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on

The role of national Parliaments in the European Union

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Since 2009 national parliaments of the EU Member States have a formal role in the legislative processes in the European Union. The Treaty of Lisbon has changed the functioning of the national parliaments of the EU Member States substantially. The purpose of this paper is to inform our colleagues from countries in other parts of the world on recent developments in EU Member States and to stir discussion on how EU Secretaries General could further develop their cooperation in order to help improving the decision making within their parliaments on EU related matters.

The European Union (EU) is an economic and political union of 28 member states that are located primarily in Europe. The EU operates through a system of supranational independent institutions and intergovernmental negotiated decisions by the member states. Institutions of the EU include the European Commission, the Council of the European Union, the European Council, the Court of Justice of the European Union, the European Central Bank, the Court of Auditors, and the European Parliament. The European Parliament is elected every five years by EU citizens. ¹

The EU traces its origins from the European Coal and Steel Community (ECSC) and the European Economic Community (EEC), formed by the Inner Six countries in 1951 and 1958, respectively. In the intervening years the community and its successors have grown in size by the accession of new member states and in power by the addition of policy areas to its remit. The Maastricht Treaty established the European Union under its current name in 1993. The latest major amendment to the constitutional basis of the EU, the Treaty of Lisbon, came into force in 2009.

The EU has developed a single market through a standardised system of laws that apply in all member states. Within the Schengen Area (which includes 22 EU and 4 non-EU states) passport controls have been abolished. EU policies aim to ensure the free movement of people, goods, services, and capital, enact legislation in justice and home affairs, and maintain common policies on trade, agriculture, fisheries, and regional development.

¹ The information in the first paragraphs is taken from EU and Wikipedia websites.



The monetary union was established in 1999 and came into full force in 2002. It is currently composed of 18 member states that use the euro as their legal tender. Through the Common Foreign and Security Policy the EU has developed a role in external relations and defence. The union maintains permanent diplomatic missions throughout the world and represents itself at the United Nations, the WTO, the G8, and the G-20.

The EU is considered to be a potential superpower. With a combined population of over 500 million inhabitants, or 7.3% of the world population, the EU in 2012 generated a nominal gross domestic product (GDP) of 16.584 trillion US dollars, constituting approximately 23% of global nominal GDP and 20% when measured in terms of purchasing power parity, which is the largest economy by nominal GDP and the second largest economy by GDP (PPP) in the world. The EU was the recipient of the 2012 Nobel Peace Prize.

Constitutional structure of the European Union

The classification of the European Union in terms of international or constitutional law has been much debated, often in the light of the degree of integration that is perceived, desired, or expected. Historically, at least, the EU is an international organisation, and by some criteria, it could be classified as a confederation; but it also has many attributes of a federation, so some would classify it as a (de facto) federation of states. For this reason, the organisation has, in the past, been termed *sui generis* (incomparable, one of a kind).

The organisation itself has traditionally used the terms "community", and later "union". The difficulties of classification involve the difference between national law (where the subjects of the law include natural persons and corporations) and international law (where the subjects include sovereign states and international organisations). Especially in terms of the European constitutional tradition, the term federation is equated with a sovereign federal state in international law; so the EU cannot be called a federal state or federation - at least, not without qualification. Though not, strictly, a federation, it is more than a free-trade association. It is,



however, described as being based on a federal model or federal in nature.

The German Constitutional Court refers to the European Union as an association of sovereign states and affirms that making the EU a federation would require replacement of the German constitution. Others claim that it will not develop into a federal state but has reached maturity as an international organisation.

The European Union has seven institutions: the European Parliament, the Council of the European Union, the European Commission, the European Council, the European Central Bank, the Court of Justice of the European Union and the European Court of Auditors. Competencies in scrutinising and amending legislation are divided between the European Parliament and the Council of the European Union while executive tasks are carried out by the European Commission and in a limited capacity by the European Council (not to be confused with the aforementioned Council of the European Union).

