actor by extending the session period, and by loosening the governmental monopoly on the parliamentary agenda. The Government paid high attention on the implementation and effectiveness of the parliamentary examination of European projects. Consequently the government has never been opposed to the setting of a project of resolution on the parliamentary agenda.

⁵² National Assembly Civil Servant, Interview 1, 30 September 1998.

⁵³ Nallet, Henri, «Le rôle du Parlement national dans la définition des positions françaises. Le Parlement : quelle influence ? », in: ENA Mensuel, n°2, 1998, p. 32.

⁵⁴ National Assembly Civil Servant, Interview 2, 30 September 1998 and Senate Civil Servant, interview, 27 October 2000.

⁵⁵ There is only one vote of no confidence on governmental European policy after Maastricht concerning the reform of CAP: JOAN/Débats, séance du 1 juin 1992, pp. 1741-1763.

⁵⁶ Loi constitutionnelle n° 95-880.

However the resolutions have no compulsory effect given the prevailing situation of the executive power.⁵⁷ The Prime Minister has pointed out in several “circulaires” to his ministers, that a negotiation in Brussels is inconceivable without taking into consideration the positions of the assemblies⁵⁸. Nevertheless the Parliament is hardly ever informed by the government of the follow-up of the resolutions. Only in some cases an explicative note had been transmitted to the assemblies. It is quite difficult to evaluate the implications of the resolutions because in most cases the positions of the assemblies and of the Government are not divergent. The majorities of National Assembly and of the Senate tend to support the President’s and the Government’s European policy if they belong to the same coalition. Further, the tabling of resolutions is not an arm that the opposition exploits to undermine governmental business in Brussels. However, the Parliament does not only legitimate the European decision-making. Some analysts have observed an ideological-instrumental division of labour between parliament and the executive, “that offered new political levers to both, whether on the domestic or on the international stage”⁵⁹, and provided an opportunity to contain the forceful right-wing anti-European faction by granting a parliamentary arena.

The proximity between the Parliament and the executive power does not constitute the only explanation of the unsatisfactory follow-up of the resolutions. The follow-up of a European proposal necessitates a considerable amount of work and a deep understanding of the EU mechanisms. This is hardly ever profitable in electoral terms. Apart from specific policy fields such as agriculture, the electoral impact of parliamentary involvement in European projects is not obvious. MPs’ political willingness to step into European scrutiny also depends on the internal discipline of the majority and of their conception of their political career. A majority MP may or may not want to be in a delicate position vis-à-vis the government when defending a controversial resolution. During the Xth, the tandem between two MPs known as eurosceptic, the National Assembly’s President Philippe Séguin and the Delegation’s President Robert Pandraud turned out to be efficient. Since 1997, the left government has avoided public votes about resolutions given the fragmentation of the parliamentary majority and its division about Europe. It preferred to organise floor sessions public debates without vote, and therefore adopted a low profile in European policy-making different from its attitude towards WTO-Policies, e.g. about the Genetically modified organisms, when parliament was largely implicated into the debate. Further, the twofold system of scrutiny does not promote the follow-up of resolutions, because outside the

⁵⁷ Conseil constitutionnel, décision n° 92-314 DC du 17 décembre 1992.

⁵⁸ Circulaire du 13 décembre 1999 relative à l’application de l’Article 88-4 de la Constitution, JO 17/12/1999.

delegations MPs are less interested in European policy proposals and some have not fully understood the utility of the resolutions as an instrument for exercising political influence.

Thus, the twofold scrutiny of a European proposal by the Delegations and the permanent Commissions may be considered as complex and not too efficient. Even if in most cases, the examination of a proposal for resolution by a Commission does not profoundly modify the analysis of the Delegation, the procedure is very time-consuming. In other domains proposals of resolutions tabled in a Delegation are examined with an important time lag. In some cases they are even not all taken into consideration. The Delegations often hesitate to transmit a text to a permanent Commissions given their work-overload with national legislation. As a civil servant notes, proposals of resolutions are received with a mix of “scepticism and boredom”⁶⁰ by permanent Commissions. For instance, the Law Commission spent a lot of time considering national projects about immigration whereas recent European proposals on that topic have not been examined. The passage through Commissions is justified from a constitutional and a political point of view, because the six permanent commissions are the only constitutional bodies that can adopt binding texts. Politically, the passage through Commissions is supposed to increase MPs awareness for European affairs. If the Delegations were transformed in permanent commissions, only the 36 members of each Delegation would be informed about European proposals and the other MPs would discover a resolution at the moment of the transposition. Last but not least, the permanent Commissions have been very reluctant to be deprived of a part of their prerogatives since the creation of the Delegations, especially at the Senate. Thus, the former National Assembly President’s proposal that a European permanent commission should be created have not been implemented.⁶¹

