

The Evolution of the Role of the National Parliaments in the Treaties of the European Union

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Abstract

This paper elaborates the evolving role of national parliaments in the different stages of the European integration process. The Review begins with the first stage (the foundation of the European Union) where national parliaments showed no or little interest in the matters of Community, and then the impact of Single European Act, following the first changes in the Maastricht Treaty, through the two Declarations attached to it and then the Protocol to the Treaty of Amsterdam. Finally the paper focuses on the changes and innovations presented in the Lisbon Treaty which will enhance the role of national parliaments in the European Union governance. For this purpose, the paper analyzes chronologically the rights that national parliaments had before the Lisbon Treaty and the new role of national parliaments after the Lisbon Treaty came into force.

Keywords: treaties, Lisbon Treaty, role, national parliaments

1. Introduction

The national parliament's involvement in the European Union (EU) governance has been a long debated issue in the different stages of the European integration, especially the extent to which national parliaments should be more involved.

The gradual expansion of powers has been reflected in the scholarly debate. Following accounts of how parliaments were the “victims” of European integration due to a process of “deparliamentarization” (Moravcsik, 1995; Norton, 1996; Weber-Panariello, 1995) in the 1990s, national parliaments have been portrayed as more active players in the context of EU integration after the Treaty of Amsterdam (e.g. Auel and Benz, 2005; O'Brennan and Raunio, 2007), although some still raise the question as to whether national parliaments are “losers or late-comers” (Maurer and

Wessels, 2001) or indeed whether they are “destined for irrelevance” (Raunio, 2010).¹

During the first stage, national parliaments showed little interest in the Community affairs. According to Norton, initially, their stance was that of non-engagement.² Within national parliaments no significant structural or procedural changes were made. This is mainly explained by the nature of the European Community. Following the so-called Luxembourg compromise in 1966, Council law-making was based on unanimity, and thus each government could veto initiatives. The Community had competence only in commercial and agricultural policies. The Community was thus mainly an intergovernmental organisation and as such a matter for the governments. National legislatures felt that their sovereignty was not under threat.³

2. National Parliaments Before the Maastricht Treaty

Since the 1980s, the marginalization of national parliaments in the domain of EU affairs has not seemed irreversible, as domestic chambers started to exhibit greater specialization in EU matters, became more active and attempted to establish stronger contacts with members of the European Parliament (Norton 1995). A number of factors can explain this change in parliamentary attitude to the EU. First, as a number of authors argue, this was a direct consequence of the accession of the Eurosceptic United Kingdom and Denmark (Norton 1995, Raunio 1999). Both countries joined the EU in 1973, but by the first half of the 1980s other national parliaments had started to adopt some elements of their scrutiny systems or at least acquaint themselves with the stringent Danish and British procedures for dealing with EU affairs.⁴

Second, the adoption of the Single European Act (SEA) brought profound changes in the stance of the national parliaments in the Community affairs. Following the White Paper on Completion of the Single Market and the Single European Act, engagement – at least at national level – became the norm. Having a European Affairs Committee, for example, became a standard.⁵

From national parliament's point of view, the SEA brought four profound changes. Each of them strengthened the supranational character of the European Community. First, it resulted in an extension of the policy competence of the European Community into sectors previously preserved for national governments. Second, as a consequence of the extension of its policy reach and the need to put in place the legal framework for the completion of the single market there was a significant increase in the regulations and directives emanating from the European Community which increased the workload of national parliaments and alerted them to third major change. The third change was that not only had policy-making power flowed upwards to the European level, but that the SEA also affected a shift in the power relationship between the national institutions of the Member States and the institution of the Community, the latter being given much greater power. The

extensive use of qualified majority voting in the Council meant that national governments could no longer block Council decisions. Finally, the SEA strengthened the legislative powers of the directly elected European Parliament. This change was yet another signal that national parliaments ran the risk of being increasingly sidelined in the law-making process.⁶

3. The Changing Role After the Maastricht Treaty

The development of the political and the economic and monetary union (EMU) with the Treaty of Maastricht brought new powers to the EU level. This was accompanied by an increasing role of the European Parliament in the legislative process with the introduction of the co-decision procedure. The European Parliament gained equal status with the Council in certain policy areas by increasing its power in law-making process. Although this could have resulted in a further marginalization of national parliaments, the Maastricht Treaty for the first time explicitly recognized the role of national parliaments in the European integration, also due to the deeper discussion on the issue of the democratic deficit in the EU at this stage.

