

The rules of attraction

Policy Transfer and the design of parliamentary EU scrutiny
mechanisms in new EU member states

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Paper presented at the EUSA Conference, Montreal May 17th-19th

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Introduction

Integrating into the European Union is a process of institutional choices and subsequent changes in domestic political, economic and legal structures. This has indeed been the case for the new member states that joined the EU in 2004. Firstly, the Copenhagen criteria established by the European Council in 1993 set out the obligations on the applicant states.¹ The political obligations were the stability of institutions guaranteeing democracy, the rule of law, the respect of human rights and protection of minorities, whereas the economic requirements consisted of a functioning market economy and the capacity to cope with competitive pressure and market forces within the EU. Last, but not least, the applicant states had to manifest an ability to incorporate the *aquis* or “to take on the obligations of membership including adherence to the aims of political, economic and monetary union”.² The process of translating the *acquis communautaire* into the domestic legislation and the building up of political and administrative routines for influencing and implementing EU-policies have resulted in an unprecedented and far-reaching re-structuration of political, economic and administrative institutions and norms.

For eight of the new EU member states of 2004 that either had been independent or parts of one-party communist states (Poland, Hungary, Slovakia, Czech Republic and Slovenia) or republics in the Soviet Union (Estonia, Latvia and Lithuania) EU accession ran in tandem with processes of state- and nation building. The rapprochement to the EU and the NATO were parallel to the post communist transformation from authoritarian to democratic rule and rule of law as well as the development from state-controlled to market economies. As a matter of fact, the strong commitment to membership in the EU was motivated by the belief that full integration with the EU would secure progress in the construction of modern liberal

¹ Presidency Conclusion, Copenhagen European Council, June 21-22, 1993.

² *Ibidem*, section 7/A.

democracies and market economies. A high prevalence of organisational change has consequently characterised these states due to both state and nation-building as well as European integration in the 1990s and 2000s. Whereas the drawing up of new democratic constitutions in the 1990s predominantly has been conceived of as domestically driven processes, the integration into the European Union has been portrayed as mainly conditioned from outside.³ It has more or less been taken as a given that the “EU has, or at least could have, a pervasive influence on the domestic policies of the CEES”, but “only a few analysts have made an effort to ascertain whether the influence of the EU is so ubiquitous as assumed”.⁴ Moreover, the domestic insularity of constitution designing has also been questioned since various international organisations exert pressure on how states formulate the basic rules of the political game.⁵ This study is situated within this broader academic debate since it aims at analysing how external and internal factors interact in how national parliaments adapt to European integration.

The design of parliamentary oversight structures

The aim of the paper is to analyse the design of parliamentary EU oversight structures in the eight CEE (Central and East European) states that joined the EU in 2004. The purpose is to investigate the impact of policy transfer in the development of parliamentary EU oversight scrutiny procedures. The empirical puzzle guiding the article is why seven out of the eight CEE states opted for a mandate-based scrutiny of EU Affairs in which the government needs to seek an explicit mandate from the parliament when negotiating in the EU? The mandate-based parliamentary scrutiny was until 2004 predominantly a Northern parliamentary experience. It had spread from the *Markedsutvalget* of the Danish parliament to the newcomers in 1995: Sweden, Finland and Austria. This so-called “Nordic model” of parliamentary scrutiny of EU Affairs was attractive to emulate in the new EU member

³ Kopecky Petr & Mudde, Cas, 2000, “What has Eastern Europe Taught Us About the Democratisation Literature (and vice versa), *European Journal of Political Research* 37:517-539., Vachudova, 2004, etceteras?

⁴ Schimmelfennig, Frank & Sedelmeier, Frank 2005, p.3.

⁵ See for instance Linz and Stepan 1996, Grigorescu, Alexandra, 2002, “Transferring Transparency: The Impact of European Institutions on East and Central Europe in Linden, R(ed), p.68-75.

states of 2004 and is at present the most common model for parliamentary control of the EU policy-making. The parliaments were in their designs of parliamentary oversight organisations to different degrees inspired by the mandating model. Moreover, the mandating parliamentary scrutiny is differently organised in terms of the scope of the scrutiny in Denmark, Sweden, Finland and Austria. Firstly, the scope of the mandating varied in terms of which EU acts need an explicit mandate from the EU (and other relevant) committees and the regularity of the mandating. Moreover, the Danish and Austrian Committees on EU Affairs can legally bind the concerned minister to a position, whereas the mandates in Finland and Sweden are politically binding. The aim of this paper is to cast some light on why the mandating model turned out to be so attractive and to map down which countries served as inspirations and why/how?

Why study policy transfer?

Policy transfer is an umbrella concept for theories that account for how and why policies travel from one place to another. Policy transfer has been defined as a “process by which knowledge about policies, administrative arrangements, institutions and ideas in one political system (past or present) is used in the development of policies, administrative arrangements, institutions and ideas in another political system”.⁶ Lesson-drawing is a closely related concept conveying processes when policy-makers in one place import ideas or policies developed elsewhere.⁷ Emulation is the utilisation of evidence about a programme or programmes overseas.⁸ What, then, motivates a focus on policy transfer in how the member states designed their parliamentary EU-organisations? The fact that one particular model for parliamentary oversight was particularly popular to emulate among the new member states suggests that learning from others’ experiences partly could explain the striking similarity in the design of national parliamentary EU

⁶ Dolowitz, David P. & Marsh, David, 2000, “Learning from Abroad: The Role of Policy Transfer in Contemporary Policy-Making in *Governance: An International Journal of Policy and Administration*, vol.13, no 1, January 2000.

⁷ Rose, Richard, 1993, *Lesson Drawing in Public Policy: A Guide to Learning Across Time and Space*, Chatham. N.J.: Chatham House.