III. The negotiation of the Amsterdam Treaty

During the negotiation of the Amsterdam treaty the French Government as well as the two chambers have prepared their own original propositions in favour of a strengthening of the role of the national parliaments in the EU. As France has been one of the few countries to support the collective and direct participation of National parliaments to the EU-level decision-making process, an analysis of its position may be helpful to further clarify the specificity of the French approach toward national parliaments in the European integration process.

⁵⁹ Notably used by government in the IGC preparing the Treaty of Amsterdam, see: Benoît, Bertrand, *Social-Nationalism. An Anatomy of French Euroscepticism*, Aldershot, Ashgate, 1998, p. 56.

⁶⁰ National Assembly Civil Servant, interview, 14 November 2000.

⁶¹ Laurent Fabius “Préface”, in *Assemblée Nationale, Les Commissions à l’Assemblée nationale*, Paris, ed. Assemblée nationale, 2000, p. 5.

High parliamentary expectations

The two parliamentary delegations observed very closely the evolution of the IGC from March 1996 up to June 1997. They auditioned each month Michel Barnier, the ministry for European affairs and French negotiator in the IGC. Even before the opening of the IGC the delegation of the National Assembly called for the establishment of an interparliamentary committee at the European level.⁶² This committee should consist of an equal and small number of representatives from each Member State and represent collectively the National Parliaments at the European level. It was called to express monthly its positions on European texts, without being able to amend them. The committee's responsibilities could cover the major decisions of the European Union - revision of the Treaties, international agreements, enlargements, the budget, home and judicial affairs, monetary affairs and defence - as well as monitor the respect of the subsidiarity principle through the adoption of a "subsidiarity exceptions" on difficult issues. Indeed, the Gaullist deputy Nicole Catala explained that, as the control of the principle of subsidiarity was essentially political, the Court of Justice could not play this role. The position of the Senate was similar, its Presidents having supported the idea of an European Senate for a long time. Thus, President Poncelet has relaunched this project during the Versailles-COSAC in October 2000.

The proposals of the Assemblies have been based on the implicit willingness to share competencies between National Parliaments and the EP. According to many French MPs, the EP should keep a central position in the Community process and National Parliaments should play a similar role in intergovernmental affairs, that is in second and third pillar policies. Thus, the preparation of the new treaty illustrated once again the distrust of many French MPs towards the EP. The prevailing feeling was that the "immature" EP was trying to endorse the monopoly of democratic legitimacy in the EU. The conflict became obvious in February 1997 when the EP adopted a resolution against a French law about immigration. However the relations improved after a meeting of the National Assembly delegation and the EP institutional commission and the Annemie Neyts-Uyttebroeck report was also interpreted by French deputies as a recognition of the legitimacy of the COSAC.⁶³

⁶² Rapport d'information n° 1939 de Nicole Catala et Nicole Ameline, "Quelles réformes pour l'Europe de demain?", 8 February 1995, conclusion n° 39. See also rapport d'information n° 2969 de Maurice Ligot, Nicole Catala et Patrick Hoguet, "Les parlements nationaux dans l'Union européenne : acteurs ou spectateurs?", 23 July 1996.

⁶³ Rapport d'information n° 3509 de Robert Pandraud, Révision des traités européens, Avant Amsterdam : treize mois de Conférence intergouvernementale, 21 April 1997, pp. 20-22.

After the first months of the IGC, the parliament stated how isolated France was. Not only were the other governments globally opposed to the creation of a second Chamber but also the other assemblies did not follow the idea of a collective assertion of National Parliaments. Before the Dublin COSAC of October 1996, a delegation of the National Assembly made a trip visiting all European chambers in order to convince them.⁶⁴ Those efforts contributed to the adoption of the point 5 of the conclusions of the Dublin-COSAC. Taking into consideration the reluctance of the majority of member States to create another European body, French parliament decided to concentrate its efforts on the strengthening of COSAC.⁶⁵ MPs hoped that an obligation to consult COSAC in some cases would become part of the new treaty, especially regarding the subsidiarity principle. The National Assembly Delegation also wanted COSAC to express its opinion on questions concerning the two intergovernmental pillars (CFSP and internal and legal affairs) and in the area of unanimous decision making of the Council.

