PARLIAMENTS IN A CHANGING EUROPE:

Citizens and representative institutions in modern governance

Conference in Belgrade

10th and 11th September 2013

PROCEEDINGS

This project is funded by the European Union

HELLENIC PARLIAMENT

НАРОДНА СКУПШТИНА
Републике Србије

Implemented by the Hellenic Parliament and the National Assembly of the Republic of Serbia

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РЕПУБЛИКЕ СРБИЈЕ

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Conference
Parliaments in a changing Europe:
Citizens and representative institutions in modern governance
10th and 11th September 2013
House of the National Assembly
Small Pleanary Room
Мала сала

		1st DAY: Tuesday 10 September 2013	
09:00	**09:30**		**Registration**
09:30	**10:15**		**1st Session: Opening – Conference Political Framework** ***Chairs: Mladen Mladenovic, NARS Deputy General Secretary*** ***Vasilios Svolopoulos, Twinning Project Leader, Hellenic Parliament***
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13:30	13:45		**Despina Anagnostopoulou, Assistant Professor** **Department of International and European Studies - University of Macedonia, Greece** *European Citizens' Right to nondiscrimination, its added value and the role of the national parliaments in drafting nondiscrimination policies and reviewing their implementation*
13:45	14:00		**Asterios Pliakos, Director of the Scientific Service of the Hellenic Parliament** *The European role of National Parliaments and the Principle of the protection of national identity*
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15:00	15:15		**Damir Davidović, Secretary General, Parliament of Montenegro** *Parliamentary control in the Parliament of Montenegro*
15:15	15:30		**Roeland Jansoone, Deputy Secretary General, Belgian House of Representatives** *The role of the National Parliaments and regional inter-parliamentary assemblies in EU-legislation and EU-policy: the example of the Belgian House of representatives and the Benelux Parliament*
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15:45	16:00		**Nikos Papathanasiou, Hellenic Parliament** *Organization and operation of the services of EU Parliamentary Chambers after the economic crisis*
16:00	17:00		**Questions & Answers** **2nd day wrap up Session**
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TWINNING

HELLENIC PARLIAMENT

НАРОДНА СКУПШТИНА
Републике Србије

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OPENING SPEECH

It is an honor and a pleasure to be present here at this conference with so many respected and distinguished guests and represent the Speaker of the Hellenic Parliament Mr. Meimarakis.

The conference is taking place within the context of a project aiming to prepare the Serbian Parliament for the negotiation process, which should begin soon and end with the accession of the Republic of Serbia in the EU.

In the following two days, we will have the opportunity to talk about the topic of the Conference, in other words, about relations between citizens and Members of the Parliaments in the context of the EU.

In my opening speech however, I would like to make a reference to the Twinning project between our two Parliaments. I would like to emphasize that this project is not a one-way process. It is a process through which all parties involved gain experiencies. Hellenic Parliament experts, as well as experts from other EU member states do not have simple solutions, do not have already made prescriptions for the challenges that Serbia and its Parliament will face in the forthcoming negotiations.

Every country that has entered the EU had its own problems, its own way to address the problems and, in the end, its own solutions. Moreover, EU was not the same, as for example when Greece entered EU, in the beginning of 80s, or Sweden, Austria, Finland in mid-90s or when 12 countries entered in 2004.

Just to give you an example: I remember that when Twinning projects were implemented at the end of the 90s and at the beginning of 2000, the role of the Parliament was not even mentioned within Twinning projects. Twinning projects took place only between Ministries. The fact that today the need for Twinning projects between Parliaments has been recognized and that

Parliaments are invited to participate in Twinning projects, shows the increasing role that national Parliaments have in the EU and in the political and institutional process of EU, as well as in the enlargement process.

Therefore, I go back to my main point that the process of Twinning is a mutual process, where no partner has absolute knowledge and where all sides are trying to find the best possible solutions. I have to say, Mr. Arsenovic, that our part, our experts, our Parliament is also benefitting through experiences that we acquire by studying operations and the work of your Parliament.

In the end of this brief address, I would like to express my appreciation for the people from the Serbian and Hellenic Parliament, who prepared this conference and made this Twinning project operate successfully and I am certain that the whole project will be successful and useful for all sides. Above all, I would like to wish the people in the Serbian Parliament successful and quick negotiations with the EU and assure them that they will always have the full support of the Hellenic Parliament and the Greek people in their efforts.

Dr. Athanasios Papaioannou
General Secretary of the Hellenic Parliament

УВОДНИ ГОВОР

Govor

Poštovani,
Čast mi je kako kao predstavnika jedne institucije, tako i lično da budem ovde i da predstavljam predsednika grčkog Parlamente gospodine Meimarakisna ovoj konferencij sa toliko poštovanih i uglednih učesnika.

Konferencija se održava u kontekstu jednog projekta čija je svrha da se bolje pripremi srpski parlament za proces pregovora, koji treba da počne i na kraju kog predstoji ulazak Republike Srbije u EU.

Imaćemo priliku da u naredna dva dana razgovaramo o samoj temi, drugim rečima o odnosu gradjana i poslanika u Parlamentu u kontekstu EU. U ovom kratkom obraćanju ja bih zeleo da se pozovem i pomenem Twinning projekat. Želeo bih da naglasim da taj projekat nije jednosmeran proces. Parlament Grčke, kao i eksperti iz drugih zemalja članica EU nemaju jednostavna rešenja, nemaju spremne recepte za izazove sa kojima će se suočiti Srbija i njen Parlament u predstojećim pregovorima. Svaka zemlja koja je ušla u EU imala je sopstvene probleme, sopstveni način da pristupi tim problemima in a kraju sopstvena rešenja. Šta više, EU nije bila ista npr. kada je Grčka ušla početkom 80ih u EU ili Švedska, Austrija, Finska, sredinom 90ih ili kada je 12 zemalja ušlo 2004. Samo da vam dam jedan primer, sećam se kada su Twinning programi sprovodjeni krajem 90ih početkom 2000. Nije se pominjala uloga Parlamenta u Twinning projektima. Twinning se održavao samo izmedju Ministarstava. Činjenica da je sada potreba za Twinningom izmedju parlamenta prepoznata i da su parlamenti pozvani da učestvuju na twinning projektu, pokazuje sve veću ulogu koju nacionalni parlamenti imaju u EU u političkom i institucionalnom procesu EU i u procesu proširenja. Stoga, vraćam se na moju glavnu tezu da je process twinninga obostrani uzajamni proces, gde nijedan partner nema apsolutno znanje i sve strane pokušavaju da pronadju najbolja moguća rešenja. Moram da kazem g. Arsenoviću

da naš deo, naši stručnjaci, naš Parlament, takodje imaju neku korist u našem radu iz iskustva koje dobijamo time što proučavamo funkcionisanjei rad vašeg Parlamenta.

Na kraju ovog kratkog obraćanja, želeo bih da izrazim veliko poštovanje za ljude iz srpskog i grčkog parlamenta, koji su pripremili ovu konferenciju i ostvarili da sve ovo protekne uspešno i siguran sam da će ceo projekat biti uspešan i koristan za sve strane. Pre svega želeo bih da poželim ljudima u srpskom parlamentu uspešne i brze pregovore sa EU u njihovim pokušajima imaće punu podršku grčkog parlamenta i grč kog naroda.

Др Атанасиос Папаиоану
Generalni Sekretar Parlamenta Grčke

INTRODUCTIONS


Main points of the presentation
What is "democratic deficit" ("d.d.")
The negative consequences of "d.d."
The efforts to balance the "d.d.": from the direct election of the Parliament (1979) to the direct election of the President (2014)
Lessons for a candidate country


Gospodin
Vasilios Sveloropoulos
Gospodin
Athanasios Papayeorgiou
Gospodin
Konstantin Kosmopoulos

The so called "democratic deficit" in the EU and the prospect of enlargement

Dr. Athanasios Papaioannou

General Secretary of the Hellenic Parliament

Belgrade, 10 September 2013

(Based on the transcript from the original conference video stream, minor modifications were made to transform oral language to written text)

My topic is the so called "democratic deficit" in the European Union and the prospect of its enlargement. First of all, I will talk about the question "What is actually democratic deficit?", if it is something that is really extensive or it is exaggerated. Many people believe that it is extensive. Second, I will talk about its negative consequences, third, about the efforts of the European Union to deal with it, and fourth, I will give some suggestions on how to avoid it.

So, what is the so called democratic deficit? As it often happens with political phenomena, it is easier to describe them than to provide a definition. For the purpose of this intervention, I will describe it as the accumulation of power by institutions that do not have direct democratic legitimacy. In the beginning, criticism originated from British conservatives, French rightists and some communist parties. Lately, the critique has reached more attentive ears. This deficit seems to have two basic aspects, the institutional and the political one.

The main argument about the institutional aspect of the deficit is, that among the European Commission, the Council and the European Parliament, the one who is directly responsible and directly elected, i.e. the European Parliament, has less authority and less power. The European Commission is a technocratic institution. The European Council is appointed by the national governments. However, this criticism has its limitations. First of all, the European Parliament has gained a lot of power and authority in the last two decades. Some of our colleagues, here, have already talked about it. Second, we should not forget that the Council is composed by the representatives of the governments, which are elected by the people. Representatives in all these council bodies are representatives of the people.

What actually composes of a bigger problem, is the political aspect of the so called deficit. Why is that? What is the political content of it? Within political parties, within governments, people avoid talking about European problems and that is political deficit. Governments usually function in a way, where they think they have a "carte blanche" to deal with European issues. Citizens are usually not informed about what is happening on a European level, and even when they are informed, this happens only when European legislation should be transposed into national law; however, at this point, it is often too late for the citizens to be included in the process.

Apart from governments and political parties, the political problem exists also in the media environment. Media representatives know that European Union issues are usually not attractive, so unless somebody is attacking the European Union, the rest is not really interesting for them. Media do not have specialized journalists, because it is too expensive to have a permanent correspondent in Brussels. Thus, when they analyze the European affairs, they tend to ignore the processes, institutional balances and tendencies that exist inside, within the European Union. These phenomena became more obvious in the past few years, as the economic crisis brought European issues on top of the agenda and on the front page. Suddenly, we realize that objective reporting is missing.

All this talk about democratic deficit, should not make us forget that the European Union constitutes the only successful democratic experiment of that range internationally. It is a unique example, regardless of the problems that it is facing, and an overall positive international political union and experience.

What the proponents of the democratic deficit argument, seem to forget is that, in reality, part of this deficit is a result of Member State concerns, and their wish to equally participate in the co-decision process. Why is the European Parliament not on the equal level with European Council? This is because small and medium-size Member States know that the balance of power and authority is better for them in the Council, as compared to the European Parliament. One of the experts at our Conference said, that it is wrong to judge democratic institutions of the European Union by using measures and criteria, which are applicable for institutions in the national states. He is right in that. If we want to have full democratic representativeness in the European Union, all Member States should have a role in the decision making processes proportionate solely to their population and we are not ready for such thing.

Part of the problem of democratic deficit in the institutions of the European Union, is a mere reflection of the democratic deficit in the national Parliaments. Misbalance between executive and legislative branch is not a European phenomenon, but also a national one. Estrangement of citizens from the politicians is not a European, but a national phenomenon, which is only reflected to the European level. Weak representation of the citizens in the political parties or

in the Parliament is also not a European, but a national phenomenon, which then becomes European. With that in mind, I am not saying that there is no democratic deficit, but that it is not only European.

Having said that the European democratic deficit is not as extensive as some people would make us believe, and it is not as European as it seems, I do not deny, that it is a problem which has to be dealt with because it has considerable consequences. And these are serious consequences indeed.

First of all, people are not involved in decisions made by politicians and therefore these decisions are not realistic. They are hard to implement, if there is no political consensus on a citizen level. There will be reactions on the local level. Respectively, laws will not be efficiently and effectively implemented. Secondly, because citizens feel estranged, they react on everything that comes from Brussels, even though it may be objectively good; the word "Brussels" has negative connotations. Thirdly, that problem gives power to the populist parties. These are political powers, which have practically found a scapegoat for everything: "Brussels bureaucracy is guilty for everything", they say. So, problems that have been created by the flaws of each state are simply attributed to the European Union.

The fact that citizens and their representatives are not satisfied with the functioning of the European institutions, again forbids European institutions from making the Union stronger and deeper. The European Constitution would have been a reality by now if the citizens and their representatives had not considered that those institutions are too powerful, that they are not directly elected by the citizens and thus, they do not have enough legitimacy.

Things have gotten worse since 2008. In the middle of an acute economic crisis, we have institutions which have become weaker. Instead of having collective decisions, we have several bilateral agreements between Member States. Institutions have then to adopt decisions, which have been made unofficially but publicly by others. The European Union knows that this is a reality.

There are a many steps in the direction of overcoming this democratic deficit. The first one, was at the end of 70s when it was decided that the European Parliament has to be elected directly. Everybody thought back then, that this would be the solution. However, results showed that voters turned their back on the European elections. Participation reached only 30%, which was a big disappointment. I am interested to know what will happen in the following European elections, in 2014. Perhaps, participation will increase simply to condemn the European idea.

A second step was the Maastricht Treaty in 1991, when the role of the European Parliament in the process of decision making was significantly increased. At the time, there was the prin-

ciple of subsidiarity, another principle that has been created, in order to appease Member States and their people. The Amsterdam Treaty in 1997, followed, which was adopted upon the fears of the countries, the people's fears, of unemployment. For the first time, social clauses were introduced in that treaty and, of course, the ratification by the European Parliament of the President of the Commission selected by the European Council.

The next stage, was the Treaty of Nice in 2001, where there was hope, but it was a great disappointment and then, the disappointment of the European Constitution followed, which was rejected. Still, we must not be pessimists, because after the failure of the European Constitution, the Lisbon Treaty from 2007 was very ambitious. It brought many changes to challenge what we call democratic deficit. We estimate that the European Parliament together with the Council decide on about 95% of the issues in the EU. The President of the Council will be directly elected in the following elections. These are important developments towards bridging the democratic deficit.

Many things have changed, and the impact of national Parliaments has been recognized by the Lisbon treaty, however we cannot yet assess the importance of the changes in practice. We have a long path to follow, but the new institutional framework has been put in place and it is good that national Parliaments are included in the European processes.

What are the conclusions from the point of view of a candidate country?

Forty years ago, my country was a candidate country. I have to mention, that the same things that were crucial then, as to the people's involvement to the process, can also be seen now. People have to be included, people have to be informed. They must not be informed only about failures in the negotiations, but they must also be informed about successes in the process of negotiations. This is not easy, as it is known that media sales are based mainly on failure stories as compared to success stories. So, members of parliamentary Committees also have to be included and informed. Their relations with the relevant Ministries in the process of EU integration and their chemistry have to be excellent, in order for things to move forward. They have to cooperate, as it has been said, in order to be efficient. All three powers of the State have to work simultaneously.

Regarding media, you may give advice to people and members of Committees, but not to the media. In any case, I have to say that media must be well informed about what is happening during negotiations. First of all, the game of transferring the blame has to be avoided. In the following years, for anything negative that will happen in this country, the demands (real or not) of the European Union will be blamed. On the contrary, everything good that will happen in this country will be explained by good internal politics. Nothing positive, will be attributed to the role of Brussels or to the integration process.

I am describing to you, how it was in my country. If you would like people to be involved in this process, if you want them to accept the process of EU integration and accept certain losses, which have to be suffered in order to be really part of the European Union, then people should be informed: about what they can be grateful concerning the European Union and about what they should criticize. For that, a lot of discussion, debate, informative debate is needed. In conclusion, I wish you all the best in the course of negotiations and I wish that you avoid mistakes that other countries have made in that process, including my country, in this adventure with the European Union.

Такозвани „демократски дефицит“ у Европској унији и перспективи проширења

Др Атанасиос Папаиоану
Генерални Секретар Парламента Грчке

Моја тема је ткв. демократски дефицит у Европској унији и перспективи проширења. Пре свега, причаћу о томе шта је у ствари тај демократски дефицит, дали је то нешто што је заиста тако велико или је прецењено. Многи људи верују да је велико. Друго, причаћу о негативним последицама истог и под три, о настојању Европске уније да се бави тиме, и под четири даћу неке савете земљама кандидатима о томе како да избегну, односно како да се носе са последицама овог, такозваног и заиста инисистирам на речима такозваним, на такозваном дефициту, демократском дефициту.

Значи, шта је тај такозвани демократски дефицит. Као што се често дешава са политичким феноменима некада је лакше описати него дати дефиницију. За сврху ове интервенције ја ћу то писати као акумулација, односно окупљање пуно моћи, институција које немају директан демократски легитимитет, и то је критика која се износи, критика који су првобитно изнели неки британски конзервативци, француски десничари, неке комунистичке партије, али у последње време је то превазишло тај проблем и допрло је до већег броја ушију, и овај дефицит је дуплиран, једно је он је институционални, друго он је политички. Институционални значи да је главни аргумент тај, да међу овим институцијама, ове институције, значи Европска комисија, Европски Парламент, само они који су директно одговорни и директно изабрани у Европском Парламенту могу да имају мање власти, мање моћи. Остале две институције, Европска Комисија је технократска. Творевина, институција од стране изабраних људи, Савет је сачињен од влада, али та критика има неке поенте и има и своја ограничења. Европски Парламент је добио много власти, односно овлашћења, моћи у последње две деценије. Као што ћемо видети ускоро, а неке од наших колега су већ причале од томе. Технократски гледано, то је везано за Европску унију и њену улогу у свему овоме. А владе, су изабране владе. Тако да су представници у овим саветодавним телима, представници народа. Шта је у ствари већи проблем у овом такозваном демократском дефициту. Политички аспекти да постоје

неки дефицити, зашто. Шта је политички садржај тога. У политичким странкама владе избегавају разговоре о европским проблемима, то је политички дефицит. Владе обично функционишу онако као да мисле да имају „ carte blanche" за бављење европским питањима, а грађани обично нису информисани о томе шта се дешава, и када јесу информисани онда је то само тада када законодавство треба да се спроведе, односно преслика у локални и национални закон, али тада је касно за грађане да буду укључени у овај процес. Осим влада и политичких странака, проблем лежи и код медија. Медији знају да обично да питања Европске уније нису атрактивна, тако да уколико не нападате Европску унију, то баш и није интересантно. Они немају специјализоване новинаре, превише је скупо имати сталног дописника у Бриселу, тако да ви онда радите анализу кад год радите анализу европских питања, ви као представник медија, игноришући процесе, институционалну равнотежу и тенденције које постоје унутар Европске уније. Тај феномен постаје све критичнији, у последњих пар година, где је економска криза ставила европска питања на сам фронт, односно на сам почетак агенде, и ту видимо да недостају праве информације. Ако је питање дефицита полупразна чаша онда је и полу пуна чаша зар не?

Европска унија остаје једина успешна, међународна, демократски експеримент у свету. То је једини такав пример, нема таквог примера у свету, без обзира на проблеме са којима је суочена, то је једино позитивно међународно искуство. Део демократкског дефицита је резултат забринутости држава чланица и њихова жеља да буду равноправно присутне у том процесу. Зашто Евопски Парламент није на потпуно једнакој нози са Европским Саветом? Зато што мале и средње државе чланице знају да равнотежа власти и моћи у Савету је боља, него равнотежа моћи у Европском Парламенту. Из тог разлога имамо једног великог стручњака који је рекао да је погрешно судити демократским институцијама Европске уније мерама и критеријумима, које важе за институције у националним државама, и у томе је у праву, ако желимо да имамо пуну демократску представљеност у Европској унији, где ће мале и средње државе чланице имати равноправан положај, изубићемо велику моћ, а нисмо спремни за тако нешто. Под три, део проблема демократског дефицита у институцијама Европске уније је одраз демократског дефицита у националним парламентима. Неравнотежа између извршне и легислативне власти, то није европски феномен, већ национални. Отуђење грађана од политичара, није европски , већ национални феномен, и само се одражава на европски ниво. Слаба представљеност грађана у политичким странкама или у Парламенту, такође није европски, већ национални феномен, а онда постаје европски феномен. С тим у виду, ја не кажем да нема демократског капацитета. Ми морамо да се боримо против дефицита. Морамо да познајемо негативне последице демократског дефицита. Пре свега, народ није инвовиран, и због тога одлуке које се доносе нису реалистичне, тешке су за применити, ако нема политичког консензуса на нивоу народа, грађана, ко ће сад реализовати европске законе. Биће реакција на локалном нивоу и закони неће бити примењени, односно неће бити ефи-

касно, делотворно примењени. Под два, зато што се грађани осећају отуђено, они реагују на све што стиже из Брисела, чак иако је објективно добро, реч Брисел има негативну конотацију. Под три, тај проблем даје моћ популистичким странкама, политичким снагама, који су практично пронашли жртвеног јарца за све. Бриселска бирократија је крива за све, проблеми који су настали недостацима сваке државе, једноставно су приписани Европској унији. То је посебан проблем , последица тог демократског дефицита. Чињеница да грађани и наравно њихови представници нису задовољни са функционисањем европских институција, опет забрањује европским институцијама да се умешају у нешто јаче и дубље. Европски Устав би био реалност до сада да грађани и њихови представници нису сматрали да су институције превише моћне, да нису демократкси изабране и да немају легитимитет итд. У сред једне акутне економске кризе, имамо институције које су постале слабије, и уместо да се доносе колективне одлуке, имамо неколико билатералних договора између неколико земаља и затим и институције на крају морају једноставно да усвоје одлуке, које су званично други донели. Ту реалност Европска унија не игнорише. Било је пуно корака који су предузети у правцу премошћавања тог демократског дефицита. И први потез је био крајем 70их када је одлучено да се Европски Парламент директно бира, односно посланици у Парламенту, и сви су у то време мислили да ће то бити решење. Међутим резултати, излазност на европским изборима је била 20 односно 30% највише, што је велико разочарење. Баш ме занима шта ће бити на наредним европским изборима, али можда ће се учешће повећати само да би се једноставно убедиле европске снаге. Други корак је био Мастрихтски споразум 1991 када је Европски Парламент, односно када је његова улога значајно повећана, процес доношења одлука итд... Затим принцип субсидијарности, још један принцип који је измишшљен да се умире државе чланице и народ. Затим уговор из Амстердама 1997 нкоји је реаговао на страх земаља односно народа од незапослености. Први пут су уведене те социјане клаузуле у тај пакт, и наравно улога Европског Парламента, именовање председника Комисије итд..По први пут је то уведено. Затим имамо, то се десило у Француској, имали смо уговор односно споразум из Нице, где је постојала нада да у тај процес, али то је било велико разочарање. Једина ствар која се десила је да се распореде гласови у Европском Парламенту и као што то обично бива у Европској унији, велико разочарење једним пактом је довело до разочарења у европски Устав, који није успео. Али не смемо бити песимисти, јер после европског Устава, Лисабонски Уговор је јако амбициозан из 2007 донео је пуно ствари, ономе што називамо тим демократским дефицитом, процењује се да Европски Парламент заједно одлучује са Саветом у 95% питања. Председник Савета директно се бира, односно биће директно биран на наредним изборима и видеће се сада којим процентом ће бити изабран. И наравно многе ствари су већ поменуте, утицај националних парламента је препознат и могао бих да покушам са неком проценом онога што се дешава у пракси. Имамо добар део пута који треба да пређемо, али ту је добра иновација. Новина, укљученост националних парламената у свему овоме. Шта су закључци са тачке гледишта земље кандидата? Пре неких 40 година моја земља је била земља кандидат,

али могу вам рећи да исте ствари које су биле императив тада везано за укљученост људи видимо и сада. Народ мора бити укључен, народ мора бити информисан. Не само информисан о неуспеху преговора, већ и о успеху процеса преговарања, а то није лако зато што за медије је успех ништа а неуспех новост, тако да одборници такође морају бити укључени, информисани, њихов однос са министром за процес интеграција, њихова хемија просто мора бити одлична, да би се ствари развијале даље. Не сме постојати влада која жели да уђе у Европску унију, а Парламент које је иза кулиса, и нема ту визију. Они морају да сарађују, као што је већ речено, да би сте били ефикасни три ноге власти морају да раде истовремено. Што се тиче медија, можете дати савете људима, и одборницима, али не и медијима. У сваком случају теоретски морам рећи да медији морају бити добро информисани о ономе што се дешава. Пре свега морамо избећи игру пребацивања кривице. У наредних 5-6 година, 7 година претпостављам да ће толико дуго трајати преговори. За све лоше што ће се десити у овој земљи, за све лоше рећићете, е то је због оних захтева из Европске уније. А све добро што ће се десити у овој земљи биће објашњено тиме што је добра интерна политика. Ништа добро се неће да кажем доделити улози Брисела или процесима интеграција, ја Вам кажем каква је ствар била у мојој земљи, ако желите да људи буду укључени у овај процес, ако желите да га прихвате овај процес интеграција и да прихвате одређене жртве до којих ће морати да да дође да би заиста били део Европске уније, онда они морају да знају за шта треба да буду захвални Европској унији а за шта треба да буду критични. За то је потребно доста дискусије, дебате, информисане дебате. у закључку ћу рећи да се надам да ето још једном вам желим све најбоље и желим да избегнете грешке које су друге земље починиле укључујући моју земљу у овој авантури са Европском унијом.

Greek experts proposal: The role of the National Assembly of the Republic of Serbia to the EU negotiation process

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I. Introduction

The pre-accession negotiations between a candidate state and EU, is a complex procedure during which, the harmonization process of the national legal order of candidate state to EU acquis is taking place. The main actor in the candidate state who also has the responsibility for both the approximation process and the negotiation process, is of course, the government; it possesses all the capacities to perform this duty and is finally accountable to the people. However, the government is not the sole actor, since there are also other institutions in a democratic state who are assigned with the task to control and supervise the government, such as the Parliament. The Parliament's involvement in the approximation process, lies particularly in the transposition phase, where it passes the legislation necessary to harmonize the existing laws with acquis and in the implementation phase, where it controls the implementation of laws. Whereas this involvement stems from its traditional role, and therefore, is more or less, self-evident, its participation in the actual negotiation process remains controversial. The reasons for this may be various, such as the lack of trust, and also, the fear that openness may harm the procedure or weaken the national position in the negotiation. No matter how justified these reasons may be, the fact remains that when more support for a negotiation position is gained among the national actors, the easiest it becomes to defend it and finally succeeds in being accepted. That is why the active role of Parliament as main actor in this process, becomes so crucial. The Twinning Project, as stated in its title, has been trying to strengthen this role, in the pre-accession negotiations as well, as part of the entire integration process.

II. The benchmarks in the path of Serbia to EU

Serbia's EU integration process followed a long path. The benchmarks in this path are the following:

- The Stabilization and Association Agreement (SAA) between Serbia and EU was signed on 29 April, 2008. According to Article 72 of the SAA, Serbia adopted on 9 October, 2009 a special program to gradually harmonize the national legislation with *acquis communautaire*, the National Program of Integration (NPI) of the Republic of Serbia to the EU for the period from 2008 to 2012.
- Serbia officially submitted an application for the admission to the membership in the EU on 22 December 2009.
- On 14 June, 2010, the EU Council of Ministers of Foreign Affairs adopted the decision on the commencement of ratification of the SAA with Serbia, by which the procedure of assessment of the Serbian application for the membership of the EU started.
- On 1 March, 2012, Serbia was officially granted the status of a candidate state for the membership in the EU.
- On 28 February, 2013, the Government of the Republic of Serbia adopted a new multi-annual programme of harmonization of national legislation, with the EU *acquis communautaire*, under the title of the *National Programme for the Adoption of the Acquis* – NPAA – 2013-2016. It will be implemented from 1 March, 2013, to 31 December, 2016.
- The process of ratification of the Stabilization and Association Agreement by the European Parliament and national Parliaments of member states ended on 18 June, 2013. The SAA entered into force on 1 September 2013.
- On 28 June, 2013, the European Council adopted the decision of opening the accession negotiations with Serbia, inviting the European Commission to make the negotiating framework for conducting the negotiations on accession of the Republic of Serbia to the European Union.

III. The phases of the negotiation process

The negotiation process between a CC and the EU is structured in phases. These phases are: screening, opening benchmarks, negotiating positions, negotiations, closing benchmarks[1].

After the formal opening of negotiations, the first stage is called "screening", that is the general review of the legislation of CC in each policy area, as it is defined in the relevant chapter of acquis [2]. During this first phase, the Commission presents the most important regulations in each chapter (explanatory screening) and then the CC presents its legislation and the assessment of harmonization of its legislation with acquis. The CC answers a questionnaire providing detailed statistics covering many years, policy measures and fills in screening lists that is a

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1 There is a somewhat different procedure for chapters 23 (Judiciary and Fundamental Rights) and 24 (Justice Freedom and Security). Opening benchmarks in form of action plans are set. When they are met, interim benchmarks are set by the Commission. When these are also met, then closing benchmarks, that is, solid track record of reform implementation, are set. When these are finally met, then draft closing EU negotiating position will be presented by Commission to member states.

2 The entire acquis communautaire is divided in different 35 policy field areas, called chapters.

general comparison between existing legislation and acquis in table format. The goal of screening is to identify the differences between the existing legislative provisions of CC and acquis.

After the screening has been completed, the Commission issues a report on screening, in which the Commission assesses the CC's achieved level of harmonization of its legislation with the acquis. Depending on the level of harmonization, the report shall recommend either to open the negotiation in a chapter, or it shall set opening benchmarks, that is the criteria to be fulfilled before the opening of negotiations, presented, usually, in the form of action plans. The action plans contain different actions such as legislative changes, the establishment of administrative structures, etc. In the case that opening benchmarks have been set, the negotiations cannot commence until the Council has decided that these benchmarks have been met by the CC.

In the next stage, the CC is presenting its negotiating position in which it will state the level of achieved harmonization of its legislation with acquis, the plan for the legislation to be harmonized and an overview of existing and future administrative capacities for implementation. Nonetheless, the CC may ask for transitional periods or exemptions in areas where it assesses, providing justified reasons, that the approximation process will not be concluded by the time of accession to the EU. Then, the Commission drafts the EU common position replying to the position of CC and stating if, and which closing benchmarks, need to be met by CC, in order for the chapter to be temporarily closed. The closing benchmarks are usually action plans and the monitoring of their implementation.

At the negotiations' stage, a cross checking of CC's progress in harmonization with acquis is performed in each chapter, including the closing benchmarks. The negotiations will be formally completed when Council confirms that CC and EU have reached an agreement on all 35 chapters.