⁸ Bennett, 1991, p.221

oversight organisation. There is obviously a possibility that convergence is the result of that the national parliaments elaborated their EU-oversight mechanisms independently of one another and approached them in similar ways without there being policy transfer.⁹ It has been observed that public problem solving generally is an imitative art where structures and policies from other places are borrowed and adapted.¹⁰

However, the likelihood for inspiration and learning from abroad is likely to be high in this case since the design of the national parliamentary EU organizations is related to international obligations with intense transnational networks. Moreover, the process of designing parliamentary EU control instruments (in the newcomer states) occurred during a period when the issue of national parliaments was high on the EU political agenda. In the Laeken declaration attached to the Treaty of Nice the role of national parliaments in the EU policy making was one of the four prioritised issues that should be taken into consideration in the preparation of the Constitutional Treaty for the EU.¹¹ Different methods for involving national parliaments were addressed within the European Convention preparing the EU draft treaty and the COSAC both in which representatives from the candidate countries took part. There were also various transnational and bilateral contacts between existing and becoming EU-members at which the parliamentary organisation of EU policy-making was debated. All in all, the status of existing research as well as the particular setting invites for a study where emphasis is given to policy diffusion (and how learning from the accession period (over time) and other examples (over space) impacted upon the choice of parliamentary EU scrutiny model.)

⁹ Hoberg, George, 2001, "Globalization and Policy Convergence: Symposium Overview, *Journal of Comparative Politics Analysis: Research and Practice*, nr 3 p. 127, Holzinger Katharina & Knill, Christopher 2005, "Causes and Conditions of crossnational policy convergence" in *Journal of European Public Policy*, vol 12, nr, p. 780 suggest that "parallel domestic pressures" or "independent problem solving" as reasons for convergence.

¹⁰ Bennett, Colin J, 1991, "What Is Policy Convergence and What Causes It?" in *British Journal of Political Science*, vol.21, no 2, p. 220.

¹¹ Referens!

Previous studies on the parliamentary organisation of EU affairs (in the 15 older member states) have almost exclusively focussed endogenous or domestic factors, whereas the impact of exogenous factors has been downplayed.¹² That is, diffusion and learning from parliamentary arrangements in other member states have not been systematically analysed even though it occasionally has been suggested that for instance Finland and Sweden took inspiration from Denmark (and UK as well in the Finnish case) when designing their parliamentary organisations of EU affairs.¹³ Ultimately, domestic and international factors are likely to be complementary, but this paper is dedicated to the study of the role of external impulses in the design of the parliamentary EU-organisations in the ten EU newcomer states from 2004.

Models of parliamentary EU oversight

All national parliaments in the EU member states have some structures for parliamentary involvement in the EU policy making. Well in advance before the day of EU-membership the parliaments in the then ten candidate states of 2004 initiated a process of formulating their parliamentary oversight institutions. The national parliaments were during the accession period involved in the process of adjusting legislation to EU requirements, i.e., fulfilling the so-called *Copenhagen* criteria as well as harmonising domestic legislation to the European body of law, i.e., the *acquis communautaire*. For this purpose specific EU committees were set up in the candidate states' parliaments, as a rule on ad hoc basis.¹⁴ During this period the national parliaments translated and implemented EU-rules since this type of policy-

¹² Bergman, Torbjörn, 2000, "The European Union and EU Affairs Committees: Notes on empirical variation and competing explanations" *Journal of Political Research* 37(3):415-429, Raunio Tapio, 2005, "Holding Governments Accountable in European Affairs: Explaining Cross-National Variation" in *The Journal of Legislative Studies*, vol.11, n.3/4, pp.319-342. Domestic factors such as public EU opinion, overall parliamentary power, frequency of minority governments, party positions on integration and the proportion of orthodox/catholic respectively protestants as a proxy for political culture in the population) are used in explaining the variation in parliamentary oversight procedures of the EU-policy making. According to Raunio there is correlation between strong EU scrutiny and general parliamentary power and a EU-sceptic opinion.

¹³ See for instance Raunio, 2005, Hegeland, Hans, 1999, *Riksdagen, Europeiska unionen och demokratin. En studie av riksdagens arbete med EU-frågor*, Lund, Statsvetenskapliga institutionen.

¹⁴ Lithuania formed a standing committee on European Affairs in 1995 and the upper houses of the Czech Republic and Slovenia formed standing committees for European integration issues in 1998 and 1993, respectively.

taking was a condition for membership. However, as full EU members the national parliaments also would take part in the policy making in that they would participate in the formulation of common EU-rules. Since the governments represent the member states in the EU policy-making and thereby exercise legislative powers that formally belong to the national assembly, the parliaments need to create mechanisms in order to be able to influence and control the policies their governments support in the EU. The organization of the parliamentary involvement is consequently crucial since it concerns the distribution of power and ultimately one channel for popular control of the EU policy-making. The EU does not only suffer from a “democratic deficit” by itself, but can also contribute to democratic deficits within the member states.

Information and participation

There are no self-evident classifications to describe the various organisations the parliaments have developed to control their governments in EU Affairs. Descriptions and evaluations of the parliamentary EU oversight instruments do depart from the means for information on the one hand and the instruments for influence and participation on the other. Access to EU and other relevant information and institutionalised contacts with other actors, such as ministries, civil society, Members of the European parliament and other national parliaments belong to the first group. The deliberations between the parliament and the government and the scope of parliamentary involvement are crucial for the possibilities for the parliamentary participation and in the end the scope of influence.

These factors constitute power resources national parliaments have at their disposal to influence and control the EU policy-making. Access to information on EU-proposals and knowledge about ongoing EU discussions are prerequisites for efficient participation. The type of information, the responsibility of distribution and selection of information are crucial in this respect. (Is there too much or too little information, does the government or the parliament itself produce explicative memoranda, which explain the

central items of a proposal and its relevance/effects for domestic politics). Contacts with external actors, such as members of the European parliament or other national parliaments or direct contacts with domestic or EU civil servants are valuable for getting information from other sources than the own government.