The *European Council* gives direction to the EU, and convenes at least four times a year. It comprises the President of the European Council, the President of the European Commission and one representative per member state; either its head of state or head of government. The European Council has been described by some as the Union's "supreme political authority". It is actively involved in the negotiation of the treaty changes and defines the EU's policy agenda and strategies.

The *European Commission* acts as the EU's executive arm and is responsible for initiating legislation and the day-to-day running of the EU. The Commission is also seen as the motor of European integration. It operates as a cabinet government, with 28 Commissioners for different areas of policy, one from each member state, though Commissioners are bound to represent the interests of the EU as a whole rather than their home state.

One of the 28 is the Commission President (currently José Manuel Durão Barroso) appointed by the European Council. After the President, the most prominent Commissioner is the High Representative of the Union for



Foreign Affairs and Security Policy who is ex-officio Vice-President of the Commission and is chosen by the European Council too. The other 26 Commissioners are subsequently appointed by the Council of the European Union in agreement with the nominated President. The 28 Commissioners as a single body are subject to a vote of approval by the European Parliament.

Parliament

The *European Parliament* forms one half of the EU's legislature (the other half is the Council of the European Union, see below). The 736 (soon to be 751) Members of the European Parliament (MEPs) are directly elected by EU citizens every five years on the basis of proportional representation. Although MEPs are elected on a national basis, they sit according to political groups rather than their nationality. Each country has a set number of seats and is divided into sub-national constituencies where this does not affect the proportional nature of the voting system.

The Parliament and the Council of the European Union pass legislation jointly in nearly all areas under the ordinary legislative procedure. This also applies to the EU budget. The Commission is accountable to Parliament, requiring its approval to take office, having to report back to it and subject to motions of censure from it.

The *Council of the European Union* (also called the "Council" and sometimes referred to as the "Council of Ministers") forms the other half of the EU's legislature. It consists of a government minister from each member state and meets in different compositions depending on the policy area being addressed. Notwithstanding its different configurations, it is considered to be one single body.

Competences

EU member states retain all powers not explicitly handed to the European Union. In some areas the EU enjoys exclusive competence. These are areas in which member states have renounced any capacity to enact legislation.

Areas of exclusive EU competences:



- customs union
- the establishing of the competition rules necessary for the functioning of the internal market
- monetary policy for the member states whose currency is the euro
- conservation of marine biological resources under the common fisheries policy
- common commercial policy
- concluding international agreements
 - when their conclusion is required by a legislative act of the EU
 - when their conclusion is necessary to enable the EU to exercise its internal competence in so far as their conclusion may affect common rules or alter their scope.

In other areas the EU and its member states share the competence to legislate. While both can legislate, member states can only legislate to the extent to which the EU has not.

It involves the following areas:

- internal market
- social policy, limited to the aspects defined in the TFEU
- economic, social and territorial cohesion
- agriculture and fisheries, excluding the conservation of marine biological resources
- environment
- consumer protection
- transport
- trans-European networks
- energy
- area of freedom, security and justice
- common safety concerns in public health matters, limited to the aspects defined in the TFEU
- research, technological development and space development cooperation and humanitarian aid

In other policy areas the EU can only co-ordinate, support and supplement member state action but cannot enact legislation with the aim of harmonising national laws.



- protection and improvement of human health
- industry
- culture
- tourism
- education, vocational training, youth and sport
- civil protection
- administrative cooperation

Finally there is competence to provide arrangements within which EU member states must coordinate policy. This involves the following areas:

- economic policy
- employment
- social policies

National parliaments of the European Union

The national parliaments of the European Union are those legislatures responsible for each member state of the European Union (EU). They have a certain degree of institutionalised influence which was expanded under the Treaty of Lisbon to include greater ability to scrutinise proposed European Union law.

In the early days of the European Parliament, its membership was composed of members of national parliaments (MP's) who doubled as Members of the European Parliament (MEP's). In 1979 the first direct elections were held, however many national MP's held on to their "dual mandate". As the workload of MEP's increased, the number of MEP's who were also national MP's decreased and since 2009 this form of double work has been banned in all member states.