It is obvious, that the most sensitive phase of the negotiation process is the presentation of the negotiating position by the CC, because it is essentially at this point, that the CC may request transitional periods which will facilitate the approximation process and allow it more time, to adjust to the requirements of acquis. Various factors may influence the formulation of the negotiating position. The first, and most important, is the impact of the regulation to be adopted on the economic transition. The second, is the impact on the financial situation of enterprises and of the state. The third is the impact on national interests and, last but not least, is the factor

[3] Alan Mayhew, 'Enlargement of the European Union: An Analysis of the negotiations with the Central and Eastern European Candidate Countries' (2000) Working Paper No. 39 Sussex European Institute p. 18

of maintaining the support of the majority for the accession [3]. The assessment of all these factors, lies with the government; however, the Parliament also has a role in the national coordination of EU policies.

IV. The existing legal framework for the pre-accession negotiations in Serbia

1. Government

The organs, their competences and the procedure of coordinating the negotiation process on government level, is described in various documents such as: The Basis for Negotiations and Conclusion of the Treaty of Accession of the Republic of Serbia to the European Union with the Proposal of the Conclusion, The Conclusion Accepting the Analysis of the Activities in the Process of Negotiations on the Accession of the Republic of Serbia to the European Union, The Conclusion on Guidance and Coordination of the Activities of the State Administration Bodies in the Process of Implementation of Analytical Review and Assessment of Harmonization of the Regulations of the Republic of Serbia with the *acquis communautaire* of the European Union and their Implementation, The Decision on Establishment of the Coordination Body for the Process of the Accession of the Republic of Serbia to the European Union, Decision on the Adoption of Negotiating Team[4].

According to above documents, the negotiation process will be steered by the Coordination Body for EU Accession Process composed by: the Prime Minister, the Vice Prime Minister, the Minister of EU Integration, the Ministers of Foreign Affairs, Economy, Finance, Agriculture, the Director of SEIO, the Head of Negotiating Team, the Secretary General of Government and the Director of Legislative Secretariat of Republic. The Negotiating Team is composed by The Head, the experts in particular chapters, the State Secretary from Ministry of Foreign Affairs, the State Secretary from Ministry of Finance and the Head of Serbia's mission to EU. This organ will undertake the horizontal coordination of the institutions involved in the negotiation process. The negotiating groups are 35 corresponding to the chapters of acquis, and are headed by the State Secretary responsible for the relevant area and are composed of civil servants from ministries and governmental agencies; experts may also be invited, depending on the subject. They take part in the screening process and in the formulation of national position.

2. National Assembly

Although, there are not any specific provisions regulating the competences of NARS in the negotiation process [5], the legal base for the participation of NARS in this process are various provisions of Rules of Procedure combined with the Rules of Procedure of Government. This

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[4] Although these documents were adopted in September 2013, their provisions were more or less known because they were publicly discussed. The composition of negotiating groups remained open. They are all available at: http://seio.gov.rs.

[5] The Resolution was adopted in December 2013, while the conference was held in September 2013.

involvement concerns the legislative role of NARS that is its participation in the transposition of EU acquis. Such provisions are those, which oblige the proposer of a bill to attach to it a Statement of Compliance and a Table of Concordance (art. 141 NARS RoP and art. 40 Government RoP for the government as bill proposer). The "Statement of Compliance" declares that the proposed law was aligned with EU legislation under one of three options: fully compliant; partially compliant or not compliant with EU legislation and includes all the relative articles of National Plan, the primary EU Law, the secondary EU Law. The "Table of Concordance" of the Bill with European Union regulations, provides a detailed provision by provision, indication of EU legislation and the provisions of the proposed domestic legislation which implement or transpose them.

Crucial are, also, the provisions on the competences of European Integration Committee which are described in Article 64 of NARS Rules of Procedure. According to this article the European Integration Committee shall:

- consider Bills and proposals of other general acts from the aspect of their conformity with the EU acquis and the Council of Europe legislation and issue preliminary opinion on justification of the abbreviated procedure;
- consider plans, programs, reports and information, on the EU Stabilization and Association Process;
- monitor the implementation of the Association Strategy, propose measures and launch initiatives for accelerating the realization of the Association Strategy within the competences of the National Assembly;
- propose measures for the establishment of a general, national agreement on Serbia's association with the European institutions;
- develop international co-operation with parliamentary committees of other countries and parliamentary institutions of the European Union.

The provisions on the competences and function of the parliamentary committees, which are included primarily in article 44 NARS RoP, are also important. Article 44 par 3 of the RoP NARS, requires committees to "engage in mutual co-operation" and according to Article 44 par 4, they may hold joint sittings to discuss matters of common interest. Moreover, according to art. 44 par. 5 and 6 NARS RoP, committees may form sub-committees from the ranks of their members to consider specific issues and the chairperson of a committee may form a special working group. Sub-committees and working groups, shall perform activities for the committees and shall not be authorized to make decisions on their own unless the competent committee decides otherwise.

V. The Twinning project's contribution to strengthening the role of NARS in the pre-accession negotiations

1. The methodology

At the same time, with the ending of the process of ratification of the Stabilization and Association Agreement, and with the opening of accession negotiations of EU with Serbia in June 2013, the Twinning Project presented to NARS a specific proposal on the role of NARS in the negotiation process. The methodology used included: research existing at the time, legal framework regulating the competences of government and NARS and its implementation in practice; which, was performed through numerous interviews with NARS employees, civil servants in Ministries and academics as well as comparative data from countries especially in the region which became members to EU recently.

This data was collected through desk research and by submitting a questionnaire to national Parliaments. Particularly, in the case of Montenegro the research was done through interviews with the Secretary General of Parliament and its Head of Office, which were followed by a roundtable in which with them participated, NARS employees and MPs from the EU Integration Committee.

The questionnaire contained questions on the transposition procedure in Parliament (e.g. What type of procedure was used for voting laws transposing the acquis, which legal instruments were used for the harmonization with acquis, were draft bills debated only by the EU committee or also by a competent committee, in practice did the EU Committee scrutinize the compatibility of the proposed laws with EU acquis, what was the procedure in Parliament to check the compatibility of proposed amendments with EU acquis, how do the EU Committee and Government cooperate in view to harmonization with acquis), but also questions on the participation of the Parliament in EU Accession Negotiations. These questions were the following : in which ways did the Parliament participate in the accession negotiations (gave opinion, adopted negotiation positions, just received information) and by which procedure, was there a special body in Parliament responsible for the negotiation procedure, if yes what were its competences, was there a special law on the participation of Parliament in the accession negotiations).

2. Evaluation of existing legal framework of Government and NARS and its implementation in practice

The legal framework governing the participation of NARS and government in the negotiation process at the time (July 2013) was described above (under IV, 1, 2). It is noted that on governmental level the negotiation groups consist of civil servants, coming from Ministries or other governmental agencies, while external experts may be invited only in exceptional cases.

On NARS level we remarked that, while according to RoP the scrutiny on the parliamentary level of the bills transposing EU law is being performed mainly in the European Integration Committee, in practice, during the sessions in which bills transposing EU law are debated the Committee does not focus on the substance of the law but only on its conformity with EU legislation in principle. The Committee does not often propose amendments to submitted bills. In any case, most amendments to the submitted bill are proposed by the competent committee, which debates the same bill at the same time. If amendments are proposed then, their compatibility with acquis is checked by the government. As far as monitoring functions of Committee are concerned, in practice Deputy Prime Minister presents the quarterly reports about the progress of NPAA and the negotiations in Brussels.

Moreover, while according to RoP (art. 44), committees may hold joint sittings to discuss matters of common interest, and form sub-committees or special working groups, there is no formal procedure in RoP NARS for its standing committees to meet jointly; appearing that there is no such practice.

3. Comparative analysis

Based on the methodology mentioned above (under 1), the following data on the role of national Parliaments in the pre accession negotiations, have been collected.

a) Montenegro

Staff members of the Parliament of Montenegro - usually a secretary of the relevant committee and one associate - participated in the work of all the working groups for preparation of EU accession negotiations, in both explanatory and bilateral screening meetings, in order to get knowledge and information as observers. Consequently, the staff members of the Parliament had the opportunity to gain a detailed insight concerning the overall EU legislation by each negotiation chapter, a complete overview of the current level of alignment with the EU legislation and to identify specific measures of the *acquis*, which need to be transposed into national legislation. All documents relevant to the screening process, are available to the authorized users of Parliament's intranet database, which was developed by the Service of the Parliament and includes screening lists, presentations, reports and other important documents produced during the screening process. European Integration Committee is competent to assess the course of negotiations and to provide opinions and guidelines on the prepared negotiation positions. The EU Integration Committee and competent committee, jointly considered the negotiating position in a session closed to public.

NGOs send their opinions to the committee, but they are not included in negotiating positions, while stakeholders are invited to open public meetings, where committee members are present.

b) Croatia

A special working body, the National Committee, was formed to supervise and evaluate the course of the negotiation, give opinions and guidelines on negotiating positions, consider information on negotiation process. The National committee is composed not only by MPs, but also by persons from the Office of President of Republic of Croatia, trade unions, employers' associations and the academic community. There is a detailed procedure for the adoption of negotiating positions, which are submitted by the government to National Committee for discussion. The National Committee issues an opinion which is discussed and adopted by the Negotiating Team. Then the final negotiating position, is submitted to the National Committee. The Committee receives on a regular basis, documents relevant to the negotiation process, such as screening reports, EU common positions, action plans, etc.

c) Slovenia

In Slovenia, the Committee on Foreign Policy approved of negotiation positions. Each chapter was dealt separately and approved by the Committee. If the subject was e.g. agriculture, then the competent committee was involved. All meetings were open to the public. Ministers were present; as was the Chief negotiator. Progress reports were also debated by the Committee. The Foreign Affairs Committee presented progress reports. The Commission on EU Affairs dealt with general issues.

d) Lithuania

In Lithuania, the Committee on European Affairs performed scrutiny of governmental negotiating positions, which had been elaborated by the Delegation for Negotiations for each Chapter.

e) Poland

The EU Committee was updated on the negotiation process by the Minister of Foreign Affairs and the Chief Negotiator. The members of the Committee had access to classified government documents concerning the negotiation process. The progress of accession negotiations were debated in the Plenary.

f) Conclusion

The outcome of the comparative analysis is, that the models used in various Parliaments during the pre-accession negotiations with the EU fall into different categories. In all cases, but one (Montenegro), the Parliament was not in any way directly involved in the negotiation process conducted by the government. There is only one case when the Parliament staff is attending the meetings of governmental bodies dealing with negotiations (Montenegro). The Parliaments' involvement falls into the following categories: In the first category, belong Parliaments which established a special working body in the Parliament dealing with issues

in the negotiation process and special procedure for the scrutiny of the negotiation position by the Parliament (Croatia). In the second category, belong national Parliaments which received the information on negotiation process by the government in a routine procedure (Poland). In the third category, belong national Parliaments which performed scrutiny of the governmental negotiation positions through a parliamentary committee (Lithuania, Slovenia, Montenegro). The extent of the scrutiny, ranged from being informed on the negotiation position to the Parliament's expressing an opinion, which the government takes into account.

4. The project's proposal - various models

The participation of NARS in the pre-accession negotiations between Serbia and EU through its involvement in the formulation of negotiating positions, will strengthen democracy and the negotiating positions themselves, since the representatives of the citizens would have contributed to them. Pre-accession negotiations need to be as public as possible, in order to have meaningful civil society contribution, so as the Serbians develop a sense of ownership towards the EU acquis.

With regard to the participation of NARS in the EU pre-accession negotiations, the following recommendations could be envisaged:

a) On a decision-making level

i) Co-decision

1. NARS forms part of the Chief Negotiator team. In this way, NARS shall play an active role in the pre-accession negotiations.
   - First of all, this participation shall enable NARS to receive first-hand information on the pending issues under negotiation and express its (politically binding) opinion on each issue.
   - NARS shall be informed on the outcome of the negotiation procedure with the EU. This shall ensure a follow-up of the decision-making procedure.
   - NARS participation in the co-decision procedure would materialize through the involvement of the European Integration Committee. The latter would establish a sub-committee and/or a working group, which would participate in the negotiations.
   - Close cooperation with the Deputy Prime Minister would be provided for.
   - The amendment of the Rules of Procedure would be required.

2. NARS could be represented in the Coordination Body in high political level (i.e. through the Chairperson or the Deputy Chairperson of the European Integration Committee). In the same vein, NARS could participate in the Expert Group through

members of the European Integration Committee, or the European Integration Department on an equal footing with the SEIO.

An amendment of the Rules of Procedure and the Decision on the establishment of the Coordination Body ("Official Gazette of the Republic of Serbia", no 81/07 – revised text and 69/08) would be required.

ii) Binding opinion

No final negotiating position shall be formed unless NARS has expressed its opinion.

- The opinion shall be politically and/or legally binding.
- The European Integration Committee shall be responsible: it shall form a sub-committee designated for participation in the pre-accession negotiations. Its chairperson may form a special working group, in which MPs (both from the European Integration Committee and other parliamentary committees, depending on the subject of the negotiation) and other experts (scientists, professionals) may participate. The sub-committee and the working group, shall liaise with the Serbian European Integration Office (SEIO) and the members of the Coordination Body (State Secretaries). This shall ensure that the proposal is legally substantiated and politically balanced.
- The sub-committee and the working group, shall issue proposals on draft negotiating positions and submit them to the European Integration Committee.
- The European Integration Committee, shall reach a decision in the form of "opinion", which shall be submitted to the Chief Negotiator.
- The Chief Negotiator, shall be under the obligation to follow the "opinion" of the European Integration Committee.
- The amendment of the Rules of Procedure would be required.

b) On an implementation level

i) Amendment of the current procedures

NARS would benefit from an active implication in the works of the SEIO. NARS could be involved in an advisory role, so as not to hinder SEIO's tasks. Nevertheless, even a modest implication of NARS, in SEIO's field of work would ensure that NARS is keeping abreast of the details of the negotiating procedure.

An amendment of the Rules of Procedure and the Decree on the establishment of the SEIO ("Official Gazette of the Republic of Serbia" no 126 as of 28 December 2007, 117 as of 23 December 2008, 42 as of18 June 2010, 48 as of 16 July 2010, 106 as of 6 November 2012) would be required.

ii) Establishment of a new organ

A new organ could be established. The latter would be composed of MPs, representatives from the SEIO, members of the Expert Group (State Secretaries), members of sub-groups responsible for the negotiating chapters and professional bodies, and the NARS European Integration Department.

Its competencies would be to:

- Monitor the SAA and provide information on its implementation
- Supervise and evaluate the course of negotiations, by considering relevant information on the process of negotiations
- Scrutinize, deliver opinions on draft negotiating positions and on issues that are expected to emerge in the course of negotiations
- Consult the Chief Negotiator in the progress of the negotiations
- Analyze and assess negotiating organs' performance/effectiveness
- Report back to NARS on the organ's work, at least twice a year

The organ's opinion would not be legally binding, only politically binding.

The organ would be informed after the final negotiating position has been formed.

An amendment of the Rules of Procedure and the parallel legislative framework governing the participating bodies would be required.

Mladen Mladenovic

Deputy Secretary General NARS

Allow me to greet you personally, on behalf of the National Assembly, and to express my satisfaction with the Conference held here, today and tomorrow, concerning the Twinning project and dealing with the significant topic of "Strengthening the capacities of the National Assembly of the Republic of Serbia, in the process of the European integration". I would particularly like to welcome the Secretary General and staff from the Hellenic Parliament, and from the Department for the implementation of the European Union projects, who are partners of the National Assembly in the implementation of this project, as well as representatives of the EU Delegation to Serbia. I would like to express my gratitude for the cooperation thus far, and I would like to take the opportunity to express the belief that this mutual cooperation in the future will be strengthend, especially regarding the accession of Serbia to the EU.

Further, I would like refer to the nature of the Project.

The IPA 2011 project **"Strengthening capacities of the National Assembly in the process of the European integration"** is a complex project, relating to four functions. The project's goal is the increase of efficiency, responsibility and transparency of the National Assembly's performance, in its representative and legislative function (with an emphasis on the process of harmonization with the EU Acquis and supervision over implementation of adopted laws), as well as, in the advancement of its supervisory function in respect to executive power.

The proposal for the Project, which was offered by the Parliament of Greece, in formal, substantive and methodological terms, fulfills all the requirements of the National Assembly, and that is why we chose Greece, to be our twinning partner. Bearing in mind, that the Parliament of Greece is structured as a one-tire parliament, and that the organizational and technical terms are similar to our Parliament's, it was concluded that the expertise of the colleagues from the Greek Parliament, and distinguished professors of the institutes and the mandate bodies, will best contribute to the improvement of the administrative and technical capacities of our Service in the European integration process.

A fact of particular relevance is that for each individual component of the project, the key ex-

perts from the parliaments of Greece and Serbia, are working together and have the opportunity to exchange valuable experiences. We appreciate the fact that our colleagues from Greece, have repeatedly mentioned that this project, in terms of gaining knowledge and experience, is of equal importance to them, as it is to us. Also, for the purpose of implementing specific activities, experts from the Slovak Parliament and Belgian Parliament also have been involved, and today at this conference, we will hear the opinions of experts from other European Union member states.

The principal components of the Project are:

1. Strengthening cooperation between the National Assembly and Government in the legislative process (strengthening cooperation between the NARS and Government to strengthen efficiency, transparency, enhancement of laws quality based on the best European practice);

2. Improvement of the NARS performance in the process of passing laws, especially in the area of harmonization of the national legislation with the European Acquis (Advancement of the NARS activities in adoption of laws and their proper application, in order to improve compliance with the Acquis and the EU standards, as well as achieving a more efficient response to the demands of the EU integration process);

3. Improvement of the organizational structure, internal rules and work in the NARS and an increase in the level of professionalism in the National Assembly (strengthening the efficiency of parliamentary working bodies, improvement of the organizational structure and increase of the professionalism in the NARS performance);

4. Improvement of the controlling role of the NARS, and its cooperation with the Government and independent state bodies, organizations and bodies (an effective control role of the National Assembly in relation to the government and cooperation with the independent state bodies, organizations and bodies);

5. Increasing the transparency of the NARS and civil society participation in parliamentary activities (greater involvement of civil society in parliamentary activities and the process of passing laws, as well as strengthening of the parliamentary capacity to meet the needs of citizens and their demands). The importance of the fifth component of the project is reflected in the fact that today's conference is dedicated to this topic: relationship between citizens and representative institutions.

The 18-month project commenced with its realization on 1st January, 2013. Today, we find ourselves in the middle of the scheduled period for implementation of the project activities. Until now, there have been numerous interviews, a series of completed seminars and work-

shops that were designed for the MPs, the employees of the Service of the NARS, but also, for government officials, independent state authorities, organizations and bodies such as NGOs (i.e. Civil sector). As a part of the project, a study visit to the Hellenic Parliament was organized. It was an opportunity for the employees in the Service of the NARS, to get to know the work of the Hellenic Parliament, to exchange experiences and to improve their knowledge on parliamentary work regarding the European integration.

The prerequisites for entry into the European Union, are not just goals in themselves – the fulfillment of these conditions leads to the strengthening of the country and ensures a better life for all its citizens. Strengthening the administrative capacity of the NARS, contributes to a better implementation of the changes and good European practices, already incorporated in the national institutional framework.

I am confident that this two-day conference, regarding the exchange of experiences and attitudes, will contribute positively to our efforts to fulfill the criteria for membership in the EU and will improve the capacity and abilities of the National Assembly of the Republic of Serbia.

Младен Младеновић

Заменик генералног секретара Народне скупштине

Даме и господо,
Поштовани народни посланици,
Поштоване колеге,
Драги пријатељи,

Дозволите да вас поздравим у своје лично и у име Службе Народне скупштине и да изразим задовољство што се, у оквиру Twinning пројекта „Јачање капацитета НС у процесу европских интеграција", данас и сутра одржава Конференција са овако актуелном темом. Посебно желим да поздравим генералног секретара и службенике Парламента Грчке и Службе за имплементацију пројеката Европске уније, који су партнери Народне скупштине у реализацији овог пројекта, као и представнике Делегације Европске уније у Србији. Желим да се захвалим на досадашњој сарадњи, у уверењу да ће међусобна сарадња у будућности јачати, поготову у светлу придруживања Србије Европској унији.

У наставку излагања кратко бих се осврнуо на саму природу Пројекта.

ИПА 2011 пројекат **„Јачање капацитета Народне скупштине у процесу европских интеграција"**, представља комплексан пројекат, који се односи на све четири функције. Циљ Пројекта је повећање ефикасности, одговорности и транспарентности рада Народне скупштине, како у погледу њене представничке и законодавне функције (са акцентом на процесу усклађивања домаћег законодавства са правним тековинама ЕУ и надзором над имплементацијом усвојених закона), као и унапређење надзорне функције у односу на извршну власт.

Предлог за реализацију Пројекта који је понудио Парламент Грчке је, у формалном, суштинском и методолошком смислу у потпуности одговорио захтевима Народне скупштине и због тога смо их и одабрали за Twinning партнера. Имајући у виду да је Парламент Грчке структуиран као једнодоми парламент, као и да је у организационом и техничком смислу сличан нашем Парламенту, закључено је да ће експертиза колега из грчког Парламента, као и уважених професора института и мандатних тела највише до-

принети унапређењу административних и стручних капацитета наше службе у процесу европских интеграција.

Од посебног је значаја то што су за сваку појединачну компоненту Пројекта одређени кључни експерти из парламената Грчке и Србије који радећи заједно имају могућност да размене драгоцена искуства. Ценимо чињеницу да су нам колеге из Грчке у више наврата рекле да је овај пројекат, са становишта стицања знања и искуства, од подједнаке важности за њих, као и за нас. Такође, за реализацију појединих активности ангажовани су и експерти из Парламента Словачке, Парламента Белгије, а данас на овој конференцији ћемо чути мишљења и експерата других земаља чланица Европске уније.

Основне компоненте Пројекта су:

1. Јачање сарадње Народне скупштине и Владе у законодавном процесу (јачање сарадње између НС и Владе са циљем јачања ефикасности, транспарентности, затим побољшање квалитета закона засновано на најбољој европској пракси);

2. Унапређење рада НС у процесу доношења закона, посебно у домену хармонизације националних прописа са правним тековинама ЕУ (унапређење активности НС у усвајању закона и њиховој правилној примени, а у циљу што боље усклађености са правним тековинама и стандардима ЕУ, као и ефикаснијег одговора на захтеве у процесу евроинтеграција);

3. Унапређење организационе структуре, интерних правила и рада у НС и повећање нивоа професионализма у Народној скупштини (јачање ефикасности парламентарних радних тела, унапређење организационе структуре и пораст професионализма у циљу бољег рада НС);

4. Унапређење контролне улоге НС и њене сарадње са Владом и независним државним органима, организацијама и телима (ефикаснија контролна улога Народне скупштине у односу на Владу и сарадња са независним државним органима, организацијама и телима);

5. Повећање транспарентности рада НС и учешћа цивилног друштва у парламентарним активностима (веће укључивање цивилног сектора у парламентарне активности и процес доношења закона, као и јачање парламентарних капацитета у циљу задовољења потреба грађана и њихових захтева). Важност пете компоненте Пројекта огледа се и у чињеници што је данашња конференција посвећена управо овој теми: односу грађана и представничких институција.

Пројекат у трајању од 18 месеци отпочео је са реализацијом 1. јануара 2013. године.

Данас се налазимо на половини предвиђеног периода реализације пројектих активности. До сада су обављени бројни интервјуи, а реализован је и низ семинара и радионица који су намењени народним посланицима, запосленима у Служби НС, али и службеницима Владе, независних државних органа, организација и тела као и невладином одн. цивилном сектору. У оквиру Пројекта до сада је реализована и студијска посета Парламенту Грчке. Била је то прилика да се запослени у Служби НС, упознају са фунционисањем и радом Парламента Грчке, размене искуства и усвоје нова знања о парламентарном раду у светлу европских интеграција.

Поштовани народни посланици,
Поштовани гости,
Драге колеге,

Испуњење услова за улазак у Европску унију није циљ сам по себи – испуњење тих услова води јачању земље и доноси бољи живот сваком њеном грађанину. Јачање административних капацитета НС доприноси бољем спровођењу реформских промена и добрих европских пракси већ транспонованих кроз национални институционални оквир.

Уверен сам да ће ова дводневна конференција, и с тим у вези размена искустава и ставова, допринети нашим настојањима да испунимо критеријуме за чланство у ЕУ и унапредимо капацитете НС.

Желим вам успешан рад и пријатан боравак у Београду.

Хвала на пажњи.

Konstantin Arsenović

Deputy Speaker NARS

Dear Guests, Ladies and Gentlemen, MPs,

It is my great pleasure to see us gathered here at the conference "Parliaments in a changing Europe - Citizens and Representative Institutions in Modern Governance", which is being held today in the National Assembly of the Republic of Serbia as part of the Twinning Project "Strengthening Capacities of the National Assembly of the Republic of Serbia in the EU Integration Process", realized in cooperation with the Hellenic Parliament.

This is the first conference organized in the National Assembly, following the changes made in the Government, so as to achieve better results in all areas, with particular concern in taking actions to stop the economic crisis and to instigate economic growth. Furthermore, we have a great in interest in focusing upon the negotiations with the EU.

This is, however, is the second conference held in the National Assembly, on the subject of the Parliament relationship with its citizens. In June, the Republic of Serbia made a decision of historical significance: the commencement of negotiations concerning Serbia's EU association. The fact that, exactly a week ago, the Agreement on Association and Stabilization came into force, is also of vital importance. Its application will be one of the criteria for monitoring the negotiations' progress for the membership in the EU. The Agreement establishes a comprehensive contractual relationship with the EU and its member states, clearly defining the rights and obligations of the contractual parties. With the inaction of the Agreement on Association and Stabilization, Serbia has earned a status by the EU as an associate member state, which is the status that infers a close relationship of a non-member country to the EU.

The commencement of the preparation activities by the European Commission for the negotiation framework, the analysis of the reforms already implemented and the achieved level of harmonization with the European legislation within the chapters that are most important for building the institutions and rule of law, are crucial for the start of the systematic reforms in Serbia. The negotiating chapters 23 and 24, are opened at the very beginning, and closed at the end of a negotiation process, and refer precisely to subject of basic human rights; justice and freedom, and citizens' rights.

The mentioned reforms depend immensely upon regular and dynamic interaction with the European Union institutions. We, in the National Assembly, may confirm, with pleasure, that our communication with the EU institutions is excellent. The result of this communication is proved through this conference, which is organized within the EU Twinning project and financed from the pre-accession funds whose beneficiaries we are. We are aware that the reforms that we are conducting in all segments of society, depend primarily on readiness and capability of the country to efficiently and effectively take measures and make decisions so as to ensure the existence of a democratic society. This is a long-term process, which takes dedication on behalf of the state officials, but also concerns timely and qualitative communication for the best involvement on behalf of the Serbian citizens.

During the year, which has been declared the European Year of Citizens 2013, it is of utmost importance to remind the significance of the relationship between Parliament and citizens, because it is this mutual communication and degree of interactivity, which features a modern governance and simultaneously functions as a measure of democracy in a society.

The achievement of the final goal, which will ensure an absolute participation of a citizen in the process of decision making, that directly affect a citizen, should be reached after strengthening the state representative institutions. It is not an accident, that the Lisbon Treaty resulted in the following: It increased the significance of the national parliaments of the member states in the decision making process in the EU; Also, it led to the adoption of amendments, which had as a purpose the decrease of democratic deficit through strengthening the role of the European Parliament and through introducing citizens to their initiative rights. A new role of the national parliaments, defined by the Lisbon Treaty, ensures greater influence on creation and decision making, on European legislation.

Based on the strenghthened role of the EU member states' parliaments and of the EU Parliament, there is an emphasis on the strenghthening of the basic functions of the National Assembly. This is also proved by the five components of the Twinning project and it is within this project that the conference has been held.

The role of the National Assembly in the process of the EU integrations, is overlooked in public. The first, and one of the most significant strategic documents has been adopted by the National Assembly of the Republic of Serbia in 2004 - **Resolution on the Accession to the EU**. This resolution has set the track for the European future of the Republic of Serbia. It was the first step for Serbia, on its way towards the EU membership. Afterwards, two strategies were adopted, for the EU accession by the Serbian government and National programs for the integration (i.e. National program for adoption of the EU Acquis 2013-2016). However, in 2004, the National Assembly commenced harmonizing the national legislation with collaborative EU Acquis even without having legal obligation.

Having been granted mandate by the National Assembly in the process of Serbia's accession to the EU, the Government has been obliged to **quarterly report the National Assembly on the advancement in the process of association and stabilization**. Not only that, but it has to report on how the priorities from the National program for integration (i.e. National program for adoption of the EU Acquis) will be achieve. Furthermore, the realization of the harmonization with the EU legislation and implementation of adopted regulations must be reported as well. The National Assembly, as the highest legislative authority and controller of the executive power, performs the third level control on proposed laws. This follows the first level of control in the competent ministries, and the second level of control in the Office for the European integration.

By granting mandate to the Government, the National Assembly, of course, does not lose its control function. On the contrary, it takes a role of control in this process of successful and appropriate conduct of all undertaken commitments; with greater emphasis on the process of harmonization of the Serbian legislation with the EU Acquis, as soon as the negotiations commence. The Parliament has a key role in the process of harmonization, because the majority of the EU regulations require approval with simultaneous control in the highest legislative authority.

Concurrently, with strengthening the representative, the legislative and the control role of the National Assembly, the efforts to provide **the citizens with an appropriate place in the system of modern governance** are being made. The whole set of the institutes defined by the Constitution and Law on the National Assembly has been set to enable fulfillment of human, minority and Serbian citizens' rights.

Also, today's debate and exchange of opinion on this topic, has been organized with the purpose of enriching us with the experience of others, to bring us closer to finding solutions which through the efficiency of their work, will bring them closer to their citizens. Our goal is to be as transparent as possible, and open to our citizens in order to truly represent their interest to the greatest extent. The democratic degree of a country is measured by parliament openness and impact of the citizens, as a result of the relationship with the national parliament.

The Constitution of the Republic of Serbia guarantees direct application of human and minority rights which stem from the generally adopted rules of the international law ratified by the international agreements. In addition, the Constitution stipulates that provisions on the human, minority and citizens' rights are interpreted in favor of the advancement of the values of a democratic society, pursuant to the international standards and practice of the international institutions, which supervise the standards application. The Republic of Serbia is a guarantor, when it comes to the respect of citizens' rights and freedoms, which is also the basis for the social, the economic and the overall development and progress in other social areas.

