

## Europeanization and Domestic Parliamentary Adaptation – A Comparative Analysis of the Bundestag and the House of Commons

**Troels B. Hansen and Bruno Scholl**

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### Keywords

europeanization, institutionalism, national parliaments, Germany, U.K., political science

### Abstract

The aim of the article is to explain the institutional development of the parliamentary scrutiny systems in Germany and the UK on the basis of existing Europeanization frameworks. So far these attempts have concentrated on policy specific analyses or on the development of governmental or administrative structures. There has been no attempt to explicitly link the evolving discussion on the role of national Parliaments and the development of scrutiny structures to the theoretical debate about Europeanization and domestic change. We will apply a strict top down approach taking on board key notions of the Europeanization literature such as misfit, mediating factors or domestic change. However, in order to grasp the various dynamics at work we had to specify the existing frameworks. The rather undefined concept of 'misfit' between the European and national level is divided into three sub-categories: constitutional, functional and cultural misfit. This allows for a more differentiated analysis of how the various mediating factors exerted their influence on the development of the domestic institutions. Drawing on explanatory models from sociological as well as rational choice institutionalism we argue that cultural factors such as the attitude towards European Integration account for the longer term developments of the scrutiny systems whereas formal mediating institutions such as national Governments or Courts are responsible for the more abrupt changes.

### Kurzfassung

Ziel dieses Beitrags ist es, die institutionellen Entwicklungen der parlamentarischen Kontrollsysteme im deutschen Bundestag und dem britischen Unterhaus auf der Grundlage bestehender Europäisierungsansätze zu erklären. Während sich diese Ansätze bislang nahezu ausschließlich auf politikfeldspezifische Fragen oder der Analyse gouvernementaler Strukturen beschränkt haben, soll hier erstmals explizit die Debatte um die Rolle nationaler Parlamente mit der sich entwickelnden Europäisierungsliteratur verbunden werden. Dabei hat sich gezeigt, dass insbesondere das Konzept des ‚misfit‘ zu unbestimmt für die Analyse der Entwicklungslinien beider parlamentarischer Systeme waren. Deshalb wurde der Misfitbegriff in einen konstitutionellen, funktionellen und kulturellen Aspekt unterteilt, um so zu einer differenzierteren Betrachtung der Einflüsse der verschiedenen intervenierenden Einflussfaktoren zu gelangen. Ausgehend von Erklärungsmodellen des soziologischen wie auch ‚rational choice‘ Institutionalismus argumentieren wir, dass insbesondere kulturelle Faktoren, wie die generelle Haltung zur europäischen Integration für die längerfristigen Entwicklungen der parlamentarischen Kontrollmechanismen maßgeblich sind, während formale institutionalisierte Verhandlungsmacht sich in plötzlicheren Veränderungen niederschlägt.

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## 1 Introduction

With the rise of the so-called ‘Future of Europe Debate’ and the intensified deliberations about the democratic legitimacy of the European Union, national Parliaments have moved to the centre of interest and studies about the role of these institutions have increased in recent years (Maurer / Wessels 2001, Cygan 2001, Holzacker 2002, Hegeland / Neuhold 2002). At the same time theory building in the field of European integration has moved to questions of how the process of European integration impacts on domestic political systems. Within the so-called ‘Europeanization’ literature (1) several top down approaches have been developed, which present categories and concepts to

account for the differential adaptation processes on the national level that could not be grasped by classic integration theories. These attempts, however, have concentrated on policy specific analysis or on the development of governmental or administrative structures (Héritier 2001, Lehmkuhl / Knill 1999, Börzel 1999). So far there have not been any attempts to explicitly link the discussion on the role of national Parliaments and the development of scrutiny structures to the theoretical debate about Europeanization and domestic change.(2)

This exactly will be the aim of this article. We will explain the institutional development of the parliamentary systems in two EU Member States on the basis of existing frameworks found in the Europeanization literature. Especially the frameworks of Tanja Börzel and Thomas Risse as well as Thomas Risse, Maria Green Cowles and James Caporaso will serve as a starting point for the analysis of the parliamentary scrutiny systems in Germany and the United Kingdom (Börzel / Risse 2000, Risse et al. 2001). We will take on board their strict top down approach keeping the process of European integration as the independent variable(3) and will broadly follow their three step approach: First, the Europeanization process at EU level is identified. Then the 'Goodness of Fit' between this emerged structure and the domestic level, and the resulting adaptational pressure, is determined. Finally, so-called mediating factors present at the domestic level and their effect is analysed to understand the change or lack of change observed. However, in order to achieve an increased analytical leverage we will propose an adapted theoretical framework which serves the specific needs of a comparative polity analysis.

In order to grasp the various dynamics at work we will break down the observed misfit between the relevant Europeanization process and the domestic parliamentary system into three categories: constitutional misfit, cultural misfit and functional misfit. This specification of the rather broad notion of 'misfit' will enable us to show that different adaptational pressures are at work on and within each of the two parliamentary systems.

We will then analyse the impact of the adaptational pressures on each of the two parliamentary systems with a specific focus on the interplay between different mediating factors derived from rational choice and sociological institutionalism (Börzel / Risse 2000). It will be argued that in particular cultural factors such as the attitude towards European Integration but also formal mediating institutions such as national Governments or Courts account for the developments observed. Thereby, the cultural factors determine the longer term developments, whereas formal institutions are responsible for the more abrupt changes. Thus, we will challenge the most recent attempt by Dimitrakopoulos to explain parliamentary adaptation only by incrementalism and path dependence (Dimitrakopoulos 2001).

Finally, a classification between a 'systemic' and an 'intra-institutional' change is offered not only to 'know change when we see it' but also to assess its relevance for the institution as such and the domestic political system as a whole.