The strategic support of the French Government

Alain Juppé's government defended quite similar ideas than the two assemblies at the beginning of the IGC negotiations. This attitude may be seen as a "post Maastricht" trauma. The 'right' and especially the presidential party had been deeply cleaved during the referendum campaign. The quite consensual claim for the strengthening of national parliaments was able to conciliate pro-European – as A. Juppé and Michel Barnier – and eurosceptic – as Philippe Séguin and Charles Pasqua – leaders of the gaullist tendency. From time to time, A. Juppé government also showed some troubles to control the plethoric majority of the National Assembly and to overcome divisions resulting from the presidential campaign. In that context, the support for a parliamentary assertion in the European process had the twofold advantage of unifying the right and of bringing about an answer to popular concerns about French European policy. Moreover, the proposal for a parliamentary involvement at the Union level was eventually less constraining for the executive power than the potential strengthening of the Parliament in the national political system. Thus, official documents produced during that period point to many reasons for upgrading the role of National Parliaments⁶⁶: As regards the "public suspicion" about European integration, National Parliaments may "play a key role in solving this problem". Then, the parliamentary implication into the fields of the justice and home affairs was judged as legitimate given

⁶⁴ The delegation was composed of Nicole Catala, Charles Josselin, Patrick Hoguet and Maurice Ligot.

⁶⁵ Rapport d'information n° 3113, Maurice Ligot, Nicole Catala et Patrick Hoguet, 12 November 1996.

⁶⁶ See the memorandum about France's position published in *Le Figaro*, 20 February 1996.

“national parliaments’ traditional spheres of competence (civil liberties, citizens’ right)”. Lastly and more strategically, France pointed that “it would be extremely difficult to incorporate third pillar policies without giving the national parliaments a role at an earlier stage”. In the government’s view the ratification of the treaty as well as the transposition of future directives “may prove delicate” without giving more prerogatives to parliaments, coherently with the principle of subsidiarity.

In its official paper of 13 November 1995 the government followed the National Assembly conclusions and suggested to create a body composed of representatives of National Parliaments which would be consulted in the field of subsidiarity. Such a “High Parliamentary Council” was supposed to take shape through an institutionalisation of the COSAC. Concerning the third pillar the government suggested "a participation of the National Parliaments in the drawing up of legislation regarding civil or penal law, thus enabling National Parliamentarians to have their say." The French government described quite precisely an original mechanism of collective association of National Parliaments based on a “flexible forum” that “could be composed of national MPs alone or have the same members as COSAC”. Confronted to the critic that any further involvement of National Parliaments at the EU-level would complicate the system, the proposal specified that the forum would not be a new institution. The forum could deliver advisory opinions in the field of justice and home affairs and on the theme of subsidiarity. During the negotiation French government quickly perceived that it would be difficult if not impossible to create a collective permanent body and that the reluctance was strong about the subsidiarity principle and the second pillar. At the end of 1996 the government finally focused on the association of National Parliaments to the projects held under the third pillar.⁶⁷ Afterwards in a common letter with Germany (9/12/1996) the government surprisingly suggested the creation of a mixed parliamentary body composed of MPs and MEPs. Such shifts indicate that the governmental support to National Parliaments was probably not as strong as it may seem, those contradictory statements provoked quite negative reactions both at the Senate and at the National Assembly.

The reasons for the “exception française”

Why did French parliamentary proposals turned out to be unsuccessful and rather isolated ? One explanation is related to the experience of the two delegations. French parliament had been one of the few assemblies to study systematically all legislative EC

⁶⁷ Audition of Michel Barnier by the National Assembly delegation, 20 November 1996.

proposals in the years preceding the IGC. During that period, the delegations discovered how bounded their prerogatives were. Since they were told repeatedly that it was not possible to change a legislative proposal because of the position of other member States' governments the conviction that National Parliaments should intervene directly and collectively - before a Council decision is taken - gained ground. The second element of explanation refers to the intermediary situation of French parliament in comparison to other European assemblies. In some countries - in Italy for instance - the level of euroenthusiasm was so significant that any assertion of National Parliaments may have been seen as a backward movement of the European integration. In the other ones – notably in Nordic countries – the main fear was that a direct and collective intervention of National Parliaments at the community level could reduce national prerogatives of the legislative power vis-à-vis their government. The opposition between national and European level – be it in favour of the European integration or of national legislative prerogatives – turned out to be less obvious in France for various reasons.