Taking into consideration the provisions of the Constitution and international documents, by adopting numerous laws and strategies, we are working on the creation of a united and coherent normative system, harmonized with the EU Acquis, which is primarily in the interest of citizens and necessary for all-around fulfillment and protection of the human rights and elementary freedoms in all areas. We are investing efforts to provide citizens (i.e. carriers of human rights) with assistance. Our obligation is not to break rights and freedoms guaranteed by the Constitution but to abide by them. It should not be forgotten that the independent state authorities, organizations and bodies were established to take care of the rule of law, the protection and advancement of human rights with an emphasis on citizens' rights.

I am sure that the upcoming debate is going to advance communication and increase citizens' impact on the highest legislative and representing body of the Republic of Serbia.

In the end, I want to underline again, that Serbia is dedicated in following the European road. And it is on this road, that the role of the National Assembly is of highest importance. For this reason, we are focused on the pivotal decision to commencement the negotiations on the EU membership, by gathering all existing resources. We will remain strongly dedicated to the reforms we have begun, and we are confident that this is the only way that we can ensure a better future for our citizens.

Константин Арсеновић

Потпредседник Народне скупштине

Поштована господо,
Поштовани народни посланици,
Драги гости,

Велико ми је **задовољство** што смо се данас у Народној скупштини Републике Србије, у оквиру Twinning пројекта „Јачање капацитета Народне скупштине Републике Србије у процесу европских интеграција" који се реализује у сарадњи са Парламентом Грчке, окупили на Конференцији „Парламенти у Европи која се мења – Грађани и представничке институције у модерном управљању".

Ово је прва конференција која се организује у Народној скупштини **после реконструкције Владе,** која је спроведена у циљу постизања бољих резултата у свим областима, посебно ради предузимања мера на заустављању економске кризе и подстицања привредног раста, а такође због потребе и заинтересованости да се фокусирамо на преговоре са Европском унијом.

Ово је друга по реду Конференција која се одржава у Народној скупштини, а која за тему има однос парламента и грађана, пошто је у јуну **донета одлука од историјског значаја** за Републику Србију о отпочињању **преговора између ЕУ и Србије о приступању**. Од важности је такође чињеница да је тачно пре недељу дана **ступио на снагу Споразум о стабилизацији и придруживању између ЕУ и Србије**, а његово спровођење биће једно од мерила за праћење напретка у преговорима о чланству у Европској унији. Споразумом се успоставља свеобухватан уговорни однос са ЕУ и њеним чланицама у којима су права и обавезе уговорних страна јасно дефинисане. Ступањем на снагу ССП-а Србија добија статус државе придружене чланице ЕУ, што је статус најближе везе са ЕУ коју земља која није чланица може да има.

Почетак припреме преговарачког оквира од стране Европске комисије и почетак анализе до сада спроведених реформи и усклађености са европским законодавством у поглављима која су најважнија за изградњу институција и владавину права од највеће је важ-

ности за почетак системских реформи у Србији. **Преговарачка поглавља 23. и 24,** која се отварају на самом почетку, а последња затварају, односе се управо на област основних људских права, правду и слободу и грађанска права.

Поменуте реформе у великој мери зависе од редовне и динамичне **интеракције са институцијама Европске уније,** а ми у Народној скупштини можемо са задовољством да констатујемо да имамо веома добру комуникацију са институцијама ЕУ, о чему уосталом сведочи и ова конференција организована у оквиру Twinning пројекта, чији смо корисници, а који се финансира из претприступних фондова Европске уније. Реформе које спроводимо у свим друштвеним сегментима, свесни смо, зависе превасходно од спремности и способности државе да ефикасно и ефектно спроведе мере и одлуке које ће омогућити изградњу демократског друштва. Овај процес је дуготрајан и захтева посвећеност највиших државних званичника, али такође и правовремено и квалитетно информисање и укључивање грађана Србије.

У години која је проглашена за **Европску годину грађана 2013**. важно је да подсетимо на однос парламента и грађана, јер су њихова међусобна комуникација и степен интерактивности карактеристике модерног управљања, а истовремено мерило демократичности једног друштва.

Остварење крајњег циља који ће омогућити апсолутну партиципацију грађанина у процесу доношења одлука које се на њега директно односе, треба управо да води преко **јачања представничких институција једне државе**. Није случајно што је **Уговором из Лисабона** повећан значај националних парламената држава чланица у процесу доношења одлука на нивоу ЕУ и што су усвојене измене у циљу смањења демократског дефицита кроз даље јачање улоге Европског парламента и увођење права иницијативе грађана. Нова улога националних парламента, дефинисана Лисабонским уговором, омогућава већи утицај на креирање и одлучивање о европском законодавству.

По узору на оснажену улогу парламената земаља чланица ЕУ и Европског парламента одговарајућа пажња се посвећује јачању основних функција Народне скупштине, о чему уосталом сведочи и **пет компоненти *Twinning* пројекта** у оквиру кога је организована ова конференција.

Када се говори о улози Народне скупштине у процесу европских интеграција, у нашој јавности се често превиђа да је управо први и један од најзначајнијих стратешких докумената усвојен управо од стране НСРС још 2004. године - **Резолуција о придруживању Републике Србије ЕУ**, којом је трасирана европска перспектива наше земље, била је први корак Србије на њеном европском путу и чланству у овој заједници. Тек после тога је усвојена једна, а затим и друга стратегије Владе РС за приступање ЕУ и Национални

програм интеграције, односно Национални програм за усвајање правних тековина Европске уније 2013-2016. Још тада, 2004. године, Народна скупштина, и без формално правне обавезе, почела је да усклађује национално законодавство са обимним прваним тековинама ЕУ.

Како је Народна скупштина дала мандат Влади Републике Србије у процесу придруживања Србије Европској унији, то је Влада, како је предвиђено поменутом резолуцијом , у обавези да **квартално извештава НСРС о напретку у процесу стабилизације и придруживања**, односно о испуњавању приоритета из Националног програма за интеграцију, сада Националног програма за усвајање правних тековина ЕУ и корацима у усклађивању законодавства са прописима ЕУ и имплементацији усвојених закона. Као највише законодавно тело и контролор извршне власти Народна скупштина представља трећи степен контроле предложених закона, после првог степена контроле у надлежним министарствима и другог степена контроле у Канцеларији за европске интеграције.

Давањем мандата Влади Народна скупштина, наравно, не губи своју контролну функцију. Напротив, управо после отпочињања преговора, контролна улога у овом процесу успешног и правилног спровођења свих преузетих обавеза, а посебно усклађивања законодавства Републике Србије са правним тековинама Европске уније, добија прави смисао. У процесу хармонизације законодавства парламент има кључну улогу, будући да већина прописа ЕУ захтева потврду, уз истовремену контролу у највишем законодавном телу.

Уз јачање представничке, законодавне и контролне улоге Народне скупштине, истовремено се улажу напори да **грађани добију одговарајуће место у систему модерног управљања**. Читав низ института дефинисаних Уставом и Законом о Народној скупштини успостављени су управо са циљем да се омогући пуно остваривање људских, мањинских и права грађана Србије. И данашња расправа и размена мишљења на ову тему организована је у уверењу да ће нас упознати са искуствима других, приближити њиховим решењима, која су их, кроз повећање ефикасности рада парламената, приближила њиховим грађанима. Наш је циљ да будемо што транспарентнији и отворенији према својим грађанима у настојању да у што већој мери будемо истински заступници њихових интереса. Степен демократичности једне државе се управо мери отвореношћу парламената и утицајем који грађани остварују и кроз однос са националним парламентима.

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1 што је потом унето и у Пословник НСРС као обавеза Владе, односно министарстава, да извештавају квартално о свом раду

Поштоване колеге,

Поштовани гости,

Устав Србије гарантује непосредну примену људских и мањинских права зајемчених опште прихваћеним правилима међународног права, потврђеним међународним уговорима. Устав такође, прописује да се одредбе о људским и мањинским и грађанским правима тумаче у корист унапређења вредности демократског друштва, сагласно важећим међународним стандардима, као и пракси међународних институција које надзиру њихово спровођење. Република Србија је гарант поштовања грађанских права и слобода, што је основа и за друштвени, економски и свеколики развој и напредак у другим друштвеним сферама.

Полазећи од одредби Устава и међународних докумената, доношењем бројних закона и стратегија радимо на **стварању целовитог, кохерентног нормативног система неопходног за свестрано остваривање и заштиту људских права и основних слобода** у свим областима, усаглашеног са правним тековинама Европске уније, превасходно у интересу грађана. Улажемо напоре да се пружи подршка грађанима, као титуларима људских права, јер је наша обавеза да се права и слободе утврђене Уставом и законима које усвајамо не крше већ поштују. Не треба заборавити да су и независни државни органи, организације и тела успостављени управо са циљем да се старају о владавини права и о заштити и унапређењу људских права, у оквиру којих посебан сегмент заузимају грађанска права.

Уверен сам да ће и предстојећа расправа бити у функцији унапређења комуникације и повећања утицаја грађана на највише законодавно и представничко тело Републике Србије.

За крај, желим још једном да подвучем да је **Србија посвећена свом европском путу,** а на том путу улога Народне скупштине је веома значајна. У овом циљу смо фокусирани на историјску одлуку о отварању преговора ЕУ о чланству Србије и око тога смо окупили све постојеће ресурсе. Чврсто остајемо посвећени реформама које смо започели, уверени да једино тако можемо обезбедити боље сутра за наше грађане.

Political aspects of the EU negotiations

Branko Ružić

Minister without portfolio in charge of the EU integration

Dear honorable, ladies, gentlemen and colleagues,

Firstly, I want to thank you on this opportunity to address you for the first time, in the National Assembly from a different role. The years of experience gained in the parliamentary seats, is irreplaceable for any public position. This experience obliges me, even more so today, while acting as a member of the Government in charge of the EU integration, to report on the actions taken to bring Serbia closer to the EU, which is an immense responsibility towards those who elected us.

I think that the government's responsibility and my responsibility, as Minister, in the process of the EU integration should rest on two basic postulates:

- **The first one** is the readiness to contribute to the achievement of the goals set by the organization whose member we want to become,
- **The second one** is the work to trigger the society we live in, to constantly change and modernize, in order to achieve the standards which will advance all of our lives, as citizens.

Even if Serbia is not an EU member, it has significantly contributed to the most important goal for which the EU was established. The project of the European Communities has created conditions for lasting peace on our continent. In the same way, Serbia's policy nowadays has created the preconditions for peace and prosperity in the region in which we live.

We are witnessing, in this day and age, a significant progress made in the application of the Brussels agreement. I do not think this success is achieved only by the direct participants in the dialogue. Great credit belongs to the wise and skillful approach of the High Representative for Foreign and Security Policy, Ms. Catherine Ashton.

Accomplishments achieved, by all three parties during the negotiations, did not only end the

13-year long frozen conflict, but in a political sense, the proportions have reached much further. Above all, the different views of the 28 EU member states on status issues were reconciled. Perhaps, the historic for the EU Common Security and Defense policy, should be considered a success. This has been the first success of the politics in this region. I cannot help, but to think, how things would be, if this was the case at the beginning of the tumultuous times in the Balkans and the outbreak of the conflict, in the former Yugoslavia more than 20 years ago.

Another prerequisite for the success of my job, actually lies in the very essence of the process the European integration. It is an opportunity that we all should grasp – not only the government or the Assembly, but also each citizen. It is a chance for our society to progress toward the most modern principles of living. Due this fact, the success of my job will be primarily linked to the accomplishment of the internal reforms bringing Serbia closer to EU standards, since the EU accession process in fact, represents that exactly.

Our main goal in the future, will be to prove that Serbia is ready and able, to fulfill all the obligations associated with the EU membership, as well as to be adequately prepared to take advantage of all the opportunities that the membership has to offer. Thus, the goal for Serbia in being part of the European Union is equality, when it comes to quality of health care, education, consumer protection, food safety, equal business conditions for companies, freedom of movement, equality of citizens and their safety, and adequate protection of the environment in which we live.

Dealing with the issues relating to the European integration from the position of the Minister in the government, is not always popular. This is well known to our colleagues who went through this process. They were aware of the fact, that at each regular session of the Government, issues were discussed which were not completed, or not progressing, that otherwise should have been. Those ministers whose associates were not working enough on the implementation of the European agenda were not happy with that. Because of this, I believe that the success of the process will depend on the willingness to realistically deal with our own capabilities and recognize our own shortcomings, and seek for solutions in that direction. Therefore, it is important to note that, in this process, we will not be alone and we will rely on the experience that other countries gained in the process. The Twinning project we are speaking about today, is the best example of support from friends and partners in the EU. We aim to move the whole of society forward; to the set track and to use every opportunity to learn from the best.

I think the EU accession process is an irreversible course of positive changes. We say that the beginning of the accession process is an invitation for investors to invest in Serbia. This step is different from all the others because we aimed at precisely creating a reliable legal and business environment. Each successfully opened and closed chapter, will carry a tag complied

with the EU and the seal of the European Commission. It is a seal that translates into a safe refuge in Serbia, and a familiar legal environment in which European investors have been operating for years in the EU market, for half a billion consumers.

At the end of my presentation, let me say a few words on our joint work plan in the upcoming months. The demanding agenda is ahead of us. In just two weeks, we will make the first step within the accession negotiations. In the following 18 months, the plan is to begin and end the screening of all chapters. Let's start with Chapters 23 and 24. A successful course of the negotiations and its completion can only have positive effects on our society, regardless on how demanding these two chapters are. That is why we welcome the intention of the Commission to begin with an explanatory screening of the Chapter 23 – judiciary and fundamental rights, as soon as possible; and a week later, on 25th September, with a screening of the Chapter 24 – justice, freedom and security.

It goes without saying, that the successful administrative and judicial application of acquis communautaire in all other chapters depends on the ability to improve the situation in our justice system, to strengthen the level of guarantee of all categories of basic and human rights, and also to work effectively in the fight against corruption and organized crime.

Along with the agenda of accession, after the Agreement on Stabilization and Association was entered into force on 1st September, we have circled the accession process. We will hold the first session of the Council of the Stabilization and Association already in October, on the sidelines of the Council for Foreign Affairs. This act will mean, full institutionalization of our relations with the EU and improving communication up to the level of political dialogue.

The success in the process of the European integration is not only dependent on the involvement of a significant number of experts, and I see quite a few of them in this room, but also on professionals' hard work and committment, which is supported by the policy that is based on the fundamental European values. Fundamental values of the European integration are peace, prosperity, rule of law and, and allow me to state some of my political beliefs, those values are also the EU solidarity and the building block for a socially righteous society. The main policy objective should be to strengthen this system of values in Serbia, as well as to incorporate the best part of the national heritage that is nurtured through our culture and tradition in the recognizable EU motto - "united in diversity".

Our motivation to become part of the EU, will be painted with the intention to contribute to the unity of the EU, but also to conscientiously fulfill the obligations taken on. Opening of accession negotiations is the best commencement in realizing these goals. I believe that you share my belief that the citizens of Serbia deserve to start the membership negotiations, since thirteen years have passed, from the formal start of the process of European integration.

Политички аспекти преговора са ЕУ

Branko Ружић

Министар без Портфеља задужен за Европске Интеграције

Екселенције, поштоване даме и господо, драге колеге,

Најпре хвала на прилици да вам се обратим и то по први пут у скупштинској сали у измењеној улози. Вишегодишње искуство стечено у скупштинским клупама незаменљиво је за обављање било које јавне функције. То искуство ме данас у својству члана Владе задуженог за европске интеграције, у још већој мери обавезује да одговорност за оно што чинимо како би се Србија приближила ЕУ полажемо онима који су нас бирали.

Сматрам да одговорност владе, и мене као министра, у процесу европске интеграције треба да почива на два основна постулата:

- **Једно је** спремност да политиком коју водимо допринесемо остварењу циљева организације чији члан желимо да постанемо,
- **А друго** је рад и подстицај друштву у којем живимо да се стално мења и модернизује како би достигло стандарде који ће унапредити живот свих нас као грађана.

Иако није чланица ЕУ, Србија је дала значајан допринос најзначајанијем циљу због којег је ЕУ и основана. Пројектом европских заједница створене су трајне претпоставке за мир на нашем континенту. На исти начин, политиком коју Србија данас води створене су претпоставке за мир и просперитет у региону у којем живимо.

Сведоци смо ових дана значајног напретка оствареног у примени Бриселског договора. Такав развој догађаја не сматрам само успехом директних учесника у дијалогу. Велике заслуге припадају мудром и вештом приступу Високе представнице за спољну и безбедносну политику Кетрин Ештон.

Резултат који су све три стране постигле у разговорима није довео само до окончања 13 година дугог замрзнутог конфликта, у политичком смислу размере успеха су далекосежније. Најпре помирени су ставови који су разликовали 28 држава чланица пре свега

о статусним питањима. Вероватно и више од тога успех се може окарактерисати и као историјски за Заједничку безбедносну и одбрамбену политику ЕУ. Ово је први велики успех ове политике на нашим просторима. Камо среће да је то био случај почетком вихора балканизације и избијањем сукоба на просторима бивше Југославије пре нешто више од 20 година.

Друга претпоставка за успех посла који обављам налази се заправо у самој суштини процеса европске интеграције. То је прилика коју свако од нас има, не само влада или скупштина, већ сваки наш грађанин појединачно. То је шанса да се као друштво крећемо ка најсавременијим стандардима живота. Због тога ће пре свега успех мог посла бити повезан са успехом унутрашњих реформи које Србију приближавају стандардима ЕУ, будући да процес приступања Европској унији то заправо јесте.

Наш главни циљ у наредном периоду ће бити да омогућимо да Србија буде спремна и способна да испуни све обавезе које чланство у ЕУ доноси, али и да се адекватно припреми како би искористили све могућности које ће нам то чланство донети. Дакле циљ је Европска унија у Србији, односно равноправност наших грађана са грађанима Уније када је у питању квалитет здравствене заштите, услови школовања, заштита потрошача, безбедност хране, једнаки услови пословања за наше фирме, слобода кретања, једнакост грађана и њихова безбедност, адекватна заштита околине у којој живимо.

Бавити се европским интеграцијама у влади са позиције министра није увек популарно. То знају и све наше колеге које су прошле кроз овај процес. Знају и да су сваке редовне седнице Владе разговарали о томе шта није урађано, а требало је да буде. То је знало да засмета оним министрима чији сарадници нису довољно радили на спровођењу европске агенде. Због тога и сматрам да ће успех процеса зависити од спремности да реално сагледамо сопствене могућности и препознамо сопствене недостатке те да за њих тражимо решења. Зато је важно имати на уму да у овом процесу нећемо бити сами и ослањаћемо се на искуства која су друге државе прошле. Твининг пројекат о којем данас говоримо најбољи је пример подршке пријатеља и партнера из ЕУ. Нама је циљ да се цело друштво креће трасираним путем и да користимо сваку прилику да учимо од најбољих.

Симболом неповратног курса позитивних промена сматрам процес приступања ЕУ. Кажемо да почетак процеса приступања јесте позив инвеститорима да улажу у Србију. Оно што овај корак чини другачијим од свих осталих јесте управо стварање поузданог правног и пословног амбијента. Свако успешно отворено и затворено поглавље носиће ознаку усклађен са ЕУ и печат Европске комисије. То је печат који значи сигурно уточиште у Србији и познато правно окружење по којем европски инвеститори годинама послују на тржишту ЕУ од пола милијарде потрошача.

Дозволите ми да на крају свог излагања посветим неколико речи нашем заједничком радном плану у наредним месецима. Пред нама је захтевна агенда. За само две недеље учинићемо први корак у приступним преговорима. У следећих 18 месеци план је да почнемо и завршимо скрининг за сва поглавља. Почећемо са поглављима 23 и 24. Колико год била захтевна ова два поглавља, успешан ток разговора и њихово окончање може имати само позитивне ефекте по наше друштво. Зато и поздрављамо намеру Комисије да што пре, већ 25. септембра почнемо са експланаторним скринингом за поглавље 23, правосуђе и основна права, а недељу дана касније и за поглавље 24. правда, слобода и безбедност.

Не треба посебно наглашавати да ће успешна управна и судска примена правних тековина ЕУ у свим осталим поглављима зависити од способности да унапређујемо стање у нашем правосуђу, да јачамо степен гаранције свих категорија основних и људских права, као и да ефикасно делујемо у борби против корупције и организованог криминала.

Упоредо са агендом приступања, ступањем на снагу Споразума о стабилизацији и придруживању 1. септембра заокружили смо процес придруживања. Већ у октобру на маргинама Савета за спољне послове одржаћемо прву седницу Савета за стабилизацију и придруживање. Овај чин ће значити пуну институционализацију наших односа са Унијом и унапређење комуникације до нивоа политичког дијалога.

Даме и господо,

За успех у процесу европских интеграција није само неопходно имати значајан број стручњака, а видим их немали број у овој сали, већ вредан и предан рад стручњака мора бити подржан политиком која почива на темељним европским вредностима. Темељне вредности европских интеграција су мир, просперитет, владавина права, а дозволите да изнесем и део својих политичких убеђења, вредности ЕУ су и солидарност и изградња социјално праведног друштва. Основни циљ политике треба да буде да се у Србији оснажи овакав систем вредности, али да најбоље што баштинимо као део националне кутуре и традиције уградимо у заштитни мото ЕУ „уједињени у разликама“.

Наш мотив да постанемо део ЕУ биће обојен намером да допринесемо јединству чланица ЕУ, али и да обавезе које чланице преузимају савесно испуњавамо. Отварање приступних преговора је најбољи почетак реализације таквих циљева. Верујем да делите моје уверење да су грађани Србије после тринаест година од формалног почетка процеса европске интеграције заслужили да почнемо са преговорима о чланству.

Захваљујем се на пажњи!

Natasa Vuckovic

Chair of European Integration Committee

Dear ladies and gentlemen, MPs and colleagues,

First of all, I would like to express my pleasure for the Conference that is being held here, in the National Assembly, in the framework of the project named "Strengthening capacities of the National Assembly in the process of EU Integrations, the conference Parliament in changing Europe". I would especially like to thank our partners from Greece and Delegation of the European Union, which is supporting the implementation of this project.

I cannot forget to mention, that this conference is being held after the decision, which is of historical significance for the Republic of Serbia on starting the accession negotiations with EU. Another significant evolvement, is that the Stabilization and Association Agreement between Serbia and EU, was entered into force last week. The implementation of the Agreement, will be one of the indicators in the follow-up of the progress in negotiations, concerning our membership in the European Union. Therefore, in the following weeks and months, as is expected, there will be a formation of a mutual parliamentary Committee with the European Parliament, which is one of the new institutional bodies, created as a consequence of the enforcement of this agreement.

The organization of this conference, right before commencing the negotiations with the European Union, gives us the chance to mutually consider all the possible aspects of the participation of the National Assembly in this process, as the highest representative institution, but also that of NGOs and the whole civil society, so that the major segments of the society can have representation during the procedure.

As a result of the Lisbon Treaty, as it is known, there is an increase of the impact of national parliaments on the member states, in the decision-making process, on the level of the European Union. The role of the European Parliament has been strengthened with the introduction of the initiative right of the citizens. These measures have been implemented with the goal to decrease democratic deficit in the European Union. With the same intent, in Serbia, the appropriate legislation framework has been set. Series of measures of commitment have been

made. In addition, the place and the role of the National Assembly in the process of the accession and pre-accession negotiations, has been defined, always with the goal of decreasing the democratic deficit.

In this context, I would like to especially mention, one of the first and the most important strategic documents in regard to the European path of Serbia, created and adopted right here at the National Assembly of the Republic of Serbia, back in 2004. This was the Resolution on the accession of the Republic of Serbia to the European Union, which was created by the Committee for European integrations, in cooperation with the European Movement in Serbia. From that time, in the Republic of Serbia, and without formal legal obligation, national legislation has been harmonized with the *acquis communautaire*. Following this Resolution, various Governmental documents have been adopted regarding the process of EU integrations: strategies, programs and action plans.

In defining the role and the place of the National Assembly in the process of EU integrations, it is important to have in mind that there are different political and legal models, in which the position and competences of the Parliament in the process of accession and joining; especially in the process of negotiations. Based on the experiences and the best practices of the previous country candidates, the main areas of parliamentary actions in the area of the EU accession are: harmonization of legislation, supervision and follow-up of the process of EU integrations, inter-parliamentary cooperation and information activities.

For me, the key question is whether it is important to consider it within this conference. Whether this process that lies ahead of us, the process of the negotiations, the position and the new role of the National Assembly, and how it can contribute and advance its regular work and achievement of its basic functions: legislative, control, representative. In the end, I am certain, that throughout the process, no matter how we try to define this new role, it is only likely that we will simply evolve the nature of our institution and advance the procedures that already exist. I also believe, that the increased amount work of the Assembly's Committees will result in the progression of our legislation procedures. Thus, we will realize that the new role, cannot fall far from the existing constitutional tasks and its position.

Our main challenge is how to define the new role – as the highest legislation and representation body- concerning the process of monitoring the negotiations. When we talk about this mechanism, it is important to set the criteria, the methods and what goals we want to achieve. It is certain, that the mechanism should be functional and sustainable. We will not achieve anything, if we set a mechanism, with which the Assembly cannot implement set goals, resulting in a loss of respect from the Government. Therefore, it is important that the methodology corresponds, first of all, to our institutional capacities. It is also extremely significant to keep in mind, that while developing this mechanism - which will include the participation of

the Assembly in the negotiation process – that it enables us to reach the level that is expected of us. Upon becoming a member of the European Union, the national Parliament must have the mechanism ready to act, in that very moment. Another important factor, is that the Government respects what the National Assembly defines as its role. Therefore, cooperation between the Government, the negotiation team and the chief of the negotiation team, will be of key importance in defining our role.

I believe that is extremely important to ensure a constant collaboration with the non-governmental sector, by including organizations of the civil society, and to make certain that the citizens are well informed. Direct communication between the citizens and its representative institution, the Parliament, should be further advanced. Another important task, is the National Assembly's in the advancement of the bilateral parliamentary cooperation. In some consultations, which we had had with various representatives from the MS of the European Union, it was mentioned that one member country of the EU, had stated up to 80 times on a Parliament level, during different phases of the pre-accession negotiations, with Serbia. It is clear, that our major task deals with cooperating extensively, and fully communicating with the other national parliaments in the European Union.

I would like to briefly refer to the countries in the region, which are most similar to us, since we have shared related legal and political systems in the past:

The competences of the Parliament in the accession process of Croatia to join the European Union, normatively where determined and institutionally implemented and aimed to the legal and political control of the process of accession. The Committee for EU affairs, functioned by having a role in the form of a forum for consultations and discussions, between representatives of the parliamentary parties. This included a constant participation of the Speaker of the Parliament on one side, and the Government and the negotiation team on the other side. The Croatian Parliament advocated for the transparent leadership of the acceding negotiations, and also for its active participation in the discussion on all the issues concerning the negotiations.

The Parliament of Slovenia also had an active role in the negotiation process. The Committee for foreign affairs, has adopted all the negotiation positions which the Government of Slovenia established. The Parliament has actively participated in the creation of positions, in the topics and areas of their competences in regard to the Constitution and the Law. At least once a year, there was a discussion referring to the position of Slovenia and its future membership.

I would like to especially concentrate on the competence of the Committee for the EU integrations of the Montenegro Parliament. The Committee follows the negotiations on the Montenegro accession, monitors and evaluates the course of negotiations, and provides opinions

and guidelines on behalf of the Assembly, functioning with the aim to: enhance the control of the work completed by the negotiation team, to change the Rules of Procedure of the Montenegro Parliament and also, to expand some of the competences of the Committees. Therefore, seven parent Committees, monitor and follow the harmonization of the laws of Montenegro with the EU acquis, within their competences. It is important to mention, that within the working groups for the preparation of the negotiations on the negotiation chapters, formed by the Government of Montenegro, the representatives of the Service of the National Assembly participate as their members. This is the first time that a country-candidate for membership, within the screening process, participates in the phase of analytical overviews and the harmonization of the national legislation with the acquis. The result is, that the employees of the Service have the possibility to have a detailed insight in the overall legislation of the European Union divided in negotiation chapters. The purpose in mentioning the aforementioned neighboring countries is, to point out to the importance of the role of the Parliament, and the significance of what was gained by the representative functions.

The National Assembly as the legislator, is largely responsible for the harmonization activities in legislation and has also been able to ensure democratic legitimacy and political control. As a result of the role that the National Assembly plays, it is a consequence that it should control the Government and the negotiation team in the upcoming negotiations, who will submit reports concerning the results, the opening chapters and the closing chapters of the negotiation process.

At this point, I would like to inform you that during the session of the Committee for EU integrations on August 29th, the decision on the formation of the working group for the creation of the document, “Resolution on the role of the National Assembly in the negotiation process with European Union”, has been made. In the Resolution, the role of the National Assembly in the upcoming negotiations, will be defined. The first part of this document, will be dedicated to the cooperation between the National Assembly and the Government in the process of negotiations, and in the second part, it should define the role of the National Assembly in the pre-accession process. This document will be presented to the Committee for the EU integrations and to the National Assembly. The goal of the Resolution, is the proposal of the following: the establishment of open dialogue between various levels of the Government in the process of negotiations, the establishment of communication with the citizens of Serbia, the representatives of the civil sector and the media. I believe that the adoption of such a document in the National Assembly, will once again be confirmed, with the choice of the majority of the citizens to enter the European Union, as the reforms proceed.

Respectful colleagues, in the context of the topic we discussed today, concerning the methods of bringing the citizens closer to the decision-making process, and how to strengthen their impact on the representative institutions, I would like to stress certain points. Firstly, the sig-

nificance of the role of all national parliaments, as democratic entities, and the issue of the adequate collaboration between the National Assembly and the civil society during the process of negotiations. Secondly, it is in the best interest of the citizens of the Republic of Serbia - in the full legitimacy of the Government in the negotiations with the EU – that the National Assembly should assist the Government, concerning the issues that it has prepared for the negotiation platforms for the accession of the Republic of Serbia to the European Union.

The Committee for EU integrations and other competent Committees, depending on the negotiations, should consider the relevant reports, and perhaps also a mutual session. How should our participation, the National Assembly's, the Committee for EU Integrations' and other competent committee's, in the negotiation process, be different? The examples from the neighboring and modern democratic trends, point to the need of a proactive role of the National Assembly. That is, to include the representatives of the National Assembly in the negotiation team, in some of its segments. That would provide with acquiring first-hand information, about issues, the flow and results of the negotiations to the biggest representative institutions. Would it be expedient for the representatives of the National Assembly, apart from the representatives of the Government, to be included in the coordination body for the process of accession of Serbia towards the EU? Perhaps, the inclusion of the National Assembly in the process of pre-accession negotiations should be considered also, on the level of the Service. The citizens of Serbia do not only expect the participation of their closest institutions of the state government in these negotiations and process of follow-up of the negotiations; they also expect their participation: the participation of the nongovernmental sector in the process of negotiations, to be defined in the Resolution that we will create and adopt, as well.