In 1989 MPs from national parliaments and the European Parliament established the Conference of European Community Affairs Committees (COSAC) to maintain contact between national parliaments and the MEPs. COSAC continues to meet every six months and has now gained the right to submit contributions and examine proposals on EU law relating to Justice and Home Affairs. The EP seeks to keep national parliaments fully



informed of the EP's activities and some EP committees regularly invites national MPs to discuss proposals.

MP's and MEP's also jointly discuss specific themes at the level of so called Interparliamentary Committee Meetings. In addition, the Conference of Speakers of EU Parliaments also functions as a platform for coordinating relations between the EP and national parliaments.

Because the Maastricht Treaty of 1993 expanded the EU's competencies into areas of justice and home affairs, the treaty outlined the importance of exchanges between the European parliament and its national counterparts in a declaration attached to the treaty. This declaration asked national governments to ensure proposals for EU law were passed on to national parliaments with sufficient time for them to be scrutinised by MP and that contacts between these MPs and MEPs, began with COSAC, be stepped up.

This was strengthened under the Treaty of Amsterdam in a protocol stating all European Commission consultation documents be promptly forwarded to national parliaments. They then have a six-week period to discuss legislative proposals, starting from the publication of the proposal to it appearing on the agenda of the Council of the European Union.

National parliaments in the EU: from information to scrutiny

The Treaty of Lisbon, in force from 1 December 2009, expanded the role of national parliaments. It sets out a right to information (Treaty of the European Union, Article 12, Treaty on the Functioning of the European Union, Articles 70 and 352 and Protocol 1), monitoring of subsidiarity – see below – (TFEU Article 69), scrutinising policy in freedom, justice and security with the ability for a national parliament to veto a proposal (TFEU Articles 81, 85 and 88), taking part in treaty amendment (TEU Article 48) (including blocking a change of voting system to ordinary legislative procedure under the passerelle clause), being involved with enlargement and generally being involved in dialogue with EU institutions (TEU Article 12).

On 1 December 2009, the Treaty of Lisbon entered into force. This Treaty was a follow-up of the Constitutional Treaty that was rejected in 2005. The painful 'no's' in the referenda in France and the Netherlands demon-



strated that the gap between Europe and many citizens had grown too wide. Many national parliaments, also the parliament in the Netherlands, saw it as their duty to bring the citizens closer to Europe again by a stronger involvement in European legislation. It is very important that the Treaty of Lisbon formalised the role of national parliaments in the EU. It introduced a procedure known as the 'early warning system'. Its aim is to prevent the EU from legislating in areas that are beyond its competence and remain within the competence of the Member States². Any national parliament may submit a reasoned opinion stating the reasons it considers that the Commission proposal in question falls under the competence of Member States. After publication by the Commission, parliaments have eight weeks to submit a reasoned opinion. A sufficient number of reasoned opinions can lead to a so called 'yellow card' (which means that the Commission needs to motivate why it intends to maintain the proposal) or an 'orange card' (which means that the Commission needs to reconsider it). These yellow and orange card procedures were first proposed by the Dutch Parliament.

- Notably in May 2012, parliaments for the first time reached the required threshold for a 'yellow card' on the 'Monti II'. This was a draft proposal governing the right to strike. Amid a furore from trade unions and EU lawmakers in Parliament, the European Commission withdrew the proposed legislation.
- An example of a situation in which the Dutch parliament tried to initiate a yellow card-procedure, was when the European Commission drafted a proposal that forced companies to reserve at least 40 per cent of their non-executive director board seats for women by 2020 or face fines and other sanctions. In a joint letter from the Senate and the House of Representatives, they stated that this is not an issue that should be regulated at the EU-level. While one of the strongest proponents of women's rights, the Netherlands expressed the opinion that European action would only work to the contrary. In this particular case, there weren't enough reasoned opinions to initiate a yellow card.