The creation of a collective body representing National Parliaments and the defence of the subsidiarity principle were first ambiguous. At the parliamentary level the project attracted pro-European MPs and some famous eurosceptic leaders. Thus, the President of the National Assembly, Philippe Séguin launched numerous initiatives during that period that he presented in context of his policy in favour of the strengthening of the parliamentary influence in the national as well as in the European sphere. Known as a leader of the Anti-Maastricht coalition, he recommended that a majority of National Parliaments could express their opposition to a text on the basis of the subsidiarity principle.⁶⁸ Both the perspective of a reduction of the democratic deficit in the EU and the claim for a development of the parliamentary prerogatives contributed to the conciliation of eurosceptics and pro-integrationists. The left – that was less divided on the European issue - was also less enthusiastic about the creation of a European second chamber. The efforts of political elite to demonstrate the compatibility of the national and European sphere may also explain the French specificity during the negotiation. The major political leaders of the right and of the left agreed on the fact that European integration was a substantial precondition for the upholding of France's position in the world. The building of Europe and the defence of France tended to be understood as the terms of the same equation with Parliament at its core.

⁶⁸ See his report to the Conference of Presidents of Parliaments of the European Union (London, 12-13 May 1995) as well as the Charlemagne colloquium in Aachen (26 January 1996).

IV. National Parliaments after Amsterdam

The reform of the 88-4

The ratification of the Amsterdam treaty has been an opportunity to codify previous informal practices through an amendment of the French Constitution. The revision was imposed by the Constitutional Council⁶⁹ and helped parliament to further foster their instruments for controlling government. In this context MPs benefited both technically and politically as they negotiated their support to the treaty in exchange of an improvement of their European prerogatives. The new article 88-4⁷⁰ establishes that all legislative proposals – including the IInd and IIIRD pillar ones - are transmitted to the assemblies and that the assemblies are able to adopt resolutions. The article also establishes the possibility for the Government to transmit to the Parliament any other document emanating from the EU. The assemblies are now able to adopt resolutions on those documents.

The procedure established for the IInd pillar proposals is different from the others insofar as the Ministry of Foreign Affairs in this domain covers the functions of the SGCI. If it is logical that the Ministry should play such a role, one may however conclude that this substitution is the result of a reluctance of French diplomats to unleash their monopoly of control on international affairs.

All those changes are not really significant as they tend to “constitutionalise” previous informal practices. The transmission of non-legislative documents (according to the analysis of the Council of State) still depends on the Government’s appraisal. The so-called “clause facultative” may be considered as a restriction of parliamentary power. However experience has shown that the Government is open to the demands of the Presidents of the Delegations (made through the Presidents of the Assemblies). For example, the Government transmitted the report of the EU-Commission on the WTO-negotiation and other documents regarding the WTO. Lionel Jospin has decided to transmit systematically the white and the green books and the annual programme of the Commission⁷¹. As concerns the CFSP pillar, the 1999 modification is symbolic given the traditional monopoly of the executive power on external affairs. Nevertheless the reform has not changed any thing due to the little number of official documents produced about CFSP and the necessity to study them as a priority. If it is too early to evaluate the implementation of the new article, the major feature is the large

⁶⁹ Décision n° 97-394 DC du 31 décembre 1997.

⁷⁰ Loi constitutionnelle 99-49 du 25 janvier 1999, Journal Officiel de la République française du 26 janvier 1999.

⁷¹ Circulaire du Premier ministre du 13 décembre 1999 relative à l’application de l’article 88-4 de la Constitution, remplaçant celle du 21 avril 1993 et celle du 19 juillet 1994.

transmission of non-legislative documents by Jospin's government which contributes significantly to increase the work of the delegations.