The character of the deliberations with the government can however be characterised as the most important asset. Information is a crucial resource, but of little use if the possibilities to have say in the actual policy-making are weak. The regularity of the deliberations and the capability of the parliament to explicitly mandate and tie the hand of the government in the EU-negotiations have been identified as crucial parameters. The scope of the parliamentary involvement is dependent on whether the EU-policy making is a task for a restricted group of parliamentarians or if a wider spectra of parliamentarians within their particular specialisations (standing committees) deal with EU matters. That is, is the preparation of EU affairs centralised to the specific committee of EU Affairs or are the standing committees involved in the screening as well? The involvement of the standing committees invites on the one hand for broader participation and the use of parliamentary expertise in the deliberations with the government, whereas they on the other hand can hamper the coordination in the negotiations.

Denmark and UK as models

The role of the national parliaments in the EU policy making has attracted greater attention along with the gradual deepening (vertical integration) of EU and the intensification of the debate on the democratic deficit of the EU. When UK and Denmark joined the EU in 1973 these two parliaments had developed two different, but distinct models for the parliamentary scrutiny of EU-Affairs. These parliaments were not the first to develop special mechanisms for the parliamentary control of the policy making in the EU, but they initiated a trend whereby the national parliaments as a rule had created EU oversight mechanisms from the day of accession (and also

parliamentary structures for monitoring the accession negotiations). In fact, the German Bundesrat was the first parliament to create a “Committee on the Common Market and the Free Trade Area” in 1957 in order to ensure that the Länder had a say in the federal government’s policy making. The Belgian Chamber of Deputies and the Italian Senate formed European Affairs Committees in 1962 and 1968 respectively.

The prevalence of popular and party-political EU-scepticism in both the UK and Denmark was probably a major factor why the two parliaments designed structures for the parliamentary oversight of EU policies. In UK where the electoral system produces majority governments a document-based model in which the parliament follows the EU policy making by screening documents was designed. The logic behind the Danish parliamentary scrutiny is to secure that the government has the backing of a parliamentary majority (or rather is not opposed by a parliamentary majority) when negotiating in the Council of Ministers. Since minority governments were frequent in Denmark during his period (and which has been the case also afterwards) it was considered important that the parliament could tie the hands of the ministers. From a formal point of view the parliamentary mandate to the responsible minister is politically binding, but a practice of formally binding mandate has developed. The responsible minister cannot in Council negotiations deviate from the parliamentary opinion, unless reconsultation takes place.

The British and the Danish cases are the empirical cases for two ideal-typical descriptive models for parliamentary EU oversight, namely, the *document-based scrutiny* on the one hand and the *mandate-based scrutiny* on the other. The parliamentary activity in the document-based scrutiny is focussed on screening and examining legislative proposals and other documents emanating from the EU. The parliament sifts all types of EU documents in order to find the most important ones and when considered necessary the parliament can consult the responsible minister in order to get more information and ultimately present the parliamentary view. However, within

the document-based the parliaments have no formal instruments at their disposal to issue the government binding instructions in the EU negotiations. The parliaments have a limited time period to deal with a EU-proposal and the government are expected not to finalise the negotiation before the parliament has completed its scrutiny. However, it is up to the parliament to signal if and when it wants to intervene in the process of formulating the EU negotiation position.

Even though the government in a parliamentary political system needs to retain the confidence of the parliament and therefore would be inclined to take the parliamentary majority into account, the mandating model is considered to invite for better parliamentary control of the EU policy making since the parliamentary scrutiny concentrates on formulating an opinion on the governmental EU negotiation positions.¹⁵ Therefore the government is obliged to present its negotiation position before the parliament (as a rule the Committee of European affairs) in order to make sure that there is an explicit parliamentary majority in support for the government's negotiation position. This practice invites for parliamentary engagement in the EU policy making since they are expected to make up an opinion on the governmental EU- position, which the government is expected to follow. The parliamentary mandate is as a rule politically binding and in case a minister deviates from the agreed negotiation position he/she has to explain himself to the Committee. The mandating is as a rule applied on matters of greater importance (EU legislative proposals, European Council meetings, etceteras). The national parliaments use different criteria in order to select which EU proposals require an explicit mandate.

The scope of parliamentary involvement in the EU policy making has lately attracted more attention. Is the parliamentary involvement in the EU policy making restricted to the specialised European Affairs Committees or are the standing committee involved as well? In the mandating models the EAC

¹⁵ See Raunio, 2005 and Maurer, Andreas & Wessels, Wolfgang, 2001, *National Parliaments on their Ways to Europe: Losers of Latecomers?*, Baden-Baden, Nomos Verlagsgesellschaft, p. 461-463.

deliberates with and mandates the government on EU policies on in various fields. That is, even though the Committee has a general expertise they negotiate on legislative proposals from different policy areas, which otherwise would be a matter for the specialised standing committees. Some EAC have requirements that all specialised standing committees should be represented in the EAC, whereas it is more common with proportional representations of the parliamentary party groups. Some parliaments has made it obligatory for standing committees to participate in the mandating process by scrutinising the governmental positions (Finland), whereas others encourage standing committees to take part (Sweden, Denmark, Latvia). In the document based scrutiny the standing committees participate as a rule in the screening EU policies, whereas the European Affairs Committees have a stronger position in the mandating since they deliberate with the government. That is, the mandating model is a more centralised parliamentary oversight organisation with a group of parliamentarians specialised in EU policies (but perhaps more powerful), whereas the document based scrutiny to a greater extent involves the entire parliament in the EU policy-making.