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These theoretical concepts will be applied in a comparative case study, in which the differences in the development of formal scrutiny rights in the House of Commons and the German Bundestag will be analysed. The study thereby follows the principle of a 'most different system design' which allows to compare cases, as contrasting as possible, in order to show the robustness of a relationship between dependent and independent variables (Landman 2000, 27). The parliamentary systems of Germany and Britain meet this prerequisite, especially in regards to European integration issues:

Whereas the Federal Republic has been a 'europhoric' if only 'semi-sovereign' founding member of the EU with an unstable parliamentary tradition, the UK only joined in 1973 after a controversial

accession process causing deep domestic cleavages, especially within the ‘oldest Parliament’ in modern times (Bulmer / Burch 1999, 16). The organising principles of the parliamentary as well as of the state systems as a whole differ completely. Germany is a federal state with a tradition for both vertical and horizontal power sharing. The UK on the contrary is a unitary and centralised state (at least until the devolution process began).

## 2 Mapping the Misfit <sup>↑</sup>

### 2.1 Identification of the Europeanization process

Identifying the Europeanization process is vital for any analysis of domestic change employing our framework. However, there is not only one specific Europeanization process that exerts pressure on the domestic level. Looking at the parliamentary systems in Germany and the UK two main processes can be identified, each with different implications for the Member State: the formal democratic deficit and the development of network governance on the European level.

The evolvement of network governance is characterised by the diffusion of state power into networks outside parliamentary control. Even if this development is informal and thus harder to grasp analytically, there are substantial empirical indications showing that it is affecting the influence of the national Parliaments on EU matters (Kohler-Koch / Eising 1999, Jachtenfuchs 2001). The network development is, however, part of a larger ‘de-parliamentarisation’ tendency that can be traced back to before European integration, and which continues to be nourished by global developments as well as European.<sup>(4)</sup> If a Parliament is sidelined, and without influence on legislative decisions taken in networks, it cannot perform its functions properly. Europeanization, however, is only one factor among many that enhances the existing network development. In order not to overstretch the concept of Europeanization (Radaelli 2000), we will leave the analysis of the network development aside and will instead concentrate our efforts on more formal aspects of an increasing democratic deficit.

The formal democratic deficit is most frequently discussed when national Parliaments’ relations to Europe are on the agenda. It has been defined in a variety of ways, employing different understandings of democracy, and emphasising the role of different actors. Raunio and Hix refer to the ‘standard version’ of the democratic deficit as a development on the European level which has led to an erosion of parliamentary control over the executive office-holders – both constitutionally and politically (Raunio / Hix 2000, 142). This means that the inter-institutional balance on the national level has been altered by the process of European integration leaving national parliaments in a weaker position compared to the status quo ante. Other scholars place more emphasis on the lacking counterweight presented by the European Parliament in European Union decision-making (Featherstone 1994, 150).

Common among most of the interpretations is that they point to national Parliaments as losers or more recently as latecomers to the EU policy making process (Maurer / Wessels 2001, Chrysochoou 1998, 31-32). We identify five developments on the European level which potentially influence the inter-institutional balance at the expense of national Parliaments, thus creating adaptational pressures on these institutions to secure their traditional role within the respective political systems.

1. The general shift in decision-making power to the European level has led to a decrease in Parliaments’ ability to influence political outcomes and to control their governments. When decisions are taken at the European level, national Parliaments lose the final say on

legislative decisions. They are left with the possibility to *influence* their government, which exercises the legislative powers in the Union together with 14 other governments and the European Parliament.

2. Almost every Treaty change since the EU's creation has resulted in a widening of its policy remit. From its initial role as an economic community, it is now playing a role in decisions covering all aspects of society.<sup>(5)</sup>
3. The increasing use of QMV after the Single European Act meant, that the ability of national Parliaments, to force governments to make ex ante commitments or to veto European legislation vanished.
4. The introduction and the increased use of the Co-decision procedure after the Maastricht Treaty puts additional pressure on the parliamentary scrutiny systems (Maurer / Wessels 2001, 42). The procedure introduces additional stages at which a legislative act may need to be examined by the national Parliaments (i.e. after the conciliation phase), thus further complicating their scrutiny task.
5. The enforcement of the European Parliament, which is aimed at strengthening the element of representative democracy within the EU system, could – from the perspective of a national Parliament – only be regarded as an inadequate compensation. This is not only because the EP's competences are only limited in comparison to national Parliaments, but also because the representation of national constituencies is incomparable as well.

Whereas this process of Europeanization on the European level determines the kind of pressure exerted on all political systems of the Member States, since it potentially alters the inter-institutional balance between legislature and executive, it depends on the domestic structures of each of the Member States how strong the pressure for change finally is.

## 2.2 Breaking down the Misfit

The degree of fit between the process of Europeanization on the European level and existing structures at the domestic level determines the degree of 'adaptational pressure' on the Member State. The lower the degree of fit, the higher the adaptational pressure (Risse et al. 2001, 8). The conceptualisation of fit and misfit is of great importance in explaining the different outcomes across the EU. Since the structures at the domestic level vary among the different Member States, the degree of fit, and the following adaptational pressure will vary as well (Risse et al. 2001, 7).

Risse et al. identify two different forms of misfit: a 'policy misfit' between EU regulation and domestic policies which leads to an adaptational pressure e.g. to reform a procedure. Secondly, direct adaptational pressure on domestic institutional structures, e.g. to reform Central Bank regulations to achieve the required degree of independence from government. Whereas the policy misfit can be a fairly obvious affair, e.g. compliance with a certain set of standards, the misfit between a domestic polity and the Europeanization process can be a highly complex relation in which it can be difficult to identify which kind of misfit exerts which kind of adaptational pressure. This is particularly the case when the domestic polity in question, is deeply culturally and historically embedded at the national level such as national Parliaments.

More precise parameters are therefore needed. We propose to break down a generally identified misfit into three sub-categories, each representing distinct elements of the general misfit which can be developed to very different degrees. This allows for a far more nuanced investigation into the interplay between the European and the domestic level.

### 2.2.1 The Constitutional Misfit: Parliamentary traditions and Formal scrutiny systems

A constitutional misfit concerns the guiding principles underlying the national institution. This refers to norms, traditions and principles that represent important characteristics of the institution laid down either explicitly in a constitutional document or passed on in constitutional tradition. They can be of a managerial kind (e.g. relation to other institutions) or related to the institution's steering principles (e.g. different variants of democratic representation). In the case of Parliaments it concerns for example the right of timely information, consultation and decision-making powers over the government when acting at the EU level.