The Protocol on National Parliaments

The introduction of the Protocol on National Parliaments (PNP) in the Amsterdam treaty has not changed in a significant way the scrutiny of European legislation by the French parliament. The reform of the article 88-4 of the Constitution is certainly not the result of the implementation of the Protocol on National Parliaments.⁷² The delay of a six weeks period provided in the protocol was a positive element but the parliamentary preferences were not strong on that subject given the four weeks period provided by the national provisions. The protocol is even accused of being "anecdotal" in a National Assembly's report⁷³ and its main impact has been psychological. The fact that the treaty distinctively mentions National Parliaments may have changed the views of some MPs - especially centrist Senators - who have been too euroenthusiastic to be in favour of a strengthening of National Parliaments. In a document established for the Versailles-COSAC in October 2000, both the Senate and the National Assembly indicate that the PNP has not fundamentally changed the shape of their control on European activities. As for the time span the MPs have to consider European legislative proposals, they remark that it is sometimes too short in three specific fields, namely in trade policy (especially at the end of a presidency), regarding the decisions held under the IInd pillar and when budgetary documents are amended. The Parliament estimates that the PNP has not helped to improve this problem. However PM Lionel Jospin's circulaire from December 1999 reminds to his cabinet colleagues to be careful about European deadlines and refers to the "spirit of the Protocol".⁷⁴ The document specifies that the Government will respect a delay of six weeks as provided in the PNP regarding legislative proposals that fall into the Council definition. Actually, the French constitutional situation is even more complex today given the twofold definition of legislative acts, the European one based on the Rules of Procedure of the Council and the national one based on the articles 34 and 53 of the Constitution.⁷⁵ The Senate and the National Assembly point to the EC's restrictive notion of legislative proposals, especially concerning budgetary documents and agreements

⁷² Sauron, Jean-Luc, « Le contrôle parlementaire de l'activité gouvernementale en matière de droit communautaire en France », *Revue trimestrielle de Droit européen*, 35 (2), avril-juin 1999, p. 196.

⁷³ Michel Vauzelle, *Rapport d'information n° 1402 sur le projet de loi autorisant la ratification du traité d'Amsterdam*, Commissions des affaires étrangères, février 1998, p. 27.

⁷⁴ Circulaire du Premier ministre du 13 décembre 1999 relative à l'application de l'article 88-4 de la Constitution, remplaçant celle du 21 avril 1993 et celle du 19 juillet 1994.

⁷⁵ Sauron, art. cit., pp. 186-187.

between institutions.⁷⁶ The inclusion of budgetary documents on the PNP should help to resolve problems of delay by leading European institutions – and particularly the Commission – to allow for a longer period. The agreements between institutions have never been transmitted to the Assemblies whereas they are considered as very important by MPs.

The PNP provisions on COSAC

The PNP has been interpreted by the French Parliament as a symbolic recognition of the legal existence of the COSAC. The delegations hoped that the protocol could be used as an argument to convince the other assemblies to reform the rules of procedure of the COSAC. Some senators were in favour of the introduction of majority votes, but the parliament now considers that such a change would be difficult considering the representativity of national delegations at the COSAC. The position of the two Assemblies is that the co-operation between National Parliaments in Europe does not go far enough. The issue of the bilateral relations between assemblies is illustrated by the reception by the delegations of the Senate and of the National Assembly of documents from the Bundestag and from the two British Assemblies. They consider that new technology may help to keep informed about the proceedings of other EU affairs committees.⁷⁷ As for the collective assertion of National Parliaments, both the delegations of the National Assembly and of the Senate hope that the COSAC will play a bigger part in the future. As organiser of the Versailles-COSAC of October 2000, French parliament – and especially the National Assembly – developed an original mechanism before the conference. A deadline for submitting contributions and for the amendments was set. The synthesis of the presidency was sent before the meeting. Such a mechanism was supposed to contribute to the adoption of a consistent text which has rather been the case. The National Assembly's President, Raymond Forni supported during the COSAC the creation of working groups between two conferences which could constitute the first step in favour of an institutionalisation of the COSAC. Moreover, French MPs estimate that the PNP gives the COSAC the right to adopt contributions on specific European legislative projects. The two French delegations hope that the conference will examine in the short term precise projects, especially proposals concerning the third pillar such as civil liberties and security. However, French MPs do not want to limit the field of the contributions to the subjects mentioned in the PNP.

