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# The Role and Power of the European and the National Parliaments in the Dynamics of Integration\*

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## Abstract

This essay aims at giving an overview on the role of the European and national Parliaments in the dynamics of integration.

After resuming the main issues that such a subject present, the author analyses the recent developments in this field paying attention to the Protocols on subsidiarity and Protocol on the role of national parliaments in the European Union.

## Key-words:

European Parliament, National Parliaments, European Integration, subsidiarity



## 1. Preliminary remarks

The European integration process has certainly enhanced the role of National Governments more than that of National Parliaments (NPs).

The pre-eminent legislative role of the Council of Ministers has been promoting almost exclusively the role of national Ministers at the EU level. Only since 1979 has the European Parliament become elective, and only since the enforcement of the Maastricht Treaty has it played the role of co-legislator in some matters.

On the other side, the enhancement of the role of the European Parliament, as well as a greater involvement of NPs, are generally seen as significant ways of decreasing the deficit of democracy within the Union. Indeed, the closer citizens are to their NPs, the more they will participate in the European integration process. The declaration on the future of the Union, annexed to the Treaty of Nice, stressed the need to examine their role in the context of European integration. In 2001, the Council of Laeken<sup>1</sup> declared that the Union needed to become more democratic, more transparent and more efficient, and National Parliaments could contribute towards the legitimacy of the European project.

In this context, it is, first of all, worth comparing the role played by National Parliaments in the overall European constitutional system with that played by the European Parliament (Van den Berg 2008).

We may easily point out that there is no symmetry between the NPs and the European Parliament. Therefore, we must begin our comparison by considering that the EU system is not actually based on bicameralism, at least not of the same kind of the bicameralism characterizing the classic parliamentary systems in effect in several Member States.

The European Parliament cannot be thought of as one of the Chambers of a hypothetical bicameral system at the EU “constitutional” level, since the Council itself is neither a “second” Chamber, nor a “High” Chamber, although the revisions of the Treaties have increased the power of the European Parliament with regard to that of other European Institutions (the Council, in particular).



Today, the European Parliament plays a firmly established role as co-legislator, with regard to most of the areas under the competence of the Union. It has budgetary powers, and exercises a democratic control over other European Institutions. It also shares (more or less equally) the “legislative” power with the Council of the European Union, it is empowered to adopt European laws, and may accept, amend or reject the content of European legislation.

The co-decision procedure (Art. 251 EC) — introduced by the Maastricht Treaty in 1992, and extended and made more effective by the Amsterdam Treaty in 1999 — endows both the European Parliament and the Council of the European Union with nearly the same political and legal weight in a wide range of matters (we can estimate that, today, two-thirds of European directives and regulations are adopted by following this procedure). But the overall system still appears to be persistently steered by the Council, which represents the National Governments.

Although, as mentioned above, the European Parliament has increased its powers, its role cannot be compared with the traditional influence exercised by Parliaments within the several constitutional systems of the Member States. Though strengthened, the European Parliament does not possess all the attributes generally associated with Parliament as a legislature. We might notice, at this point, that the democratic deficit of the EU is related to “a mismatch between national conceptions of democratic power and authority on the one hand, and the new institutions and practices of transnational governance” (Boerzel - Sprungk 2007:113-137).

The consequence of this mismatch is that, on the one hand, each competency transferred from the Member States to the European Union is often perceived as a compression or reduction of democratic principles. A certain matter which, in the past, had been debated by the two Houses at national level, is now regulated by laws approved with the noteworthy influence of the Council, which represents only the Executive Power of the Member States.

So far, in spite of increasing democracy and popular participation at EU level, thanks to the stronger role played by the European Parliament today, a sort of “democratic gap” is still being perceived. Moreover, due to the higher concentration of competencies at the EU level, National Parliaments suffer from a reduction of their “democratic influence”.