In the UK, the principle of parliamentary sovereignty was at the heart of the debate between opponents and advocates over British accession to the EC in the early 70s. It means two things: firstly, that a law enacted by parliament overrides any other source of law. Secondly, that no Parliament can bind its successor (George 1992, 98). Dicey, the most renowned exponent of the doctrine, called it "the dominant characteristic of our political institutions" and "the very keystone of the law of the constitution" (A. Dicey, quoted in Page 1996, 32). Over the years it has achieved a high symbolic value as a carrier of liberty and 'Britishness' and has formed an integral part of the British conception of national sovereignty (Armstrong / Bulmer 1996, 259). It is therefore not surprising that challenging this principle can be viewed as a threat to the British nation-state identity as well. The notion of parliamentary sovereignty, however, conflicted with key features of Community law. Already in 1964, with the *Costa vs. ENEL* case, the European Court of Justice had enunciated the bearing principle of Community law, namely that it has primacy over national law. This constituted an almost complete misfit and the adaptational pressure was therefore relentless.

Another constitutional misfit between the Europeanization process and the British parliamentary system can be found in the formal scrutiny system. British politics has been characterised by very strong executives that have even been labelled 'elected dictatorships'. The House of Commons has been given little influence on the control and shaping of policy. This is primarily explained by the fact that most governments - as a result of the first past the post electoral system - are one-party majority governments. As long as they can rely on party support they are in a position to control the work of the House. Secondly, the centralised character of the unitary state gives the governments an almost absolute power. There is no tradition of horizontal power sharing. Few agencies have possessed an effective autonomy and the cabinet is characterised by tight discipline and strict coordination mechanisms. On the vertical level, the power used to be concentrated in the central government, with only little influence given to local or regional governments (Armstrong / Bulmer 1996, 259). All together, these elements make up a very powerful executive that has not been generous in handing away scrutiny rights. When the process of Europeanization increases the power of the executive in relation to the parliament, it thus makes even more apparent the lack of formal parliamentary scrutiny.

This adds up to a rather ambiguous misfit. The reinforcement of the government cannot be regarded as a misfit that presses for change since it only strengthens an existing situation. For the Parliament, however, the constitutional misfit is significant as it is loosing even more possibilities to influence the government. Thus, the adaptational pressure for a change in the political system as a whole has not been high. The pressure for the rather weak House of Commons to develop effective control tools for decisions that are increasingly taken outside its 'normal' sphere of influence was very high indeed, in order to re-establish at least the former inter-institutional balance.

In Germany there was no similar tradition to the parliamentary sovereignty of the British system. The aim of the victorious parties when drawing up the German Basic Law after WWII was to avoid the re-emergence of a strong central power. Thus a political system was created characterised by a strong division of power both vertically through the involvement of the Bundesrat and horizontally by independent institutions such as the Federal Bank and the Federal Constitutional Court.

This power dispersal characteristic for the German federal system prevented the government from obtaining the same position as in Britain. The 'built in' counterweight to the process of stronger executives brought about by European integration was, however, not complemented by strong control mechanisms after the Federal Republic had joined the EC. Within the Bundestag debates on EU affairs have been infrequent and a scheduled annual debate does not always take place. 'Written question' (kleine Anfragen) and 'written questions followed by short debate' (grosse Anfragen) are used, but question time is not of central importance (Bulmer / Paterson 1987, 172). These instruments are mainly used by the opposition and to a far lesser extent the parliamentary majority, or the legislature as a whole. However, since no real opposition existed on EU affairs, these control instruments have rarely been used (Hölscheidt 2001, 133).

Since the scrutiny system within the Bundestag only developed very slowly, this major constitutional misfit of missing counterweights to governmental power pertained for the first 35 years of German EU membership.

### 2.2.2 The Functional Misfit: a Speaking and a Working Parliament

The functional misfit covers the practical organisation of the work within the institution. This can be the difference between a hierarchical and a more horizontally managed organisation. The factors covered by the functional misfit are decisive for the range of options readily available for the institution when encountering adaptational pressure. In the case of Parliaments this concerns the internal organisation between the plenary and committees, the committee structure or the formalised role of party fractions.

Westminster was, and to a lesser extent still is, characterised by a relatively low level of institutionalisation. It has been characterised as a 'speaking parliament' (Armstrong / Bulmer 1996, 274), in which deliberation and debate dominate the work of the MPs. As a chamber-oriented institution it had made little use of committees such as permanent committees, which did not exist on specific subject matters when Britain joined the EC (Norton 1996, 103-104).

The non-existent permanent committee system meant a lack of expertise and independent technical advice. This starved the House of information and hampered its ability to call the executive to account. Thus, this tradition made it ill prepared to handle the increasing inflow of technical legislative acts that started to arrive following accession to the EC, and thus aggravated the asymmetric relationship with the executive which can be regarded as a high degree of misfit.

Contrary to the 'speaking' tradition of the House of Commons, the Bundestag has always had a well institutionalised committee system which has taken up a central place in the policy-making process. Members of the Bundestag spend the majority of their parliamentary time on committee work. This is radically different from the situation in the House of Commons, where it has been difficult at times to recruit people to committee work. The committees make up the main problem solving mechanism in the Bundestag. Here a large part of the disputes between government and opposition are settled, which to some extent make them the actual decision-making locus of the Bundestag. With the European Affairs Committee as a notable exception, the committees' remits run parallel to that of the ministries.

Whereas the election system in the UK favours candidates that are able to build up a relation with the constituency, the German system facilitates the election of specialists. The regional lists enable the party to put forward candidates who will perform well in committees. This, in combination with the specialist and depoliticised nature of the committee work, means that the Bundestag is rather well equipped to handle the scrutiny of even complex legislative processes (Bulmer 1986, 213 – 215). The functional misfit between the challenges of the Europeanization process and the internal

working structure of the German Bundestag has thus been low.

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### 2.2.3 The Cultural Misfit: Adversarial and Cooperative Political Culture

The cultural misfit finally covers the political culture within the institution. A confrontational and a cooperative culture respectively determine whether the European policy making style can be integrated into the working modes of the institution. For Parliaments, this in particular influences the ability to effectively scrutinise the government's policy towards the EU.