Finally the PNP provisions on COSAC have not induced a revision of the composition of the delegation to COSAC. The French delegation is composed of the president of each

⁷⁶ Questionnaire established for the Versailles-COSAC of October 2000, question four.

parliamentary delegation and by other MPs representing the main political groups. If two members of the delegations wish to participate at the COSAC, they manage to do so in turn. Contrary to other European National Parliaments the representativity of the national COSAC-delegations is not really a conflictual issue. There is no collective preparation of the COSAC in both assemblies because texts are hardly ever published before the meeting. Politically, the Presidents of the delegations do not want to be compelled to follow the decisions of the assemblies.⁷⁸ After the conference, the Presidents usually give a short account of the COSAC during a meeting of the delegations and short reports with official documents are just published. The weakness of the collective preparation and of the reporting is also linked with the fear that other MPs – especially those willing to join the delegation - would feel excluded.⁷⁹

V. Outlook and conclusion

The Amsterdam treaty has been an opportunity to codify previous practices but the adoption of the treaty has not really changed the basic rules of Parliament's involvement into EU affairs. The role played by the French Parliament in the EU decision-making remains ambiguous. The chambers have not yet fully clarified the goals of their involvement in European affairs. Three different elements may be pointed out.

Their first ambition was to change the national institutional system. Even if the involvement of the French Parliament into European affairs is usually analysed as “an opportunity to recover power”⁸⁰ against the government and the President, it is not sure that the relation between executive and legislative power is so antagonistic. But it seems that the unfavourable position of the assemblies since the beginning of the Fifth Republic has led MPs to be cautious about any additional loss of power. Europe has been an outlet to parliamentary frustration. Indeed formal parliamentary powers – further increased by the Amsterdam treaty – have become important. The institution of resolutions and parliamentary reserves represents a considerable evolution regarding the balance of power of the Fifth Republic. Parliamentary prerogatives are more significant in the European context than in national politics given that the spontaneous expression of the ‘rationalised’ assemblies about national projects is very much limited by the rigid framework of the Constitution. However, the parliamentary assertion should not be exaggerated. From A. Juppé to L. Jospin, the magnanimity of the executive power vis-à-

⁷⁷ Questionnaire established for the Versailles-COSAC of October 2000, question five.

⁷⁸ National Assembly Civil Servant, interview, 14 November 2000.

⁷⁹ Senate Civil Servant, Interview, 27 October 2000.

⁸⁰ Dubouis, Jean-Louis, « The European Union : An Opportunity for the French Parliament to Recover Powers ? », European Monographs, 11, 1996, pp. 49-63.

vis parliamentary demands has proved that the power of the Parliament is not as important as it may first appear. Prime ministers have accepted to implement parliamentary prerogatives only insofar as the establishing of new 'European' powers for the national representation does not constitute a real threat to them. L. Jospin asks in his 1999 circulaire for the development of better tools for information gathering at the governmental level and a better follow-up of the resolutions but in practice it seems that there is a governmental unwillingness to develop further the influence of the parliament. Thus, the prevailing view is that today the two assemblies have obtained enough institutional tools to intervene and that the reforms of the nineties went as far as the balance of power under the Fifth Republic allowed it.⁸¹ The reform which is the most urgently needed - the transforming of the delegations in permanent commissions – concerns rather the internal organisation of the assemblies than their relation with the executive power.

The second aim of the parliamentary assertion has consisted in influencing the governmental European policy by scrutinising EC and EU projects. The assemblies were not very well equipped to adapt to the logic of "consensus democracy" predominant at the Brussels stage of the decision-process. It is true that the conflictual mood and the traditional importance of parliamentary party battles is opposed to the spirit of compromise of the EU. However, the relationship between the executive and the legislative powers indicates that this feature should not be overstated. The resolutions of the Assemblies diverge hardly ever from the governmental position. The comprehensive and profound work done by the delegations indicates that the assemblies have rather succeeded in scrutinising the huge amount of European proposals. Nevertheless, it is still uncertain whether the Parliament is fully adapted to the Community system of governance. The two Assemblies have concentrated their interest on the Council of Ministers. This focus is logical insofar as a National Parliament will always try to influence its government first. The preference in favour of the Council is also coherent with the intergovernmental perception of the European process of most French MPs. Meanwhile, the Parliament has neglected other EU-institutions, namely the Commission and the EP. The development of the co-decision – notably with the Amsterdam treaty - has contributed to multiply the places of decision. French Parliament finds it difficult to answer to this dilution even if the Senate has reacted to this challenge by sitting up a parliamentary representation at Brussels.⁸² Finally, the influence of the assemblies over the European policy

⁸¹ The idea of transforming resolutions into compulsory demands is progressively ruled out even by MPs themselves. A possible legislative reform would be to give a stronger legal basis to the parliamentary reserves that are only mentioned in a circulaire (Circulaire du Premier ministre du 13 décembre 1999 relative à l'application de l'article 88-4 de la Constitution).