² See on the working method of the Senate in selecting priorities concerning European affairs : www.europapoort.nl, with a section in english.



There certainly is room for improvement of the subsidiarity tools. Proposals have been made and deserve further discussion. In the Netherlands Clingendael, the Netherlands Institute of International Relations, published a report on deepening the practical application of the principle of subsidiarity.³ Some of the practical ideas to strengthen subsidiarity at national level and/or to improve focus are the following:

- Introduce the 'right' for national parliaments to request clarification from Commissioners regarding a proposal, communication or reaction to a reasoned opinion. Ensure better cooperation between national parliaments and the European Commission, especially in the yellow card procedure.
- Ask the European Commission to respond to reasoned opinions from national parliaments in the yellow card procedure within eight weeks of submission.
- Increase the effectiveness of the yellow card procedure, by extending the grounds for reasoned opinions, and allowing proportionality arguments next to subsidiarity objections.
- Extend the time-frame in the yellow card procedure to give national parliaments more time to submit reasoned opinions and coordinate among themselves.
- Lower the threshold in the yellow card procedure from one-third to one-quarter of all parliamentary chambers of the member states.
- Follow the example of the Danish scrutiny model and introduce a mandating system for national parliaments in ex ante control, making national parliaments policy-shapers in the EU legislative procedure.
- Organise an annual subsidiarity debate in national parliaments to consider current and proposed EU legislation.
- Request all member states to make a list on subsidiarity concerns and perceived overburdensome regulations. The commission should collect all the input and process it.
- Mobilise and educate national parliaments to improve their involvement in existing EU procedures.
- Increase investment in the monitoring of impact assessments at the national level.

³ Clingendael, Netherlands Institute of International relations, From Subsidiarity to Better EU Governance: A Practical Reform Agenda for the EU, March 2014.



- Encourage better cooperation and coordination between national parliaments and governments. Governments could better explain their position in the Council, so as to trigger a reaction from the national parliament.
- Exchange best practices on the approach to subsidiarity and the use of the subsidiarity check by national parliaments. COSAC could be the right platform for such an information exchange.
- Introduce an informal 'red card' for national parliaments, by proposing the political agreement that the Commission will use its discretion to withdraw legislation if one-third of national parliaments raise subsidiarity objections.
- Introduce a 'late card', giving national parliaments the opportunity to voice their concerns at a later stage of the ordinary legislative procedure.
- Introduce a 'green card' for national parliaments, which would give them the option to table a joint legislative proposal if a substantial number of member states' parliaments support it.

Proposals like these could be discussed not only at formal interparliamentary meetings, but also in informal settings, like meetings of Secretary Generals of EU parliaments.

A more democratic European Union

The Lisbon Treaty, at the time, was celebrated for making the EU more democratically accountable as the European Parliament was given more powers. Today, national parliaments seem to have become fashionable again in the discourse about the EU. The formalised role of the national parliaments in the EU legislative process now perhaps is seen as the major breakthrough of the Treaty of Lisbon. Many see the EU develop towards a political union with increasing concern and believe that democratic oversight belongs at the national level. The European Parliament is now often is no longer seen as the sole body that gives democratic legitimacy to the European Union. European governments are conspicuously discussing ways to enhance the involvement of national parliaments with EU decision making. National parliaments are more and more hailed as the champions of democratic legitimacy in the EU.

Division of competences



If national parliaments have to play a role next to the European parliament, how can duplication be avoided? The obvious answer lies in a clear division of tasks. Yet the Lisbon Treaty didn't make the division of competences easier. On the one hand it vastly increased the role of the European Parliament across a wide range of issues, sometimes at the expense of national parliaments. For example, as in the area of Justice and Home Affairs decision making by unanimity was replaced by qualified majority voting, it has become much more difficult for parliaments to scrutinise their governments' role in the Council. At the same time, national parliaments have been given a role in the EU legislative process. Through the subsidiarity mechanism and the political dialogue, national parliaments now have a formalised, direct relationship with the European Commission. It is my personal observation that it has taken the European Parliament some time to get used to this role of national parliaments. MEP's have long considered it their exclusive prerogative to deal with the Commission.