Not once since WWII has there been a coalition government in Britain. This is a result of the first-past-the-post electoral system, which tends to produce clear majorities in the House, making policy-making in Britain an adversarial exercise. The sitting order of the House of Commons and its almost ritual debating style clearly symbolise this. In the UK, coalition building and cooperation with the opposition is regarded as an aberration. This adversarial political culture prevents a united legislature from employing its power towards the executive, since debates, even at committee level, are shaped by the party cleavage.

A telling example of this is the British ratification of the Maastricht Treaty. When John Major negotiated the Maastricht Treaty in 1990-1991, his government had a ruling majority of only 21 mandates and it could be put in jeopardy by Euro-sceptic dissenters in the Conservative group. Although Labour supported the Maastricht Treaty, it chose to "act its institutional role of seeking the government's defeat" (Kassim 2000, 42). In the end, Major was forced to use his final call, a confidence vote in Parliament, in order to get his majority. The misfit between the cooperative consensus-oriented policy-making on the European level and the adversarial political culture in the UK weakens Westminster's ability to exercise effective scrutiny. As long as the scrutiny process is still primarily dominated by party cleavages, it lacks – from the perspective of the parliament – the effectivity a more unified approach towards the government could entail. The adaptational pressure on the Parliament was therefore high even in a cultural respect.

The German political system, on the contrary, is characterised by a co-operative political culture, which has been an essential prerequisite for a productive interplay between the various institutions on the horizontal as well as on the vertical level. It has even been regarded as a prerequisite for this system of 'political intervoveness' to function smoothly (Börzel 1999).

In the legislative process the informal consultation process begins very early for the governing parliamentary party groups. Contacts between the parliamentary group and the various ministries involved flourish. Experts in the parliamentary groups are consulted by ministerial officials, and parliamentarians get information about coming government positions while they are still developing. The committees elaborate their opinions in consultation with ministerial representatives and sessions are not necessarily characterised by a government versus opposition conflict. Majorities across party lines are not unusual. The non-partisan style of committee work and the willingness of the government parties to make concessions result in about 60 percent of all bills being amended at committee stage.<sup>(6)</sup> In more politicised questions, however, a relatively high degree of party discipline in the Bundestag would assure that backbenchers stayed in line even in the committees.

As a reflection of its election system, Germany invariably has coalition governments. Although the party structure is dominated by the two biggest parties, they have both been dependent on small coalition partners to assure a majority in the Bundestag.

Thus, there has not really been a misfit between the cooperative culture in the German political



system and the European level. On the contrary, the complex German bargaining system has often been compared to the equally complex EU decision-making. Unlike the adversarial British political culture, the German tradition is therefore not conceived of as causing any problems. Thus there is a lack of adaptational pressure.

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## 3 Explaining Domestic Change <sup>↑</sup>

### 3.1 Rational Choice and Sociological Mediating Factors

The adaptational pressures exerted by Europeanization are a necessary, but not in itself sufficient condition for causing changes at the domestic level. The argument is that without misfit there is no pressure, and without pressure there is no change – a hypothesis which itself needs to be tested empirically. But whether change actually occurs is dependent on a number of mediating factors at the domestic level. Risse et al. distinguish between three structural factors (Multiple veto points, Mediating formal institutions and Political and organizational culture) and two factors relating to agency (Differential empowerment of actors and Learning) which they draw from rational choice as well as from sociological institutionalism. (7)

Adaptational pressure can make formal institutions, whether intended or not, affect domestic actors' ability to induce change. They can facilitate change or they can act as 'veto players'. Thus Multiple veto points and Mediating formal institutions are conceptualised by Risse et al. as asserting their effects in opposite directions. Common for the two are that they work according to the 'logic of consequentialism'. They do not affect the actors' view on a situation, but they empower certain actors or hinder their possibility to change the existing structure (Risse et al. 2001, 9-10). As the analysis will show, both of the mediating factors can work in favour as well as against domestic change depending on the respective situation. It is therefore not correct to make this a priori distinction.

On the other hand, the collective understandings of proper behaviour, existing procedures, norms and traditions embedded in institutions affect whether domestic actors can use adaptational pressure to induce change. A given organizational culture defines a set of borders inside which the actors can legitimately pursue their interests. This happens according to the 'logic of appropriateness'. Action is rule based, and follows a role or identity that fits the specific situation (Risse et al. 2001, 10). In principle Europeanization can, according to the framework, lead to such changes in the interests and identities of the involved actors through a process of learning. Institutions like Parliaments, however, with a long legacy, deep roots in the political system and strong symbolic value, have a high resistance to adaptational pressure. Therefore it can be expected that political culture such as the general attitude towards European integration will be of significant importance in allowing or preventing adaptational pressure to transform into domestic change.

### 3.2 Systemic and (Intra-)institutional change <sup>↑</sup>

It is one thing to detect a Europeanization process and a misfit between domestic and European structures, but another to identify what consequences it may have; what exactly the adaptational pressures press for. Risse et al. mention two kinds of change: Similar 'policy results', as when an EU directive sets a certain standard that must be achieved and 'structural isomorphism', as when formal and informal institutional structures undergo change in order to achieve a certain goal.

Risse et al. are only interested in the latter type of change, but underline the importance of a

distinction between four different categories of change: policy outcomes, policies to achieve these outcomes, sector-specific institutional structures, and "system-wide" political, economic and social structures (Risse et al. 2001, 15).

Since this categorisation is clearly linked to a policy analysis, we propose two new categories to identify and to classify the different changes we encounter in our analysis. Risse et al. see domestic change in relation to the Europeanization process. We find it more useful to look at change in relation to the original institutional setting as well. Additionally, we propose to classify change not only by its narrow impact on the institution but also on the political system as a whole:

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1. Systemic change covers a situation where structures or norms that encompass the political system are changed at large. This concerns the power balance between institutions for example or the constitutional standing of an institution as such or the political culture of a political system. For a change to be considered system-wide it must have a transformational nature going beyond the existing logic of the institutional set-up.
2. Intra-institutional change on the other hand covers alterations in the internal working mode of an institution, the way things are handled or in what way decisions of the Parliament are prepared. Contrary to the system-wide change, intra-institutional changes are not directly influencing the inter-institutional balance. However they still can be of a profound nature and might be an important prerequisite for parliaments ability to exercise its competencies.