The results seem to be quite paradoxical: because the EU level is not “fully” respondent – or, at least, is perceived as not being so – to democratic principles, while National Parliaments are not directly involved in the European legislative process, the overall democratic guarantees of the system, taken “as a whole” from a “multilevel point-of-view”, seems to be diminishing.

In other words, the devolution of powers, functions and competencies from the Member States to the European Union may be considered as a non-“zero-sum” game in terms of democratic accountability.

Thus, the Treaty of Lisbon is an attempt to tackle these problems through norms aiming to increase the participation of National Parliaments in relevant decision-making processes.

## **2. The role and function of multilateral networks or mechanisms involving National Parliaments at EU level**

The Treaty of Lisbon emphasizes the role of National Parliaments within the European system in many ways.

In accordance with Art. 12 of the Consolidated Treaty on the European Union, National Parliaments shall “actively” contribute to the good functioning of the European Union.

When/if the Treaty of Lisbon will come into force, National Parliaments will be informed by EU Institutions and forwarded the drafts of EU legislative acts<sup>II</sup>. This will facilitate their monitoring role; yet, the way in which this will be organized, as well as its degree of effectiveness, will depend on the constitutional relations between Government and Parliament.

The direct transmission of projects and documents from the Commission to NPs has recently become effective, but often produces a contrary output, since the NPs are in no condition to process those papers.

NPs will also be involved in the fields of Freedom, Security and Justice. Indeed, according to the new provisions in the Treaty of Lisbon (ex Art. 70, Treaty on the Functioning of the EU), National Parliaments will take part in the evaluation mechanisms for the implementation of EU policies in those areas. They will be involved in the political



monitoring of Europol and the evaluation of Eurojust activities (Art. 88 and 85 of that Treaty).

On the other hand, the European Parliament will become a co-decision maker for the legislation concerning Justice and Home Affairs.

National Parliaments will also participate in the revision process of the Treaties (Art. 48 Tr.) and be notified of EU-accession applications (Art. 49 Tr.).

### **3. The role of National Parliaments in monitoring the principle of subsidiarity**

According to the Protocol on the application of the principles of subsidiarity and proportionality, National Parliaments are to verify that the principle of subsidiarity (Estella 2003 Bilancia 2004; Jeffery 2006) be complied with. The “early warning” system will be a significant innovation in the normative decision-making process: each House will receive all drafts concerning EU legislative acts and will be granted eight weeks to decide whether the proposal is consistent with the principle of subsidiarity. The European Parliament will take into account the observations submitted by National Parliaments as “reasoned opinions” approved by following this procedure. So, if one-third of National Parliaments (one-fourth in the Freedom, Security and Justice area) agree on amending a bill, the European Commission must re-examine it (Art. 7; paragraph 3 of the Protocol). If a simple majority of National Parliaments agrees on the fact that the proposal for a legislative act does not comply with the principle of subsidiarity, it must be re-examined and modified. After such revision, the Commission may decide to maintain, amend or withdraw the proposal.

When choosing to maintain a proposal, the Commission will have to justify, through a consistent opinion, why it considers that the proposal complies with the principle of subsidiarity. This reasoned opinion, as well as those of National Parliaments, shall be submitted to the European Parliament and Council. These two institutions shall consider whether the legislative proposal is consistent with the principle of subsidiarity, paying attention to the reasons expressed and shared by the majority of National Parliaments, as well as to the reasoned opinion of the Commission. If, by a majority of 55% of the Council



members or a majority of the votes cast in the European Parliament, the Council or the Parliament states that the legislative proposal is not consistent with the principle of subsidiarity, the proposal shall be dropped.

This kind of *ex ante* control will eventually create a sort of multilateral mechanism, at EU level, exerted by national Parliaments: the European Parliament at this point is due to play the role of counterpart in the evaluation process of subsidiarity.

While these procedures operate in the so-called “*ex ante*” phase of the legislative process, National Parliaments will possess also a sort of “*ex post*” power, a peculiar and interesting innovation in the institutional structure of the European Union, as devised by the Treaty of Lisbon.

