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The Chairman

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**SPEECH BY Mr HUBERT HAENEL:**

**'THE ROLES OF NATIONAL PARLIAMENTS AND OF THE EUROPEAN  
PARLIAMENT AFTER THE LISBON TREATY'**

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The spectre of democratic legitimacy has always haunted European construction but, as long as the latter kept a mainly economic content, it attracted attention only episodically.

In the economic field, indeed, questions of principles had been settled at the outset by the treaties themselves; it was a matter of implementing these principles, by reaching compromises and allowing for transitions.

That's why, despite the authority resulting from its election by direct suffrage from 1979 on, the European Parliament initially had difficulty in finding its place in the operation of the Union, managing to really assert itself only in the budgetary field.

The Maastricht Treaty formed a watershed, by allowing European construction to penetrate 'regalian' fields: not only did it set in place a single currency, it also set

up a Union whose second and third pillars were of a political nature: the goals of the second and third pillars were an affirmation of Europe in foreign policy, security and defence matters, and the construction of an internal area of freedom, security and justice.

European construction therefore addressed fields where it needed sufficient democratic legitimacy for its action to be seen as justified, and the topic of a Union 'democratic deficit' was more than ever in the forefront.

**The response to this 'deficit' has been sought, treaty after treaty, by developing the powers of the European Parliament.**

The Maastricht Treaty already contained, in this respect, major advances. It made the Parliament's agreement necessary for many decisions: the most important international agreements, rules on the right of residence and circulation of Union citizens, basic rules on the structural funds and the cohesion fund, statutes of the European system of central banks, and a uniform procedure for European elections. It also set in place, in some fields, the co-decision procedure whereby legislation cannot be adopted by the Council, even if it votes unanimously, if the Parliament voices opposition. Last, the monitoring powers of the Assembly were considerably broadened: the Commission, now renewed after each European election, had to receive a vote of appointment by the Parliament, and the latter now had the right to set up committees of inquiry.

The Amsterdam Treaty pursued this evolution: the co-decision procedure was amended to reach complete equality between the Parliament and the Council; above all, it was extended to many fields, becoming the ordinary procedure when the Council votes by a majority. The political monitoring of the Parliament over the Commission was strengthened by a double appointment procedure (the Parliament appoints first the President of the Commission, then the Commission as a college, after hearing each of the appointed members). Last, the Parliament received a major instrument of exercising influence with respect to the common

foreign and security policy, since the expenditure of this policy is charged to the Community budget unless the Council voting by a majority decides otherwise.

The Nice Treaty prolonged this trend, by extending the co-decision procedure to the new subjects where the Council was now called on to vote by qualified majority. Also, this legislation increased the powers of the Parliament regarding referrals to the Court of Justice: whereas before it could only make a referral to the ECJ to safeguard its own prerogatives or or to have it certified that another institution had failed to implement a provision of the treaties, it was now given – in the same way as a Member State – the possibility of taking proceedings against acts of the Council, Commission or European Central Bank (ECB), whether for lack of jurisdiction, violation of substantive provisions, violation of the Treaty establishing the European Community, or misuse of power.

The Lisbon Treaty put the finishing touches to the evolution towards a 'parliamentarisation' of European construction, but in an innovatory manner, not only by further strengthening the powers of the European Parliament, but by granting a specific role to national parliaments.

With the Lisbon Treaty, the legislative role of the European Parliament has been considerably increased by the generalisation (subject to a very limited number of exceptions) of the co-decision procedure which will now also apply regarding justice and internal affairs, the common agricultural policy, agricultural legislation...

Its budgetary powers are also increasing owing to the suppression of the notion of 'compulsory expenditure', whereas this share of the budget, comprising mainly agricultural expenditure, practically cannot be amended today by the Parliament. The Council and the Parliament are placed on an equal footing in the budgetary procedure; however, if an agreement is reached in the conciliation committee between the representatives of the Parliament and those of the Council, but if the latter then rejects said agreement, the Parliament has the final say and

can take up again all or part of the amendments it had adopted in first reading.

