

Ralf Dahrendorf Taskforce on the Future of the European Union

Working group I “Reform of the EU institutions - re-Democratisation of the EU”

The Parliaments above the Crowns

How the supremacy of national parliaments over national executives can improve European governance and democracy

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1. Introduction

Among the many attacks the European Union currently suffers from, both by anti-Europeans (far-Right and far-Left) and eurosceptics (normally parties of a more conservative nature, regardless of their political affiliation), the accusations of not being democratic and of not respecting national sovereignties are likely the most common. Other attacks, especially from the Liberal and Conservative sectors, include over-regulation, or, diametrically opposed, from Social Democrats, Greens and Leftists, the lack of regulation, if not of being an agent of big capitalism. The fact that such accusations are contradictory among themselves tells us plenty about their validity, and a factual analysis of both claims would undermine them even further.

In this paper though, the focus will lie on what gathers criticism from across the board, and more specifically on one of the issues that is most commonly pointed out: the limited role and influence of national parliaments in the EU's decision-making process.

2. National Parliaments in the EU and other international organizations

Despite a widespread ignorance of this fact, EU legislation already grants a role for national parliaments. More importantly, the Treaty of Lisbon improved their role within the EU significantly. According to Article 12 of the Treaty of the European Union (TEU), “National Parliaments contribute actively to the good functioning of the Union” through several mechanisms, including the right to be informed about the development of draft legislative acts, overseeing the good application of the principle of subsidiarity and proportionality, and taking part in the revision of the treaties.

This article is developed further in other articles of the Treaty (Articles 69, 81 and 88) and in *the Protocol on the Role of National Parliaments in the EU* and *the Protocol on the Application of the Principles of Subsidiarity and Proportionality*.

The **Reasoned Opinion Procedure** constitutes the bulk of the reinforcement of national parliaments introduced in Lisbon. Through it, national parliaments are given the opportunity to deliver their opinions on pending EU legislations. Each country gets two votes (two for each of the 15 unicameral parliaments, and one vote per chamber of the 13 bicameral countries), amounting to a total of 56 votes. If the reasoned opinion represents at least one third of the votes, the Commission is required to review the legislative proposal and can either maintain, amend or withdraw it. Reasons for their opinion must be provided. This is what is called a *yellow card*.

In case the reasoned opinion represents a simple majority of the votes, the proposal falls under the *orange card* procedure. The Commission must review it and has – again – the opportunity to maintain, amend or withdraw the proposal. If it decides to maintain the proposal, it must justify its decision by means of a reasoned opinion. What differentiates the orange from the yellow card procedure is that following the decision to maintain a proposal, all reasoned opinions (the proposer's and of the national parliaments) are submitted to the legislative institutions of the EU. These may then decide whether to proceed with the legislative procedure or not. A majority vote in the European Parliament, or a vote of 55% of the Member States in the European Council, may block it.

These procedures nevertheless do not apply to areas of exclusive competence of the EU, such as competition rules, but may in turn be also applied by legislative initiatives from other European institutions.

Finally, a national parliament has the right to bring a case before the EU Court of Justice, arguing that an adopted legislative act does not comply with the principle of subsidiarity. This is called a *red card* procedure.

In a very incipient manner, we nowadays have in the EU what the Council of Europe has instituted long before (and that in the EEC actually preceded the European Parliament): an assembly of parliaments. The **COSAC** (*Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union*)ⁱ meets twice a year in the member state that holds the rotating EU presidency. Furthermore, the **IPEX** (*Interparliamentary EU information exchange*)ⁱⁱ constitutes a tool to facilitate inter-parliamentary cooperation. Outside the EU, the **PACE** (*Parliamentary Assembly of the Council of Europe*)ⁱⁱⁱ constitutes the best example of how a parliament of parliaments could effectively work. Admittedly, its powers^{iv} are limited, but that is also a result of the reduced scope of action of the Council of Europe itself.

3. Improving democracy, achieving good governance

All too often we hear eurosceptics saying that more power should be given to national parliaments in order to have a more democratic Union. As it happens though, this argument can only stand either by ignorance of both law and practice of the EU, or by cynicism. Indeed, national governments have key roles in determining the composition of the Commission. They set the political agenda, they participate in the European legislative process through the Council, and they have benefitted from weak and obedient Commissions for quite some time.

Another problematic issue, not from a legal, but from a historical and philosophical point of view, is the idea of governments holding national sovereignty and guaranteeing that quite curious notion of ‘national interests’.

Regarding **national sovereignty**, how can we (and especially we, Liberals) ever presuppose that the executive, a non-elected political body, can represent the sovereign, the people, instead of the legislative organ, duly elected? We are only going to improve democracy in Europe if we realize that we cannot respect sovereignty without respecting its holders, the representatives of the people.