⁸² Sénat, Bulletin d'informations rapides no 727, 25 mai 1999, p. 31.

of their government is hard to establish precisely and is necessarily limited given the difficulties of a fifteen-member negotiation.

The third dimension of the parliamentary intervention is related to the public debate. The mass of documents available today on the web illustrates the parliamentary will to establish a link between the EU and the people. MPs have strategically opposed the democratic deficit of the EU to their capacity to publicise European debates. However, it seems that the public has not really perceived the positive effects of the europeanisation of the chambers. MPs are still among the most unpopular political leaders. The media do not systematically give an account of their work. The difficulty of the two chambers to intervene in the public debate about Europe is also linked with a certain lack of political will on the part of MPs. Outside the specific context of the two delegations, MPs find it difficult to adapt to 'EC-culture'. The gap between the minority of representatives involved in the European process and the others is significant. The electoral benefits of a European involvement and the way of "politicising" Europe are still problematic.

The concurrence between the three dimensions of the parliamentary assertion in European affairs has enticed several perverse effects. On the contrary to what happened in regions, the development of the parliament against the executive power has been more or less instrumentalised by eurosceptics. The demand for more prerogatives has sometimes been merged with the critic of the integration process. During the ratification of the Maastricht treaty and after, the so-called "souverainistes" have used the parliament as a tribune and as a way of influencing the government. From the early nineties until now, the government's attitude has constantly consisted in privileging the second dimension of the parliamentary involvement – the scrutiny of EC legislation – against the third one – the public intervention. From the executive's perspective, the parliament is preferred as an expert rather than as a tribune. Indeed, the association of the Parliament during the preparation of a directive is in the government's interest. A first examination of a European text by the National Parliament may be helpful to discern potential resistance that would be more harmful if the project was already adopted at the European level.

Nevertheless there is a dramatic problem of legislative implementation deficits in France. Transposition failures are growing to such extent, that the French government today feels obliged to present a kind of 'Enabling Act' (following Art. 38 of the French Constitution), that would allow government to implement European directives without any implication of

the legislator.⁸³ This reveals a re-emergence of de Gaullian practices in European policy making. In such a perspective the scrutiny mechanisms and the broad implication of parliament during the EU-negotiation appear more and more questionable. At the same time one must admit that MPs themselves have sometimes favoured the third dimension against the second one, that is the public intervention rather than a real attempt to influence the government. Thus, many resolutions are still agreed to without taking in consideration their follow-up.

After a period of self-assertion against the executive power characterised by the influence of euroscepticism, the French Parliament has entered in a maturity phase when dealing with European affairs. The priority for the parliament does not consist in creating new procedures but in using the existing ones with a view of associating the scrutiny of European proposals to the intervention on the public debate. If they are still in search of some balance between expertise and voice, the assemblies have decided to be both working and talking parliament in order to develop a position of interface between the EU and the citizens.

Annex

Article 88-4 of the French Constitution (Text updated following the constitutional amendment modifying article 88, 23 march 1999)

TITLE XV - ON THE EUROPEAN COMMUNITIES AND THE EUROPEAN UNION

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Article 88-4

The Government shall lay before the National Assembly and the Senate any drafts of or proposals for instruments of the European Communities or the European Union containing provisions which are matters for statute as soon as they have been transmitted to the Council of the European Union. It may also lay before them other drafts of or proposals for instruments or any document issuing from a European Union institution.

In the manner laid down by the rules of procedure of each assembly, resolutions may be passed, even if Parliament is not in session, on the drafts, proposals or documents referred to in the preceding paragraph.

⁸³ See: Assemblée Nationale, Rapport No 2766 du 4 décembre 2000, portant habilitation du Gouvernement à transposer, par ordonnances, des directives communautaires et à mettre en oeuvre certaines dispositions du droit communautaire, rapporteur Jacques Floch, Paris.