Two declarations, Declaration 13 and 14 were attached to the Maastricht Treaty.

Declaration No.13 is the first European Document that in particular treats the role of national parliaments.⁷ It encourages greater involvement of national parliaments in the activities of the European Union". According to the Declaration which was set up following proposals by the UK and France, the governments should ensure that "national parliaments receive Commission proposals for legislation in good time for information and possible examination". Though not being legally binding, the Declaration had political consequences. Above all it intensified the debate between national parliaments and European Parliaments on the effectiveness of parliamentary accountability in EU affairs.⁸

The Declaration No.14 regulates the Conference of the Parliaments⁹ as "the Conference of the Parliaments will be consulted on the main features of the European Union, without prejudice to the powers of the European Parliament and the rights of the national Parliaments. The President of the European Council and the President of the Commission will report to each session of the Conference of the Parliaments on the state of the Union". The need for enhanced contacts between the European Parliament and national parliaments was also mentioned, a topic that was further addressed in Declaration No.14, which dealt with the recommendations of the Assizes. The key idea was to develop the Assizes as a parliamentary forum for discussing EU issues of relevance to the European Parliament and national parliaments, with reports from the heads of the European Council and the European Commission providing the necessary input. This format for cooperation, however, has not been used since.¹⁰

The role of national parliaments in the Amsterdam Treaty was discussed under the necessity for democratization of European decision making procedures. After

several proposals from different national actors, a protocol was inserted in the Treaty of Amsterdam: the Protocol on the role of National Parliaments in the European Union.

The protocol on the role of national parliaments annexed to the Treaty of Amsterdam encouraged greater involvement of national parliaments in the activities of the EU and required consultation documents and proposals to be forwarded promptly so the NPs could examine them before the Council took a decision.

Declaration No.13 annexed to the Maastricht Treaty and Protocol 13 annexed to the 1997 Treaty of Amsterdam both purported to involve national parliaments to a greater extent in EU matters. The Amsterdam Treaty changed the subsidiarity article number from 3b to Article 5, but not the text of the article, and included a new, legally binding protocol to the Treaty setting out the principles of subsidiarity and proportionality. This Protocol obliged the Commission to "consult widely before proposing legislation and, wherever appropriate, publish consultation documents", and to justify the relevance of its proposals with regard to the principle of subsidiarity. Separate justification was required for the financing of Community action in whole or in part from the Community budget. The Commission was also required to submit annual reports to the European Council, the Council of Ministers and the European Parliament on the application of Article 5. The new Protocol required that the reasons for concluding that a Community objective could be better achieved by the Community be substantiated by qualitative or, wherever possible, quantitative indicators.¹¹

Declaration No.23 annexed to the 2001 Treaty of Nice invited national parliaments to participate in the debate on the future of the Union and the Laeken Declaration of 2001 proposed specific questions about the role of national parliaments that the Convention on the Future of Europe, launched in February 2002, should tackle. The Convention Working Group on the role of national parliaments identified some basic factors influencing the effectiveness of scrutiny and acknowledged that national parliaments did not always make use of the powers they had to scrutinise their governments.¹²

Since the Treaty of Amsterdam, a six-week time period between the publication of an EU legislative proposal and the setting of the item on the Council agenda is in force, so as to allow national parliaments some time to scrutinize it *ex ante*.¹³

The Nice Declaration and specifically, the section 23 of the text - dealing with the future of the Union- listed the role of the national parliaments among the priority to be faced "for improving and monitoring the democratic legitimacy of the Union and its institutions in order to bring them closer to the citizens". Again in this direction, the Laeken declaration provided us with further insights about the role of the national legislators, which were called to contribute in strengthening the legitimacy of the European project.¹⁴