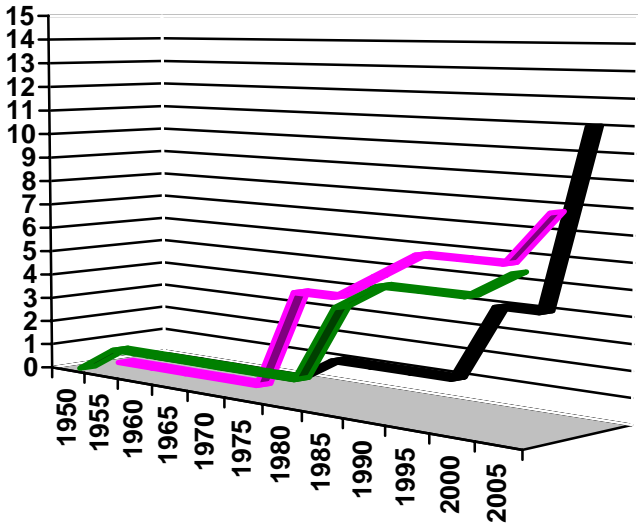
The diffusion of parliamentary oversight organisations

It is not uncommon that diffusion exhibits a distinct pattern, for instance policies tend to spread in wave-like patterns.¹⁶ A policy or an institution is considered attractive and transferred to other environments. The spread of the mandating model for parliamentary EU scrutiny exhibits some traits that are common to policy diffusion. Firstly, diffusion tends to occur in distinct temporal waves so that the cumulative frequency takes the form of a curve. From the illustration below we can see that over time and the later a state has joined the EU) the higher the propensity that the parliamentary EU scrutiny is mandate based. (Some states are omitted in the table!, but this does not change the general picture). It has been suggested that national parliaments “would react to the deepening integration” or a more powerful

¹⁶ Weyland, Kurt, 2005, Theories of policy diffusion Lessons from Latin American Pension Reform, *World Politics* 57, January 2005 p. 262- 95

EU by tighter EU scrutiny.¹⁷ This is a functional explanation based on rational action since the choice of institution is related to the development of the EU system. In this case policy convergence would be to expect: The temporal distribution of the parliamentary scrutiny models in terms of that the stronger mandating model has been more popular among the more recent EU members could be an indicator of that the scope of the integration at the time of membership matters. The microfoundations or causal mechanisms, which would be needed to support the explanation is then that considerations on the power of the EU is taken into consideration in the design of the parliamentary scrutiny.

Table 1 Diffusion of parliamentary scrutiny models from 1952-2004 in EU 25 (Bulgaria and Romania are not included).



	1950	1955	1960	1965	1970	1975	1980	1985	1990	1995	2000	2005
other	0	1	1	1	1	1	1	4	5	5	5	6
document	0	0	0	0	0	4	4	5	6	6	6	8
mandate	0	0	0	0	0	1	1	1	1	4	4	11

In addition to the temporal dimension diffusion can also exhibit a distinct geographical pattern as policies tend first to spread in the region “in which the innovation was designed and only later reaching other areas of the

¹⁷ Raunio, 2005, p.326.

world”.¹⁸ This pattern also applies to the spread of the mandating parliamentary scrutiny model since it was designed or developed in Denmark and then spread to Sweden, Finland and Austria. The mandating model has been implemented by the four new member states in the close Baltic Sea Area, i.e., Estonia, Lithuania, Latvia and Poland, but also to member states further away from the northern EU member states: Slovenia, Hungary and Slovakia. One possibility is that the geographical concentration of the mandating model in the Northern EU member states is consequence of that proximity invites for imitation due to contacts among neighbours in the Baltic Sea Area. Another explanation is that the proximity actually is a proxy for cultural, political and social similarities. The pattern of diffusion can only transmit a picture of how policies spread, but cannot account for why certain policies spread more than others. That is, agency needs to be taken into consideration.

The distribution of parliamentary EU scrutiny models

The British and Danish parliamentary models have been attractive templates to emulate. The older member states such as France and Italy reorganised the parliamentary scrutiny in the 1990s inspired by the British model and the new member states of 1995, such as Finland and Sweden were inspired by the Danish case when designing their parliamentary EU oversight. As a matter of fact Finland combined the British and the Danish models so that the standing committees were involved in the screening and the EU Committee (the Grand Committee in Finland) formulates a binding mandate for the government.

There is a distinct geographical pattern of the two parliamentary scrutiny models: The document-based scrutiny dominates in the older member states, except for the UK in France, Italy and Ireland. Among the newcomers from 2004 only Malta, Cyprus and the Czech Republic opted for the document-based model. The mandate-based scrutiny was until the latest enlargement geographically concentrated to the North of the EU (Denmark,

¹⁸ Weyland, 2005, p.236.

Sweden and Finland) and Austria Seven out of the ten newcomer national parliaments chose to set up a model of mandate-based parliamentary scrutiny; Estonia, Latvia. Lithuania, Slovenia, Poland, Slovakia and Hungary. The mandate-based model is consequently today the most frequent model for parliamentary scrutiny in the EU.

Some of the parliamentary EU scrutiny organisations can neither be characterised as document nor mandate-based. The role of the parliaments in the making of EU policies is as a rule weaker in these cases and their function is to initiate and carry out general discussions on EU, inform the public and etceteras! Spain, Portugal, Greece and a number of other parliaments belong to this quite heterogenous group.

Table 2: Types of parliamentary scrutiny in EU 25

Sources: Parliamentary websites, COSAC.

Types of parliamentary oversight in EU memberstates		
Scrutiny of documents	Mandating	Other
United Kingdom	Denmark	Spain
Ireland (Oireachts)	Austria	Portugal
France	Finland	Greece
Czech Republic	Sweden	Belgium
Netherlands* (JHA)	Estonia	Luxembourg
Italy	Latvia	
Malta	Lithuania	
Germany	Slovakia	
Cyprus	Slovenia	
	Poland	
	Hungary	

Inspiration from where?

There are different degrees of policy transfer. To a certain extent one can say that policy transfer occurs in all types of policy making since experiences from other places often are considered. The interesting aspect is the scope or degree of the transfer: Are existing models copied and completely transferred or are the main ideas behind a policy emulated as a new organisations

structure?¹⁹ Or are existing policies utilised as means for inspiration? The idea of a strong parliament empowered to mandate the government attractive to emulate. But these ideas were in different ways transferred and integrated. That is, there are examples of both copying and innovations of existing mandating organisations, i.e., the Finnish, Swedish and Danish, but also the Austrian parliamentary arrangements were attractive. In the table below, which is based on written reports as well as interviews the patterns of inspiration are indicated.