As said before, whatever we agree here in the National Assembly, will depend on the way, which we as an institution, will be able to change it. Also, it will depend on whether the Government will be ready to accept the new role of the National Assembly, its role in the process of pre-accession negotiations and whether that role, will be respected during the pre-accession negotiations. I believe that the new dynamics between the legislative and the executive power, will be necessary to be established in the following weeks and months ahead of us.

Thank you for your attention.

Наташа Вучковић

Председница Одбора за европске интеграције

Поштована господо, народни посланици, драге колеге

Најпре бих желела да изразим задовољство што се овде у Народној скупштини у оквиру овог пројекта: Јачање капацитета Народне скупштине у процесу европских интеграција одржава и ова конференција: Парламенти у Европи која се мења. Посебно бих желела да се захвалим нашим партерима из Грчке и делегацији Европске уније уз чију подршку се овај пројекат спроводи.

Не могу да не не поменем да се конфренција одржава након доношења одлуке која има историјски значај за Републику Србију о отпочињањз преговора Европске уније и Србије о приступању. Од важности је и чињеница да је прошле недеље ступио на снагу Споразум о стабилизацији и придруживању између Европске уније и Србије чије ће спровођење бити једно од мерила за праћење напретка у преговорима о чланству у Европској унији. Следствено томе нас очекује у наредним недељама и месецима и формирање заједничког парламентарног Одбора са Европским парламентом, што је једна од нових институција, односно тела које се формира као последица ступања на снагу овог споразума.

Одржавање ове конференције непосредно пред отпочињање преговора са Европском унијом, даје нам прилику да заједнички размотримо могуће аспекте укључивања Народне скуштине у овај процес, као највише представничке институције, али невладиног сектора и читавог цивилног друштва тако да највећи сегменти друштва заиста у овим преговорима могу имати своје представнике.

Уговором из Лисабона као што је познато повећан је утицај националних парламената држава чланица у процесу доношења одлука на нивоу Европске уније, а улога Европског Парламента ојачана је увођењем права иницијативе грађана. Ове мере су спроведене са циљем да се смањи демократски дефицит у Европској унији. Са истом намером у Србији се успоставља одговарајући законодавни оквир и спроводи читав низ мера залагање односно дефинисање места и улоге Народне скупштине у процесу приступања и предприступних преговора има управо исти циљ.

У овом контексту желим посебно да поменем да један од првих и најзначајнијих стратешких докумената у погледу Европског пута Србије сачињен и усвојен управо у Народној скупштини Републике Србије још 2004. године. То је била Резолуција о придруживању Републике Србије Европској унији, која је израђена у Одбору за европске интеграције у сарадњи са Европским покретом у Србији. Од тада се у Републици Србији и без формално правне обавезе усклађује национално законодавство са правним тековинама Европске уније. Тек после тога усвајана су различита владина документа о процесу европских интеграција: стратегије, програми, акциони планови.

У дефинисању улоге и места Народне скупштине у процесу европских интеграција важно је имати на уму да постоје различити политички и правни модели у оквиру којих су дефинисани позиција и надлежности Парламената у процесу придруживања и приступања, а посебно у процесу преговарања. На основу искустава и најбољих пракси ранијих земања кандидата, главне области парламентарног деловања у области приступања Европској унији су усклађивање законодавства, надзор и праћење над процесом евроинтеграција, међупарламентарна сарадња и информативне активности.

За мене је кључно питање да ли и оквиру ове конференције је важно да га размотримо. Да ли заправо процес који је пред нама, процес преговора и улога, нова улога Народне скупштине у том процесу може допринети и унапређењу њеног редовног рада и остваривању њених основних функција законодавне, контролне, представничке , јер мени се чини да у том процесу и у нашој новој улози, како год је ми дефинисали постоји велика могућност управо да на том процесу унапредимо оно што је природа наше институције, што је процедура која сада постоји у њој, мислим да и кроз повећан рад скупштинских одбора и кроз унапређење наших законодавних процедура можемо јако пуно учинити да улога скупштине заиста буде у складу са њеним уставним задатком и положајем.

Наш главни изазов је како да као највише законодавно и представничко тело дефинишемо ту улогу у процесу праћења преговора. Када говоримо о том механизму, о том моделу, важно је да поставимо критеријуме правце, шта желимо да остваримо. Сигурно је да тај механизам мора да буде функционалан и одржив. Нећемо ништа постићи уколико поставимо механизам који ни скупштина неће моћи да примењује нити ће влада да га поштује. Због тога је важно да он одговара пре свега нашим институционалним капацитетима. Важно је да када развијамо тај модел, механизам за учешће скупштине у процесу преговора, омогућимо да идемо у сусрет и оној новој улози која нас очекује када постанемо држава чланица Европске уније и да као национални Парламент у Европској унији имамо већ спреман механизам за деловање у том тренутку. И наравно изузетно је важно да влада поштује оно што ће Народна скупштина дефинисати као своју улогу. Зато ће и консултације са владом и преговарачким тимом и шефом преговарачког тима бити оно што је од кључног значаја за дефинисање наше улоге.

Мислим да је изузетно важно да укључимо и обезбедимо редовну сарадњу са невладиним сектором, са организацијама цивилног друштва у целини, и да обезбедимо добро информисање грађана, јер је представничка институција, односно Парламент, где се мора и даље унапређивати та директна комуникација са грађанима. И још један задатак који је пред Народном скупштином, а то је унапређење билатералне парламентарне сарадње. У неким консултацијама које смо у току пар недеља са разним преставницима из земаља чланица Европске уније имали чули смо податак да ће једна од земаља чланица Европске уније чак 80 пута морати да се на нивоу свог Парламента изјасни по разним фазама током предприступних преговора са Србијом. Имаћемо велики задатак у сарадњи и проширењу комуникације у сарадњи са националним парламентима у Европској унији.

Осврнула бих се кратко на земље у региону и то оне које су нам најсличније, с обзиром да смо управо некада делили исти правни и политички систем. Надлежности Сабора у процесу о приступања Хрватске Европској унији нормативно су биле одређене и институционално спроведене и усмерене су биле на правну и политичку контролу процеса придруживању. Одбор за европске послове имао је својеврсну улогу форума за консултације и расправу између представника парламентарних странака уз редовно учешће председника Сабора са једне стране, владе и преговарачког тима са друге стране. Хрватски Сабор се залагао за транспарентно вођење преговора о приступању као и за своје активно учешће у расправи о свим питањима у току преговора. Парламент Словеније је такође имао активну улогу у процесу прговора. Одбор за спољне послове је усвајао све преговарачке позције које је влада Словеније утврђивала. Парламент је активно учествовао у израђивању позиција, кад су у питању теме и области у његовој надлежности у складу са уставом и законом. Најмање једном годишње се расправљало о положају Словеније и будућем чланству. Посебено желим да скренем пажњу на надлежност одбора за европске интеграције Парламента Црне горе. Одбор данас прати преговоре о приступању Црне горе, надгледа и оцењује ток преговора и даје мишљења и смернице у име Скупштине, у функцији боље контроле рада преговрачаког тима изменама Пословника Скупштине Црне горе, проширене су надлежности неких Одбора. Тако да седам матичних одбора у оквиру своје надлежности прате и оцењују усклађеност закона Црне горе са правним тековинама Европске уније. Од значаја је рећи да у свим радним групама за припрему преговора по преговарачким поглављима која је формирала влада Црне горе у својсвту чланова учествују и представници службе Скупштине. Ово је први пут да у оквиру неке земље, кандидата за чланство, у оквиру скрининга учествује у фази аналитичког прегледа и усклађености националног законодавства са правним тековинама Европске уније. На овај начин и службеници Скупштине имају могућност да стекну детаљан увид у целокупно право Европске уније по преговрачаким поглављима. Ове примере сам навела да укажем на важност улоге Парламента какве су у процесу приступања добиле преставничке институције у неким од суседних земаља.

Народна скупштина је као законодавац одговорна за велики део активности у области усклађивања законодавства и надлежна за осигурање демократског легитимитета и политичке контроле. Због тога би Народна скупштина требало да у предстојећим преговорима контролише владу и преговрачки тим, који ће подносити извештаје о резултатима преговора као и отварању и затварњу преговрачких поглавља.

Желим да Вас обавестим овом приликом да је на седници Одбора за европске интеграције 29ог августа ове године донета одлука о формирању радне групе за израду документа , Резолуције о улози Народне скупштине Републике Србије у процесу преговрања са Европском унијом. У тој резолуцији ће бити дефинисана улога Народне скупштине у предстојећим предпреговорима. Један део овог документа односиће се на сарадњу Народне скупштине и Владе у процесу преговора, а у другом би требало да буде дефинисана улога Народне скупштине у предприступном процесу. Циљ Резолуције, документа који ће бити предложен и Одбору за европске интеграције и влади и у Скупштини у целини, је успостављање дијалога између различитих нивоа власти у процесу преговора, али и са грађанима Србије и са преставницима цивилног сектора и медија. Верујем да ће усвајање једног оваквог документа у Народној скупштини још једном бити потврђено и већинско опредељење грађана за улазак у Европску унију, као и за наставак реформи.

Поштоване колеге, у контексту теме о којој данас расправљамо о приближавању грађана процесу доношења одлука и повећању њиховог утицаја на представничке институције, пре свега на националне парламенте, што је од важности за свакодневно демократско друштво, питање адекватног укључивања Народне скупштине и грађанског друштва у процесу преговарања је од посебног значаја, у најбољем интересу грађана Републике Србије пуног легитимитета наступа Влада уи преговорима са Европском унијом, Народна скупштина треба да или да усваја или да буде консултована о преговарачким платформама за преговоре о приступању Републике Србије Европској унији, оне која влада буде припремила. Одбор за европске интеграције и други надлежни одбори зависно од поглавља требало би да разматрају извештаје о преговорима, евентуално и на заједничким седницама. Да ли је то оно како видимо наше учешће или би учешће Народне скупштине и Одбора за европске интеграције и других надлежних одбора у преговарачком процесу могло и требало да буде другачије. Примери из окружења и савремени демократски трендови упућују на потребу проактивне улоге Народне скупштине. Да ли укључити представнике Народне скупштине у преговарачки тим, у неке његове сегменте. То би највећој представничкој институцији омогућило прибављање информација из прве руке о спорним питањима и о току и резултатима преговора. Да ли би можда било целисходно да представник односно представници Народне скупштине поред представника Владе буду укључени у координационо тело за процес приступања Србије Европској унији. Можда би требало размотрити и укључивање Народне скупштине у процес предприступних преговора и на нивоу стручних служби. Грађани Србије не само да очекују учешће њима нај-

ближе институције државне власти у овим прговорима односно у поступку праћења преговора, већ очекују такође да њихово учешће, учешће невладиног сектора у процесу преговора буде такође дефинисан у Резолуцији коју ћемо израдити и усвојити. Као што сам већ рекла, шта год да се договоримо овде у Скупштини, зависиће од тога на који начин ћемо као институција бити у стању да то применимо. И такође зависиће од тога да ли ће Влада бити спремна да прихвати нову улогу Скупштине., њену улогу у процесу предприступних преговора и дали ће ту улогу поштовати током предприступних преговора. Мислим да ће та нова динамика управо између законодавне и извршне власти бити неопходна да се утврди у овим наредним недељама и месецима који су пред нама.

Захваљујем на пажњи.

The National Parliament and the Accession Negotiations - some experiences and some recommendations

Dr. Tanja Miscevic

Head of Negotiating Team for Accession of the Republic of Serbia to the EU

Respectful MPs, colleagues from the Secretariat of the National Assembly, and all guests of this House, I am particularly pleased to be here today, in my first official visit, in the new function I am to undertake.

When I was invited in June, to participate in this conference, I had no idea what I would actually talk about regarding this job, which I will assume in the following years. However, things have not changed. What I want to talk you about today, are the experiences of other countries concerning the process of accession in the EU, especially dealing with the negotiation process, as viewed through the Parliament's role, and through the relations with the civil society. Although, my current position is from the other side, and not from the scope of the civil society as it was before, things cannot change greatly, regarding this role. Furthermore, as it has been stated by the General Secretary of the Hellenic Parliament, there are fabricated models; moreover, as it has been expressed by the chairwoman of the Committee for EU Integrations of the National Assembly of Serbia, we ourselves create the mechanisms, and that is a matter of agreement and consensus.

Nevertheless, what has been observed and the knowledge gained from the experiences of the other states, leads us to detect several basic principles, on which the negotiation process of a state, is based on.

First of all, what is the negotiation process? It is an immense exercise to familiarize ourselves with our current situation, and consequently, it makes us think of what situation we want to find ourselves in, in the future. To take things a step further, through the role as Chairwoman of Committee for EU Integrations, we have to see the negotiation process in becoming a full member state of the European Union, from the angle of every institution; not just the Government, but also the National Assembly, all other entities and essentially the whole of Serbia. For that reason, we want to become a member of the European Union and wish to know what

weight our role will have, as a member state. Therefore, having all this in perspective, we are preparing for the significant assessment process, concerning our positioning and our role.

The relevant processes have to function in a manner which is inclusive and transparent, and that translates into being open in encompassing the participation of all of those, who can contribute to this aim. The process must be open and transparent, public and informative, with everything that lies ahead on this road. That includes a clear establishment of the key decision-makers, i.e. those who define, adopt and bind the state in the context of the EU accession; the ones who define the conditions upon which the state will become member of the European Union. Their connection with the wider civil society, its organizations, universities and institutions, unions, employers' associations, workers' associations is of great significance. Therefore, with participants who come from a wide range of groups, and can assist in the process, I repeat, always recognizing and understanding our capacities and the real role that we should have during the process, and keeping in mind what there is to gain. The models followed by countries close to us - which are similar regarding their organization and experiences – have already created mechanisms and actions of inclusion. We have heard, that other national Parliaments have concentrated on arranging for room for communication and agreement, in order to establish a better participation of the representatives - and not just representatives of the National Assembly, as such - in the negotiation process.

Some of the countries have formed special bodies. For example, Croatia and Montenegro, dealt only with coordinating the follow-up procedure of the negotiation process on behalf of the national Parliament. This was one of the models that could be taken into consideration. I agree with the opinion that we should find, not just what best suits us, but to try to lessen the multiple institutions, so as to try and find the most efficient solutions.

The second very important factor, is information; signifying the openness of and the transparency of the whole process, through continuous communication. I go beyond just the process of informing, and therefore, accentuate the role of communication, which means that there is a need for feedback. By this, I do not just mean that the negotiation team should have feedback from the citizens of Serbia, but that the National Assembly, should also have a corrective role, and in that respect should be advanced by the National Assembly and the MPs. That means, there is a need of the continuous notification during ongoing negotiations, which will result in being periodically binding, to the Chief of the negotiation team and, therefore, also, to the members of the negotiation team, in regard to the current negotiation topics. Apart from that, the same may occur, even with the inclusion to the EU acquis or the inclusion of the screening process.

Therefore, the first thing that I can present to you is the following, concerning the screening of Chapter 23 through web-link, Webster. The tracking will be provided on various spots, and it will be accessible for the interested parties. We would like to especially invite MPs of the Na-

tional Assembly, in order to familiarize themselves, not just with the legal orders, but also with the spirit of the law, which will follow us from the very beginning to the very end of the negotiation process. Also, I offer all of my assistance in anything that will be needed for the creation of the new Resolution or the appropriate Decision of the Parliament, which will sustain and determine its place in the negotiation process. As it has been observed already, such a Resolution was a very big impetus in the previous phase of the process of integration, for Serbia, concerning the commencement of negotiations referring to the Stabilization and Association Agreement. We have been using it gladly, and have referenced to it often in our talks towards EU, but also in the talks with MPs of the National Assembly, due to the fact that it gave the spirit of progress in the process of integration. Today, this spirit can be strengthened, advanced and again be useful for the whole process.

In concluding, what I would like to emphasize is that there are two key functions that all Parliaments, within the context of a parliamentary democracy should have, and these are: the legislative function and the control function of the executive power, which should never stop, which should always be strengthened and further advanced. Also, it should not be neglected, that the negotiation process itself, follows the live adoption of the harmonized laws, and that is one of the key reasons for us to work together in coordination, so that the agenda of harmonization or adoption, could be clearly followed here in the Assembly. An additional reason for this to happen, is that the Parliament can help to succeed in our intention to accelerate the whole process. Of course, the control function performed by the Parliament and the MPs, which is one of the hardest, but also one of the most important forms of actions that they can have, will only be strengthened through the next phase, with the use of mechanisms, which will be adopted as the agreement in the negotiation phase progresses.

In the end, I would like to state my personal opinions in relation to my role, as the chief of the negotiation process. I will be at your disposal; not just to the Committee for EU Integrations, but for every Committee of the National Assembly. My obligation is to inform the National Assembly, on the day after each meeting, or to be available before every meeting in Brussels, as the phases of the negotiation process progress. Also, I am always open to every question, suggestion and comment, on how to make this process more open for the ones who wish to participate in it. The reason for that, lies in my understanding that this process is not just the matter of the Government. The process is “owned” by the whole of society, the whole state, because a member of the European Union becomes “the state” as such. It is important to understand that the process towards the membership is actually the most important phase, because it includes enormous reforms. These reforms have already begun, and are an ongoing process, which will be epitomized by leading us to the membership in the Union. This is the hugest benefit for us, as the regular citizens of Serbia, but also tomorrow in Europe, as the citizens of Europe.

Thank you very much for your attention.

Парламент и преговори о приступању-искуства и препоруке

Др Тања Мишчевић

Шеф преговарачког тима за приступање Републике Србије ЕУ

Уважени народни посланици, колеге из Секретаријата Народне скупштине, сви гости овог дома у коме сам и ја у првој званичној посети, сада у новој функцији, што ме нарочито радује.

Када сам у јуну месецу позвана да учествујем на конференцији, нисам знала да ћу заправо говорити на тему посла који ћу обављати у наредним годинама. Међутим, ствари се нису промениле. Заправо оно о чему сам желела да овде данас говорим јесу искуства других земаља у процесу приступања државе Европској унији, посебно у преговарачком процесу, посматрано кроз улогу, место Парламента и наравно, кроз везу са цивилним друштвом. Иако је моја садашња позиција са друге стране, не више као део цивилног друштва, ствари се наиме не могу много променити у посматрању ове улоге. Међутим, и као што рече Генерални секретар Парламента Грчке, нема готових модела, или као што рече председница Одбора за европске интеграције Скупштине Србије, механизам сами правимо и он је ствар договора и ствар консензуса.

Међутим, оно што смо до сада могли видети и научити из искустава других држава јесте заправо неколико освновних принципа на којима почива преговарачки процес једне државе. Најпре, шта је преговарачки процес. Преговрачки процес је једна велика вежба упознавања са оним што јесмо тренутно и са оним што желимо да постанемо у наредном периоду. Посматрајући то и даље и шире управо онако како то чини председница Одбора за европске интеграције, процес морамо посматрати из угла онога шта желимо да будемо као пуноправна чланица Европске уније. Свака институција, не само Влада већ и Скупштина, али и сви остали органи и заправо цела Србија. Зашто желимо да постанемо чланица Европске уније и која ће наша тежина у том чланству бити. Дакле, припремамо се за тако значајну оцену нашег места и улоге.

Тако посматран процес мора бити инклузиван и транспарентан, а то подразумева да буде отворен за укључивање и учешће свих оних који том циљу могу да допринесу на начине

на који они заиста том циљу могу да допринесу. Процес мора бити и отворен и транспарентан, у смислу јасности и корака и информација и свега онога што нас на овом великом путу заправо чека. То подразумева и врло јасно одређивање оних који су кључни доносиоци одлука, односно који дефинишу, усвајају и обавезују државу у смислу приступања Европској унији, односно који дефинишу услове под којима ће држава постати чланица Европске уније и њихову везу са најширим грађанским друштвом, организацијама цивилног друштва, универзитетима и институтима, синдикатима, удружењима послодаваца, удружењима радника. Дакле, са најшире посматраном гамом различитих учесника који у процесу могу да помогну, понављам схватајући и разумевајући своје капацитете и праву улогу која је у процесу треба односно морају имати и добити. Моделе како су до сада државе које су ближе нама и по уређењу и искуствима ранијег деловања уредили и направили механизам укључивања када се концентришемо на Парламент, дакле националних Парламената смо већ чули, и ту је неки простор који јесте простор за разговор и договор како ће то обезбедити што боље учешће предтавника, и не само представника, већ читаве Народне скупштине као такве у преговарачком процесу.

Неке од држава формирали су посебна тела, рецимо Хрватска и Црна Гора, која су се бавила само координацијом праћења процеса преговора у име националног Парламента, и то је још један од модела који се може узети у разматрање. Ја сам потпуно сагласна са ставом да треба да нађемо не само оно што нама највише одговора, него са што мање умножавања институција пробати да нађемо најефикасније решење као такво.

Друга врло важна ствар је информисање, односно отвореност процеса или транспарентност читавог процеса кроз непрестану комуникацију. Идем даље од самог информисања и стављам акценат на комуникацију, дакле уз потребу повратне информације. Не само преговарачки тим према некоме, грађанству, односно грађанима Србије, Народној скупштини, већ и обратно, корективну улогу коју у том смислу свакако треба да има и унапређује Народна скупштина и посланици Народне скупштине. То значи потребу непрестаног обавештавања о самом току преговора, које ће периодично обавезивати како шефа преговарачког тима, тако и чланова преговарачког тима, наравно у односу на питања која је тренутно тема преговора. Пре тога чак и укључивње у упознавање са правним тековинама Европске уније или укључивање у скрининг.

Ту, прва ствар коју Вам могу понудити јесте праћење скрининга за поглавље 23 преко веб линка, вебстрима - наиме, биће обезбеђено праћење на више места и биће отворено за све оне који су заинтересовани. Наравно посебно ћемо упутити позив посланицима Народне скупштине, како би се упознали са не само правним правилима, неко духом права у овој области, која ће нас пратити од самог почетка па до самог завршетка процеса преговарања. Такође, нудим сву помоћ која је потребна око прављења нове Резолуције или одговарајуће одлуке Параламента који ће одржати и одредити у договору,

своју позицију, своје место у преговарачком процесу, јер таква Резолуција је била јако велики импетус у претходној фази процеса интеграција Србије за отварање преговора о Споразуму о стабилизацији и придруживању. Њу смо врло радо користили и врло радо се на њу позивали у сваком разговору и према Европској унији, али и у разговору са посланицима Народне скупштине, јер је одавала дух тадашњег процеса интеграција. Сада тај дух чини ми се може бити ојачан, унапређен и поново користан за читав овај процес.

На крају, ствар која ми се чини јако важна нагластити да никако, а видим да то није случај, не треба занемартити две кључне функције који Парламент у свакој држави парламентарне демократије има, а то је законодавна функција, легислативна и функција контроле извршне власти, која никако не престаје, она се ојачава и има простора и за даље њено унапређење. Никако не треба занемарити да сам преговарачки процес, прати живи процес усвајања усклађених закона, и ето вам још један од кључних разлога зашто морамо радити заједно у координацији како би се агенда хармонизације или уклађивања могла врло јасно пратити и овде у Скупштини. Додатни разлог је и и Парламент помогао да успемо са нашом намером да читав процес и буде као такав убрзан. Наравно контролна функција, која јесте један од најтежих али и најважнијих облика деловања, које Парламент и народни посланици могу имати и која ће се само појачавати кроз наредне фазе, кроз механизме, које постигнемо као договор у фази преговора, што је само још један додатак читавом овом процесу.

И на крају, да кажем личних ставова везаних за мене сада као шефа преговарачког тима. Бићу на располагању, не само Одбору за европске интеграције, него сваком од Одбора Народне скупштине када год ме позовете. Моја ће обавеза бити да иза сваког састанка, или пре сваког састанка у Бриселу, као фази преговарачког процеса о томе обавестим Народну скупштину. И увек сам отворена за свако питање, сваку сугестију и коментар, како да овај процес учинимо и ефикаснијим и бржим, али и транспарентнијим и много ширим, односно много више отвореним за све оне који у њему заиста треба да имају места. Разлог за то лежи у мом разумевању да овај процес није само ствар Владе. Процес је власништво читавог друштва, читаве државе, јер чланица Европске уније постаје држава као таква, а и сам процес до чланства је заправо најважнија ствар, јер он подразумева огромне реформе које не почињемо сада, али које настављамо и воде ка својој кулминацији кроз чланство у Унији. То је оно што доноси највише користи за нас, као обичне грађане Србије, али сутра у Европи као грађане Европе.

Хвала Вам најлепше на пажњи.

The role of national Parliaments in the area of freedom, security and justice

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Introduction

The Treaty of Lisbon has brought up major changes to the role of national Parliaments. These are illustrated in articles 5, 12 TEU and in the second Protocol on the application of the principles of subsidiarity and proportionality annexed to the Treaty on European Union and the Treaty on Functioning of the European Union.

Equally important, are the changes in the role of EU institutions in criminal matters, which are marked by the development of the Union as an "area of freedom, security and justice". This field covers the areas of immigration, asylum, prevention and combating crime, police and judicial cooperation, mutual recognition of judgments and judicial decisions in criminal matters, harmonization of criminal legislation. This paper focuses on the issue how the national Parliaments using the powers given to them by the Treaty of Lisbon, may contribute to the harmonization of criminal law [1].

I. The competences of national Parliaments under the Treaty of Lisbon

A. Conditions

The importance of the participation of national Parliaments in the function of EU in a formal and institutionalized manner, has been fully acknowledged by the Treaty of Lisbon. This has come as an answer to all those who had argued that the national Parliaments had lost a significant part of their powers in the EU integration process due to the strengthening of European Parliament and Commission and national governments in Council negotiations. Indeed, national Parliaments had found themselves more and more alienated from the European policy making process. The need to address the role of national Parliaments in the European architecture was referred to in the Declaration on the future of the Union annexed

[1] Art. 67 TFEU.

to the Treaty of Nice of 2001, while the Laecken Declaration mentioned the legitimacy which national Parliaments contribute to the European project. Explicit provisions on this issue were included in the Constitutional Treaty which survived into the Treaty of Lisbon [2].

Under the Treaty of Lisbon, article 12 TEU provides that national Parliaments control if the draft legislative acts of the Union, which are forwarded to them, respect the principle of subsidiarity according to the procedure described in the Protocol on the application of the principles of subsidiarity and proportionality. This Protocol establishes the so called "early warning mechanism", that is a really a separate national stage in the legislative procedure in the Union, in which preventive control of subsidiarity principle is performed by national Parliaments. This mechanism includes the conditions under which the control takes place, the extent of the control and the legal consequences of the possible rejection of a draft legislative proposal due to non compliance with the subsidiarity principle.

In particular, all draft legislative proposals (either initiated by Commission, EP, group of member states, Court of Justice, ECB, EIB), are forwarded to national Parliaments, which in a period of eight weeks may issue a reasoned opinion whether the draft proposal complies with the principle of subsidiarity. During this eight-week period, the draft proposal is not placed on a provisional agenda for the Council.

B. Scope of control -Subsidiarity principle

As mentioned before, the scope of the control exercised by national Parliaments consists in the compliance with the principle of subsidiarity. Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action, cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level. The main goal of the subsidiarity principle, is to ensure that decisions should be made as close as possible to the citizens. This principle defines whether or not, actions must be taken at Union level by using as criteria the scale and the effectiveness of the proposed action at Union level to achieve the objectives compared to action at member states level (central, regional or local).

C. The legal consequences

In the framework of the "early warning mechanism", the Treaty of Lisbon repeating the solutions given by the Constitutional Treaty allows for the opinion of national Parliaments on

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2 On the continuity of provisions from the Constitutional Treaty into the Treaty of Lisbon G. Barett, E.L.Rev. 2008 p. 66

3 Art. 5 par. 3 TEU.

4 Mitsilegas EU Criminal Law p. 48

non compliance of a draft legislative proposal with the principle of subsidiarity to result under specific requirements to a review of the draft by the proposer.

In particular, if the reasoned opinions on a draft legislative act's non-compliance with the principle of subsidiarity, represent at least one third of all the votes allocated to the national Parliaments, (or a 25% of all the votes, if the draft concerns an issue in the area of freedom, security and justice) the draft must be reviewed by the proposer (Commission, the group of Member States, the European Parliament, the Court of Justice, the European Central Bank or the European Investment Bank), who decides with a reasoning of whether to maintain, amend or withdraw the draft [5].

In order to reinforce the subsidiarity control mechanism, the Treaty of Lisbon introduced a novelty consisting in the power to block legislation under the conditions of art. 7(3) b of the Protocol, on the application of the principles of subsidiarity and proportionality.

In draft legislative proposals under the ordinary legislative procedure, if reasoned opinions on the noncompliance with the principle of subsidiarity represent at least a simple majority of the votes allocated to the national Parliaments, the proposal must be reviewed. If the Commission chooses to maintain the proposal, it delivers a reasoned opinion on the compliance with the subsidiarity principle and submits to the Union legislator, for consideration. Before concluding the first reading in the ordinary legislative procedure, the legislator (the European Parliament and the Council) shall consider whether the legislative proposal is compatible with the principle of subsidiarity, taking into account the opinions of the majority of national Parliaments and of the Commission.

If, and that is a novelty compared to Constitutional Treaty, a majority of 55% of Council members or a majority of the votes cast in the European Parliament, either would suffice, are of the opinion that the proposal is not compatible with the principle of subsidiarity, then it shall not be given further consideration. Moreover, actions on grounds of infringement of the principle of subsidiarity may be brought before the Court of Justice by the member states on behalf of their national Parliament according to their legal order (art. 8 of the Protocol).

D. Asessment of the Protocol

The institutional framework established by the Protocol on the application of the principles of subsidiarity and proportionality, is a substantial step towards democratic legitimacy in EU. In particular, the subsidiarity principle control as exercised by national Parliaments at an institutional level, may affect directly the EU legislation, because it has, under the con-

5 Art. 7 par. 2 Protocol on the application of the principles of subsidiarity and proportionality

ditions of art. 7 par. 3 d, the power to block legislation for non – compliance with the subsidiarity principle. In practice, there are many reasons to be skeptical about the exercise by national Parliaments of the powers granted to them by the Protocol. Firstly, not all national Parliaments have the resources to scrutinize in depth complex legislative proposals within a relatively short period of time. The lack of resources, or even the unwillingness to spare them for this procedure, would lead to an inability to present reasoned opinions. Secondly, due to the complexity of the proposals, the coordination with other national Parliaments is not usually easy to achieve. Thirdly, and most importantly, each national Parliament has a different degree of independence vis –a- vis the executive. The more executive dominated they are, the less control they exercise. If there is no tradition of scrutiny of their own executive, it is not likely that they would become actively involved in the EU legislative process. Furthermore, the provision of the Protocol that the reasoned opinion refers to non compliance only to the principle of subsidiarity, and not that of proportionality may be considered as regrettable, since it is difficult to disaggregate between the two principles and there is little reason why national Parliaments should not express an opinion on both principles, given the fact that draft legislative acts should be justified with regard to both principles.