Indeed, according to Art. 8 of the Protocol<sup>III</sup>, after the legislative act has come into force, the Court of Justice of the European Union shall judge actions concerning its possible infringement of the principle of subsidiarity, as notified by a Member State in accordance with its constitutional and legal order, on behalf of its National Parliament or a single Chamber thereof.

All the above-mentioned efforts to increase the “democracy” of the European Union must be considered positively, even if they betray some problematic aspects.

Firstly and generally, one should never forget that, whenever elements of further complexity are added to a very complex system, the completion of procedures is bound to take much longer, and the final outcome will be acquired with greater difficulty. Therefore, it is not surprising that, today, the legislative process both at EU and national level is ever slower, and that this slowness is considered critical in a modern, dynamic Europe which, on the contrary, needs to be able to intervene quickly.

From a different point of view, after observing the kaleidoscopic and truly complex framework of the new provisions concerning the role of National Parliaments in the European Union, devised after the crisis of the European constitutional process in 2006, we may highlight that, in a multilevel perspective, the Member States have the precise duty to adapt their internal procedures to the new “face” of the European legal order (of course, when/if the Treaty of Lisbon will come into force). Thus, national legislators, in tune with their complementary role within the European architecture, must deal with several interesting problems.

This is a notable point, as it shows quite well how, today, both legal systems (European and



national) are closely and deeply interwoven.

There seem to be at least three different paths which a Member State may consider to take in order to adapt its overall legal order to the new EU institutional structure: enhancing its National Scrutiny System, reforming the Rules of Procedure of its Parliament, invoking the new discipline to appeal to the European Court of Justice on behalf of the National Parliaments.

#### **4. The role of National Parliaments in scrutinizing governments**

The involvement of National Parliaments in European affairs has become increasingly dependent on the effective relationship between the National Legislative Power and the National Executive Power, according to the national constitutional norms and praxis (Goetz - Meyer -Sahling 2008). Their actual involvement in the European decision-making process depends indeed on the scrutiny of their own governments: this is important not only in the fields of Justice and Home Affairs and Common Foreign and Security Policy, but also in the areas of implementation of the open method of coordination and internal decision-making the EU is bound to take over (Basel II, WTO), as well as all the fields without the province of the EU Parliament.

Member States are required to regulate their internal relationship between Parliament and Government according to the general perspective of the political influence the first exercises upon the latter. The European Union could attempt to achieve a more effective task by developing best-practice exchanges in parliamentary participation to the EU integration process, but the task of promoting a better scrutiny on the Government by the NPs pertains to the exclusive domain of national constitutional laws.

This is not a new issue. One of the major problems is that National Parliaments have hardly any influence on the policies discussed and approved by their Government representatives in the Council.

When there is a strong political connection between a Parliament majority and a Government — a thing that is deemed essential in a parliamentary form of government —, that relationship must also be functionally and fully extended to the political stance that a Minister will take when a European legislative proposal is discussed in the Council (Auel 2007: 157-179; Holzhacke 2007: 180-206).



The implementation of a fair cooperation between Parliament and the Executive Power in all European affairs requires a structured system, and cannot simply rely on such ordinary procedures as the audit of Government members before the Assembly.

In Italy, we know that — apart from “formal” instruments and procedures — Parliament is not “substantially” interested in what is being done in Brussels or Strasbourg. The Italian official position in the European Council is often formed within the national Council of Ministers, after internal discussion by functionaries and legal experts. The annual Community Law, passed in 2000, has strengthened the position of Parliament in relation to the Government (Law n. 422 of 2000), allowing for a flexible *ex ante* scrutiny of EU proposals, in which Parliament can present its amendments before the bill is tabled at the EU level: without it, the Government would be free to decide its own stance. According to a Law of 2005<sup>IV</sup>, the Government has to send the two Houses all the EU documents (included White and Green Papers) indicating the dates appointed for their discussion in the proper Parliamentary Committees. Furthermore, the Government shall expose its stance in Parliament before each European Council, and report to the specific Parliamentary Committee before every Council of Ministers in Brussels.