As a result of concerns about a ‘democratic deficit’ of the EU, the issue of national parliaments was included in the Laeken Declaration¹⁵ as one of the key priorities to be considered by the Convention on the Future of Europe (European Council, 2001). Following the negotiations in both the Convention and the subsequent Intergovernmental Conferences, stipulations on enhancing the role of national parliaments were first enshrined in the Constitutional Treaty and later taken over virtually unchanged into the Lisbon Treaty (Raunio, 2007; Kiiver, 2012: 20).¹⁶ An early warning subsidiarity mechanism was included in the Protocol on on Subsidiarity and Proportionality attached to the 2004 Treaty Establishing a Constitution for Europe, which never came into force following its rejection by France and the Netherlands in negative referendums in 2005.¹⁷

4. National Parliaments in the Lisbon Treaty

The Lisbon Treaty, which came into force in December 2009, contained many of the Constitutional Treaty provisions and it was the first time that national parliaments are mentioned in the actual main text of the EU’s “constitution” – as opposed to Protocols and Declarations attached to previous Treaties¹⁸ and are also provided with wider opportunities to participate in the activities of the European Union and influence the European legislative process.¹⁹ Also, two Protocols attached to the Lisbon Treaty, refers more explicitly to the powers that are given to the national parliaments.

The Treaty of the European Union (TEU) states that national parliaments ensure compliance of the EU with the principle of subsidiarity (Art.5) and hold their governments accountable for their actions in the Council (Art.10). They can also contribute to the good functioning of the Union (Art.12) by taking part in the evaluation mechanisms for the implementation of the Union policies in the area of freedom, security and justice in accordance with Art. 70 of the Treaty on the Function of the European Union (TFEU); in the political monitoring of Europol and the evaluation of Eurojust’s activities in accordance with Articles 85 and 88 of TFEU; in the revision procedures of the treaties in accordance with Art. 48 TEU and in the inter-parliamentary cooperation between national parliaments and the European Parliament. They will also be notified of applications for accession to the Union in accordance with Art.49 TEU.²⁰

Thus, after the Lisbon Treaty, four main spheres can be relatively identified where national parliaments can participate in the EU activities: (1) the role of national parliaments in ratification and revision process of EU primary law; (2) the rights that national parliament has in the area of freedom, security and justice; (3) activities in exercising interparliamentary cooperation; (4) the role of national parliaments in EU legislation.²¹

Considering the role of national parliaments in ratification and revision process of EU primary law it must be said that the Treaty of Lisbon involves national

parliaments into Treaty revision procedures. This way, national parliaments get important rights not only in ratifying amendments of the EU founding Treaties and bargaining for new provisions of the Treaties. Article 48 of the TEU distinguishes two kinds of treaty revision procedures: (i) ordinary revision procedure and (ii) simplified revision procedure. According to the first procedure, representatives of national parliaments are not only informed about proposals for the amendment of the Treaties, but also together with the Heads of State or Government of the Member States, members of the European Parliament and the Commission participate in the Convention where these proposals are discussed. In the simplified Treaty revision procedure, national parliaments have more binding rights. An individual veto right is stipulated for any one parliament or chamber to veto the application of the simplified Treaty revision procedure²²

Policy implementation in a number of areas has come under more direct control of the national parliaments, which have acquired the right to evaluate policy implementation in the area of freedom, security and justice and to monitor the activities of Europol and Eurojust,²³ as required in Articles 70, 85 and 88 of the TFEU.

The role of inter-parliamentary cooperation was enhanced. Protocol on the Role of National Parliaments in the European Union (No.1) in its Articles 9 and 10 refers to the interparliamentary cooperation. The European Parliament and national Parliaments shall together determine the organisation and promotion of effective and regular interparliamentary cooperation within the Union; and a conference of Parliamentary Committees for Union Affairs may submit any contribution it deems appropriate for the attention of the European Parliament, the Council and the Commission. That conference shall in addition promote the exchange of information and best practice between national Parliaments and the European Parliament, including their special committees. It may also organize interparliamentary conferences on specific topics, in particular to debate matters of common foreign and security policy, including common security and defence policy. Contributions from the conference shall not bind national Parliaments and shall not prejudice their position.

But the main novelty of the Lisbon Treaty is the “early warning system”, with the national legislatures assigned the right to monitor whether initiatives for EU decisions comply with the principle of subsidiarity.²⁴ This power²⁵ is regulated by the Protocol on the Application of the Principles of Subsidiarity and Proportionality (No.2) annexed to the Treaty of Lisbon.