However, the system established by the Protocol may motivate national Parliaments and governments to better resource national Parliaments in order to fulfill their role, and may oblige the EU legislator to justify the draft legislative acts, with regard to both principles, so that the community competency is viewed as "a pluralistic dialogue between various political actors at national and Union level" [8].

II. The Treaty of Lisbon and EU Criminal Law

A. Criminal procedure

The provisions of the Treaty of Lisbon, which concern the harmonization of national criminal legislation are articles 82- 83 TFEU under the title "Judicial cooperation in criminal matters". At this point, the analysis focuses on par. 2 of Article 82, which refers to harmonizing the domestic criminal procedure. According to art. 82 par. 2 TFEU, the EU may adopt in the form of directives: minimum rules about mutual admissibility of evidence between Member States, the rights of individuals in criminal procedure, the rights of victims of crime or any other aspects of criminal procedure, which the Council has identified in advance by decision.

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6 Craig, The Lisbon Treaty 2010, p. 186, Tridimas, The general principles of EU law second ed., p. 191. Wagner, National Parliaments and democratic control in the EU, European Policy Brief 29.

7 Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties. In any proportionality inquiry the relevant interests must be identified und weighted before the balancing operation which consists of three stages: a) whether the measure was suitable to achieve the desired end, b)whether it was necessary to achieve it and c) whether the measure imposed a burden on the individual that was excessive in relation to the objective sought to achieved (proportionality strict sensu) [7]. The principle of proportionality applies once it is decided that Union action is necessary and seek to define its scope

8 Tridimas, p. 191

This power may be exercised under two conditions. The first condition is, that these directives should take into account the national legal traditions and systems. The second condition is that the measure would be necessary to facilitate mutual recognition and policing and criminal law cooperation with a cross–border dimension. This last condition, raises the question if the measures would be limited in matters, which have a specific relationship with cross–border proceedings [9]. It has been argued, that particularly the harmonization of the laws of evidence, cannot be restricted only to cases with specific cross-border element, since the evidence may have been collected before this element appeared. Therefore, it might be better to demand only a degree of likelihood that the rules in question would have a particular impact on cross–border proceedings [10].

In any case, the operation of mutual recognition is linked with national sovereignty, since it has led to rethinking of territoriality. National judicial decisions and consequently national legal systems, must be based on mutual trust and must be respected by other national jurisdictions in EU [11], even if the procedural standards by which a conviction was imposed by one member state are different or lower than the ones in the executing state. The Treaty of Lisbon, is attempting to resolve this issue by granting the Union, the competence to adopt minimum rules on mutual admissibility of evidence between Member States, the rights of individuals in criminal procedure, the rights of victims of crime or any other aspects of criminal procedure. Steps toward this direction are the Resolution of the Council of 30.11.2009 on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings persons and the subsequently adopted Directives 2010/64/EU, on the right to interpretation and translation in criminal proceedings and 2012/13/EU, on the right to information in criminal proceedings together with the Green Paper on pre-trial detention. These are efforts to guarantee a minimum level of protection for the accused persons in the entire EU and strike a balance between fundamental rights and enforcement of national decisions. Given the fact that the competence of EU to adopt such rules has been conferred only in order to promote mutual recognition, it is unlikely that it would lead to a debate on common EU criminal law standards [12]. Nevertheless, such a debate is necessary because of the diversity of the criminal procedure systems in member states, which really contain the “fundamental rules regulating the relationship between individual and state” [13].

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9 Peers, EU Criminal Law and the Treaty of Lisbon ELRev. 2008 p. 514

10 Peers, p. 514

11 Mitsilegas, p. 158

12 Mitsilegas, p. 159

12 Mitsilegas, p. 158

B. Substantive criminal law

According to Lisbon Treaty, the Union has the competence to establish minimum rules concerning the definition of criminal offences and sanctions in the areas of serious crime with cross–border dimension, such as terrorism, trafficking of human beings, sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting as a means of payment, computer crime and organized crime. The cross-border dimension results either from the nature and impact of these offences, or from the need to combat them commonly. In any case, other areas besides the ones mentioned above, may be added by the Council, if they meet the criteria of seriousness and cross–border dimension. The Council must act unanimously with the consent of European Parliament [14].

Even more significant is the power conferred by TFEU to adopt criminal law provisions for other Union policies, which have been subjected to harmonization measures if the approximation of criminal laws of member states is essential to ensure effective implementation of these policies [15].

The so called emergency brake, is the power for a member state to object to a draft directive, on the grounds that it would affect fundamental aspects of its criminal justice system and refers it to the European Council. This motion suspends the ordinary legislative procedure. Within four months, in case of a consensus, the European Council will refer the draft directive back to the Council and the suspension will be terminated. If there is disagreement, a group of at least nine member states could launch enhanced cooperation, on the basis of the draft directive concerned, without needing to comply with any requirements, which would normally apply, before enhanced cooperation could be authorized.

Reviewing the provisions of art. 83 TFEU, on the competence of the Union in the area of criminal law, we remark that it covers three different categories. The first category of offences are restrictively enumerated in par. 1 (terrorism, trafficking of human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting as a means of payment, computer crime and organized crime). In the second category fall offences, which meet the following criteria: particularly serious crime, cross border dimension resulting from the nature and impact

9 Peers, EU Criminal Law and the Treaty of Lisbon ELRev. 2008 p. 514

10 Peers, p. 514

11 Mitsilegas, p. 158

12 Mitsilegas, p. 159

13 Mitsilegas, p. 158

of these offences or from the need to combat them commonly with the additional procedural requirements of unanimous decision of the Council and consent of European Parliament. The third category comprises of offences which fulfill much broader criteria. These concern an area of Union policy subject to harmonization measures, and they ensure effective implementation of this area of policy.

Given that the offences falling in the third category, may concern any area of Union policy subject to harmonization as long as they ensure effective implementation of this policy, we should examine the impact of this provision on the democratic self- determination of member states. In particular, the first issue concerns the punishment of a conduct, not because it causes damage to society, but because the punishment is an essential instrument to support the goal of harmonization. It lies with the national legislator, to decide which values are to be protected by punishment because these values are connected with the history, the tradition and other factors important for the self -esteem of a community. That is the reason why such sovereign powers may only limitedly be transferred to the Union [16].

The second issue is that the Union's competence to harmonize criminal law provisions seems to be unrestricted. This occurs, since it may cover any area of Union policy subject to harmonization such as racism and xenophobia, intellectual property, competition, common rural policy etc. It has been argued that the harmonization measures should exist prior to the criminal law measures, because otherwise, there would be no Union policy to be effectively implemented by latter; the criminal law measures, should at least that be adopted immediately after the adoption of the harmonization legislation. Even in the light of this interpretation, the EU competence remains largely unrestricted, which may undermine the competence in this area of the democratically elected national legislator and, therefore, affect the democratic self determination of member states.

In order to achieve a reasonable balance between national sovereignty and identity on one hand, and effectiveness and democratic legitimacy in EU on the other hand, the provision of art. 83 par.2 TFEU is subject to restrictive interpretation. According to such an interpretation, only when a serious deficit in the implementation of Union policies has been clearly manifested - and can be done, solely through criminal sanctions – may the competence of the Union be deemed conferred [18].

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14 Art. 83par. 1 TFEU

15 Art. 83par. 1 TFEU

16 BVerfG, 2 be 2/08 30.6.2009, par. 361, 363, "criminal law as a means to an end" Mitsilegas, p. 112

17 Peers, p. 520-521

18 BVerfG par. 362

III. The role of national Parliaments in harmonizing criminal law

A. The goal of harmonization of criminal law

With the exception of art. 83 par.1 TFEU (combating serious cross-border crime) the provisions of TFEU (art. 82, 83) concern the harmonization of criminal law regarding criminal law as a means to end, other than punishing crime for itself. In the criminal procedure, minimum rules may be established on: mutual admissibility of evidence between Member States, the rights of individuals in criminal procedure, the rights of victims of crime or any other aspects of criminal procedure with the aim to facilitate mutual recognition and policing and criminal law cooperation with a cross–border dimension. While in substantive law, minimum rules may be adopted defining criminal offences, in order to ensure effective implementation of Union policies, which have been subjected to harmonization measures. In both cases, the member states may use the so called emergency brake, whose objective is to a draft directive on the grounds that it would affect fundamental aspects of their criminal justice system and then refer it to the European Council.

As mentioned above, criminal law - both substantive and procedural - is closely linked to national sovereignty and identity, since each society decides for itself, based on tradition, history and national characteristics, which conduct it deems punishable, how this punishment is imposed, which rights are granted to the accused, which powers the state may use to investigate crime. These decisions shape the fundamental aspects of criminal justice system and that is why national sovereignty and identity are clearly manifested in these aspects.

The Treaty of Lisbon, by admitting the impact a criminal law measure has on a criminal justice system, as a reason to activate the emergency brake is attempting to strike a reasonable balance between national sovereignty and identity on one hand, and effectiveness and democratic legitimacy in EU on the other hand [19].

Another means to this end, is the subsidiarity principle control performed by national Parliaments. This control is exercised in all areas, in which the Union has not exclusive competence, among which is the area of freedom, security and justice. Consequently, national Parliaments may issue a reasoned opinion on non-compliance with the principle of subsidiarity of all draft directives, including those whose legal basis are in art. 82, 83 TFEU.

The subsidiarity principle defines whether or not, actions must be taken at Union level by using as criteria the scale and the effectiveness of the proposed action, to better achieve the objectives compared to action at member states level (central, regional or local). When

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19 Peers, p. 529

20 Art. 4 TFEU

draft directives concern e.g. minimum rules defining criminal offences, it lies with the national Parliaments to control if the objectives, which is the implementation of Union policy, may be achieved better by a national criminal provision, or even by non-criminal provisions using as criteria the scale and the effectiveness of the draft directive. In order to judge the effectiveness of the measure, indicators such as the existing national provisions, inconsistencies with the criminal legal system would be useful.

Conclusion

It is obvious, that national Parliaments have at the institutional level, certain powers to influence EU legislation in the area of harmonization of criminal law, though limited by the scope of their control, which is restricted to the subsidiarity principle and by practical difficulties arisen from the degree of their independency from the executive. Nevertheless, the exercise of these powers becomes more important in criminal law harmonization process, due to the fact that in this area, a reasonable balance between national sovereignty and effectiveness in EU is more difficult to strike. Therefore, it is absolutely necessary for national Parliaments to take advantage of all powers given to them by the Treaty of Lisbon. Moreover, they could, following internal procedures, motivate their governments to use the emergency brake. However, it would be useful to debate on an extension of these powers in a future review of the Treaties, in the area of harmonization of criminal law. It remains to be seen, if they live up to the expectations of the citizens of Europe.


Asesores Plásticos

European Citizens' Right to non-discrimination, it's added value and the role of national parliaments in drafting non-discrimination policies and reviewing their implementation

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ABSTRACT
This paper consists of two parts. In the first, it summarizes European Citizens' Right to non-discrimination, its added value, its efficiency and its achievements. In the second part, it emphasizes the role of the national parliaments in drafting non-discrimination policies and reviewing their implementation. It also examines the structure and role of two parliamentary committees on Equality in UK and Greece, and suggests best practices for the review of non-discrimination.
Keywords: Non-discrimination; Roma; gender discrimination; Serbia;

1. Introduction: Serbia and the principle of non-discrimination

Serbia is a contracting party to all international instruments that recognize the principle of non-discrimination. Still, Serbia is reported by the European Commission (2013: 9) to face discrimination problems with minorities (Roma but also Bosniaks, Albanians), people with disabilities and LGBT. Women also face multiple discrimination, especially Roma women, as well as domestic violence (CERD 2013). Serbia has adopted adequate legislation e.g. for the punishment of hate crime but still it faces problems of implementation and enforcement (Bertelsmann 2012: 8-9). This is why the Serbian government has adopted the Strategy for Prevention and Protection against discrimination on June 27, 2013 while the Action Plan is currently being drafted. According to the Strategy, there are two institutions which supervise the implementation: The Office for Human and Minority Rights and the Commission for the Protection of Equality and Protection of Citizens.

As Serbia is an EU candidate country since March 2012, and Chapters 23 and 24 of the EU's 35 negotiation chapters involve justice and human rights and fighting against discrimination, it is of great interest to implement the principle of non-discrimination in a way that is problem free.

2. The principle of non-discrimination at the international level

2.1. The principle of non-discrimination in the international and European level

The fundamental principle of non-discrimination in securing the enjoyment of human rights is considered to be binding law (jus cogens) at the international level (Inter-American Human Rights Court, 2003: 22). The principle prohibits the contracting states to treat persons differently in similar situations.

The principle of non-discrimination in its various formulations is protected by many International Conventions and Covenants of the United Nations (e.g. Institute for International Law and Human Rights 2009: 3-5), to which Greece and Serbia are contracting parties: a) The UN Charter (Art. 1(3), 13(1)(b), 55(c) and 76), b) The Universal Declaration of Human Rights (Art. 2 and 7), c) The International Covenant on Economic, Social and Cultural Rights (1966), d) The International Covenant on Civil and Political Rights (1966 – art. 26), e) The International Convention on the Elimination of All Forms of Racial Discrimination and its Committee CERD (1966), f) The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1989) and its Optional Protocol (2009), g) The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW – 1979) and its Optional Protocol (1999), h) The Convention on the Rights of the Child (1989) and its Optional Protocol (2011), i) The Convention on the Rights of Persons with Disabilities (2006) and its Optional Protocol, j) The UNESCO convention against Discrimination in Education and just recently k) The Istanbul Convention of the Council of Europe on preventing and combating violence against Women and Domestic Violence (2011)

2.2. The principle of non-discrimination and the Council of Europe

Individuals are protected against discrimination by two main conventions adopted in the framework of the Council of Europe.

The most significant Convention is the European Convention on Human Rights (1950) which includes: a) Art. 14 ECHR, which has an auxiliary character and a more limited scope than the UN Conventions, since it protects individuals only for rights and freedoms “set forth by the Convention” and b) Its Protocol no 12 (2005), which prohibits any discrimination in the enjoyment of any “right set forth by law” “without an objective and reasonable justification”. It covers all fields of national legislation, but applies only to public authorities (European Conference of Presidents of Parliament (2010). This Convention is very important since the EU is going to adhere to it according to the Lisbon Treaty.

Recently in 2011, the European Convention on Preventing and Combating Violence against Women and domestic violence (Istanbul Convention) was signed from some European States (Serbia included). The Convention is going to enter into force in August 2014.

3. The EU protection of the principle of non-discrimination

3.1. The Initial EEC framework on employee's right to non-discrimination

Since 1958, the Treaty establishing the European Economic Community (EEC) and now the Treaty of Functioning of the European Union (TFEU), has respected three main sets of provisions against discrimination:

a) The expressed prohibition for nationals of Member States of any discrimination because of nationality 'within the scope of application of this Treaty, and without prejudice to any special provisions contained therein' (ex Art. 7 EEC now Art. 18 TFEU),
b) The prohibition of discrimination in the framework of free movement of persons and services e.g. as regards employment, remuneration and other conditions of work and employment. Equal treatment was extended by the legislation in social and fiscal advantages, such as equal access to house loans for employees, equal exemption from taxes, recognition of military service in seniority, exemptions for big families in transport etc., (ex Art. 48 EEC and now Art. 45 TFEU, ex Reg. (EEC) 1612/1968 and now Reg. (EU) 492/2011) and
c) Equal pay of men and women (ex Art. 119 EEC now Art. 157 TFEU).

In addition, the Court of Justice of the European Union has recognized the principle of non-discrimination as a general principle of EU Law since 1977 as Professor Pliakos, A. (2012: 83) explains.

3.2. Non Discrimination and Citizens' Rights

Since 1993, the Treaty of Maastricht has introduced the European citizenship, which is "additional to" the national citizenship, as well as the European Citizens' Rights. These rights are exercised in accordance with the conditions and limits defined by the Treaties and by the measures adopted thereunder (ex Art. 8A EC, now Art. 20 TFEU). Today, the Treaty of Lisbon has classified them in Part II under the heading "Non-Discrimination and Citizenship".

The Treaty of Amsterdam (1999) provided a legal basis (ex Art. 17 EC now Art. 19 TFEU), so that the Council of EU could unanimously adopt measures for combating certain forms of discrimination based on sex, racial or ethnic origin, religion or belief, disability, age and sexual orientation, supplementing the already existing comprehensive body of gender equality law.

3.3. Non-discrimination in the Treaty of Lisbon (2009)

The Treaty of Lisbon (2009), reinforces the principle of non-discrimination with the following provisions:

a) Equality is recognized as one of the six "Values of the EU" (Art. 2 TEU), which if a member State infringes, the EU may impose sanctions in a procedure described in Art. 7 TEU (Kanellopoulos, P. 2010:126),

b) Equality of the European Citizens and their right of equal attention before the EU institutions and bodies are recognized by Art. 9 TEU, as an effect of the democratic principle as E. Sachpekidou describes (2013: 126-127),
c) The principle of non-discrimination is taken into account in all EU Policies as a "horizontal clause" in Art 10 TFEU (Papagiannis, D. 2011: 60-61),
   - Gender discrimination is expressly prohibited (Art. 8 TFEU),
d) Gender discrimination is expressly prohibited (Art. 8 TFEU),
e) Under the ordinary legislative procedure, the European Parliament and the Council may: a) take "measures against discrimination because of nationality" (Art. 18 para. 2 TFEU) and b) adopt the basic "principles of Union incentive measures, excluding any harmonization of the laws and regulations of the Member States, to support action taken by the Member States, in order to contribute to the achievement of the objectives" (Art. 19 para.2 TFEU).

4. Non-discrimination and the European Citizen's Rights in the case law of the Court of Justice of the EU

In its case law, the Court of Justice of the EU has given European citizenship a content going beyond the express Treaty provisions. Former Advocate General F. Jacobs (2007: 593-610) explains that the Court has used 3 ways:

1) The CJEU used citizenship to broaden the scope of the non-discrimination principle as a Citizen's right "because the subject matter fell within the scope of EC law" "*rationae personae*" since the claimant was "lawfully resident" in another member state:
   a) To 'financial benefits' such as the child allowance (*Martinez Sala*, C-85/96) and recourse to social assistance system (*Trojani*, C-456/02) or minimum subsistence allowance refused because of nationality grounds (*Grzelczyk*, C-184/99) and
   b) To maintenance grants to students (*Bidar* C-209/03 in contrast with *Lair*, 39/86) and to tide over allowance refused because the graduate had not completed her secondary education in Belgium (*D'Hoop*, C-224/98).

2) The CJEU used citizenship, to broaden the scope of the non-discrimination principle in the context of market freedoms. As Papagiannis D. (2010: 469-472) explains, the European worker must have the equal access, equal treatment and the same social and tax advantages. E.g:
   a) *Christos Konstantinidis* (C-168/91) challenged the prescribed system of transliteration from the Greek to the Roman alphabet because he was obliged to accept in Germany the name Hrestos Konstantinides which he claimed caused his loss of dignity and inconvenience in daily and professional life and
   b) *Collins* (C-138/02) claimed a job-seeker's allowance in the UK, but he was rejected because he did not fulfill the national residence requirement, which was found to be legitimate in order to provide his genuine link with that market.

3) The CJEU used citizenship as an independent source of rights which affects symbolically important interests of the citizen (not economic ones). E.g.:
   a) To allow Spanish children to change their last names in another member state according to the Spanish way with dual name of father and mother (Garcia Avello, C-148/02) and
   b) To accept the right of residence for a Chinese baby girl and her Chinese mother as "carer" in the UK, for an indefinite period (*Chen*, C-200/02), since the baby was born in Ireland and thus gained Irish nationality (*ius soli*).

In addition, the CJEU has applied the principle of non-discrimination in European Arrest Warrant cases: The EU legislation gives the right to the member State that receives the European Arrest Warrant to opt not to execute it against a national or a resident of that member state, if that state undertakes to execute itself the sentence or detention order in accordance with its domestic law. The CJEU ruled in *Wolzenburg* (C-123/08), that it was discriminatory for the member state of residence to request supplementary administrative requirements, e.g. possession of a residence permit of indefinite duration besides 5 years residence in order to opt not to execute the European Arrest Warrant as Marguery, T. explains.

However, De Witte, F. (2011) argues that there are some limits in the use of the principle of non-discrimination as an instrument for the development of the concept of Union citizenship, particularly in relation to social rights, which are sustained by notions of solidarity and generalized reciprocity bound with national citizenship.

5. European Citizenship rights which deal with non-discrimination

The Treaty of Maastricht (1993) provided for a list of citizenship rights to be granted to nationals of Member States. Today, this list comprises rights, most of which have as an aim to allow the European Citizen to enjoy free movement, political rights and consular protection under the same conditions as nationals of the host Member State:

a) The right to move and reside freely within the territory of the Member States

The Directive 2004/38/EC has codified the "acquis communautaire". The Directive applies to all European Citizens, not only for the Economically Active Persons (workers and professionals).

The right is exercised under the condition that the European citizen:

   a) Is covered by appropriate sickness insurance and
   b) Possesses sufficient resources so that he/she will not become a burden on the public finances of the host Member State (Art. 7 of the Directive).

The Directive 2004/38/EC allows economically inactive European citizens and students

from other states, to bring members of their family, even if they have the nationality of a third state, and it also allows the facilitation of other relatives such as aunts, grandfathers who are in need, and live under the same roof with him/her, to join the European citizen in the host Member State (Art. 2 and 3 of the Directive).

One of the most important provisions affected by the European citizenship, is that of the expulsion. A member state may not expel a citizen of another member State if he/she has been already integrated in that society or has family there (Art. 28 of the Directive).

b) The right to vote and to stand as candidates in elections to the European Parliament and in municipal elections in their Member State of residence, under the same conditions as nationals of that State

Directives 93/109/EC and 94/80/EC specify the conditions and the procedure for registration so that the European Citizen living in another Member State may be qualified to vote or stand as candidate. In order to avoid discrimination, EU citizens can become members or establish a political party in whichever Member State they reside. The European Parliament recommends that the candidates in European Parliament's elections must be men and women in equal numbers (Bulgarian Gender Research Foundation 2009: 1).

c) The right to enjoy, in the territory of a third country in which the Member State of which they are nationals is not represented, the protection of the diplomatic and consular authorities of any Member State on the same conditions as the nationals of that State

The Decision of the Representatives of the Member States 95/553/EC provides the rights of the European Citizen abroad in order to avoid discrimination. The European Commission proposed a new Directive (COM[2011] 881 final) specifying in each third country, which member state will coordinate all efforts and launched a dedicated website on consular protection for informing the citizens. The proposal, which is still under consideration, enhances the right to consular protection by:

- Clarifying the content of this right,
- Facilitating the necessary cooperation and coordination procedures with clearer responsibilities and improved burden-sharing, in crisis situations so as to ensure non-discrimination in times of crisis and
- Including non-EU family members in its scope of application, with the purpose of strengthening the right to family life, as well as the rights of the child.

d) The right to address the institutions and advisory bodies of the Union in a Treaty language and to obtain a reply in the same language.

The Rules of Procedure of each EU institution provide rules for the exercise of this right.

6. The EU Charter of Fundamental Rights

6.1. The Charter's main characteristics

The Charter is an innovative instrument, because it brings together in one text, all the fundamental rights protected in the EU, making them visible and predictable. The Charter of Fundamental Rights constitutes a further step in European integration as Christianos emphasizes (2011: 21).

The rights and principles enshrined in the Charter, stem from the constitutional traditions and international conventions common to the Member States, the European Convention on Human Rights, the Social Charters adopted by the Community and the Council of Europe, and the case law of the Court of Justice of the EU and the European Court of Human Rights. As Papagiannis (2011: 74-75 and 79) explains, the originality of the Charter lies on the fact that it includes fundamental rights of third generation"; it does not make the traditional distinction in civil, political, and social rights, but rather a categorisation in 6 categories: Dignity, Freedoms, Equality, Solidarity, Citizens' Rights and Justice. Though rights also protected by ECHR - will have the concept and scope determined by the European Court of Human Rights- the EU law may offer broader protection in comparison with ECHR (Art. 52, para. III) as Sachpekidou analyses (2013: 146).

The Charter has the same binding legal force as the Treaties since 2009 and applies primarily to the institutions and bodies of the Union and to the Member States, only when they are implementing EU law. The Treaty explicitly states that the provisions of the Charter do not extend the powers of the Union as defined in the Treaties (Art. 51).

6.2. The Charter of Fundamental Rights and the principle of non-discrimination

The Charter prohibits any discrimination based on an indicative long list of grounds (Art. 21): nationality of a member state, sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property or birth, disability, age or sexual orientation. The Charter has one chapter devoted in "Equality" where more rights and principles are proclaimed. The Fundamental Rights Agency in Vienna, is the European Agency that aims to collect and provide reliable and comparable data on fundamental rights (Reg. 168/2007).

6.3. Effective implementation of the Charter of Fundamental Rights

The European Commission (2010), has issued its Strategy for the effective implementation of the Charter of Fundamental Rights, where it describes a *preventive approach*. This consists of reminding the authorities of the obligation, to comply with the Charter in implementing the EU legislation and in assisting them to do so, in particular within the committees of experts set up to facilitate the transposition of the directives.

The European Commission (2012a: 10), has launched the e-justice portal, which provides the public with information about legal remedies in cases of alleged violations of non discrimination and fundamental rights. It also presents an *Annual Progress Report*, on the application of the Charter to the European Parliament and the Council.

The Court of Justice of the European Union relies on the Charter even to annul provisions of a Directive (European Commission 2012b: 4 and 25).

7. Sex discrimination

Sex discrimination was initially dealt by Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion and working conditions as well as by Directive 79/7/EEC on equal treatment in social security. Both Directives were recasted by Directive 2006/54/EC. The new Directive provides that there shall be no discrimination whatsoever on grounds of sex, either directly or indirectly, by reference in particular to marital or family status. This Directive is without prejudice to provisions concerning the protection of women, particularly as regards pregnancy and maternity dealt by Directive 92/85/EEC.

In case C-104/09, *Roca Álvarez*, a father, asked his employer, to accord him leave during the first 9 months to take care of his baby. The employer refused, because Mr. Roca's wife was not an employee but self employed. According to the Spanish law, he could take that leave only if his wife was also an employee. The Court found that the Spanish law was discriminatory because this leave seems to be accorded to workers in their capacity as parents of the child and male employees who are fathers are not entitled to the same leave as mothers who are employees, unless the child's mother is also an employee and not a self employed person. Depriving fathers of that leave, on the sole ground that the child's mother is not an employed person, means that a self-employed woman would have to limit her activity and bear the burden alone.

Directive 2004/113/EC implements the principle of equal treatment between men and women, in the access to and supply of goods and services e.g. in the social protection, health care but not in education, media and advertising. Article 5 of Directive 2004/113/EEC included:

- A unisex rule for new contracts that prohibited the use of sex as an actuarial factor in the calculation of premiums and benefits as to result in differences in individuals' premiums and benefits (art. 5 & 1) and
- A derogation from the unisex rule by allowing Member States to maintain proportionate differences in individuals' premiums and benefits where the use of sex is a determining factor in the assessment of risk based on relevant and accurate actuarial and statistical data (art. 5 & 2).

The CJEU in the "*Test-Achats ruling*" (C-236/09), declared Article 5(2) invalid with effect from 21 December 201,2 because it enabled Member States to maintain *without temporal limitation an exemption* from the "unisex rule" in breach of the principle of non discrimination in the EU Charter of Fundamental Rights. In 2011, the European Commission (2012a: 7) has issued Guidelines in order to confront implications in the insurance sector of all Member States.

In addition, the European Commission (2010b) has issued its Strategy on Equality between Women and Men, which tackles the indirect discrimination and the real barriers on equal pay and equal access to decision making.

The Directive 2010/41/EU on equal treatment, is also of great importance, between self-employed men and women which was originally dealt by Directive 86/613/EEC. The new Directive 'notably improves the social and maternity protection of female self-employed workers' as Craig and De Burca analyse (2011: 891).

8. The Framework Directives on non-discrimination

8.1. The concept of discrimination in the Framework Directives

The Framework Directives use similar definitions for the concept of discrimination. According to Art. 2, direct discrimination is the case "where one person is treated less favourably than another is, has been, or would be treated in a comparable situation solely on grounds of e.g. racial or ethnic origin". Indirect discrimination is the case "where an apparently neutral provision, criterion or practice would put persons of a specific characteristic" e.g. disability at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

The Framework Directives consider as a priori discrimination:

- The harassment as the unwanted conduct which can take different forms, from verbal or written comments, gestures or behaviour, but it has to be serious enough to create an intimidating, humiliating or offensive environment and
- An instruction to discriminate against persons of a specific characteristic.

Direct discrimination is allowed only for two reasons:

- when foreseen in the Directive for "genuine and determining occupational requirements" (e.g. religion) only if the objective is legitimate and the requirement is proportionate.
- for reasons of public order, public safety and public health.

In discrimination cases, it is often extremely difficult to obtain the evidence necessary to prove the case, as it is often in the hands of the respondent. This problem was recognised

by the European Court of Justice (*Danfoss*, Case 109/88) and the Community legislator in Directive 97/80/EC (OJ L 14, 20.1.1998)

8.2. The added value in the battle of non-discrimination by the EU Framework Directives

Many provisions of the Framework Directives add value to the general principle of non-discrimination. The Framework Directives:

a) provide for minimum requirements allowing member States to take more stringent measures,
b) allow member states to take positive action to balance discrimination,
c) impose the obligation on member states for availability of remedies,
d) request the protection of victims from any adverse treatment by the employer as a reaction to a complaint aimed at enforcing compliance with the principle of equal treatment and
e) place the burden of proof of discrimination to the employer, since it is often extremely difficult for the employee to obtain the evidence necessary to prove discrimination (Danfoss, Case 109/88, Directive 97/80/EC).

In addition, the Directive 2000/43/EC imposed national bodies for the promotion of equality to be established, allowed collective actions to take place and promoted social dialogue and dialogue with NGOs.