The mandating models were designed differently in the new member states. Estonia, Latvia, Lithuania, Slovakia and Slovenia (National Assembly) have like their northern neighbours institutionalised regular mandating routines in which the European Affairs Committees on a regular basis deliberate and mandate the government on EU draft legislation, but also on other matters considered politically relevant. The EACs in the parliaments in Poland (the Sejm) and Hungary also mandate, but less frequently.

Estonia and Slovenia have also been inspired by the Finnish parliamentary scrutiny since it is obligatory for the standing committees to formulate the draft positions on which the EAC committees deliberate with the government. The Lithuanian parliament has made it obligatory for the standing committees to participate in the screening of important issues that need to be mandated (except for EU legislative proposals) by the EAC, but they are not as regularly involved in formulation of the parliamentary opinions as the standing committees in Estonia and Slovenia.

¹⁹ Rose 1993, Dolowitz, David and Marsh, 2000, p. 8, 13.

Table 3. EU oversight organisation, the area/country of main inspiration and transferred characteristics in the ten member states that joined the EU in 2004.

1)State	2)EU oversight model	3)Main inspiration	4)Transferred Characteristics from 3)
ESTONIA Regulation: 15.3.2004 Riigikogu Rules of Procedure Act	Mandating (politically binding)	Finland/Nordic	1)Committee of EU Affairs/ Committee of Foreign Affairs responsible for regular mandating 2)Compulsory for standing Committees to formulate draft opinions for EAC
LATVIA 1995 Constitution Rules of Procedure of the Sejm (amended 2001)	Mandating (politically binding)	Sweden /Nordic	1)Regular mandating before Council meeting 2)Standing committees encouraged to get involved, but debate on better institutionalisation
LITHUANIA Est.18.9.1997 Revised 9.11.2004 Statute of the Sejm	Mandating (politically binding)	Finland/Nordic	1)Involvement of EAC and of standing committees (only in screening important issues that must be mandated by the EAC) 3)Innovation: Semafor organization for
SLOVENIA National Assembly April 2004 Article 3A of the Constitutional Act and article 2A of the Rules of procedures of the National Assembly National Council 1993 Article 97 of the Constitution of the Republic of Slovenia.	Mandating Screening The International and European Affairs Committee may formulate opinion (non-binding)	Finland/Nordic	1)Committee of EU Affairs/ Committee of Foreign Affairs responsible for regular mandating 2)Involvement of standing committees
SLOVAKIA 29.4.2004 The Constitutional Act No. 397/2004	Mandating -The Committee on European Affairs approves the positions of the government concerning	Nordic (Swe/Den)	1)The EAC positions are binding for the government 2)Standing Committees can be

	proposals for EU legislation.		asked to formulate position on government proposal.
HUNGARY Article 35/A. of the Hungarian Constitution , the Act LIII. of 2004 on the cooperation of the Parliament and the Government in European Union affairs and the Standing Orders of the National Assembly : Articles 134/A-D.	Mandating - The European Affairs Committee examines draft proposal to be adopted by the Council	Nordic/Austrian	1)Standing committees can send their opinions 2)The mandating arrangements less regular than in the Nordic parliaments.
POLAND The Sejm 28.7.2005 Standing Orders of the Sejm (the current committee established 14 May 2004) The Senate Act on Cooperation Between Council of Ministers with the Sejm in Matters Related to	Mandating?/screening? (not unconditional mandate) Screening	Nordic? and /or Austrian?	1)Regular mandating on EU legislation of the EAC
Czech Republic Chamber of Deputies May 2004 Czech Constitution article 10b and ACT of 7th May 2004 ,amending Act No. 90/1995 Coll., on the Rules of Procedure of the Chamber of Deputies Senate 1998 Czech Constitution (Art. 10b) and section 119 of the rules of procedure of the Senate	Screening documents Committee of European Affairs -deliberates on draft EU legislation -may request relevant Minister to attend the meeting -committee positions are not binding, but the minister must take them into account. -sectoral committees can be asked to deliver opinions	UK	
Malta	Screening documents	UK	
Cyprus	Screening documents	UK?	

The Czech Republic, Malta and Cyprus opted for a document based screening procedures, inspired by the UK House of Commons parliamentary procedures. In the Maltese case the inspirations from UK is openly stated in annual report of the European Affairs Committee from 2004: “The scrutiny procedure by the Maltese Parliament is closely modelled on the UK Scrutiny System”.²⁰

To conclude, seven out of the ten new member states of 2004 chose some type of mandate-based parliamentary scrutiny. The remainder of the paper is dedicated to a discussion of how different theoretical perspectives can provide some clues for the popularity of the mandating model. Naturally, the “deviating” cases (the states that opted for the document-based scrutiny need to be accounted for as well in future research.)

Theoretical perspectives

There are some theoretical perspectives that account for why similar choices are made in different places. Some concentrate on conditional external pressure and other focus other types of external impulses emanating from trans-national communication. These take into consideration international organisations or states as relevant actors and arenas for the disseminations of information and experiences, whereas a third group of theories provide instruments for explaining the actual choices actors made. These theories cannot be conceived of as mutually exclusive, but can rather complement one another.

External conditionality

External pressure is a frequent explanation for policy convergence around the world.²¹ International organisations such as for instance the EU, WTO and the IMF push for certain policies and by using the carrot (EU-

²⁰ The Standing Committee on Foreign and European Affairs, House of Representatives, Malta, Annual Report 2004, p.11. The choice of a document based screening seems to have been quite evident since the institutional visits are almost exclusively directed to the UK.