During the thirteenth legislature, 132 Parliament meetings took place, attempting to influence the Italian stance in relation to legislative acts, parliamentary commissions, and Ministers. Many EU proposals were scrutinized in the fourteenth and in the fifteenth Legislatures too<sup>V</sup>.

Of course, the necessity of strengthening and emphasizing the relationship between Parliament and the Council at national level is even higher after the new Treaty.

Indeed, as National Parliaments will be more directly involved in the European system, some mechanisms must be devised to avoid political conflicts between the two branches of the State. For example, what if a Member-State Minister approved, in the Council, a EU draft which «its own» National Parliament, or at least one of its two Houses, had found or would later find unlawful according to the subsidiarity principle? From this point of view, it seems quite strange that a State should not express its will, regarding EU affairs, with one voice.



## 5. The Reform of the Rules of Procedure.

A Member State has to modify the Rules of Procedure of its Parliament, in order to accomplish the new “early warning” system.

As mentioned above, Parliament has no more than eight weeks to check whether a EU draft is compliant with the subsidiarity principle. Although eight weeks might seem like a long time, with regard to the necessity of a quick intervention, it is not so, indeed, if we consider that National Parliaments are supposed to “also” go through their ordinary day-to-day agenda.

The Italian Houses are structured into Assemblies and numerous Committees (even Committees on European Affairs). Therefore, one must consider the option of devolving to these Panels, instead of the Assemblies, the examination and drafting of the reasoned opinions required by the Treaty of Lisbon. In bicameral Parliaments, procedures must be established to avoid discrepancies between the two Houses: for example, one may think of a “Bicameral Commission for European Affairs” composed of senators and deputies (Gianniti 2007 and 2008).

Our last point deals with the procedure concerning the appeal to the European Court of Justice on behalf of National Parliaments. In fact, it seems necessary that a State should adopt new dispositions in order to regulate the Houses’ power to require the intervention of the European Court of Justice.

Beside the above-mentioned reforms, what seems to be also appropriate (perhaps, almost necessary) is that National Parliaments should become fully and profoundly aware of their new role within the European system. It is important that they become conscious of the fact that, in the light of the new provisions, they will be considered not only national but also “European” bodies, occupying a position formally independent of the will of the State as expressed by the Government.

Under a “multilevel constitutional” perspective, we may say that National Parliaments could be nowadays “parts” of the overall European “constitutional” structure, like the so-called Independent Authorities and the National Administration, which are also “European” Administrations whenever they enforce EU law, and, like the National Judiciary, often wear, as has been said, a “European Law Wig”.



Indeed, it is now up to National Parliaments to bear the weight of the “external” democratic legitimacy of the European Union. Therefore, we may say that the European Union is now trying to achieve two sources of “democratic” legitimacy: an “internal” one, based on the European Parliament, and an “external” one, based on National Parliaments as “components” of the overall structure of European political and legal integration.

But we may not be satisfied with the new “role” and “position” gained by these “Europeanized” “national” Parliaments.

Certainly, we should also stress that the “external” democratic path traced by the Treaty of Lisbon does not confer a truly “active” position to National Parliaments.

It seems to be quite paradoxical. No matter whether National Parliaments may acquire new powers, this should not reduce the “role” and “charisma” of the European Parliament. Still, the (new) system of double democratic legitimacy (introduced by the Treaty of Lisbon) only partly reduces the “democratic deficit” at EU level. The involvement of the national Parliaments in the European legislative process helps diminishing the democratic deficit, even if we have to consider that the strengthening of the EP and the abolition of the veto power will really attain such a goal. After the Lisbon Treaty, National Parliaments have only the power to “stop” or “block” the legislative process at EU level, or to defend the subsidiarity principle under the safeguard of the competencies, prerogatives or interests of the Member States.