**The European Parliament is now at the heart of the Union's institutions,** with broad powers which it exercises independently, not being tied to any government by having to toe the majority line, as is ordinarily the case in a parliamentary regime.

Alongside these changes, which follow on logically from the previous treaties, the Lisbon Treaty contains more innovatory provisions in the sense that **they grant a role to national parliaments in the very operation of the Union.**

The first aspect of this role is to **ensure compliance with the subsidiarity principle.**

The adopted mechanism comprises three aspects:

– Any chamber of a national parliament may, within eight weeks from the date of transmission of a draft legislative act, send to the Union institutions a reasoned opinion stating why it considers that the draft in question does not comply with the subsidiarity principle. The Union institutions 'take account' of the reasoned opinions sent to them. When a third of national parliaments have sent a reasoned opinion, the draft must be reviewed (for legislation relating to police and judicial cooperation in criminal matters, this threshold is decreased to a quarter). For the application of this rule, each national parliament has two votes; in a bicameral system, each chamber has one vote;

– If a draft legislative act is disputed by a simple majority of the votes allocated to national parliaments and if the Commission decides to maintain the draft, the Council and the Parliament must consider whether the draft is compatible with the subsidiarity principle; if the Council (by a majority of 55% of its members) or the Parliament (by a simple majority) gives a negative response, the draft is not given further consideration;

– After the adoption of legislation, the Court of Justice shall have jurisdiction in actions on grounds of the infringement of the subsidiarity principle brought by a Member State's national parliament or a chamber thereof. The action is always formally presented by the government of a Member State, but the protocol sets forth the possibility of it being simply 'transmitted' by said government, the real instigator of the action being the national parliament or a chamber thereof.

National parliaments are also involved in the implementation of '**bridging clauses**' allowing a switch from unanimity to a qualified majority for Council decisions, or a switch from a procedure other than co-decision between the European Parliament and the Council to the co-decision procedure. The decision to implement a 'bridging clause' is taken unanimously by the European Council. It must be approved by the European Parliament. However, before the decision is taken, each national parliament has a **right to object**. Once the European Council has demonstrated its intention to use a 'bridging clause', this initiative is transmitted to the national parliaments. This transmission marks the beginning of a six month period during which any national parliament can oppose the implementation of the 'bridging clause'. If, when this period expires, no national parliament has notified its opposition, the European Council can vote.

Last, some provisions of the treaty involve national parliaments in the constitution of the area of freedom, security and justice. They lay down that '*national parliaments shall be informed of the content and results*' of the evaluation of the implementation, by the authorities of the Member States, of Union policies in the area of freedom, security and justice, and they '*shall be kept informed of the proceedings*' of the standing committee promoting coordination between the authorities of the Member States with respect to internal security. Above all, **the new treaty specifies that national parliaments are involved 'in the evaluation of the activities of Eurojust' and in 'scrutiny of the activities of Europol'**. In addition, national parliaments have a right to object (similar to that laid down for 'bridging clauses') when the Council determines the list of aspects of family law with cross-border

implications.

This new involvement of national parliaments could contribute in several respects to strengthening the legitimacy of the Union. First, because better scrutiny of compliance with the subsidiarity principle, by encouraging the Union's action to be refocused on the fields where it is particularly necessary, cannot but strengthen the acceptability of this action. Then, because involving national parliaments to a greater extent is tantamount to strengthening their role as a relay and a connecting thread between the Union's citizens. Last, because by being more directly involved in the Union's activities, national parliaments will be all the less able to shirk their responsibilities as regards scrutiny of the European policy conducted by their governments.

More generally, the double parliamentarisation brought about by the Lisbon Treaty – this treaty is often called the 'parliaments' treaty' – appears to be in the spirit of European construction as a 'federation of Nation-States', according to Jacques Delors words, because a federation of this type – aimed at the joint exercise of sovereignties rather than the advent of a new sovereignty replacing that of Member States – cannot be based either on a single decisional method or on a single form of legitimacy: **it must involve and combine all the legitimacies.**