According to Article 7 of Protocol No.2, which describes the process of the so-called early warning system, a draft European legislative act must be reviewed within the eight-week time limit if one third – or one quarter in the area of freedom, security and justice – of the national parliaments oppose its subsidiarity arguments. The Commission, a group of Member States or the European institution from which the

draft originates, may decide to maintain, amend or withdraw the draft and reasons must be given for each decision. This is the 'yellow card' procedure.²⁶

Furthermore, the Lisbon Treaty – contrary to the Treaty establishing a Constitution for Europe (2003) – establishes another procedure called the 'orange card'²⁷ which applies only to the draft European legislative acts falling under the ordinary legislative procedure (the former co-decision procedure). If more than half of the national parliaments oppose such an act on the grounds of subsidiarity arguments, the latter must be reviewed. The European Commission may then decide to maintain, amend or withdraw the proposal. If the European Commission decides to maintain its proposal, then it has to provide a reasoned opinion justifying why the Commission considers the proposal to be in compliance with the subsidiarity principle. On the basis of this reasoned opinion, and that of the national parliaments, the European legislator, by a majority of 55 per cent of the members of the Council or a majority of the votes cast in the European Parliament, shall decide whether or not to block the European Commission proposal.²⁸

As mentioned above, the Treaty of Lisbon also contained a Protocol on the Role of National Parliaments which enshrined EU commitments on the provision of documentation directly to national parliaments, the right to submit a reasoned opinion on conformity with subsidiarity and proportionality, an eight-week period for national parliaments to scrutinise proposals before consideration by the Council, and to better inter-parliamentary cooperation between national parliaments and the European Parliament.²⁹

This Protocol broadens the scope of the documents to be forwarded to the national parliaments to include all draft legislative acts, consultation documents, the annual legislative programme and any other instrument of legislative planning of the Commission, the Council's agendas and minutes and the Annual Report of the Court of Auditors. "An eight-week period shall elapse between a draft legislative act being made available (by the EU institutions) to national parliaments in the official languages of the Union and the date when it is placed on a provisional agenda for the Council for its adoption or for adoption of a position under a legislative procedure".

However, the expansion of the number of acts to be submitted to the national Parliaments fosters a greater potential for intervention by national Parliaments. At the same time, this expansion gives rise to the risk of inundating their structures with an enormous amount of documents. Complete and comprehensive information can therefore not always achieve effective parliamentary control of European policies and could produce an information overload.³⁰ But, selection and anticipation are possible.

5. Conclusions

As it is stated in the Art. 12 of the TEU, national parliaments can contribute actively to the good functioning of the EU. But, before the Lisbon Treaty came into force,

previous Union's treaties hardly recognised the role and participation of national parliaments in the EU governance. The role of national parliaments in the Maastricht treaty was only mentioned in the Declarations attached to it, thus not legally binding. While in the Treaty of Amsterdam their role was sanctioned in a specific Protocol.

With the Lisbon Treaty it was the first time that national parliaments were mentioned in the actual main text of the EU's "constitution" – as opposed to Protocols and Declarations attached to previous Treaties³¹ and are also provided with wider opportunities to participate in the activities of the European Union and influence the European legislative process.³² And for this reason the Treaty of Lisbon, leading to the strengthening of the role of national parliaments in the process of European integration, was due to innovative procedural changes referred to in the literature as the "treaty of national parliaments".

The Lisbon Treaty made significant changes, including setting out the right of national parliaments to be kept informed by the institutions of the EU; to co-operate with other national parliaments and the European Parliament; to ensure respect for the principle of subsidiarity; and to take part in the evaluation of justice and home affairs policies.³³ National parliaments can now uphold the principle of subsidiarity, under Protocol No. 1 to the TEU, by submitting a reasoned opinion to the EU institution which instigated the proposal, if they believe that the proposal breaches the principle. However, the final decision on whether or not a Commission proposal violates the principle of subsidiarity is taken by the European Parliament and the Council, and not by the national parliaments.³⁴

Strengthening the role of national parliaments has since Laeken been seen as one of the ways of addressing the EU's fragile democratic legitimacy, and the reforms contained in the Lisbon Treaty have provided a number of measures towards this aim.³⁵ And this should be considered positively.

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