8.3. The Framework Directive 2000/43/EC

The Directive 2000/43/EC on equal treatment between persons, irrespective of racial or ethnic origin prohibits discrimination on such grounds and has wide field of application, since it applies both:

- in employment, occupation and vocational training, as well as
- in non-employment areas such as social protection, health care, education and access to goods and services, including housing, which are available to the public.

As Craig and De Burca point out (2011: 868-869), the Directive does not apply to nationality based discrimination as well as to entry, residence and legal status of third country nationals.

The Directive is complemented by the Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law. It defines a common EU-wide criminal legislation, to ensure that similar behaviour constitutes an offence across EU Member States and that effective, proportionate and dissuasive criminal penalties are provided (FRA 2012b: 25).

The Directive 2000/43/EC obliges Member States to give e.g. Roma (like other EU citizens) non-discriminatory access to education, employment, vocational training, healthcare, social

protection and housing (FRAa 2012). Racial harassment is considered discrimination. An example of racial harassment against Roma students was given in Hungary. Teachers warned Roma students that they had informed the nationalist violent organisation "Hungarian Guard" for their bad behavior in school. The Authority of Equal Treatment in Hungary decided that their behavior was based on racist motives and created a phobic environment for the students (Decision 654/2009, 20 Dec 2009, Gaitenidis, N. 2014).

In EU, there are 10-12 millions Roma who face prejudice, intolerance, discrimination and social exclusion in their daily lives. In Serbia there were 108,193 Serbians belonging to the Roma minority in 2008 (OSCE 2008: 4). Discrimination against Roma is still prevalent in employment, education, health care and housing in Serbia (BTI 2014: 11).

The European Commission's (2010c) "Europe 2020 strategy" for smart, sustainable and inclusive growth will combat persistent economic and social marginalization of what constitutes Europe's largest minority. The EU Framework for national Roma integration strategies (European Commission 2011) aims to join forces at all levels (EU, national, regional) and with all stakeholders, including the Roma, to put an end to the exclusion, design positive action measures and targeted integration strategies with sufficient funding (national, EU and other) with more effective use under robust monitoring mechanism, empower the Civil Society through a stronger role for the European Platform for Roma Inclusion.

8.4. Directive 2000/78/EC

The Directive 2000/78/EC establishes a general framework for equal treatment in **employment** and occupation and vocational training (only) by prohibiting discrimination on grounds of sex, age, disability, sexual orientation, religion or belief. It had to be transposed into national law by 2003, while provisions on age and disability discrimination, by 2006. As Craig and De Burca emphasize (2011: 872), the Directive does not impose any requirement, as there is in the Directive 2000/43/EC on member States "to establish or designate an equality body or institution charged with promoting equal treatment in these fields".

As it is clarified by FRA and ECHR (2010), the Directive does not cover social protection, education, etc. and does not require Member States to establish equality bodies. This is why a proposal was submitted by the European Commission (2008), which is still under deliberation by the Council. The proposal aimed to enhance protection from discrimination outside the field of employment, in both the public and private sector in: social protection, including social security and health care; social advantages; education; access to and supply of goods and professional/commercial services which are available to the public, including housing (not between private individuals acting in a private capacity). It also aimed to enhance the **role of Equality Bodies**, in order to give independent help to victims of discrimination, conduct independent surveys on discrimination and publish reports and recommendations on discrimination.

Here, follow two examples of discrimination and the additional measures that the EU takes

8.4.1.Discrimination because of sexual orientation (LGBT and homophobia)

There is no UN International convention on the subject up to date. Thanks to the Directive 2000/78/EC LGBT persons are allowed equal treatment in employment but also in retirement pensions in EU.

The **Court of Justice of the European Union** confirmed equal treatment for married couples and registered partners if the life partner is in a situation that is legally and factually comparable to that of a married person. A registered partner in a same sex German life partnership was entitled to receive **a supplementary retirement pension under an occupational pension scheme in the same way a married partner** was (*Römer*, C-147/08).

Harassment is frequent at work which leads to invisibility of LGBT individuals. In addition, almost half of EU respondents (47%) think that discrimination on grounds of sexual orientation is widespread in their country (FRA 2010: 9).

The European Commission (2008) proposal on Directive 2000/78/EC ensured that member states decide on matters related to marital and family status, including adoption, as well as to institute and recognise or not, legally registered partnerships. However, once national law recognised such relationships as comparable to that of spouses then the principle of equal treatment should apply. Since the 2008 proposal of the European Commission, has been approved by the European Parliament but not yet by the Council, the European Parliament has created the Intergroup on LGBT Rights which is closely following the negotiations around the directive, in partnership with other Intergroups and civil society groups (European Parliament's Intergroup 2013).

8.4.2.Persons with Disabilities

The Directive 2000/78/EC ensures their equal protection while providing for the employer to take measures for their reasonable accommodation of their work place. In addition, the Charter provides for measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

The EU is bound by the UN Convention on the Rights of Persons with Disabilities since 22 January 2011 in its legislative actions as well as its policy-making, to the extent of EU competences.

In this context, the European Parliament and the Council endorsed the European Disability Strategy, which sets out the framework of action for the Commission in the field of disability and also represents the framework to implement the UNCRPD in EU. Disability rights are

reflected in legislative acts, e.g. Regulations on passenger rights covering maritime and inland waterways transport and bus & coach transport as European Commission explains (2010d). The proposal of the European Commission (2008) enhances individual measures of reasonable accommodation for effective access for a particular disabled person under the condition that it would not impose a disproportionate burden.

PART TWO: National parliaments in the EU and the principle of non - discrimination

1. Introduction

As required by UN (the Paris Principles) and OSCE, states must have a National Human Rights Institution that "can be structured in a number of different ways with differing powers and functions, provided they exist independently from other branches of government". This is done in many states (Institute for International Law and Human Rights, 2009: 17-18). The EU has provided for national bodies for monitoring equality as regulated in its Directives (notably Directive 2000/43/EC).

1.2. The position of National Parliaments in the EU political and legal system

National Parliaments as legislators, should act in order to safeguard the principle of non discrimination. However in the EU, national parliamentary powers are reduced to transpose EU legislation, instead of controlling the government before it gets into binding legislation, since 80% of the economic and social regulation of the Member States is based on EU Directives (BVerfGe 89 (155) – Pernice, I., 2001: 5-6).

The Treaty of Lisbon (2009) has provided for a system of cooperation between National Parliaments and the European Commission in view of its Protocol no 2, on the control of the principle of subsidiarity. The veto power of a number of National Parliaments under certain strict prerequisites and procedures, has given national parliaments an extended power to be informed on EU decision making as Chrysomalis, M. explains (2010: 27-29).

1.3. National parliaments as legislators

National Parliaments must make a prerequisite that future legislation respects the principle of non discrimination. As M. Garoyan (2010: 2) puts it, "as national parliaments, it is our duty to legislate by making it a rule to maintain and strengthen the principle of non-discrimination and continuously revise relevant legislative regulations but also existing protective measures". He continues that "the strengthening of institutions ... against discrimination is of utmost importance".

There are such specialized institutions, e.g. in Cyprus there is the Authority against Racism and Discrimination. What is most important, however, is the existence of specialized Parlia-

mentary bodies e.g. the Employment and Equality Committee (Finland), the Committee on the Labour Market (Sweden), the National Assembly Task Force on the Rights of Women and Equal Opportunities for Men and Women (France), the Committee on Family Affairs, Senior Citizens, Women and Youth (Germany) and the Committee on Human and Minority Rights and Gender Equality (Serbia).

Our proposal is, that the principle of non discrimination could be ensured by screening all legislative proposals through a discrimination test by the specialized Parliamentary Committee, before they are adopted in order to eradicate discrimination even in multiple and compound form. This early prevention has been established by the European Commission in its Strategy for the implementation of the Charter of Fundamental Rights (2010: 6-7). This screening incorporated before and during the impact assessment of each legislative proposal of the European Commission could be used as a model for National Parliaments.

In addition, contacts with the Fundamental Rights Agency of the EU and the European Network of Independent Experts in the non-discrimination field could be kept regularly

1.4. Parliamentary Control and the principle of non discrimination

Parliamentary control is even of a greater importance than legislative quality. During parliamentary control, the specialized Parliamentary Committees could investigate policy issues, proposed legislation and government activities. Parliamentary control should focus on discrimination by the national administrative and judicial system (Pernice I., 2001: 7). There are some proposals already made by Inter-parliamentary Union such as:

- Improvement of parliamentary control procedures by ensuring reflection of civil society's interests and increasing the role of political parties.
- The Research and Information Services of a national Parliament could provide evidence on discrimination legislation for the parliamentary control of the government.

In addition, the European Conference of Presidents of Parliament (2010) discussed the institutionalization of contacts between Parliament and Independent authorities as a two way control in benefit of the citizens (Garoyan, M. (2010) and broadcasting the sessions of Parliamentary Committees and of the Parliament (e.g. Greece).

2. Best practices of parliamentary committees on discrimination

2.1. UK Committee on Equality and Non Discrimination

Thanks to Interparliamentary Union Parline Database, certain national parliamentary committees in ULK and Greece are used as an example for best practices.
The Committee on Equality and Non-Discrimination, considers questions of equality and

non-discrimination on any ground such as sex, sexual orientation, gender identity, race, colour, language, religion, political or other opinion, national or social origin, ethnicity, belonging to a national minority, property, birth, age, disability or other status. In particular it considers:

a) Questions relating to the promotion of equality and equal opportunities across the board;
b) All matters affecting equality between women and men, including political representation, economic empowerment, violence against women and gender-related crimes, trafficking in women, and sexual and reproductive health issues related to women's rights and freedoms;
c) Questions regarding national and other minorities, including Roma and Travelers;
d) Questions relating to the prevention and fight against racism, racial discrimination, xenophobia, anti-Semitism and intolerance in Europe.

The committee aims to promote gender mainstreaming in the work of the Assembly, so that a gender equality perspective is incorporated at all levels and in all fields. It shall, also, promote a balanced representation of women and men in the Assembly structures.

The committee has established and maintained working relations with national equality bodies.

The committee shares the Assembly representation in the European Commission against Racism and Intolerance (ECRI) and represents the Assembly in, and follows the work of, the relevant expert committees of the Council of Europe.

The committee chooses, on behalf of the Assembly, the winners of the "Gender Equality Prize".

2.2. Greek Parliament: Committee on Equality, Youth and Human Rights

The Committee is responsible for:

- Studying, researching and submitting proposals on equality and human rights,
- Monitoring the application by the government of the principle of gender equality, especially with regard to employment issues and respect for human rights,
- Identifying the needs and problems of youth, submitting relevant proposals to any competent national or European body, promoting cooperative action between the Hellenic Parliament and other international institutions on youth issues, promoting initiatives concerning the free development of personality as well as evaluating any opinions expressed during the annual session of the Youth Parliament.
- It includes a sub-committee on issues of disabled persons, e.g. access to social, economic, cultural and other goods of life, and the submission of proposals for the improvement of the existing institutional framework.

The Committee:

- Submits an annual report at the Plenum.
- May submit a recommendation at the Speaker of the House, after the examination of a subject.
- May invite members of the executive, heads of ministerial departments, members of municipal authorities, labor unions and other social organizations
- May decide or deliver an opinion on any issue submitted by the Conference of Presidents, as well as on any other matter, that comes under its competence, as this is defined by the Constitution or the Standing Orders.

The meetings are broadcasted by the Parliament's television channel.

The Committee is not part of a broader national gender machinery to promote gender equality. It is entitled to hold hearings, whenever necessary, with members of the government, the Ombudsman, the National Human Rights Commission and non-governmental organizations (NGOs).

Conclusion

There is a great body of anti-discrimination law in the EU: International Conventions in which the member States of the EU are parties, European Citizenship Rights, non-discrimination Directives, and Article 14 of and Protocol 12 to the European Convention on Human Rights (in which the EU will soon adhere), all prohibit discrimination across a range of contexts and a range of grounds. The Charter seems, also, to provide a broader protection than the existing Directives. The Court of Justice of the EU and the European Court of Human Rights present, also an ever-growing case law on fundamental rights and in particular non discrimination. With the Fundamental Rights Agency, the EU has equipped itself with a tool to help its institutions and the Member States implement Union law. However, its main activity is to provide reliable and comparable data on fundamental rights.

All this legislative mosaic is a great advantage for the European Citizen. However, what do the national parliaments do? How effective is the EU legislation on the principle of non discrimination in the member states? How do citizens influence legislation and parliamentary oversight by submitting complaints to Independent State Bodies? National Parliaments must play a significant role both as legislators as well as controllers. Their specialised Parliamentary Committees, must enhance their role and institutionalise contacts e.g. with PACE, the European Parliament, the International Organisations, FRA and the Independent Network of Discrimination experts and Independent authorities, as a two way control in benefit of the citizens. National Parliaments have the right to adopt more stringent measures according to the EU Directives. Non discrimination, must be on their focus through legislative screening and enhanced parliamentary control.

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The role of National Parliaments in the European Union

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ABSTRACT
National parliaments' role in the EU framework is dictated by their constitutional responsibility to control whether the competences transferred to the EU are exercised or not, in accordance with the constitutional terms under which they have been transferred to. In addition to this, the involvement of national parliaments into the EU affairs could contribute to lessen the democratic deficit of the Union. The statistics provided by the annual reports of the Commission on subsidiarity and proportionality, show some worrying problems regarding the way national parliaments exercise their powers, especially their inability to accept the challenge to operate as a collective body. The first "yellow card" drawn in July 2012, highlights some of the problems national parliaments face. In any case, this first experience of the yellow card procedure is rich in the lessons of defining and applying the principle of subsidiarity. The efficient application of the principles of subsidiarity led national parliaments to improve their national procedures and the interparliamentary cooperation. More efforts are needed to get the principle efficiently applied. National parliaments need support in implementing efficiently the control of the respect of the principle of subsidiarity. EU institutions, above all the European Commission, should support national parliaments. The framework of political dialogue should be strengthened, so as to allow national parliaments to contribute actively to the good functioning of the Union", as Article 12 TEU requires. National parliaments have a double role in the EU.
Keywords: national parliaments, subsidiarity, political dialogue, double role.

I. INTRODUCTION

National parliaments' role is dictated by their constitutional responsibility to control whether the competences transferred to the EU are exercised or not, in accordance with the constitutional terms under which they have been transferred. Moreover, the involvement of national parliaments in the EU affairs could contribute to lessen the democratic deficit of the Union. Even after

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the Lisbon Treaty, national parliaments remain the principal subject of democratic legitimization of the European Union, as Article 12 TEU recognizes. They must, therefore, have a role in the European Union corresponding to their position, as the direct legitimate institutions [2].

The role of national parliaments should be analogous to their traditional legislative and controlling powers, eroded by the process of European integration. By playing a role in shaping and scrutinizing EU decision making, national parliaments may contribute to lessen not only the commonly accepted European democratic deficit, but also the growing national democratic deficit, created by the incessant shift of competences to the European Union. The 2009 Lisbon Treaty, tried to preclude EU from acquiring new competences by reinforcing the institutional obstacles in that direction. It sets out a formal and very demanding role for national parliaments, as concretized along with the preexisting but further reinforced principles of subsidiarity and proportionality, by the principle of respect for national identity. National parliaments should, therefore, engage in the general development and scrutiny of the process of European integration, even if they consider that their European role is or would be different.

II. THE CONTROL OF THE PRINCIPLE OF SUBSIDIARITY

The statistics provided by the annual reports of the Commission on subsidiarity and proportionality, show an increase in the amount of reasoned opinions national parliaments have sent to the Commission. Using the post-Lisbon new powers, national parliaments have submitted 30 reasoned opinions in 2010, 64 in 2011 and 70 in 2012. Although this demonstrates a clear upward trend of parliamentary activity in relation to the implementation of the principle of subsidiarity, one could observe some worrying statistics regarding the way national parliaments exercise their powers. Among other problems, one could succinctly cite the overlap between the subsidiarity control mechanism and the political dialogue, the fact that the opinions sent as “reasoned opinions” do not state a breach of the principle of subsidiarity as required by the Article 6 of the Protocol, the application of differing criteria when national parliaments assess compliance with the principle of subsidiarity, the varying focus of reasoned opinions issued by national parliaments, the non participation (or the weak involvement) of some national parliaments in the control of the principle of subsidiarity and the inability of some parliaments to respect the eight week period.

The first “yellow card” drawn, in July 2012, on the so called “Monti II-Regulation”, highlights some of the above mentioned statistics. National parliaments issued 12 reasoned opinions on the Monti II proposal, representing 19 votes, whilst the threshold required by Article 7(2) of the Protocol no 2 is 18 votes. The Commission re-examined the proposal, as stipulated in the “yellow card” procedure, and concluded that the principle of subsidiarity was respected. Nevertheless, the Commission has withdrawn its proposal for political reasons, considering that

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[2] See German Federal Constitutional Court’s Lisbon ruling, 2009.

it would not receive the needed political support within the European Parliament and the Council. The Commission informed the European Parliament, the Council and national parliaments by letters of 12 and 13 September 2012 of its intention to withdraw its proposal. It took its decision on 26 September 2012 [3]. As the annual report 2012 of the Commission on subsidiarity and proportionality indicates, the reasoned opinions were sent by 12 national parliaments out of 27. Most of the reasoned opinions sent, questioned the use of Article 352 TFEU as the legal basis for the proposal, as well as its insufficient justification. Some expressed doubts as to the added value of the proposal and the need for the action proposed. Five national parliaments argued that Article 153(3) would exclude the right to strike from the EU competences, while others claimed that the general principle of equality between the economic freedoms and the social rights and the proportionality test included in the proposal are not in line with the principle of subsidiarity and they could create a negative impact on the right to strike.

In its reply to national parliaments that issued reasoned opinions [4], the Commission explained the aim of its proposal, emphasizing the need to clarify the principles and rules applicable at the EU level, as regards to the exercise of the right to strike within the context of the internal market, including the need to reconcile them in practice in cross-border situations. The latter could not be achieved by the Member States alone and required action at European Union level. As to the Article 153 TFEU, the Commission argued that Court rulings have clearly shown that the fact that this Article does not apply to the right to strike and does not exclude collective action from the scope of EU law. Moreover, the Commission justified the choice of a regulation, instead of proposing a directive, by underlining that as the regulation is directly applicable it would have reduced regulatory complexity. In addition, the proposed regulation would also recognize the importance of the existing national laws and procedures for the exercise of the right to strike, including existing alternative dispute-settlement institutions. As a whole, the Commission concluded that the principle of subsidiarity had not been breached.

The first "yellow card" procedure triggered by national parliaments is rich in lessons of defining and applying the principle of subsidiarity. Although the principle of subsidiarity is defined in Article 5(3) TEU, and the Article 5 of Protocol no 2 provides helpful guidance on how this principle is to be applied, along with the previous Protocol on the application of the principle of subsidiarity and proportionality, attached to the Treaty of Amsterdam - which the Commission continues to use as a guideline for assessing the respect of these principle [5], - it seems that the principle of subsidiarity is being interpreted differently by the national parliaments. While all the above mentioned texts, link the concept of the principle of subsidiarity with the inability of Member States to achieve sufficiently the objectives of a proposed action at the national

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3 PV (2012), 2017.

4 Letter of 14 March 2013.

5 See the annual reports 2010 and 2011, (COM(10) 547 and COM(11) 344.

level, because of, among others, its transnational aspects, national parliaments did not take into consideration that the aim of the "Monti II" draft regulation was the necessity to reconcile the right to strike with the economic freedoms of the EU in practice in cross-border situations, which Member States can not resolve independently. The question of competence raised by their reasoned opinions relates more to the principle of conferral than to the principle of subsidiarity and proportionality [6].

This precedent shows the necessity to follow a commonly accepted definition of the principle of subsidiarity, as the Treaty itself and its relative Protocols suggest. It is true that the eighteenth bi-annual report of COSAC Secretariat [7] states that, a large majority of national parliaments report that their reasoned opinions are often based on a broader interpretation of the principle of subsidiarity than the wording in Protocol no 2. The document refers to the opinion expressed by the UK House of Lords, stating that it is in favor of a wider interpretation of this principle because "although the principle is a legal concept, in practice its application depends on political judgment". However, a common approach to the meaning and application of the principle of subsidiarity may make the threshold required for triggering the yellow and orange card, less difficult to be reached. Moreover, national parliaments may establish a more efficient cooperation with the Commission as regards the respect of the principle of subsidiarity. This cooperation should also include the European Parliament and the Committee of Regions, which as the annual report 2012 of the Commission indicates, are on the way to reinforce their control of the respect of the principle of subsidiarity. Finally, a well-framed cooperation with all EU Institutions may reinforce the ability of national parliaments to better defend an action on grounds of infringement of the principle of subsidiarity brought before the Court of Justice of the European Union pursuant to Article 8 of the Protocol no 2. The criteria to be chosen must take into account the relative provisions of the Treaty and its Protocols as they have been interpreted by the Court of Justice. Based on those provisions, the Commission's Impact Assessment Guidelines [8] set out clearly the criteria used to assess the compliance of Commission proposals with the principle of subsidiarity and proportionality. As its 2012 Report indicates, the Commission has always encouraged other institution to apply the same criteria [9].

Reasoned opinions do not concern the control of the principle of proportionality. The Protocol no 2 does not link the "yellow and orange card" procedures with the principle of proportionality,

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6 See Article 5(1) TUE distinguishing the limits of EU competences from the use of the EU competences. National parliaments can control the respect of the principle of conferral but within the context of political dialogue.

7 Published on September 2012.

8 SEC (2009) 92.

9 See however the 18th Bi-annual Report, where it is indicated that national parliaments have differing views on the need for guidelines to clarify the scope of subsidiarity control and related criteria. Only half of the national parliaments responding to the questionnaire were in favor of this. All who supported it insisted that any guidelines must be non-binding.

which pursuant to the Article 5 TUE governs the overall competences of the European Union. However, national parliaments could control the respect of the principle of subsidiarity either in relation to the control of the principle of subsidiarity or more clearly within the framework of the political dialogue. The former approach has recently been debated by COSAC indicating that "Even though there is a disagreement as to the issue whether the principle of proportionality is an inextricable component of the principle of subsidiarity, the majority of national Parliaments are of the opinion that the control of subsidiarity is not effective enough if a proportionality check of the proposal at hand in not conducted". [10] In any case, the abovementioned necessity of defining common criteria allowing to assess the respect of the principle of subsidiarity, would shed more light on the relation between the principle of subsidiarity and the principle of proportionality.

The application of the principles of subsidiarity presents a challenge to the national parliaments which must be accepted. Protocol no 2 aims at ensuring "that decisions are taken as closely as possible to the citizens of the Union" [11] This direct linkage between the principle of subsidiarity and the principle of democracy, renders national parliaments more responsible for the efficient exercise of their new powers. The efficient control of the principle of subsidiarity should, therefore, be considered as the first priority of national parliaments, which could not but operate as a collective body to achieve their potential. The task involved, is almost beyond their raison d'être, given their different political and constitutional traditions as well as their differing socio-political settings. However, the way national parliaments have altered their processes in order to be able to adapt to the dynamic institutional set-up of the European Union, raises hopes for assuming their new responsibilities. [12] Moreover, as COSAC itself certifies the exchange of information between Parliaments on subsidiarity scrutiny, has been significantly increased using a variety of exchange methods and networks, in particular, the IPEX database and national parliaments representatives based in Brussels. In addition, as it acknowledges, in the context of this intensified activity, further improvements could be made, such as the exchange of accurate information between Parliaments at an even earlier stage in the scrutiny process, the amelioration of the content of the IPEX website to cover the substantive reasons for breaching the subsidiarity principle and the availability of more detailed English and/or French summaries or translation of important documents [13] It is interesting to indicate that in relation to the as earlier as possible scrutiny process, the 19th Bi-annual report refers to some national parliaments, whose practices might be characterized as "best practices", such as the modification of the Standing Orders of the Parliament of Portugal, in January 2013, allowing the sectoral committees, to choose from the Commission's Annual

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10 See the Conclusions of COSAC, Nicosia 14-16 October 2012.

11 First sentence of its preamble.

12 See the bi-annual reports of COSAC secretariat, especially the 18th and 19th reports.

13 Conclusions of the XLIX COSAC, Dublin, 23-25 June 2013.

Legislative Programme the initiatives to be scrutinised. Their analysis is submitted to the European Affairs Committee, which prepare a written opinion on the compliance with the principle of subsidiarity, while the breach of this principle would have to be determined in a plenary resolution [14].

National parliaments need support in implementing efficiently the control of the respect of the principle of subsidiarity. Dublin COSAC Contribution, acknowledged the work of the Commission in dealing with the large number of reasoned opinions sent to it by national parliaments. However, COSAC urged the Commission to respond to reasoned opinions, with greater speed and with greater focus on the arguments contained within each reasoned opinion. Moreover, it invited the Commission to review, to improve and to clarify how the "Practical arrangements for the operation of the Subsidiarity control mechanism under the Protocol no 2 of the Treaty of Lisbon", published by President Barroso in 2009, should operate for both the yellow and orange cards. It invited the Commission, in this review, to state, in particular, "how and when its responses should be issued in response to the cards so triggered and the timeframe within which this will be undertaken". Finally, it invited the Commission "to identify the way in which it will communicate with national parliaments in the scenario, where a card has been triggered" and "to address more specifically the concerns raised by national parliaments in their reasoned opinions."

III. POLITICAL DIALOGUE

It is true, that the so-called Barroso Initiative has aimed at supporting national parliaments beyond the texts of the Treaty and Protocol no 2. The Barroso Initiative emphasizes the political dialogue with national parliaments, by favouring, in relation to the "Threshold", "a political interpretation of opinions received from national parliaments", which means among others that the Commission will consider all reasoned opinions "even if they provide different motivations, or refer to different provisions of the proposal", that it will provide a "political assessment" of the files for which the threshold has been reached, and that, in the opposite case, it will reply to the respective national parliament "in the context of the political dialogue". In the case of the yellow and orange card procedure, the Commission will give reasons for its final decision in the form of a Communication sent to all national parliaments, as well as to the legislator and to IPEX. Dublin COSAC Contribution, rightly points out the necessity to take into account the experience of the first yellow card in response to the "Monti II proposal" and to adapt the provisions of the Barroso Initiative. As it is indicated, "in practise, a degree of uncertainty surrounded these arrangements following the triggering of the first yellow card". Any adaptation of these arrangements must distinguish more clearly the duties of the Commission pursuant to the Treaty and Protocol no 2 governing the principle of subsidiarity from what belongs to

[14] See also the House of Lords secretariat's efforts to identify possible subsidiarity concerns early, including through close scrutiny of the Commission's Annual Legislative Programme.

the concept of "political dialogue." [15] The growing number of reasoned opinions necessitates the distinction between the subsidiarity control mechanism and the political dialogue framework, whose legal nature must be defined, especially in relation to the competences and responsibilities of the EU institutions. This delimitation will facilitate the establishment of an efficient and responsible cooperation between the national parliaments and the Commission, which begins to underline the "informal nature of the political dialogue, which has to be conducted in full respect of the prerogatives of the EU institutions and of the institutional balance more general." [16]

However, the prerogatives of EU Institutions can not achieve the desired results, without the active and continuous involvement of the national parliaments. In the terms of the European Council the "interdependence" between the European and the national legislative processes, requires the participation of the national parliaments in the process of EU policy formulation. It, therefore, asked the Commission to duly consider comments by national parliaments, in particular with regard to the subsidiarity and proportionality principles. [17] Moreover, the fact that national parliaments remain even after the Lisbon Treaty the strongest legitimating factor of the process of European integration, underlines the need to define broadly the framework of their political dialogue with the Commission. By making clear for the first time, that "national parliaments contribute actively to the good functioning of the Union", the new Treaty [18] recognised a new conception of the evolving multilevel EU representative democracy. The political dialogue has to encompass, as the European Council suggested, not only the principle of subsidiarity and proportionality, but also the principles of conferral and the principle of national identity [19] concerning all important aspects of the Commission's legislative agenda, and most importantly, the further federalisation of the process of European integration.

View under this approach, Dublin COSAC Contribution rightly pointed out that national parliaments "should be more effectively involved in the legislative process of the EU, not just as the guardians of the subsidiarity principle, but also as active contributors to that process. This goes beyond the adoption of reasoned opinions on draft legislative acts, which may block these acts and would involve a more positive, considered and holistic view, under which Parliaments

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15 See for instance the provision Barroso Initiative relating to the "Scope of national parliaments' opinions, which distinguishes the subsidiariy aspects from the comments on the substance of a proposal and invites national parliaments "to be as clear as possible as regards their assessment on a proposal's compliance with the principle of subsidiarity."

16 See the response of the Vice-President of the European Commission to the European Scrutiny Committee's Forty-first report of session 2010-2012 of the House of Commons, on the subject of the 2010 Annual report on relations between the European Commission and national parliaments, Brussels, 11.01. 2012, C (2012) 39 final, who refers to the concern about the lack of a specific indication in the report about the impact of opinions expressed by national parliaments on the Commission's proposal or positioning in the legislative process.

17 Presidency conclusions, Brussels, 15-16 June 2006, para 37.

18 Article 12 TEU.

19 Articles 4 and 5 TEU.

could invite the Commission to develop legislative proposals." COSAC, therefore, called the Commission a) to consider within the existing context of political dialogue any individual or collective requests from national parliaments for new legislative proposals, b) to give special attention and consideration to opinions on a specific legislative proposal or specific aspects of a proposal that have been issued in the context on the political dialogue, by at least one third of national parliaments and c) to ensure that national parliaments are specially alerted to all Commission public consultations when they are launched, and to pay special attention to any contributions made by Parliaments to any such consultations.

IV. CONCLUSION

On the whole, national parliaments have a constitutional responsibility to protect the fundamental principles and values protected by national constitutions. To this end, they must participate in the shaping and scrutinizing EU decision making system. At the same time, by contributing to the good functioning of the EU, as required by the Treaty, national parliaments, may assume a federal role consisting of the protection of national values throughout the formulation and protection of the European values. In other terms, the European role of national parliaments has a double dimension. The first dimension incorporates their mission to function as guardians of the national identity. The second dimension of their role, aims at contributing to the development of a European identity based on the European values so as to protect better the national values.

Parliamentary control in the Parliament of Montenegro

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ABSTRACT

Having in mind that the parliamentary oversight role is usually based by the Constitution, in this paper, I will provide a brief comparison of two Constitutions of Montenegro, very different in many aspects but crucial for our country – the first Constitution of Montenegro of 1905 and the last one, which is also the first Constitution of independent Montenegro, of 2007. Although it was more than a century ago, the Constitution of Montenegro of 1905 (in a way) represents an inception of parliamentary control and oversight. Having in mind political, historical and social conditions at the beginning of XX century in Montenegro - even though it cannot be compared to the achievements of parliamentarism in Western Europe of that time - it is a stepping stone for today's shape of our parliament. The Constitution of Montenegro of 2007 fulfills democratic achievements leading to parliamentary strengthening as a higher priority.