### 3.3 The Adaptation Process in the United Kingdom

#### 3.3.1 Mediating Formal Institutions and the Departure from Parliamentary Sovereignty

UK accession to the EC, and the adoption of the European Communities Act, were preceded by stormy debates in the House of Commons, with the euro-sceptic Labour party strongly opposing both membership and the way the government handled the negotiations. However, a simple majority in parliament was all it formally took to send Britain into the Communities. No constitutional court that had to give consent, no second chamber had to be consulted, and no constitutional obligations to seek a public mandate in the form of a referendum before handing over sovereignty to the EC needed to be satisfied (Dinan 1999, 64-66). This low number of veto points made it relatively easy for the government to induce change which constituted a breach with the principle of parliamentary sovereignty in the UK.

Still, the European Communities Act has been called 'a masterpiece of drafting' (Munro 1996, 86). While it de facto accepted the primacy of Community law, its formulation was sufficiently murky to leave the question of the future binding of parliament formally unresolved (Page 1996, 33). However, the fact that British courts on several occasions such as the Simmenthal case (1978) acted as facilitating formal institutions and set aside domestic legislation in favour of Community law was, however, regarded as the 'death knell of parliamentary sovereignty' (Munro 1996, 88, Page 1996, 44).

Thus, the formal facilitating institutions of the government and the national courts played the decisive role in inducing this abrupt system change that altered the constitutional standing of the House of Commons within the political system of the UK as a response to the huge adaptational pressure from the European level.

#### 3.3.2 Cross-Party Euroscepticism and the Introduction of Formal Ratification Rights

However, the continued existence of Euro-sceptic segments in both the government and opposition parties were of vital importance in the strife of the legislature for compensation. The British Parliament never had the same degree of control on foreign policy as in the domestic arena., since international treaties have always been considered an executive act (Page 1996, 32-34). Unlike in other European countries, there is no general constitutional rule in Britain that requires the legislator's consent to international treaties. However, the making of treaties does not alter national law until they are incorporated into the law by the intervention of, or under the authority of, the Parliament. Although this provision guarantees that Parliament has the last say over treaty based changes in the national legislation, other aspects, like changes in the institutional set-up on the European level, which also cause pressures on the national level, did not fall within this category. This problem first became salient in 1978 before the decision about a direct election of the European Parliament was taken. When the European Parliamentary Elections Act was passed, the Labour government sought to assuage fears amongst its own party's backbenchers by guaranteeing that "no treaty which provides for an increase in the powers of the European Parliament shall be ratified by the United Kingdom unless it has been approved by an Act of Parliament." (Munro 1996, 91).

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With this constitutional novelty, Westminster could again win more formal control rights. The clause came of use with the ratification of the Single European Act as well as the Treaty on European Union. Since both Treaties provided for an increase in the European Parliament's power, the government was obliged to obtain an approving Act from Parliament. Under the Major government the ratification rights of the Parliament were strengthened even more. This again owes directly to the internal party struggles caused by dissident Conservative Euro-sceptics. When the Conservative government went from a majority of 88 seats down to 21 in the 1992 election it put the decisive group of Euro-sceptic backbenchers – the so-called 'Bruges group' (Ware 1996, 251) - in a very powerful position (Kassim 2000, 42). Major, in the end, was forced to use the "suicide threat of a vote of confidence" to bring his party rebels into line (Munro 1996, 91-92). One of the compensations given in the end was the provision concerning EMU in the European Communities Act. It stated that the government could not give notification of its intention to move to the third stage of the EMU unless a draft of the notification had first been approved by an Act of Parliament (Page 1996, 36). This concession marked a strengthening of the ratification rights of the House of Commons. Thus the cultural mediating factor of a cross-party-Eurosceptic attitude was the decisive driving force behind the strengthening of Westminster by successively introducing formal ratification rights.

### 3.3.3 The Development of Formal Scrutiny Rights

The Euro-sceptic political culture and the existence of intra-party oppositions in EU affairs have played the decisive role in the transformation of misfit into domestic changes in the British scrutiny system as well. Both the Conservatives and Labour have been internally split over the question of European integration even before the European Communities were created (Norton 1996, 94).

The history of the development of a formal scrutiny system of EU affairs in Westminster itself is one of a great number of initial changes followed by a long period of rather insignificant incremental adjustments. Unlike the United States' Congress or the German Bundestag for example, the House of Commons did not have permanent subject-matter committees prior to accession. When bills required detailed consideration, they were referred to ad hoc committees that ceased to exist as soon as they had reported back to the full House. Before entering the EC, it was therefore widely accepted, by Parliament as well as by government, that procedures in the House had to be profoundly revised. However, differences between opponents and proponents of EC membership prevented a mechanism to scrutinise Community legislation being set-up prior to accession. At the 1971 motion, principally

approving British membership in the Community, Labour were split in half over the question and 39 Conservatives broke the party line and voted against. The vote on the second reading of the European Communities Act only succeeded because the government made it a vote of confidence, and even then, 15 Conservatives voted against and five abstained (Norton 1996, 94). It took two reports of an especially established Select Committee – named after its chairman Sir John Foster - to define the fundamental changes in the handling of EC legislation (House of Commons 2000b, 4).

Finally, after a generally Euro-sceptic Labour minority government took office in February 1974, the motion to appoint a new committee, the Committee on European Secondary Legislation Etc, was agreed, implementing a large part of the recommendations from the two Foster reports (Baines 1996, 56-57). The creation of a permanent Scrutiny Committee that met once a week when Parliament was sitting and which was given all the normal powers of a select committee, was a true institutional innovation in the House of Commons (Rasmussen 2001, 158). Whereas the euro-sceptic cleavage, and the controversy over accession in general meant that the scrutiny system got a slow take-off it was also the reason why so fundamental intra-institutional changes were realised.