²¹ Melo, 2004, “Institutional Choice and the Diffusion of Policy Paradigms: Brazil and the Second Wave of Pension Reform” in *International Political Science Review*, vol.25, nr.3, p.320-341, Weyland, 2005,

membership, international loans, etceteras) or the stick (sanctions) impose certain policies and institutions upon states. This type of external pressures is a potential explanation when similar policies are selected in a wide range of countries. Such *direct imposition* or *coercive transfer* may result in convergence since an organisation, as a rule a supranational body or a state/groups of states by various means can enforce compliance.²² An asymmetrical power relationship is a prerequisite for why an organisation is in position to dictate the rules of the game Domestic actors have a minimum of choice in these processes. *International harmonisation* is another category of external pressure emanating from a state's compliance according to existing international obligations, as for instance membership in the EU²³. EU member states are obliged to follow binding EU rules, which they have taken part in formulating. This particular type of external imposition has been defined negotiated transfer since the states in theory can have some influence on the rules.²⁴ Depending on the character of the rules international harmonisation may lead to convergence in policy outputs, outcomes and/or instruments. Neither external imposition nor conditional international harmonisation can account for the popularity of the mandating model for parliamentary scrutiny of EU Affairs in the new member states as the EU has no mandate to formulate binding norms for how national parliaments should organise their EU-work.

Soft EU rules and meditative activities

However, EU guidelines and recommendations have been formulated on the role of national parliaments in the EU policy-making. These soft non-binding rules have always been accompanied with precautionary statements like "scrutiny by individual national parliaments of their own government in relation to the activities of the Union is a matter for the particular constitutional organization and practice of each Member State".²⁵ As a matter of fact, it is a sensitive issue since it is up to each and every member

²² Dolowitz and Marsh, p. 9-11, Holzinger & Knill, 2005, p.781, Ikenberry, 1990.

²³ Bennett, 1991, p. 225, Holzinger & Knill, 2005, p.778.

²⁴ Dolowitz and Marsh, 2000, p.15

²⁵ Protocol on the role of the national parliaments in the European Union (Treaty of Amsterdam).

state to choose its proper parliamentary organisation of EU affairs. That is, the EU cannot oblige any member state to set up any or some particular parliamentary oversight structures. Nevertheless, non-binding guidelines have been formulated within the EU stressing the importance of involving the national parliaments in the EU-policy-making. These recommendations have been intimately related to the debate on the “democratic deficit” of the EU, which gained momentum in the 1990s. A first declaration was added to the Treaty of the European Union (TEU) from 1993 where the participation of national parliaments was encouraged by underlining the responsibility of national governments to forward information on EU legislative proposals to their parliaments. The importance of engaging the parliaments was once again taken up in the Protocol on the role of national parliaments in the Treaty of Amsterdam 1997. The recommendations were then more specific compared to the ones from 1993. Firstly, the types of documents that must be forwarded to the member states (read governments) and the permissible time-period for translating Council decisions were laid down. These responsibilities were within the EU institutions. Secondly, the Conference of European Affairs Committees COSAC was mentioned as an important meeting-point for parliamentarians from national parliaments, but also for members of the European parliament. COSAC has no formal competence, but is an arena for discussion and exchange of opinions between parliamentarians.²⁶ COSAC was created in 1989 and is a “co-operation between committees of the national parliaments dealing with European affairs as well as representatives from the European Parliament”. General meetings are held biannually (usually hosted by the Presidency of the EU). These sessions have thematic programmes where specific issues related to the role of national parliaments in the EU are addressed. COSAC has since 2004 published biannual reports on various themes, such as the scrutiny procedures in the member states, the preparation for the subsidiarity control of national parliaments in the draft Treaty, etceteras.²⁷ The information in

²⁶ <http://www.cosac.eu/en/cosac/>)

²⁷ <http://www.cosac.eu/en/documents/biannual/>)

these reports is usually provided by the national parliaments themselves, but give a possibility to compare practices and experiences in the member states. The COSAC also invites academics to present research on national parliaments and the EU to their sessions.

Within the framework of the COSAC a set of Copenhagen parliamentary guidelines were formulated in 2003.²⁸ They were formulated together by national parliamentarians from old and to-be member states. The initiative came from the working group on national parliaments in the European Convention preparing the Draft Treaty for the European “constitution”. These criteria were presented as instructive principles or a kind of “instructive minimum standards...it is up to each Parliament to decide the extent to which the guidelines should be implemented”. Three elements in the parliamentary scrutiny were highlighted 1) the quantity and quality of information, 2) the timing of information exchange and 3) the opportunities the national parliaments have to use the information to have some influence on Community Policy. However, no particular model was mentioned as a model or best practice to follow in the official documentation, but there were pressures from the EU or EU affiliated on the new member states to set up parliamentary EU oversight procedures. However, the EU as such could not impose nor did the EU formulate any guidelines in favour of any particular model (in terms of mandating, document-screening or the scope of committee involvement, for instance) as there is no common European template for parliamentary participation in the EU policy- making.

The soft guidelines can be characterised as instruments in the inquisitive activities directed towards member states of the EU, as for instance by the COSAC.²⁹ Even though member states in a formal sense are not forced to take these ideas in consideration, they are involved in networks and environments where they are requested to present their policies, which are

²⁸ European Parliament, ‘Copenhagen parliamentary guidelines’ Guidelines for relations between governments and Parliaments on Community Issues (instructive minimum standards, COSAC, 27.1.2003, (Official Journal of the European Union C 154/1).

²⁹ Jacobson, Bengt, 2007, *Scripted States*, unpublished manuscript.

compared and judged. Since the member states of the EU jointly have produced soft rules on what should be taken into consideration for how national parliaments organise their EU-organisations these constitute starting points or unofficial criteria for the debates and comparisons between them. Good practices and well performing cases of parliamentary EU scrutiny may be identified and formulated through these activities.

The activities within the EU institutions or affiliated bodies are consequently arenas for the exchange and comparison of practices and experiences between representatives from the member states. The same goes for the large amount of other seminars and conferences that were held upon the themes of EU, democracy and national parliaments and the multitude of contacts between the European national parliaments (both between parliamentarians and civil servants). Added to this are the various bilateral and multilateral contacts between the national parliaments. That is, the design of parliamentary scrutiny organisations took place in an environment of multiple arenas for meditative activities where experiences were shared, compared and evaluated and where stories of good examples and bad performers were told. It has been claimed that policy transfer processes “require activities where “best practices” are produced. All those that want to be seen as innovators need to have a supply of good stories and reform proposals to be able to choose from as they bring together and promulgate their own innovations”.³⁰ To conclude, these arenas had a vital role, as exemplified by a viewpoint from “Exchanging best practices, views on common points of interests, and problems during COSAC as well as personal contacts established there have contributed to the development of the Estonian parliamentary system”.³¹

The question is which best practices and good performers were identified and formulated in these transnational discussions? Firstly, research results

³⁰ Ibidem, p.4.