The goal of this comparison is to show that, on paper, distinction between these Constitutions, more than a century apart, is not as extensive as one might think. However, in practice, the scope of exercising oversight and control by the Parliament, although based on more or less similar Constitutional provisions, is completely incomparable. In addition, I do not think this can be explained with variety of oversight tools provided nowadays through the Rules of Procedures. On the contrary, I believe that it is all about the willingness of MPs to exercise their power, including that of oversight and control; the development of various tools just comes as a result of that willingness.

The paper provides an overview of control and oversight tools in the Parliament, emphasizing progress and changes that are being made in recent years. Developing and improving the institution of parliamentary oversight, continues to be relevant and the main goal towards democracy at its best.

Keywords: Constitution, inquiry, MPs question, parliamentary oversight, parliamentary control, Rules of Procedure

1. Introduction

When we speak today about parliament of a candidate country on the way to join the EU, the first thing that occurs to us are: the strengthened legislative power, the strong performance in the field of control and oversight, the openness to citizens, the transparency of work, the MPs, the quarrels, and of course, the travel expenses.

The (one) issue that is related, more or less directly, to all of aforementioned features, is oversight and control, in all aspects. These are, sometimes, not so visible, because they can be performed on numerous levels and in numerous stages of different parliamentary processes. The measure of success of a modern parliament is the extent to which it is able to claim power given to it, by the functioning democracy and Constitution to perform oversight.

In my experience, the meaning of words' control and oversight is not the same. The oversight function in the Parliament of Montenegro is being exercised through measures and procedures, directed to regular preventive checking of important legislation following its adoption in order to secure proper implementation and avoid the need for control when a problem has occurred. It is obvious, that concepts and tools used today, in performing this work are not new; actually, they exist for decades and in some countries a number of those tools have been used for centuries.

When it comes to oversight, I am convinced that we actually speak about dedication of a parliament to have a strong position with regard to the oversight and control. Strong dedication in this field means strong parliament, of course, within its constitutional position. Therefore, I would say, that the system is already invented. The success can be measured by our willingness to commit, and our ability to adapt to new times and new issues. The (whole) point is how much parliaments (or MPs) are willing to exercise their power.

In times of crisis, people turn to their representatives asking for actions or answers. They expect their MPs to perform control on issues that concern them and to explain events that happened and, if needed, to hold someone accountable. The global economic crisis, and what happened in the parliaments of the most developed countries, represents one of the most visible examples. After developments in our area, we are reinventing this, and the public is becoming more aware of it. Sometimes, this leads to having two extreme sides: one that believes parliaments should do everything, and the other one that is always dissatisfied with the results. Of course, the truth is somewhere in between.

In order to perform oversight or control, MPs do not need any authorization; they just need to have the willingness to act through some of the models that are already exist. In addition, capable parliamentary service, is equally important, because acting without good preparation can be a serious obstacle. MPs especially need quality assistance, because sometimes, gov-

ernment and representatives of institutions with incomparably more resources are there to confront them. We are in the process of a European integration and, we are also in the process of making significant reforms in all fields. Thus, it is not extraordinary that people in all countries of the region, are often dissatisfied with the speed of the overall processes due to their high ambitions. This is expected, because we are not, where we think we need to be. The reality is that the mutual goal is still distant, and it takes a lot more time in order to establish quality institution through building and developing capacities in these and other fields, so as to correspond with the process of joining the EU.

2. Parliamentary control and oversight in Montenegro

2.1 Historical comparison: Parliamentary oversight in 1905 and 2007 Constitutions of Montenegro

Parliaments use various tools in order to perform control and oversight functions. Most of these, are part of the rules that govern parliamentary procedures (law on parliament, standing orders or rules of procedure), but the general framework is usually defined by constitution, which is the case in Montenegro and, I believe, it is the case for all countries of the region. One correctly may presume, that evolution of the scope of parliamentary control over time can be observed through changes in constitution, which, more or less, clearly indicates the balance of powers between legislator and executive. But is this the case? In the case of Montenegro, I will shortly address two constitutions, in terms of parliamentary control – the first one, of 1905, and the last one, adopted in 2007. In this regard, it can be noticed that differences, although sometimes not so visible, in fact, can be profound and crucial.

First, the Constitution of Montenegro of 1905 provides for first elements or indications of accountability of the Government to the Parliament, such as:

- Ministers shall be responsible to the Prince and Lord and to the People's Assembly for their official acts (Article 108);
- The Government shall always be obliged to provide required explanation to committees on their request (Article 85);
- The Assembly itself shall have the right to call a minister or a specific commissioner to provide necessary explanations (Article 86).

In the area of budgetary issues, which are historically the ones where a parliamentary oversight originates, there were also a few interesting Articles:

- Without approval of the People's Assembly, the state may not take loans (Article 93);
- Without approval of the People's Assembly, no levy, tax or any surtax shall be imposed or change (Article 77);
- Approval of the People's Assembly shall be necessary for trade agreement, as well for agreements whose implementation requires any payment from the state treasury, or change of state laws or ones that limit public or private rights of Montenegrin citizens (Article 7).

Although, there were some elements of parliamentary oversight, we cannot talk about significant parliamentary control in the period in which Montenegro was a part of various state communities, between 1944 and 2006. In 2006 after independence, the 23rd Convocation of the Parliament of Montenegro was established with the task to adopt Constitution of the independent state of Montenegro. The Constitution of Montenegro was adopted in 2007, and it was the first time that the balance of powers was explicitly stipulated, through Article 11, titled "Division of powers": "The relationship between powers shall be based on balance and mutual control." The 2007 Constitution, also introduced a framework for advancement of parliamentary oversight capacity, particularly in important areas like defense, security and foreign affairs. The following are articles of the Constitution that regulate this matter:

- Article 11 stipulates “the army and the security services shall be subject to democratic and civil control.”
- Parliament to appoint and dismiss from duty: the Supreme State Prosecutor and State Prosecutors, the Protector of human rights and freedoms (Ombudsman), the Governor of the Central Bank and members of the Council of the Central Bank of Montenegro, the President and members of the Senate of the State Audit Institution, and other officials stipulated by the law.
- Election of officials is a powerful tool, and some of the above mentioned institutions are actually strong allies of the parliament in oversight work. In our case, lead committees in their fields strongly cooperate with these institutions, especially, Ombudsman and State Audit Institution.
- According to Article 144, “the State Audit Institution shall submit an annual report to the Parliament.”
- Article 95 introduced that the opinion of the Parliamentary Committee responsible for international relations, is required in the process of appointment or revoking of ambassadors and heads of other diplomatic missions of Montenegro abroad.

The parliamentary inquiry, as a control mechanism, was introduced for the first time as a constitutional institute with the Constitution of 2007, in Article 109:

- – “The Parliament may, at the proposal of minimum 27 Members of the Parliament, establish a fact-finding commission in order to collect information and facts about the events related to the work of the state authorities.” Since the adoption of the Constitution, this right was exercised two times: once in 2012 and once in 2013.

Interpellation, also stipulated by the Constitution in Article 108, defines that “the interpellation to examine certain issues regarding the work of the Government may be submitted by a minimum of 27 Members of the Parliament.” During the 24th Convocation, interpellation was submitted two times.

Vote of no confidence, is also an instrument provided by the Constitution. During the 24th Convocation, Vote of no confidence was put on the agenda on three occasions.

2.2 Rules of Procedure as the ground for oversight role

The Constitution may provide for certain tools of oversight, while the Rules of Procedure define types of additional oversight tools and the procedures regarding their implementation, including the implementation of the above mentioned instruments. Primarily, the oversight capacity of the Parliament of Montenegro derives from provisions on right and duties of Members of Parliament, as given in Article 50 of the Rules of Procedures: "A Member of the Parliament is entitled to access any official materials, documents and data prepared or collected in the committees or Parliamentary Service, Government, ministries and other state administration authorities, related to issues of significance for exercise of MP duties. A Member of the Parliament has a right to demand notifications and explanations from the President of the Parliament, the chair of the working body, the minister or other official with regard to activities under the scope of rights and duties of such officials, or activities under the responsibility of authorities they manage." These provisions enable MPs and the Parliament to oversee actions of the executive, while the Rules of Procedure determine which actors are allowed to use which tools, on which occasions.

Role of parliamentary bodies

During previous convocation in the Parliament of Montenegro, attention was increasingly focused on the role of parliamentary committees and on other working bodies and their legislative and oversight role. Whereas, previously, all discussion tended to focus on the debate in plenary chamber. Importance to the committees, was given with a political agreement, that no law can go directly to the plenary unless previously supported by the committees that debated it. As expected, permanent committees are involved in both law-making and oversight. However, in line with this subject, with Amendments to the Rules of Procedures adopted in July 2012, two new committees were formed within the current Convocation, which deal primarily with oversight in their respective areas. These committees are: Anti-Corruption Committee and European Integration Committee (we divided one committee for FA and EI), both chaired by the opposition MP. In addition, the Committee on Economy, Finance and Budget is also chaired by the opposition MP. It should be added that, both in previous and current convocation, the Commission for Monitoring and Control of Privatization Process has been also chaired by the opposition and with equal number of MPs of ruling and opposition parties. In addition, the Committee for Security and Defense has a very strong oversight role, and it is the only case where we have a Law on parliamentary oversight of security forces.

One of the key elements that determines our commitment to controlling the work of the Government, is the fact that chairs of four parliamentary committees are coming from the opposition (we have four parliamentary committees chaired by the opposition MPs). This is of imperative importance, considering that the fields that some of these committees are covering, are large and they are responsible for more than 20 negotiating chapters with the EU, while one committee coordinates all work on European integration. In addition, role of these com-

mittees in controlling the implementation of the new and previously adopted legislation, is very strong; especially, if one takes into account that the opposing MPs do not need to have majority in order to organize control hearing, once in the spring session and once in the autumn session. It is interesting to point out, that since this right was adopted it was not used greatly. MPs had the tendency to agree more, since they knew that initiatives must pass, as long as they are in line with legislation.

Regarding control of adopted legislation, the Action Plan for Strengthening of the Legislative and Oversight Role of the Parliament of Montenegro in 2013, envisages committees to regularly check implementation of the key legislation in the fields that are under their scope of competence. In addition, they are to have a hearing with the ministries they are accountable for, approximately every six months; where they would discuss challenges and other developments in their respective area with representatives of the Government. The objective is, to strengthen regular oversight of implementation of adopted legislation and to keep parliament informed regarding implementation of policies in different fields. When it comes to oversight the role of the committees, it is worth mentioning reports of parliamentary committees, as a vehicle for formulating conclusions and recommendations to the government. Monitoring and deliberation of implementation of these recommendations by the government and state agencies, as follow-up activities of committees, is a practice used more and more often, which further strengthens oversight role of the Parliament.

3. Parliamentary control tools regularly used in the Parliament of Montenegro

3.1 Prime Minister's Hour and Parliamentary Questions

According to Article 187, "A Member of the Parliament is entitled to raise a parliamentary question to the Government or a responsible minister and receive a response; while the chair or the authorized representative of the chair of an MP Group, also, has the right to raise a question to the Prime Minister and receive a response on issues related to the work of the Government." A parliamentary question, shall be posed at a special sitting of the Parliament, which is held no less than once in a two-month period, during an ordinary session. A question to the Prime Minister shall be raised at the beginning of the sitting, as referred to in paragraph 3 of this Article, and in the month when such a sitting is not held, at a special sitting dedicated to the Prime Minister's Hour – Premier's Hour. The Prime Minister's Hour will be held every month, within the ordinary session, instead of once in two months, as it was before, as introduced by Amendments to the Rules of Procedure in 2012. During the last convocation of the parliament, around 1150 questions were posed before the prime minister and the members of the government. Regarding questions that MPs have the right to put forth, it is important to mention that they can also directly address any institution, and request information through article 50, which is a practice used frequently, when MPs are preparing for debates on legislation in committees and in plenary. In the case, that the MP did not receive a reply in a defined time period, the secretary general may be addressed,

who then informs the secretary general of the government about the issued and requests for his intervention so as to result in the MP getting a response.

3.2 Parliamentary hearings

According to the Rules of Procedures, parliamentary hearings and inquiries may be organized by heading committees of the Parliament, for the purpose of obtaining information, or professional opinions related to: proposed acts under procedure in the Parliament, explanations of specific solutions from proposed or existent acts, clarification of issues significant to the preparation of proposed acts, and for a more successful exercise of the control function of the Parliament. Within hearings, the Rules of Procedures stipulates in detail the consultative and control hearings. In addition, the Amendments to the Rules of Procedure in 2012, introduced that committees should adopt decisions on holding control hearing, once during the ordinary session of the Parliament, upon request of one third of the members, with one item of the agenda.

Compared to the 23rd Convocation, a significantly higher number of control and consultative hearings were organized in the 24th Convocation. In addition, a number of thematic sittings, outside of the Parliament building, and visits to various institutions, conferences, public debates, round tables and other similar events were organized, which also strengthened the oversight role of the Parliament. It is important to note, that almost all of these activities are open for the public. In total, during the 24th Convocation there were 71 consultative and 15 control hearings. To put the progress achieved into perspective, it should be mentioned that during the 23rd Convocation we had only two control and four consultative hearings. While analyzing developments, it is worth observing that more and more committees are introducing the practice of thematic sessions on very diverse issues, which sometimes publicly have similar effects like hearings.

3.3 Parliamentary inquiry

In addition to the Constitutional provisions on parliamentary inquiry, the Rules of Procedures stipulates this issue in more detail. Article 78 reads, that parliamentary inquiry may be opened with the view of considering the situation in a specific area and concerning issues of public significance, collecting information and facts on specific occurrences and events related to establishing and leading policy. Also, areas of interest are the work of competent authorities in such aforementioned areas, which could set the ground for decisions to be made by the Parliament on political responsibility of public officials or undertaking other procedures under its competence. Article 79 defines that the chair of the Inquiry Committee shall be from the opposing MPs.

In February 2012, the Parliament decided, for the first time, to open a parliamentary inquiry and establish a committee of inquiry in charge of collecting information and preparing a

report on alleged corruption in the privatization of the company "Telekom Crne Gore". Soon, it was clear, that additional legislation was necessary and that stronger rights for the members of these bodies should be established. The Law on Parliamentary Inquiry was enacted in July 2012, which defined the scope of work of the Committee of Inquiry, and provided it with the possibility to request information from all state and local bodies and legal entities. In addition, members of these committees have the right to access confidential information necessary for their work without any approval. We recently finished the second parliamentary inquiry in July.

3.4 Interpellation

In addition to Constitutional provisions on interpellation, articles 198 through 203 of the Rules of Procedure, define consideration procedure for interpellation on the work of the Government. As mentioned, this motion was moved two times during the 24th Convocation.

3.5 Deliberation of annual reports of various bodies submitted to the Parliament according to the law

Debate on annual reports that various bodies submit to the Parliament according to respective laws, as well as follow-up activities of committees on monitoring their recommendations and opinions, comprise of a strong oversight tool. This is especially valid for reports of regulatory bodies, State Audit Institution, Ombudsman, etc. Significant effort is put into measures to make an obligation for all committees to debate on the level of implementation of the conclusions they made on certain reports. The proof that reports are not only being read, we had a situation in July that reports from the Supreme Court and State prosecutor were not adopted because MPs were dissatisfied with their work.

4. Crucial oversight areas

4.1 Budget

Parliament, as stipulated by the Constitution, adopts the budget and the final account of the budget. These competences fall into the area of crucial importance from the oversight point of view. Furthermore, the examination of the budget is within the scope of work of the Committee on Economy, Finance and Budget, which concerns a draft budget law and final account of the budget of Montenegro, as well as financial plans and reports of related regulatory bodies. Other committees are involved in the deliberation of the draft law on budget, in their behalf dealing with respective areas of interest. The challenge that we have in this area, is to change budget legislation in order to prolong the time period, during which the proposed budget spends in the parliament.

4.2 Defense and security

The Law on Parliamentary Oversight in the Field of Security and Defense, which was unanimously adopted in December 2010, fully regulates implementation of parliamentary over-

sight in the field of security and defense. The Law provides the precise definition of the obligations of all actors and ensures protection of rights and freedom of citizens against any potential misuse. The Law stipulates that Parliamentary oversight should be conducted regularly according to the annual plan adopted by the Committee, and in extraordinary occasions if required. In line with this, the Security and Defense Committee, regularly adopts annual Plans for conducting the oversight role, which is made public. As part of its oversight role, the Security and Defense Committee deliberates annual work plans of Ministry of Defense, Police Administration, National Security Agency, etc.

In addition, in 2011 we introduced the practice that all committees adopt their annual plan of work, but that they also debate upon open sessions, on how successful they were in implementing their work. Both plans and reports are public.

4.3 European Integration Process

By establishment of the separate Committee on European Integration and extension of the competences of the lead committees for monitoring compliance of Montenegrin laws with the EU acquis, the basis for enhanced and systematic oversight of the accession process to the EU was established. A set of activities within the accession negotiation process envisaged by the 2013 Action plan for strengthening legislative and oversight role of the Parliament of Montenegro is to be carried out by the European Integration Committee, in cooperation with lead committees.

Consideration of the draft negotiation positions, is taken, by chapters of the Committee on European Integration meetings and providing of opinions and suggestion, and, also, if necessary, holding meetings for obtaining information on preparation of negotiation position from negotiation Government structures; The Committee shall define the model of participation of the lead committees' members at these meetings. During September, all negotiating positions will be discussed on joint sessions of at least two committees.

Committee on European Integration shall, in cooperation with lead committees, organize thematic forums on certain chapters, in the form of public debates, roundtables, etc., where the professional and other interested public would have an opportunity to express opinions and suggestions prior to establishing negotiation positions and consideration by the Committee. The first one is scheduled in about two weeks.

Committee on European Integration shall, at least quarterly, organize meetings where the progress in pre-accession negotiation will be considered for each negotiation chapter that negotiations are initiated for, and if necessary, interested members of the lead committees shall be invited.

Committee on European Integration shall regularly consider the reports on implementation of obligations from SAA (Stabilization and Association Agreement), as well as quarterly reports on overall activities within the Association and Stabilization Process submitted by the Ministry of Foreign Affairs and European Integration.

Approximation of legislation, is the most important obligation of the parliament in this process and in this area we have decided to adopt a slightly different model. In the Parliament of Montenegro, all lead committees (7) are responsible for checking tables of concordance and assessing if the law is in accordance with the EU acquis. We believe, that lead committees are the ones that debate all changes of legislation and since they know best the field of their competence, they should also be familiar with the EU legislation in their respective fields. We chose this model because we believe that the integration process has evolved over time and we witnessed the change of the process, which was in place in the previous period. It is important to understand that the expectations (and requests) of parliament have increased dramatically, so it is supposed to be more functionally engaged than before.

5. Action plan for strengthening legislative and oversight role of the Parliament of Montenegro

For several years, the Parliament of Montenegro has established practice of adoption of action plans. Action plans consist of measures/activities, including ones regarding strengthening of legislative and oversight role of the parliament, as well as building administration capacities. We introduced this practice in 2010 and several days after, we obtained candidate status and were able to adopt it almost three months before government succeeded. Also, the reporting of these plans to the European Commission is independent of the parliament. Our report represents a part of the state report prepared by the government and the government cannot intervene.

Examples of some of the new practices introduced by the Action plan for strengthening legislative and oversight role of the Parliament of Montenegro in 2013:

- Working bodies shall, at least once every six months, hold a meeting where the representatives of the competent ministries shall be invited and, as needed, the representatives of other state administration bodies and organizations, with the aim to deliberate conducting of policies within their competences;
- Working bodies shall regularly deliberate implementation of conclusions, previously adopted by the working bodies and/or by the Parliament. Follow up on conclusions is a very important aspect of control;
- Working bodies shall organize consultative/control hearings dedicated to deliberation of implementation of laws adopted in the previous one-year period or earlier.

We have also adopted the practice of presenting legislative plan, which is made public, and quarterly reports on its implementation. Today, it represents a unique document, which gives a very precise view of not only all the laws adopted, but also of the ones that are waiting to be adopted, or the ones that were sent to the parliament but were not planned, etc. We support, that improvement of planning is one of the key elements in creating conditions for the parliament to successfully manage the process of integration. Also, since 2011, all legislative proposals in the Parliament of Montenegro, are organized in accordance with the negotiating chapters, which makes it much easier to get a clear overview about legislative activities regarding the chapters at any moment.

These measures defined by the Action Plan, are focused on the oversight of implementation of laws. As a legislative body, parliament evaluates the implementation of laws that it has been enacted to ensure that agreed policy and adopted laws are properly implemented, as well as to assess their outcomes and the impact on the citizens.

In conclusion, a lot has been accomplished, with regards to strengthening parliament's oversight role over the last several years. The Parliament and its committees, have a number of oversight mechanisms at their disposal, which are the standard instruments used in modern parliamentary democracies. It is important to underline that addressing these issues is not about inventing any models. All we need, is more or less, in place and now it takes time and dedication to improve quality - among other things - through implementing reforms that lead us through the European integration process. We also recognize that, work on further enhancing of these practices must continue, to reach its full potential.

Finally, it is clear that the strength of parliament and, consequently, its oversight potential greatly depend on information. This is why I, as the Secretary General, must mention all the good work and progress we have achieved with our parliamentary administration. Of course, I must also add that a lot more work awaits us, considering the strengthening of the administrative capacities and overall conditions for the work of the MPs and administration. Regarding improvement of administration, the Parliament is proud to be the first institution in Montenegro that adopted a human resource development strategy, with training plans on a yearly and monthly basis. Also, we are in the process of establishing parliamentary institute as a support for all the work that I have just discussed.

Simultaneously, with all the above mentioned changes, a lot of effort has been invested in strengthening the administration of parliament to serve MPs to make well informed decisions, including those related to oversight. For example, we made a database of all the acquis with which, already adopted legislation is in line with. We made an intranet portal with information that our staff brought from the screening process. These are very valuable tools in everyday activities.

We are in the process of debating a new resolution on European integration, which will more closely define some of the processes not covered by the rules of procedure and this is expected to be fulfilled by the end of the year.

We will continue to work on both of these fronts to further shape our parliament as an institution fully able to perform its representative, legislative and oversight functions.

The role of National Parliaments and regional inter-parliamentary assemblies in EU-legislation and EU-policy: The example of the Belgian House of representatives and the Benelux Parliament

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ABSTRACT
This contribution will focus on the role of the national parliaments of the EU-member states in the process of influencing EU-decision making, and, in particular, on the way this role is applied by the Belgian House of Representatives.

As interregional cooperation also plays a role in influencing European policy and legislation, and several new Member States and candidate Member States are inspired by good practices of existing interregional cooperation, this contribution will also focus on the role Inter-parliamentary assemblies, such as the Benelux Parliament, can play in this field.
Keywords: European Union, Inter-parliamentary assemblies, Inter-parliamentary cooperation, Parliamentary oversight, Proportionality, National parliaments, Subsidiarity

1. Introduction: The national parliaments and the European decision making process, a multilevel government system

The European decision making process, can be described as a multilevel government system in which, among others, national parliaments try to influence the developments in the European policy and legislation.

As more than 50 % of legislation "trickles" down from the EU and 80 % of the EU-policy budget is to be executed by national governments, and parliamentary control cannot be executed by the European Parliament only, national parliaments need to control their governments, for communitarian aspects, as well as for intergovernmental aspects.

Following the Lisbon Treaty, the national parliaments are granted powers that allow them to

express opinions and advices on legislative proposals and policy papers of the European Commission.

This contribution will focus on the role of the national parliaments of the EU-member states in the process of influencing EU-decision making, and, in particular, on the way this role is applied by the Belgian House of representatives.

The presentation covers parliamentary control "ex ante": subsidiarity checks and political dialogue, as well as parliamentary control "ex post": control of the government with respect to the EU-policy, control on the transposition in national law.

2. Parliamentary control "ex ante" on European policy and legislation - Policy shaping "before the Treaty of Lisbon"

"Before the Treaty of Lisbon", the Belgian House of representatives exercised its parliamentary control "ex ante" through debates - before and after the European Council meetings - in the Advisory Committee for European Affairs, as well as by parliamentary questions, resolutions and inter-parliamentary cooperation (The "Conference of parliamentary committees for European Affairs" - COSAC and the "European Union Speakers Conference" - EUSC).

In May 2006, the Barroso Initiative was launched, aimed to establish an informal "political dialogue" between the Commission and the national parliaments by inviting the parliaments to react on Commission policy papers, proposals and legislative documents so as to improve the process of policy formulation.

Since May 2006, the Belgian House of representatives appoints in each standing committee a Euro- promoter, who is responsible for ensuring the implementation within the committee of the advice, making proposals for resolution, making recommendations and other final texts of the Advisory Committee for European Affairs, as well as making proposals for normative proceedings and other documents from the European Commission sent to him by the secretariat of the Advisory Committee.

3. Parliamentary control "ex ante" after the Treaty of Lisbon"

"With the entry into force of the Treaty of Lisbon" on 1 December 2009, the national parliaments are empowered to monitor initiatives for EU-laws. The Lisbon Treaty has two Protocols about the national parliaments: Protocol No. 1 on the role of national parliaments in the EU, which is designed to inform MP's about the European decision making process and which strengthens similar provisions of the Maastricht and Amsterdam Treaties and Protocol No. 2 on the Application of the Principles of Subsidiarity and Proportionality, which is the real novelty of the Lisbon Treaty.

3.1 The "subsidiarity and proportionality check"

The "subsidiarity and proportionality check", mentioned in the Lisbon Treaty, empowers national parliaments to control certain aspects of EU-decision making directly, without involvement of the national governments.

Subsidiarity (Article 5(3) TEU) is about the question whether the European level is the proper level to act as a legislator in an area, which does not fall within its own exclusive competence. Therefore, draft legislative acts shall contain the justification that the Union objective can be better achieved at the EU level.

The subsidiarity check is only applied in the case of legislative proposals. Documents of a non-legislative nature can be commented under the scheme of the Barroso Initiative.

Proportionality (Article 5(4) TEU) is about the question whether the measures (the means) do not go beyond the objectives to be attained.

Proportionality deals with effectiveness / appropriateness, whereas subsidiarity deals with efficiency.

Protocol No. 2 on the Application of the Principles of Subsidiarity and Proportionality of the Lisbon Treaty describes the procedure for the "subsidiarity check". 56 votes are allocated to the national parliaments of the 28 member states. The subsidiarity scrutiny is assigned to be carried out within the (short) 8-week deadline from the date of transmission of a legislative act. The protocol only acknowledges the reasoned opinion procedure with reference to "negative" reasoned opinions, i.e. conclusions on a breach of the subsidiarity principle. The "yellow card procedure" is applied when reasoned opinions on violation of the subsidiarity represent at least one third of all the votes allocated to the national parliaments (19 votes out of 56). In this case, the draft must be reconsidered. The "orange card procedure" is applied when reasoned opinions on violation of the subsidiarity, represent at least a simple majority of all the votes allocated to the national parliaments (29 votes out of 56). In this case, the proposal must be reviewed, when this is confirmed by a majority vote in the Council or European Parliament.

The Belgian House of representatives has set up rules for the "subsidiarity check" and the "political dialogue", which can be summarized as follows: The House's services shall draft on their own initiative, at the request of the chairman or of one third of the Members of a standing committee or at the request of the Speaker of the House, a note dealing inter alia in compliance with the principles of subsidiarity and proportionality of the European documents. At the request of at least one third of its Members, the relevant standing committee shall instruct the Euro-promoter to formulate, within the timeframe that it lays down, a

draft opinion dealing inter alia in compliance with the principles of subsidiarity and proportionality. The committee shall adopt an opinion, which shall be sent forthwith to the relevant European institutions and to the federal government. If inclusion on the plenary sitting's agenda has not been requested, the opinion of the Committee shall be deemed to be that of the House.

The draft advices are prepared or presented by the Euro-promoter of each committee. Nevertheless, in cases where the Euro-promoter does not belong to a group that reflects the governmental majority, the advice can be amended.

As a result of the subsidiarity check in the national parliaments, actors of NGO's, independent State bodies and professional organizations are given the opportunity to express their support or concerns on certain European initiatives.

In 2012, the committees of the Belgian House of representatives sent 9 opinions on European legislative proposals to the European Commission. Five proposals were examined by the Finance Committee, whereas the Transport Committee, the Justice Committee, the Social Committee and the Commercial Law Committee, each, examined one proposal.

Only in two cases, the House sent a "negative" reasoned opinion, stating that the proposal did not comply with the principle of subsidiarity.

This was the case with the so called "Monti proposal" that curtailed, according to the House, the right to take collective action, a fundamental right, beyond what is permitted by the European Social Charter. The House also stated that the legal base, invoked by the European Commission, was not appropriate as labour law had remained within the competences of the Member States.

In another case regarding a proposal for a "regulation on statutory audits of public-interest entities", the House found that - although the European level was the proper level to act as a legislator- there was an infringement of the subsidiarity principle because of the European Commission's choice for a regulation as a legal instrument. The House stated that in this case, the European legislator should prefer a directive to a regulation.

In seven cases, the House sent a "positive" opinion, stating that the proposals complied with the principle of subsidiarity. Out of these seven cases, with regard to three proposals, the House sent to the European Commission observations, which referred to the content, in order to adapt the proposals on some issues that were a matter of concern.

The parliamentary reports with the adopted advice on subsidiarity, did not only include the

point of view of the majority, but also referred to the point of view of the political group(s) of the opposition. The reply of the European Commission on each opinion of the House of Representatives, was published as a parliamentary document.

3.2 Participation of National Parliaments in Interparliamentary Conferences

After the entry into force of the Lisbon Treaty, two conferences were established: In September 2012, the Conference of Interparliamentary Conference of CFSP (Common Foreign Policy) and CSDP (Common Security and Defense Policy) and, in September 2013, the Conference on Economic and Financial Governance.

These conferences that consist of representatives from all the National Parliaments of Member countries and the European Parliament, offer national Parliaments a unique challenge to consider their role in ensuring democratic accountability and legitimacy in the EU.

These conferences also create the need to develop separate specific parliamentary procedures to integrate into daily parliamentary life.

3.3 Involvement of national parliaments in specific European topics

The entry into force of the Lisbon Treaty also created a need to involve the national parliaments in specific European topics, which play a major role in domestic politics, such as the European semester, the EU 2020-objectives for sustainable growth and the action in the field of security and justice.