Their function is that of “warning” rather than of “proposing” drafts. They may amend or correct or at least try to nullify the EU legislation (of course not directly, but indirectly, by exercising their power to require a judgment by the Court of Justice), but cannot directly participate in the elaboration of European directives and regulations. We may say that, rather than the power to help to build the “engine” of European political integration, they have the power to have it “tuned up”.

One may say that, on the contrary, National Parliaments have played an “active” role right from the start, in the so-called “descending” phase of the European integration process, by implementing directives into their own national legal system.

However, even in that “descending” phase, National Parliaments cannot be considered the “engines” of integration. Quite often, indeed, directives are so detailed that little room is left for the National Legislator to adapt them. According to national procedures, quite often (at least, in Italy) the implementation of EU directives is delegated



by Parliament, through the annual Community Law, to the Executive Power, allowing the Council of Ministers to adopt “legislative decrees” aimed to implement directives.

One may say that, if there is already a European Parliament representing the European people, it is not necessary to recognize another power of proposal pertaining to National Parliaments, as well. This is obviously right and acceptable.

Yet, the new Treaty recognizes that no less than one million citizens, nationals of a significant number of Member States, have the power to take an initiative and invite the European Commission, within the framework of its powers, to submit any appropriate proposal when they believe that a legal act of the Union is required for implementing the Treaties (Art. 11, paragraph 4).

We should also consider that the new Treaty confirms an analogous power of the European Parliament (strengthening it, by providing that, should the Commission not follow a Parliament’s request, the Commission itself must motivate its denial).

Therefore, why can’t we argue that the increasing involvement of National Parliaments may reinforce the democratic issue? Why can’t we say that National Parliaments may be involved also in an evaluation of the proportionality principle (not only the subsidiarity principle), on the one hand, and in a much tighter cooperation with the European Commission, e.g. for the elaboration of a new EU legislation, on the other? Why can’t we say that the National Independent Authorities and the National Administrations actually seem to be much more “Europeanized” than National Parliaments, both in theory and in practice (Auel-Benz 2005: 372-393)?

A way of increasing the involvement of National Parliaments in European policy-making may be found in the provisions of Art. 9 and 10 of the Protocol of National Parliaments in the European Union, but these articles are not exactly written in order to confer genuine power of proposal to National Parliaments.

In sum, something has been done so far to increase the overall democratic legitimacy of the European Union, also in reply to the “mood” of European citizens, who are often not exactly “Euro-enthusiastic”. Further steps seem to be necessary, above all with regard to an effective inter Parliamentary cooperation.

If the EU structure seems to be an ever more perfectible “constitutional multilevel network”, linking tightly together the various Institutions at various levels, a greater European political integration should not bypass an effective Europeanization of National



Parliaments, as representatives of the “European *peoples*” (*with* “final –s”), together with their European Parliament representing the “European *people*” (*without* “final –s”), or, to be more precise, the European citizens.

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\* Report of the meeting “The Integration Dynamics” in Fifty years European Parliament Experience and Perspectives - Hellenic Parliament Foundation, Athens, 17-18 October, 2008.

<sup>I</sup> See Presidency Conclusions (and Annexes) - European Council Meeting in Laeken - 14-15 December 2001, SN 300/1/01 Rev 1

<sup>II</sup> See the Protocol concerning the role of National Parliaments in the European Union.

<sup>III</sup> See also Art. 263 of the Consolidated Version of the Treaty on the Functioning of the European Union.

<sup>IV</sup> Law n.11 of 2005, “Norme generali sulla partecipazione dell’Italia al processo normativo dell’Unione europea e sulle procedure di esecuzione degli obblighi comunitari”

<sup>V</sup> During the 14th Legislature (2001-2006) there were 82 meetings at the Senate: during the 15th Legislature (April 2006- April 2008) 115 meetings of the Parliamentary Committees referring to European documents (legislative drafts) at the Senate.

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