³¹ European Union Affairs Committee of the Riigikogu, General Overview, www.riigikogu.eu

were disseminated and researchers on national parliaments were invited to write reports of talk on parliamentary democracy and the EU. The research in the field is quite straightforward in identifying the mandating models as the stronger ones. The major part of the academic research has attempted to assess which parliaments are the most active and or successful in influencing EU Affairs. They use a number of indicators, such as access to information, involvement of specialised committees and the character, scope and timing of the parliamentary involvement.³²

Secondly, the old member-states presented and advertised their models of parliamentary scrutiny. In particular, the three parliaments in the Nordic EU member-states marketed the mandating model by publishing a pamphlet on “European Affairs Committees in Finland, Sweden and Denmark in 2002. That is, there was active marketing from the three main mandating states, in particular during the European Convention. The parliamentary EU scrutiny was presented as a quite coherent “Nordic model” even though there are differences between them: ”It makes sense to talk of a Nordic model of European Affairs Committees, as the basic principle that Parliaments exercises influence and supervision over their Governments on EU questions is the same”.³³ The initiative for this brochure came from Denmark (and was written by civil servants of the Danish Folketing). According to one of the representatives from the Swedish parliament in the European Convention (and the then chairman of the Swedish EU Committee) this offensive by the Northern parliaments was not met positively by parliamentarians from other member states.

³² To mention a few examples Maurer & Wessels, 2001, p. 463, Raunio & Wiberg, 2000, p. 351-351, Raunio, 2005, p.321-322). (All these researchers have taken part in conferences organised by the COSAC). In the Maurer & Wessels analysis of the strength of parliamentary scrutiny the member states with mandating arrangement are situated in the top, i.e., Denmark, Finland, Sweden, Austria – whereas the document based come thereafter and the member states with other arrangements are at the bottom. (Luxemburg, Spain, Portugal, Greece).

³³ In the working group of national parliaments at the European Convention the parliamentary EU oversight procedures in the member states were presented. According to Sören Lekberg, the Swedish parliamentary representative in the working group the mandating models of DK, SWE and FIN were presented as a Nordic model. This term was also used in the domestic parliamentary debate in Sweden. The Nordic parliaments had a joint publication (October 2002) where the Nordic parliamentary EU-organisations were presented “*The EU and democracy in the Nordic region European Affaris Committees in Finland, Sweden and Denmark*”.

Thirdly, some type of “silent” knowledge of best practices was disseminated and promulgated. That is, there was some agreed-upon conception of good practices in the parliamentary networks. For instance, A Lithuanian civil servant told that when a group of EAC members and civil servants visited the House of Commons they learnt that the Finnish model was the most efficient “Everyone told us that the Finnish model of parliamentary scrutiny of EU-Affairs” was the most efficient one, even when we were not in Finland”.

In particular the civil servants have intense contacts and often know one another by name. They could perhaps be characterised as a type of advocacy coalition that have promoted certain models for organising the parliamentary EU Affairs in the new member states. In the Estonian internal parliamentary publication *Riigikogu Toimetised* (nr 7/2003) the chief civil servant of the EAC states that “The examples of Finland, Sweden and Denmark are worth following. The much advertised Danish system has been based on the tradition of minority governments where the cabinet must basically reconfirm its mandate for each step. In the Swedish system, the main problem is that the Riksdag is not in a strong position of having an effect on the political will of the majority cabinet. The Finnish model is based on a semi-presidential system, and it is very important that the members of Eduskunta formulate opinions that have effect on the EU decisions”.³⁴ The impact of civil servants in this process varied depending on their role in the preparations of the EAC committees. Usually a parliamentary committee was set up to investigate the possible reforms to be made in the national parliaments as full members of the EU, whereas in the Slovenian case a group of civil servants and experts formulated a proposal for the parliamentary EU scrutiny. According to one of the civil servants this procedure partly explained why the Finnish model was emulated in the National Assembly of the two-chamber Slovenian parliament (interview).

³⁴ Olev Aarma, 2003, “Rahvusparlamendi valikud Euroopa Liidus” in *Riigikogu Toimetised* 7/2003. In addition the author describes the result from a research report where the Finnish parliamentarians state that have more of a say in the EU-policy making than their Swedish colleagues, (by Jungar & Öberg .Ahlbäck (2002) *Parlament I bakvatten*”

However, the Nordic attraction was prevalent among the political representatives as well. According to the Estonian parliamentarian Marko Mihkelson, chairman of the EAC and representing the political party Res Publica “Estonia does not necessarily have to reinvent the bicycle...The most obvious examples are from the Nordic countries. Although Denmark, Sweden and Finland have all followed their own paths we can to some extent talk of the Nordic model...Riigikogu has to make a decision soon. It is necessary to rely on the experience of other countries based on these form the solution that fits the Estonian realities best, and the most efficient solution for us. Several Nordic experts have said good things about the Finnish system, i.e., the Grand Committee, because this system is most explicitly defined. This does not mean that the automatic copying of this model guarantees the success of it in the new context”.³⁵ The writer quotes extensively from the report that has been described above from the three Nordic parliaments.

Fame or performance?

What motivates actors to follow international examples or models from elsewhere when they are in a position to make a choice? Rational learning models depart from utilitarian motives, whereas sociological accounts assume that the selection of a particular policy or institution has symbolic purposes.³⁶ In the first case the actors that are searching for solutions scan the environment for policies, analyse them in relation to their goals and preferences and pick the one that best serves their interest. According to models of normative imitation the choice of policies rather follows the logic of appropriateness, “models are adopted because they appear more legitimate, successful or appropriate”.³⁷ The purpose might be to gain international legitimacy by emulating modernity and compliance with international norms and “the adoption of a model not as the result of a goal-oriented choice but

³⁵ Marko Mihkelson, “Eesti parlamendi roll Euroopa Liidus”, *Riigikogu Toimetised* 7/2003.