The bigger picture

While the question of duplication gets a lot attention, there is a far more important question: how can we avoid 'gaps' in democratic scrutiny? Are there any areas of EU decision making that neither national parliaments nor the European parliament have effective control over? And what can be done about it? Let me explain my point and say a few words about the European Semester.

The European Semester has introduced a yearly cycle of economic policy coordination within the European Union. The first half of the year, the 'European semester', involves various reporting requirements for Member States, as they submit budgetary- and reform plans for the following year to the European Commission. The Commission, in turn, issues country-specific policy recommendations that are to be implemented in the second half of the year (the 'national semester') and monitors compliance.

With the introduction of the European Semester, an existing framework benchmarking economic performance in the EU has been strengthened. In the wake of the European sovereign debt crisis, its governments have invigorated the significance of the Semester and the enforcement of the Stability and Growth Pact, and created the post of a strong budget com-



missioner, a post currently fulfilled by Olli Rehn. It is now much more difficult for member states to have the Commission's recommendations overturned by the Council.

At the level of governments, budgetary coordination has been given teeth. But to what extent has this been matched by parliamentary oversight? As each national parliament is focused on the recommendations for its own country, who keeps track of the bigger picture?

While national parliaments are best placed to scrutinise the recommendations directed at their own country, they may find it more difficult to oversee the wider process across the different member states. One could argue that here the European Parliament has a role to play. For example, MEP's are in a better position to evaluate how the budget commissioner's recommendations to one country compare to recommendations made to other countries.

What I would like to stress is that it is in the interest of democratic legitimacy to look beyond competences and to find actual ways for national parliaments and the European Parliament to cooperate.

The importance of interparliamentary cooperation

Interparliamentary cooperation can make an important contribution in this regard. By exchanging information and best practices not only between national parliaments but also between MP's and MEP's, we can ensure full democratic scrutiny. Interparliamentary conferences are a valuable instrument as they allow for an open exchange of views between delegations. The Interparliamentary Conference on Economic and Financial Governance of the European Union and COSAC are good examples. Both Houses of the Dutch Parliament have made it a point of using these meetings as effective as possible by focusing on an exchange of information and best practices rather than acting as quasi-political body pouring out political statements.

In the Netherlands we have used bilateral contacts among parliamentarians in recent months to discuss the role of the parliaments in the European Semester. This is a matter that has not yet crystallized. Gradually the



European dimension of decision-making on the national budget will take shape. Each national parliament has its own responsibility, but we can learn a lot from informing each other and sharing best practices.

The role of the Secretaries General

It goes without saying that the Secretaries General of the national parliaments of the EU Member States have a special role to play. They are responsible for a good administrative functioning of their parliaments. In the last five years the European dimension of the work of the national parliaments has tremendously gained impact. Led by a few pioneers in our midst the Secretaries General created the website IPEX as the core information source on how national parliaments are dealing with European dossiers. At our annual EU Secretaries General meeting in Vilnius in January 2014 for the first time there was an intensive discussion on best practices in coordination of European Union affairs in parliamentary administration. I can imagine that the more informal setting of the ASGP meetings would give room to informally discuss questions on how EU Secretary Generals organize European affairs in our national parliaments, including questions like administrative capacities involved in parliamentary scrutiny in EU affairs and staff involvement in EU affairs. Such a meeting could be organized prior to or after the general meetings of the ASGP. Perhaps it would be an idea to once a year reserve half a day of our ASGP meetings for regional meetings of ASGP members. With great success we have been experimenting with smaller scale discussions based on language groups. Perhaps time is ripe to consider formulas for half day regional programs during our conferences. Like all ASGP sessions 'regional sessions' could in my view be open to all colleagues interested in the agenda of the particular session.