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Next to these structural changes, the government accepted on an informal basis a constraint under which British ministers undertook not to agree to any legislative proposal in the Council until it had passed scrutiny. This caused considerable troubles in the beginning because the backlog of Commission proposals awaiting scrutiny meant that items were selected for debate in the House that had already been decided on in the Council (George 1992, 93). This experience spurred a debate over the functioning of the Committee and as a result the Procedure Committee, in autumn 1975, recommended that the documents, which the European Secondary Legislation Committee Etc considered should be subject to further scrutiny, were referred to a standing committee where they could be debated more thoroughly.

After the change of government in 1979, the scrutiny system was debated again and the above-mentioned government undertaking, which had hitherto been ‘voluntary’, was framed as the so-called Scrutiny Reserve Resolution and agreed to in October 1980. This strengthened the House’s rights at least symbolically, since in certain cases ministers could still neglect the resolution (Munro 1996, 94). However, the improved scrutiny capacity of the House was by far outweighed by the changes in the decision-making processes introduced in the Single European Act.

In the 90s only smaller changes were introduced in the existing scrutiny system. One of the more remarkable was the creation of two (later extended to three) European Standing Committees. Documents, which the European Legislation Committee recommended for debate, would automatically be referred to one of these two standing committees. Furthermore, the scrutiny reserve resolution was reinforced twice (1990, 1998)(8) and the committee was renamed to the ‘European Scrutiny Committee’ (Select Committee on European Legislation 1998, Appendix 1, para. 22).

All in all, it can be concluded that the changes made in the scrutiny system directly reflected resistance from Euro-sceptic backbenchers over the inadequacy of the existing system. Thus, the mediating influence of a stable cross-party Eurosceptic attitude towards Europe transformed continuously the existing misfit into changes. These changes are not merely an path dependent development, as Dimitrakopoulos (2001) has argued, but innovative outcomes were developed as well under adaptational pressure.

### 3.3.4 Systemic and Intra-institutional Change in the UK

As is obvious from the analysis, the adaptational pressures have had effect. The departure from the

fundamental principle of parliamentary sovereignty must be seen as a systemic change of the first order that breached with a century-old tradition in the UK. Likewise, the compensation through the introduction of formal ratification rights on treaties, has to be regarded as a constitutional innovation in the British political system which had systemic effects as well. Beginning with the reforms introduced immediately upon accession, the House of Commons has succeeded in expanding its scrutiny remit continuously over the years. Especially the introduction and expansion of the scrutiny reserve was part of a development, moderating the asymmetric power balance between executive and legislature, however not altering the systemic structures at large.

Internally, House of Commons did not have permanent subject matter committees prior to EC accession. When the Committee on European Secondary Legislation Etc started its work in 1974 it was a parliamentary novelty, challenging the British tradition as a chamber oriented speaking parliament. Whereas some see the development of the scrutiny system in the House of Commons as relatively insignificant adjustments, others argue that even a gradual change over a 25-year period is impressive in a country where centuries of tradition make all change remarkable (Rasmussen 2001, 161). Regardless of its political importance, it is a fact that accession to the EC, and the ongoing Europeanization process was the direct reason why the creation of an inherently different procedure was possible.

No change in the political culture has been observed as a result of the adaptational pressures on the UK. The adversarial political culture is a product of the one-party governments, which again stems from the electoral system which is deeply embedded. Even if there have been tendencies towards the departure from a purely majoritarian system in European and sub-national elections, these tendencies are not clearly linked to the process of Europeanization.

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### **3.4 The Adaptation Process in Germany**

#### **3.4.1 The Permissive Consensus and the Absence of a Scrutiny System**

The scrutiny system in the Bundestag only developed very slowly between 1957 and 1991. We argue that this was mainly due to the pro-European consensus in the Bundestag, which was even seen as integral part of the German 'Raison d'Etat' after the second world war.

In Article 2 of the Act of Ratification of the Treaty of Rome only an unbinding provision was made ensuring continuous information of the Bundestag by the government. In complete contrast to the struggles EC accession provoked in the UK the euphoria over the advancing European integration meant that the Bundestag was content even with these limited scrutiny rights (Schweitzer 1990, 168). Unlike in the UK, there has thus been no incompatibility between European integration and German self-conception. Throughout most of the process of European integration there has existed a national (elite) consensus on the desirability of German participation. From the 1960's onwards no opposition to European integration worth mentioning has been represented in the Bundestag. The European policy of the Federal Republic of Germany was either raised above party dispute or displayed a large degree of interparty agreement, not least because the government in office collaborated with parliamentarians of all party groups (Schweitzer 1990, 48). Lindberg and Scheingold (1970) have named this a 'permissive consensus' which left the government with a wide room of manoeuvre in European Affairs. Even today not a single significant party in the Bundestag can be characterised as anti-European or even Euro-sceptic (Hölscheidt 2001, 117).

Up until 1979, the compulsory dual mandate, that the Members of the European Parliament simultaneously held membership of the Bundestag, still ensured a flow of information from the

European level without the involvement of the government. The different committees could recommend the Bundestag to adopt a resolution on Commission proposals, but the government was not obliged to take these resolutions into account.

After the first direct elections to the European Parliament in 1979 the number of dual mandates rapidly decreased, and in 1983 hardly any were left. This caused the need for a body in the Bundestag that could cooperate with the European Parliament, and in 1983, the 'Europa-Kommission' was set up. It did not have the status of a committee, and was thus not permitted to submit recommendations for decisions to the Bundestag. An initiative aimed at institutionalising and strengthening its position was rejected, and the Commission was abolished in 1987 (Hölscheidt 2001, 125). In May the same year the Foreign Affairs Committee's Sub-committee on EC Affairs was created. Its function was primarily to do "groundwork" for the powerful Foreign Affairs Committee, and its scope for performing effective scrutiny was consequently severely limited (Saalfeld 1996, 22). In general, the scrutiny procedure was characterized by late and insufficient information and a selective approach by the Bundestag towards EC legislation (Bila 1998, 2-5). The Bundestag did not have the force, unity or incentive to constrain the increasing power of the government (Rometsch 1996, 62).