³⁶ Covadonga 2004, p., Gilardi, 2003, p

³⁷ Melo, Marcus André, 2004, p. « Institutional Choice and the Diffusion of Policy Paradigms : Brazil and the Second Wave of Pension Reform » in *International Political Science Review*, vol.25, nr.3, p.320-341.

as a result of magnetic attraction”.³⁸ In its strictest form a policy could be adopted without taking functional needs into consideration.

Rational learning explanations assume that the actors engage in a wide-ranging search for solutions that best fit their needs. Theories of assuming full rationality are ideal-typic in that they assume that actors have strong analytical capabilities and fixed preferences. Rather, theories departing from conceptions of bounded rationality are more fruitful since it is assumed that shortcuts are used when collecting and interpreting information. The information gathering activities are not as extensive when bounded rationality is the case: All experiences are not scanned in the same way. A more selective and restricted process is assumed. Both in the interviews and the reports published by the parliamentary committees evidence can be found that all experiences are not considered equally interesting. For instance in one of the reports from the parliamentary investigation of the parliamentary organisation of EU Affairs in Lithuania there is a question of which of the following member states are worth following: Denmark, Finland, Sweden, the Netherlands, UK, Austria, Ireland, France. The answer given in the answers that were provided was the Finnish experience.³⁹ One of the civil servants comments that there was “no idea of looking at how parliaments work in for instance Greece, Spain and Portugal since we know that they are very weak and have little impact”(interview).

Theories of bounded rationality propose two reasons for why policies are emulated from certain areas. Firstly, according to the availability heuristics policies are transferred from neighbours on which one is dependent. The experiences of countries that are closer in geographical, cultural or historical terms are paid more attention to. In the interviews conducted in relation to the project a Lithuanian parliamentary representative (and the chairman of the EAC committee in 2003) stated that “It was important for Lithuania to

³⁸ Weyland, 2005, p.

³⁹ Darbo grupės del Seimo darbo Lietuvai tapus Europos Sąjungos nare koncepcijai ir reikalingiems teises aktu paketimu projektams parengti Parlamentino modelio parinkimo darbo pogrupio (nr 2) medžiagos savadas (Report from the Lithuanian parliament 2003).

have similar parliamentary EU structures as the Northern neighbours in order to facilitate regional cooperation within in the EU, but also otherwise” (interview). Since gaining independence in 1991 the Nordic and Baltic states have had close contacts, even though the political, cultural and historical legacies are different.

Secondly, according to the representativeness heuristics logic policies are emulated because they are conceived of as the best performing. They are chosen on the basis of reputation, not only because they are best suited to the domestic needs or demands. That is, there exists a conception of good-performing models or a ranking list of performance. That is, “a bold innovation attracts disproportionate attention from neighbouring countries, it is widely adopted on the basis of its apparent promise, not on its demonstrated success”. There is ample evidence (that was accounted for earlier in the paper) that the Nordic EU oversight scrutiny organisations were considered as the best performing in terms of empowering the national parliaments in relation to the government (see above).

Normative imitation is an explanation following the logic of appropriateness. Some policies are preferred since they are perceived to be more legitimate and consequently more appropriate to emulate (Weyland, 2005). This may be expressed in the copying of successful models of institutions of which they are dependent: External pressures are in operation, but not as conditional obligations, but rather as attractive templates with symbolic assets. The motive can be strategic since the reason for the choice of a particular policy might be to gain international reputation. The basic idea is that measures are adopted not so much of concerns for functional needs, but rather for symbolic purposes. The parliamentary processes of designing EU parliamentary oversight organisations seems have the character of quite knowledge-intensive activities. Moreover, the distribution of power between institutions (parliament and government) or parliamentary groups (government and opposition) is central in all types of constitutional engineering, which is likely to promote probing if different alternatives.

However, it can be quite hard to formulate operationalisations that allow for the differentiation between a decision guided by the representativeness heuristics alternatively normative imitation. The scope of the information gathering activities and the probing of other models in relation to the proper political system could be a way of drawing a line between them.

Conclusion

Policy transfer has played a vital role when the ten new member states of 2004 designed their parliamentary EU scrutiny. The mandating model, which provides the parliament with instruments to politically tie the government's hands in the Council negotiations, was the most attractive model to emulate. Seven out of the ten new member states opted for a parliamentary organisation empowering the parliament (through European Affairs Committees and/or standing committees) to take ultimately decide which standpoint the government shall put forward in the EU policy-making.

External conditionality cannot explain the striking convergence in how the new member state adapted their parliamentary organisations to full EU membership since the EU has no formal competence whatsoever to dictate how national parliaments should participate in the domestic coordination of the EU-policymaking. However, soft (non-binding) guidelines and recommendations have been produced by the EU and COSAC. These have served as starting points for the discussion and comparisons of existing parliamentary EU oversight procedures of the older member states. COSAC, the European Convention (in particular, the working group of national parliaments), other seminars and conferences, as well as bilateral contacts between parliaments have constituted arenas where this type of activities of probing and formulating good examples and best-performers have been identified and formulated. The parliamentary arrangements have been the main objects in this beauty contest and some of them actively promoted their model by producing reports and advertisements on their model. For

instance, the three Nordic parliaments jointly marketed a so-called Nordic model of parliamentary EU-policy-making.

In their decisions the parliaments in the new member states made use of short-cuts when deciding which lessons could be learnt from the older member-states. That is, bounded rationality seems to best make sense of these decision-making processes. More precisely, all models of parliamentary oversight were not studied similarly in the investigations preceding the decision. Rather the focus of attention was directed towards those that had been identified as the best-performing. In the actual design of the parliamentary oversight adjustments or innovations were made to different degrees. It is in the fine-tuning of parliamentary EU models that adjustments to the domestic structures become visible.

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