This is directly connected to the problem of **national interests**. Saying that a government can protect the national interest presumes that there is a univocal national interest, which clearly is not the case (otherwise, we would not need parliamentary democracy, but only a benevolent dictator). Plurality of opinions and transparency in the decision-making process are the characteristics of parliaments, as opposed to executives resting upon the principle of expediency. We are not going to achieve good governance if we continue accepting such concentration of powers in national governments.

4. Regaining sovereignty, ensuring subsidiarity

Recently, members of twenty of the twenty eight national parliaments have written a letter claiming a bigger role for their institutions in EU decision making^v. Among the proposals is the demand of national parliaments to be able to block proposals from the Commission. Such initiative, though welcome, presents a very problematic issue: it proves the **disconnection between national parliaments and national governments**. More than a criticism of Brussels, it is a living proof that governments do not care about the opinions of their legislative organs – otherwise, they would exercise their powers accordingly within the formal (vetoes in the Council) and more or less informal procedures (trialogues, for example).

This shows that national governments cannot be trusted to guarantee national sovereignty and enforce subsidiarity. National governments are easily, and very often effectively, controlled by specific national industry lobbies. Secrecy (especially in processes like committology and trialogues) allow them to, under the cover of dubious national interests, tweak decision-making in directions that their citizens and their parliaments would not authorize them to.

As Richard Corbett puts it, ‘the ability to scrutinise their national minister, is for each Member State to organise in respect of its own constitution and parliamentary tradition. It does not require a European rule to do so’.^{vi}

5. Policy Recommendation

Regulatory capture, an unavoidable feature of power concentration, and secret negotiations would be much harder in the context of a proper, institutional representation of national interests through members of the national parliaments. **The institutional solution should be a stabilization of the COSAC in a new chamber**, whereby each country would have as many MPs present as their current number of votes in the Council (or the Committees).

Such chamber should have **mandatory regular meetings**, and should be a key element in the legislative process. **Not merely a consultative organ**, like the Committee of the Regions and Economic and Social Committee, but actually absorbing powers from the Council. This new high chamber could then fulfil – in a much more democratic and transparent manner – the crucial role of representing national sovereignty, as opposed to the European Parliament, that would remain a representation of the people.

Other, minor, solutions could be thought of, such as the **obligation of nominees to the European Commission to receive an approval by their respective national parliaments**. Also, an obligation to report back to the parliaments could be conceived, though it might raise a problem of independence – Commissioners are supposed to represent European, not national, interests. Reporting to the national parliament could be confusing in that regard, which cannot be said about an initial stamp of approval (something that would furthermore avoid the problems with nominees, like we have seen with Alenka Bratusek’s self-nomination to the post of Commissioner).

Reinforcing the role of national parliaments at the expenses of the executives appears to be the only way to guarantee that real national interests are represented in its entirety. Whiggism, Liberalism’s first incarnation, was the party of the parliament, the party that defended a limitation of the role of the executive power, of the crown. It is a sad reflection of the state of European political thought in general and Liberalism in particular that we have to take so much time and effort to explain that the basis of our constitutional democracies – **the supremacy of the legislative over the executive – should be recovered**. We are in time to do it though, and should move forward quickly, both to save the EU, and our national democracies.

Additional readings

- European Parliament Research Service, *EU subsidiarity check by National Parliaments*, <http://epthinktank.eu/2014/01/20/eu-subsidiarity-check-by-national-parliaments/>.
- House of Lords, *The Role of National Parliaments in the European Union*, Report <http://www.publications.parliament.uk/pa/ld201314/ldselect/ldecom/151/151.pdf>.
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- Paola Bilanci, Centro Studi Sul Federalismo; *The Role and Power of the European and the National Parliaments in the Dynamics of Integration*, http://www.on-federalism.eu/attachments/040_download.pdf.
- Stratulat, Emmanouilidis, Fischer, Piedrafita, *Legitimising EU Policymaking: What Role for National Parliaments? (Discussion Papers)*, http://www.bruegel.org/fileadmin/bruegel_files/Events/Event_materials/2014/BTTD2014_Working_Paper_Session1_final.pdf.
- Jans and Piedrafita, *The Role of National Parliaments in European Decision-Making* http://www.bruegel.org/fileadmin/bruegel_files/Events/Event_materials/2014/BTTD2014_Working_Paper_Session1_final.pdf.

ⁱ <http://www.cosac.eu/>.

ⁱⁱ <http://www.europarl.europa.eu/webnp/cms/op/edit/lang/en/pid/1879>.

ⁱⁱⁱ <http://www.assembly.coe.int/nw/Home-EN.asp>.

^{iv} http://website-pace.net/en_GB/web/apce/Powers.

^v <http://euobserver.com/eu-elections/124771>.

^{vi} In <http://euromove.blogactiv.eu/2013/11/05/what-role-for-national-parliaments-in-eu-law-making/>.

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