We consider this 'permissive consensus' as the main reason why the parliamentary scrutiny procedure developed so slowly and within the 'limited ideological space' (Bulmer 1986, 23) that is characteristic for the German party system. Moreover, the main players' interest in maintaining status quo preserved the inertia in the system. The shifting governments saw their interest in avoiding a specialised committee, since the segregation of information served them according to a 'divide and rule' logic. The departmental standing committees on their part defended their 'property rights' and they fought to avoid that an EU Committee being set up that would cut into their jurisdiction (Saalfeld 1996, 31). Besides the decisive mediating factor of a broad pro-European political culture change was also hampered by the existence of a number of veto-players as well.

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### 3.4.2 Mediating Formal Institutions and the Creation of the German Scrutiny System

Nevertheless, after the 1985 White Book on the Internal Market and the ratification of the SEA it became impossible to ignore that the process of European Integration posed severe problems for the democratic accountability of decisions taken at the European level. Following dissatisfaction in the Länder, the Bundesrat, for the first time, made use of its veto right on Treaty changes, and pressed the government to get more influence (Börzel 1999, 584). Thus the Bundesrat played a crucial role as a formal mediating institution making change in the Bundestag possible by breaking the path for further scrutiny rights. From approaching European policy as an area exclusively belonging to the domain of the executive, the Bundestag started to see it as an important part of everyday politics that reached beyond the 'permissive consensus' on European affairs. This can be regarded as a process of Learning.

As a result, the Committee on European Affairs was set up in September 1991 even though the 'Europeanists' in the Bundestag fought hard against the changes (Rometsch 1996, 70). Thus, thirty-four years after the ratification of the Treaty of Rome, a genuine Committee on European Affairs was finally created (Bila 1998, 8). Despite its competences to adopt resolutions on Commission proposals insofar as no other committee was competent, the Committee did not fulfil expectations (Hilf/ Burmeister (1996), 67-68). It did not succeed in finding its own place alongside the powerful Foreign Affairs and Economic Affairs Committees and was therefore rarely given responsibility for cases of particular importance (Bila 1998, 6).

The decisive break-through for the Bundestag's scrutiny system was facilitated by the role the Federal Court played in the debates surrounding the ratification of the Maastricht Treaty. A former German official in the European-Commission argued that the Maastricht Treaty failed to obey the democratic standards required by the Basic Law and filed a case (Boom 1995, 5). By declaring the case admissible, the Constitutional Court, intentionally or not, became a key actor in the development of formal scrutiny rights in the Bundestag. The pending case put a lot of pressure on the government, for whom it was an unacceptable prospect that the Maastricht Treaty should be judged unconstitutional after it had been through ratification in the Parliament. The set-up of the Special Committee in October 1992 showed how seriously the government approached the situation. The Committee was created with the specific purpose of paving the way for the ratification of the Maastricht Treaty. Within six weeks the Committee dealt not only with the ratification, but also with the amendments to the Basic Law, which were considered necessary. The Constitutional Court thus played a vital role as a catalyst for domestic change by literally forcing the government to take serious the Bundestag's lack of formal scrutiny rights, and thus acted as formal mediating institution.

Two articles amended in December 1992 are of particular importance for the scrutiny system of the German Bundestag: Article 23, the so-called 'Article on Europe' (Hilf/ Burmeister 1996, 69) and the related Article 45.

Article 23 considerably extended the scope for influence for the Bundestag on European legislation. It gives detailed provisions for the decision-making procedure in European affairs in the Parliament and stipulates that the government is obliged to inform the Bundestag "comprehensively and as quickly as possible". For the first time the Basic Law acknowledges the right of the Bundestag to influence the shaping of European legislation, before it is adopted in the Council of Ministers. An Act of Cooperation between the government and the Bundestag on European matters further specifies that the opinion given by the Bundestag shall be the basis for the negotiation position of the government (Bila 1998, 8-9)

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Article 45 can be seen as a complement to article 23. It provides the constitutional basis for the appointment of the Committee on the Affairs of the European Union (the EU Committee). As a constitutional novelty the EU Committee can, under certain rather demanding conditions, be authorized by the plenary of the Bundestag to take the role of the Bundestag as a whole in relation to the government and state opinions directly (Bila 1996, 27). The procedure, however, has never been used and is unlikely to be employed in the future because such an empowering of the EU Committee would enhance its status both legally and practically, compared to the other committees (Hölscheidt 2001, 129). All in all, however, the constitutional changes gave the Bundestag the potential to really influence European affairs and diminished the Pre-Maastricht misfits. In practice, the actual influence of the Bundestag is still hampered by party loyalty and continued consensus on EU affairs and the Bundestag is seen by some as merely a 'supportive scrutinizer' (Hölscheidt 2001, 140).

### 3.4.3 Systemic and Intra-institutional Change in Germany

In Germany changes on the systemic level can be observed only in conjunction with the constitutional adaptation prior to the ratification of the Maastricht Treaty. In relation to the constitutional misfit of a missing scrutiny system important changes have been introduced to counter the democratic deficit. These far reaching adaptations, however, did not change the parliamentary system as such. Unlike the British case the adaptations of the German system took place within the institutional logic of strong counter-players to the government. In this respect the constitutional amendments introduced in the early 90s represented a system-conform response which was prevented beforehand by the remarkably strong cultural mediating factor of a pro-European

permissive consensus.

Regarding the adaptation process of the Bundestag's internal working modes, the pressure for change was low, because of the strong tradition for committee work. The various Committees introduced before the 90s could be integrated without altering the internal working procedures decisively. Thus, it is remarkable that the EU Committee, even in the absence of a specific adaptational pressure, was provided with such an outstanding position. The possibility of the EU Committee to represent the Bundestag as a whole was a constitutional novelty. This constitutes a very specific case in which remarkable intra-institutional change occurred in the absence of a concrete adaptational pressure.

## 4 Conclusions

The aim of this article was to develop, on the basis of existing Europeanization approaches, an improved framework for the comparative analysis of the adaptation processes of domestic polities and to test it in a comparative case study. The empirical observations have shown that the changes in the parliamentary systems in Germany and the UK can be explained by applying the concepts of misfit, adaptation pressure, mediating factors and domestic change present in the Europeanization literature. However, an adaptation of these concepts to the needs of a polity analysis was necessary in order to grasp the relevant dynamics in the development of the two parliamentary systems.

The break-down of the rather undefined concept of misfit into three sub-categories showed that inherently different adaptational pressures were at work, not only in the two countries but also within each of the two parliamentary systems. In Germany for example, the constitutional misfit has to be regarded as enormous prior to Maastricht whereas the functional and the cultural misfits were minimal. In Britain, on the other hand, the functional and cultural misfits were huge whereas there was a rather ambiguous picture regarding the constitutional adaptational pressure. The notion of parliamentary sovereignty proved to be incompatible with the Europeanization process and the adaptational pressure was therefore relentless prior to Britain's accession. The pressure on the government-parliament relation by the Europeanization-induced strengthening of the government was rather low, on the other hand, since it only reinforced the already existing asymmetry.

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Thus, very different adaptational pressures had to be considered analysing the influence of the various mediating factors that finally shaped the reactions of the two parliamentary systems. The employment of the concept of mediating factors, however, showed the limits of the analytical framework. Whereas the empirical analysis demonstrated that rational as well as sociological institutionalist mediating factors exerted their influence at the same time, it was not possible to generalise whether or when they worked in favour or against domestic change. This contradicts partly the findings of Risse et. al. who conceptualise e.g. political culture only as a facilitating factor and argue for a distinction between mediating formal institutions and veto-points, which did not find support in our analysis. Thus, the explanatory reach of the framework remains rather limited since it can only indicate the important determinants for or against change, but cannot generalise about their influence.

Another unresolved question remains, which of the mediating factors prevails when they are pulling in different directions. One important finding has been that the cultural mediating factor - the attitude towards European Integration - proved to be dominant, even if it played opposite roles in the two countries. Whereas the 'permissive consensus' on European integration prevented the Bundestag from putting sufficient pressure on the government and thus prevented domestic change for decades, the Euro sceptic culture was the strongest weapon for the House of Commons' backbenchers in their pursuit of better scrutiny rights. The influence of this cultural mediating factor was partly



counteracted in both of the countries by formal mediating factors. In Britain the government and the national courts facilitated the departure from the principle of parliamentary sovereignty against the fierce opposition from Euro-sceptics in both of the parties. In Germany, it was the Constitutional court that finally pressed the Government, as well as the Parliament, to revise the existing scrutiny procedures and to introduce far reaching constitutional amendments. The only generalisation possible is the fact that the cultural mediating factors accounted for the longer-term tendencies and the mediating formal institutions were responsible for the more sudden polity changes. The countries thereby followed a reverse pattern. Whereas very little happened in the Bundestag for the first 35 years of European integration, the House of Commons were endowed with a scrutiny system from the early years of membership. On the other hand the scrutiny system in the Commons only developed marginally from its initial starting point, whereas the scrutiny rights in the Bundestag got a substantial boost around the creation of the TEU.

Finally, the analysis stressed the importance of having clear indicators and categories for domestic change. The introduction of the notions of systemic and intra-institutional changes allowed distinguishing between changes that simply altered the working modes of the analysed institutions and those who altered the parliamentary systems at large. In the UK, systemic changes could be observed especially in the departure from the century-old principle of parliamentary sovereignty that was at least partly compensated by the constitutional novelty of formal ratification rights. This also indicates that parliamentary adaptation processes cannot sufficiently be explained by path dependency and incrementalism as done by Dimitrakopoulos (2001). The same is true for Germany. Important constitutional changes were introduced prior to the Maastricht Treaty and especially the standing of the new EU committee can be regarded as an remarkable constitutional innovation in the scrutiny process. The changes, however, did not alter the logic of the consensus oriented parliamentary system with strong counterweights to the government. Thus, the adaptation process in the UK had greater repercussions on the political system as a whole, but also on the intra-institutional level. Whereas existing intra parliamentary working methods in the Bundestag were mostly just adapted the institutionalization of the committee work within the British Parliament meant a decisive move away from a strictly chamber-oriented parliamentary work.

All together, the comparative case study has shown that the adaptation of the framework has brought analytical gains; gains that might be exploited in analyses of the Europeanization of other institutions as well. The real challenge will be to develop further generalizations or even causal relationships between the core categories of the Europeanization approach that go beyond the scope of single case studies.

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## Endnotes

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- (1) Europeanization theories cover different views on the effects of European integration, which can be classified according to three different understandings of the term (Marcussen, (2002), (2002forthcoming): Europeanization as European institutionalisation, Europeanization as change mechanisms (Knill / Lehmkuhl (1999)) and Europeanization as second-image reversed (Peter Gourevitch (1978)). An alternative categorisation is developed by Olsen (2001) who distinguishes between five different phenomena.
- (2) Only Dimitrakopoulos (2001) takes up the question of the influence of European Integration on domestic institutions in regards to national Parliaments. From an historical institutionalist perspective he explains the development only in terms of 'incrementalism' and 'path dependency'.
- (3) For a conceptualization of the feedback loops on the European level, see Börzel (2002).
- (4) Dimitris N. Chrysochoou talks about 'The parliamentary decline thesis' regarding the "asymmetrical evolution of the powers of Western European executive and legislative institutions since the early days of this century", Chrysochoou (1998), 107. The 'modernisation' thesis claims that "the sheer complexity, technical knowledge, and sectorisation characteristic of modern decision-making make representative bodies ill-suited to exercise any effective influence on governments", Raunio / Hix (2000), 148.
- (5) To the increase in legislative output and areas covered, see: Maurer / Wessels (2001), 39-45.
- (6) Saalfeld (1998), 60. Not all authors share this view on the committee system. Holzacker claims that the formal committee structure of the Bundestag is not as much an area of scrutiny by the parliament as by the opposition parties, and that the governing parties' goal in the scrutiny procedure solely is to protect and strengthen the government, Holzacker (2001), 10.
- (7) On the theoretical origins of the mediating factors, see : Börzel/Risse (2000).
- (8) Resolution of the House of 24 October 1990, in Rogers (1995), appendix C.