The European semester

The European Semester process, introduced through the "Six pack" legislation, is a tool to improve EU policy coordination both on macroeconomic and structural issues. In April of each year, Member States submit their plans for sound public finances to the European Commission. The democratic legitimacy of the European Semester can only be achieved through the direct involvement of national Parliaments in all stages of the process. Indeed, it is necessary that the budgetary prerogatives of the national parliaments are respected. Under the Belgian Constitution, the House of representatives has the exclusive power to approve the budget.

The "European Semester" has its impact on the daily parliamentary work of the Federal Advisory Committee on European Affairs and the Finance Committee. In the Belgian House, a specific parliamentary procedure for dealing with the European Semester has been elaborated. The French Assemblée Nationale, also has set up a timetable for the parliamentary dimension of the European Semester.

Especially in 2013, the findings of the European Commission on the "macroeconomic and

structural situation in Belgium" gave rise to several questions in Parliament.

"Europe 2020" and the "National Reform Plans"
The "European semester" also includes the objectives for "Europe 2020", to make progress towards smart, sustainable and inclusive growth, in areas such as employment, research, innovation, energy or social inclusion. "Europe 2020", which was launched in June 2010, invites the Member States to submit their National Reform Programmes in the month of April of each year.

In the Belgian House, "Europe 2020", the "Annual Growth Survey" and the "National Reform Programmes" have been discussed by a number of specialized committees and the Federal Advisory Committee on European Affairs. In addition, during the debates in the Belgian House, some Members have called for taking into account social and environmental indicators.

The Area of "Freedom, Security and Justice" (AFSJ)
Some national parliaments have a far reaching power in the field of Justice and Home Affairs, which directly affects the lives of European citizens.

In the Netherlands, for example, proposals on family law, operational police cooperation, visa requirements and operations carried out by the police in another member state are subject to approval by the Dutch Parliament before the Dutch representative can cooperate in drafting a decision in the Justice and Home Affairs Council. Such a procedure does not exist in the Belgian Parliament.

Cooperation between national parliaments and the European Commission could also have an added value in the evaluation of Eurojust's activities and in the scrutiny of Europol.

4. Parliamentary control "ex post" = Policy making

The traditional powers of control "ex post" (questions, interpellations, resolutions) have not fundamentally changed with the Lisbon Treaty.

However, these powers have been strengthened as a result of the Lisbon Treaty. Tools in the "ex ante" process, such as the "subsidiarity check" and the "political dialogue", now allow members of parliament to have a better oversight on European legislation in the "ex post" process. As draft bills transposing European legislative acts are mainly prepared by the government, the members can put questions to the government on issues such as, the late or incorrect transposition of EU-directives into the internal legal order.

The Euro-promoter of each committee in the Belgian House, is responsible for ensuring the

implementation within the committee of the advice on subsidiarity. This also means that he monitors the follow up of the parliamentary committee's recommendations to the government.

Under the Lisbon Treaty, the national parliaments have the right to bring an action before the Court of Justice to challenge a legislative act of the EU for infringing the principle of subsidiarity. Belgium has not yet transposed this principle into domestic law. Germany, France, Portugal and France already have a legal framework, which covers the action on grounds of infringement of the principle of subsidiarity. In the German Bundestag, for example, the Bundestag is obliged to initiate such an action at the request of one-fourth of its Members (Art. 23(1)(a) of the German Constitution). So, a motion tabled by a parliamentary minority can initiate such an action.

5. Interregional cooperation and parliamentary oversight

As interregional cooperation plays a role in influencing European policy and legislation, and several new Member States and candidate Member States are inspired by good practices of existing interregional cooperation, it is useful to examine to which extent Inter-parliamentary assemblies, such as the Benelux Parliament, can play a role in this field.

The Benelux Treaty establishes an intensive cooperation between the governments of Belgium, the Netherlands and Luxemburg. Benelux is the only regional organization which is explicitly mentioned in the EC-Treaty (Art. 306 EC). The EC-Treaty allows further Benelux integration and makes it possible to cooperate on issues, which are not yet addressed at the EU level.

The Benelux has proved its added value on a wide variety of issues such as the internal market, the free movement of persons, intellectual property, cross-border police cooperation and cross-border workers.

Founded in 1955, the Benelux Parliament has established itself as an active democratic forum for inter- parliamentary dialogue between the three countries. The Benelux Parliament is composed of members having a mandate in their respective national parliaments and it only has a consultative role.

The issues, the Benelux Parliament discusses, have a clear link with European legislative proposals and policy papers. The Benelux Parliament has, for example, adopted recommendations on matters, such as the fight against value-added tax (VAT) fraud, the safety of nuclear installations, Trans-European networks in the field of railways and energy, road pricing, Pooling & Sharing regarding military capabilities.

Although European directives and regulations deal with the aforementioned matters, exchange

of good practices and recommendations of the Benelux Parliament on operational issues that affect the three countries can result in inspiring examples, of how to cooperate more closely in the EU framework.

The Lisbon Treaty does not empower regional inter-parliamentary assemblies to send an opinion on subsidiarity to the European Commission. Nevertheless, it is likely that debates in the Benelux Parliament on European policy papers can initiate discussions in the respective national parliaments.

The parliamentary oversight of the Benelux Parliament (and the national parliaments) could also be strengthened on other activities of the intergovernmental actions of the three countries, such as "joint action" in European fora, the cooperation in implementing EU-law and existing or planned initiatives on "enhanced cooperation", which allows a core of countries to move further on the path of integration in a certain policy.

6. Conclusion - Evaluation of the efficiency and effectiveness of the new tools for parliamentary oversight

The new powers under the Lisbon Treaty gave rise to a bigger awareness for EU affairs among MP's and to the creation within the national parliaments of Units with civil servants, specialized in EU affairs. COSAC and IPEX (Inter-parliamentary EU Information Exchange) support the national parliaments in the need for more inter-parliamentary cooperation and exchange of information.

Practice has shown that, as far as subsidiarity is concerned, the 8-week deadline is far too short. Each parliament has its own domestic agenda. When institutional affairs or budgetary laws are being discussed in parliament, there is not much time left for European policy issues. Each parliament has its own timetable, which often makes the 8-week deadline not workable. Other national parliaments do not have the resources to invest into the scrutiny of EU-affairs. The thresholds for subsidiarity are rather difficult to reach. Indeed, the so called "yellow card" has only been triggered once.

Most of the comments the European Commission receives, refer to the content of the proposals, rather than to subsidiarity issues. The subsidiarity check is thus applied by Member States in a too flexible way.

Although the Lisbon Treaty granted a new role to the national parliaments, these prerogatives are not likely to make a great deal of difference without more structured cooperation among national parliaments.

In Belgium, the parliament is rather a "moderate player," when it comes to controlling the gov-

ernment in EU affairs, as Belgium has a tradition of being in favor of more European integration (permissive consensus on European integration).

The Belgian House of representatives has the tools to exercise parliamentary oversight on EU-affairs. In this respect, the Euro-promoter in each committee can play a pro-active role. Since 2010, we see that, in the Belgian House, European issues get integrated in the daily parliamentary work of the committees. This was not the case before the Lisbon Treaty came into force. However, this growing sensitivity for EU-affairs, does not withstand that domestic affairs still remain in priority.

Contrary to the Netherlands, where the parliament receives a summary on European initiatives with the implication of the proposals for domestic law and policy and the point of view of the government, the Belgian Parliament does not receive such similar information from the government.

The added value of the powers granted to the national parliaments under the Lisbon Treaty, do not necessarily deal with the subsidiarity control mechanism, which has proved to be not that workable in practice. The added value rather deals with the "political dialogue" with the European Commission and the fact that, due to the Lisbon Treaty, European policy gets integrated in the daily work of national parliaments.

Finally, effective regional inter-parliamentary cooperation makes EU-affairs more concrete and visible, both for members of parliament as for citizens. As effective regional inter-parliamentary cooperation deals with operational issues of European integration, it can enhance the role of members of parliament in order to influence the developments in European policy and legislation.

7. Acknowledgements

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Inter-parliamentary cooperation and communication within the EU

Francois Duluc
French National Assembly

I. At first, the National Parliaments were the institutional losers of the EU

1) Since 1979, the European Parliament is elected directly by the citizens of Europe, whereas from 1957 to 1979 the Members of the European Parliament were only representatives of the National Parliaments, selected among their members.
2) The Treaties have increased the powers and the competences of the EU institutions, meaning, of the Council, where Member States are only represented by their National Governments, and by the European Parliament.

II. Nevertheless, the democratic deficit of the EU has proven the necessity to strengthen the cooperation between EU institutions and National Parliaments, and between National Parliaments themselves

1) The democratic deficit of the EU:
   - The rejection of the Constitutional Treaty in France and the Netherlands
   - The poor electoral turnout in the European elections versus the legitimacy and the visibility of National Parliaments for the citizens
   - The growing demand to institutionalize the involvement of the National Parliaments in the EU decision making process (Nice, Laeken)

2) The relations before the Lisbon Treaty:
   - The influence of the National Parliaments in the EU decision making process, depends on the constitutional or legal provisions of each member state. In many cases, the Government is required to consult its Parliament before voting in the Council of the EU (different rules: for example Denmark, France, Hungary, etc.)
   - Information is not forwarded to the National Parliaments by the European institutions, but by the National Governments
   - The role (information and oversight) of the European Affairs Committees of the National Parliaments

3) The relations after the Lisbon Treaty: the protocole on the role of National Parliaments in the European Union:
   - Communication: Information forwarded directly by European Commission to National Parliaments upon publication (consultation documents, planning documents, draft legislative acts and proposals); information provided to National Parliaments 8 weeks before it is on the agenda of the Council; agendas and minutes of the meetings of the Council sent directly to the National Parliaments, at the same time as to Governments.
   - Cooperation: More effective and regular inter-parliamentary cooperation between National Parliaments themselves and with the European Parliament; COSAC recognized and strengthened.

COSAC is an inter-parliamentary conference created in 1989 upon the initiative of Laurent Fabius, then President of the French National Assembly. It brings together every six months, in the country holding the European Union presidency, six representatives of the committees tasked with European affairs at the Union's parliaments and six European Parliament representatives. COSAC meetings allow parliamentarians to question the European Union Presidency-in-Office and adopt political contributions on European subjects. COSAC, which saw its existence enshrined in the protocol on the role of National Parliaments, appended to the Amsterdam Treaty, is also empowered to examine any legislative proposal or initiative in relation to the establishment of any area of freedom, security and justice which might have a direct bearing on the rights and freedoms of individuals. It also organizes concerted "tests" of subsidiarity, by inviting all National Parliaments to provide prior monitoring to selected texts together. COSAC contributions are transmitted to the European institutions, i.e. to the Council of Ministers, European Parliament and Commission.

4) The relations after the Lisbon Treaty: the protocole on oversight of the principles of subsidiarity and proportionality
   - National Parliaments are granted a major role in ensuring the respect of these principles
   - All draft legislative acts must contain detailed statement on their compliance with subsidiarity
   - During 8 weeks after the transmission, possibility for National Parliaments to send to EU institutions a reasoned opinion on compliance with subsidiarity principle
   - In one third of National Parliaments consider the draft is contrary to subsidiarity, the draft must be reviewed - After the review, the draft legislative act can be either maintained, amended or withdrawn but reasons must be given to the National Parliaments.
   - If a majority of National Parliaments suggests that a proposed legislative act is not in compliance with subsidiarity, and if the Commission decides to maintain the pro-

posal, 55% of the Council or a majority in the European Parliament can decide that the legislative proposal of the Commission will not be given further consideration.
- National Parliaments are granted the right to initiate legal procedures before the European Court of Justice.

The role of IPEX is essential in the implementation of this procedure.

IPEX, the Inter-parliamentary EU information exchange, is a platform for the mutual exchange of information between the National Parliaments and the European Parliament concerning issues related to the European Union, especially in light of the provisions of the Treaty of Lisbon. The establishment of IPEX derives from a recommendation given by the Conference of Speakers of the Parliaments of the European Union in the year 2000. The main part of IPEX is the Documents database which contains draft legislative proposals, consultation and information documents coming from the European Commission, parliamentary documents and information concerning the European Union. The parliamentary documents are uploaded individually by each national Parliament. IPEX offers at the same time, the means for following the subsidiarity check deadlines. IPEX also contains a calendar of inter-parliamentary cooperation meetings and events in the European Union and a section on national Parliaments and the European Parliament providing links to relevant websites and databases in the field of inter-parliamentary cooperation, as well as specific procedures in EU Parliaments. IPEX is also hosting the EU Speakers website.

Apart from the Lisbon Treaty and the legal considerations of the 2 protocoles, the political influence of the National Parliaments in the EU decision making process is increasing, and even if only 2 or 3 important National Parliaments consider that a draft legislative act is contrary to the subsidiarity principle, it is very unlikely that the European Commission will not amend or even withdraw the draft.

III. The role of the Permanent Representatives of the National Parliaments

- 24 National Parliaments out of 27 Member States have Permanent Representatives in Brussels
- First initiative in 1991: Danish Folketing
- Reasons and objectives for the decision to send a Permanent Representative to the EU

Main functions:

- Reporting on political events and developments in the EU
- Organizing the participation of Members of Parliament to inter-parliamentary meetings in the European Parliament
- Organizing visits by MPs and staff to EU institutions in Brussels and Strasbourg
- Networking: contacts, exchange of information and coordination with Representatives of other National Parliaments

- Contacts, exchange of information with the Permanent Representation of the Governments in Brussels
- Contacts with Members of the European Parliament, Commission and Council
- Disseminate information concerning the activities and positions taken by National Parliaments on EU legislation
- Participation to the early warning mechanism (oversight of subsidiarity–Lisbon Treaty)
- Organization of training courses for members and staff on EU law and institutions
- Attendance to EU speakers conferences and COSAC meetings

A closer look of the British and Austrian Parliament within the EU context: No democratic system is perfect and it has to fit the culture of the country in which it operates

Dr. Sonja Stiegelbauer

Lecturer, former Minister and MP, Austria

When we recently had our Board Meeting of the European Union of Women in Paris, we discussed my invitation to Belgrade and one of the British members announced spontaneously, "Democratic system? We have been developing this for over 400 years since the Civil War and it is still far from being perfect!"

This was the way I fell into the trap. It made my brain work, and it was fun brainstorming with a handful experts:

British members of Parliament,
Ruth Fox, Director of the famous Hansard Society, a supporting organization for members in the UK Parliament and recording Parliamentary proceedings.

Lynne Faulkner, President of the British Section of the European Union of Women. When "MPs have votes", she told me. "They go through different doors to vote. I guess you know, that they have the House of Commons with the elected MPs and the House of Lords with the Peers, most of whom are nominated by the political parties, including the Anglican Bishops and a few hereditary Peers."

Prof. Melanie Sully and Prof. Werner Zögernitz from the Institute of Parliamentarism and Democratic Questions at University of Vienna.

Dr. Günther Schefbeck, expert at the Austrian Parliament and present here today.

Stefan Hammer, Professor of Public Law and Legal Philosophy at the University of Vienna

Nils Bandelow, Professor of the Technical University of Braunschweig, who sent me his last ppp and lectures about the English Constitution. He also recommended the famous classical work of Walter Bagehot, "The English Constitution", referring back to the Reform Acts of 1832 and 1867;

"The change is not in one point, but in a thousand points. On all great subjects, much remains to be said, and of none of this is more true than of the English Constitution. But, an observer who looks at the living reality will wonder at the contrast in the paper description. One will see more of life, which is not found in books, and will not detect the rough practice of many refinements of the literary theory. Language is the tradition of nations; each generation describes what it sees, but it uses words transmitted from the past."

Please read his book!!

Thanks to all of them, and in spite of this brainstorming I have not become an expert on the English Constitution, but I can show you some inputs for the UK:

What does democracy mean in the 21st century?
Where should a constitution be "rooted"?
What does responsibility in a free, moral society, mean?

Referring to the Austrian Parliament you will hear about a Parliamentary Group's work in the legal system of the rules of procedure of the National and Federal Council.

You all have heard Sir Winston Churchill's words, manifested at the end of the forties in the last century, that democracy is the worst of all forms of government amongst all the others. If you try to explicate his words in cooperation with others, you will come to this conclusion: Democracy is the best of all proved systems.

His thoughts started from a parliamentarian, so called representative democracy. Decisions will be made by elected representatives, not by the people itself. The representatives decide on their authority and responsibility.

Democracy shows shortages, but is still, the most attractive form of government worldwide. It is proved by the past: Dictatorships are converted, democratic rules are implemented into absolutely governed states. In the society, implicitness has become very rare.

Also, the role of media is getting more and more influential. Media have become the fourth power in the state, and report ruthlessly about actual or alleged malfunctions and mistakes, which sensibilize society.

We also can add, that a national state is not any longer a closed system of decisions. We have to take into consideration that global and transnational developments lead us, and that only partial constraints are administrated and executed. Many of our decisions concerning financial crises and debts are presented to have no alternatives and that proves be frustrating for the European society, which does not witness a co-decision process.

Stefan Hammer, Professor for Public Law and Legal Philosophy at the University of Vienna means, that our appreciation for democracy is constantly connected to the difficulties we meet. Of course, being stuck in difficulties does not mean that democracy is worthless. Crises belong to the democratic understanding, because it is through these difficulties, that way we end up asking ourselves if given structures are effective, so as to make us look for more doors of innovation.

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Legal and oriental studies at Vienna University; assignment to the Austrian ministry for foreign affairs as Deputy Head of Human Rights Department, delegate to OSCE Human Rights Conferences, UN observer in the South African elections 1994; visiting professor in Dakar (Senegal) and in Kansas (USA); participant in Christian-Islamic dialogues in the fields of human rights, democracy, and religion-state relations; Lecturer at the first Vienna Christian Islamic Summer University 2008; coordinator of a research cooperation project with Sarajevo University on Constitutional Reform in Bosnia.
Publications in constitutional and administrative law, legal philosophy, European and comparative constitutionalism, human rights, federalism and protection of minorities.

www.tbi.univie.ac.at
www.univie.ac.at/vicisu... CV Stefan Hammer

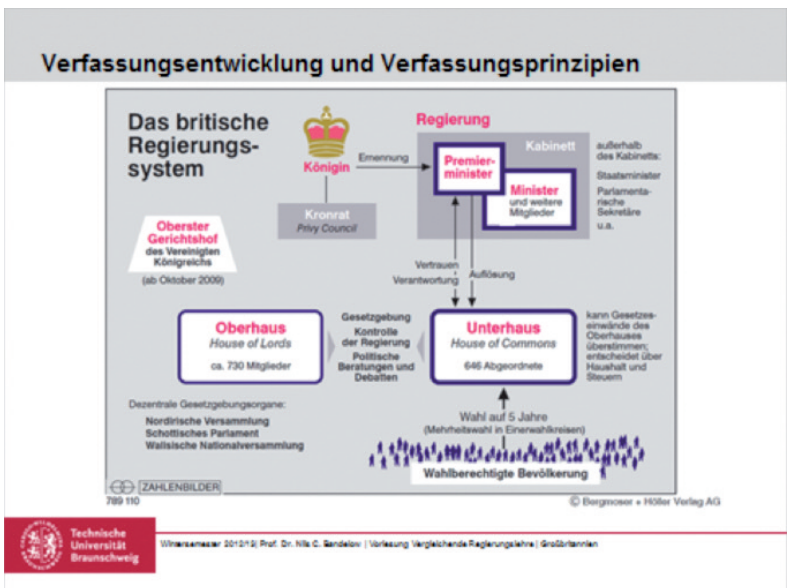
When I prepared my presentation here in Belgrade I asked members of the British Parliament, what imperfections they find, and what they would like to change in their Houses of Parliament. Most of the answers were based on the political viewpoints of the parties, but one Liberal, whom I know for many years answered: “I would devolve power and reform voting to a proportional system”.
So, I tried to find solutions and answers in the scripts of Professor Dr. Nils C. Bandelow’s “Parliamentarism”.
www.tu-braunschweig.de/innenpolitik

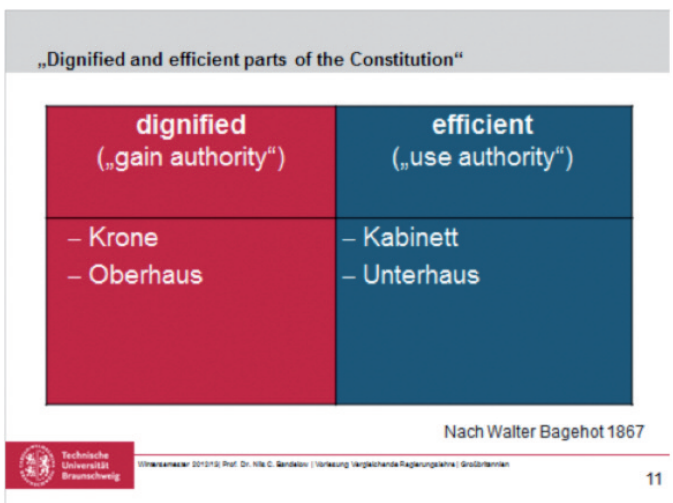
He was even so kind to send me his last ppp of July 15, 2013. I will only show you 4 inputs,

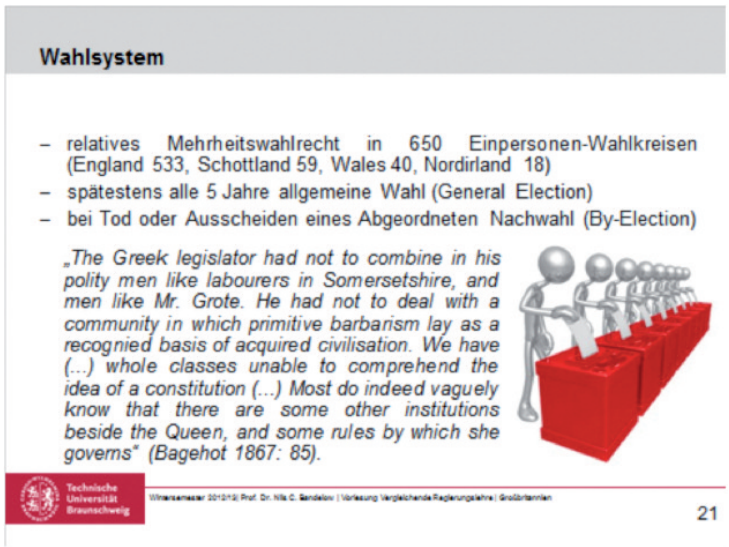
because it would be out of my time limit to discuss them all with you.
Additionally, I recommend to you, the Hansard's scripts.

www.hansardsociety.org.uk

Development and Principles of British Constitution.
Basic structure of the Parliamentarism.
Principle of party competition, instead of controlling the institutions.
In Bagehot's Constitution you will find it as "gain authority" and "use authority"
On one side: Crown and House of Lords, on the other side: Cabinet and House of Commons.

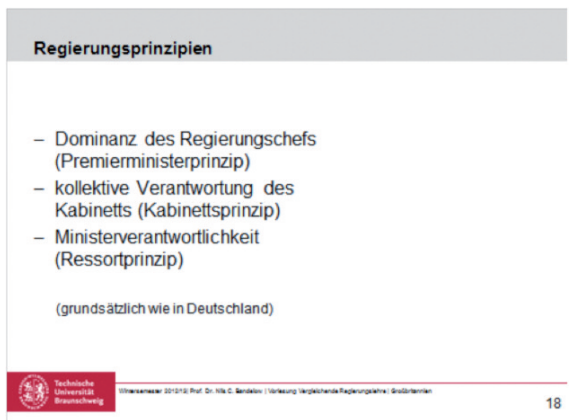






Discussion:
Words of a member out of the House of Lords, when I asked him, what he would like to change in the British Constitution: "I would devolve power and reform voting to a proportional system."

System of Election
Right of voting
Majority
One-person-constituency (electoral district)
General Elections every 5 years
By – Elections after death, or if somebody was excluded or got retired.
Political Culture and Participation
Consciousness of classes
Individual freedom before social equality
Persons not principles, firm politics
Acceptance of a very egoistic position as opposed to values
Wide consensus for the constitution, skepticism, against European Integration



3 Principles of Government:
PM principle since the coalition is weaker!!
What pros and cons can we find, for or against these 3 principles?
Should we strengthen or weaken these principles?
Prof. Bandelow even gave me hints to the basics in literature:
"Upon all": Bagehot Walter, The English Constitution, 1867.
I do recommend this old book! (At the moment, you will find it in paperback version, for 9,90)
I found my most valuable information in "Democracy and Disengagement in Britain" in a Hansard's Society Publishing of 2005; hereof, I give you the conclusion:

Neglecting Democracy
What does democracy mean in the 21st century? Hansard Society in UK identified a rough cluster of defining principles.

Following, is reading, about what they have found out:
"It seems fair to say that democracy in Britain is alive and well. Constitution is rooted in the rule of law, free and fair elections, people are not oppressed, state power is constrained by appropriate democratic checks and balances, and the basic human rights are respected and encouraged. People are free to vote or not to vote, to pursue their lives according to their own deeply held beliefs, and to change their minds about these beliefs regardless of who might prefer otherwise: nothing is true merely because those in positions of power say it is, and no government is automatically right merely because it is in power; truth and falsehood right or wrong are decided in a context of free debate and discussion involving all those with an interest in the outcome.

No-one is imprisoned for political dissent – indeed, political debate is encouraged in schools, universities and town halls across the country. In all these things, Britain distinguished itself from a range of nations whose states systematically oppressed, tortured, and terrorized their members for no reason other than that they hold views that the Government discourages.

In such a world, worries among the political class about the supposed "crises" of British democracy appear trifling and self-indulgent.

Should we not be concerned about the position of people in nations which are undemocratic, instead of wringing our hands about whether our democratic institutions are democratic enough, or whether citizens feel engaged enough?

As a democratic nation, we do have a responsibility to aid the spread of democratic ideals in other nations, but we should not be so complacent about our own democracy as to ignore its weaknesses and failings.

Democracy must be evaluated in terms of how it is implemented in the real and complex world of human conflict, interaction and tension. The question is, if British political institutions are up to the job of representing the vast and diverse range of views, beliefs and aspirations in modern society and how might we reform them in order to make them perform more effectively?

These questions strike at the heart of what it means to be a British citizen and a member of a democratic polity. If the public stop voting and disengage from the formal political process – if the vital link between voters, representatives and decisions is served – then formal political institutions (and the decisions they make) really do belong to a different world, alienated and divorced from the rest of society, and shorn of their legitimacy. The answer is not to replace our institutions with ones which afford greater decision-making power to the citizen body at large. Such efforts, embodied in the views of many well-meaning and responsible democrats, would in fact undermine democracy further by placing power in the hands of those who are – by luck or accident – in the majority on any given issue. Politics would stagnate further, despite finding it easier to contribute to political debates, minority groups would find it harder and harder to influence political decisions, as more and more issues would be decided by a vote, carried through by the moral political majority from which they are excluded.

As a result, direct democracy actually sows the seeds of greater disengagement among disillusioned citizens, and it sows too the seeds of inequality, oppression and the systematic marginalization of those whose views are not of the mainstream.

The answer therefore lies not in diminishing the role of representative institutions, but strengthening them and making sure that the chain of command between citizens, local and national institutions, and supranational institutions like the European Union is resilient and visible. This places a significant burden upon our institutions to improve the ways in which they communicate with citizens – both directly and through the media: it requires them to be accessible to citizens and responsive to their concerns; it suggests that formal institutions need to appear more relevant to the lives of individual citizens and not bound up in the adequate traditions and processes which serve to alienate people; and it suggests that different political institutions have a responsibility to work constructively together rather than in competition with, or ignorance of, one another.

But a healthy democracy also requires citizens to engage with the formal democratic process. It requires people to take an interest in politics, to communicate effectively with decision-makers, and to make use of the formal mechanism which exists to give them a voice and provide legitimacy to British parliamentary democracy and the decisions arising out of it.

Reform must be pro-active and it must come from citizens and institutions alike. If it does not,

then the gap between the public and those who make decisions in their name will widen, further estranging the British people from those who wield power, and fundamentally undermining democratic governance in Britain.

The authors of *"Neglecting Democracy"*, Declan McHugh and Philip Parvin, argue that the future of democracy cannot lie in reducing the representative system of democracy to be replaced by a more 'direct' democracy. This would not bring marginalized and excluded groups into the democratic process - rather it would drown out minority voices.

If those in politics are serious about engaging and involving the public in the political process then they must look at how people can be asked to engage with institutions, not instead of them.

We aim to strengthen parliamentary democracy and encourage greater public involvement in politics. At the heart of our work is the principle that civic society is most effective when its citizens are connected with the institutions and individuals who represent them in the democratic process. There has never been more urgency for Parliament to engage with the public.

I got a practical hint from Lynne Faulkner, President of the British Section in the EUW:

We have a major challenge in the UK over tennis, because although Andy Murray has just won the Wimbledon Men's Singles Championship, 77 years after the last Briton to win, there is no one following him. The highest rated British male tennis player after Andy is 252nd in the world, and we are not investing enough money in teaching tennis to children in poor areas. In Spain, for example, they have 23,000 football coaches looking for talents, and produced a world beating football team. The Lawn Tennis Association appointed a Chief Executive with a venture capital background, who knows little about tennis, so they balance the books, but do not sort out their tennis strategy. He is leaving and they have no one at present. We produce world beating cyclists because they have a Cycling Academy in Manchester, where talented young cyclists get scholarships to train full time and we have brilliant national coaches.

I would like to close the UK part with the words of Margaret Thatcher:

"We want a society where people are free to make choices, to make mistakes, to be generous and compassionate. This is what we mean by a moral society; not a society where the state is responsible for everything, and no one is responsible for the state."

Now I will change to the Austrian Parliament and refer to Professor Zögernitz's scripts. Professor Dr. Werner Zögernitz is President of the Austrian Institute of Parliamentarism and Democracy Questions.

"The Austrian Parliament and its Parliamentary Groups"
I will give you an overview about the **Role and Legal Status of the Parliamentary Groups in the Austrian Parliament**

According to the rules of procedure of the National Council, members from the same electoral party have the right to form a parliamentary group, a club.
According to the Law on Financing a Parliamentary Group such a club consists of:

- the members of the first chamber, the so called National Council,
- the members of the second chamber, the so called Federal Council
- and of the European Parliament's members elected in Austria and belonging to the same political party.

Every club has a chairperson supported by deputies.

At present there are 84 members of the parliamentary group of my party, the ÖVP. Also all ÖVP Government Ministers and State Secretaries are entitled to attend the events and meetings of the group. Important officials, like presidents and general secretaries of the sub-organizations, social partners and other institutions close to the party, are co-opted at the beginning of the legislative period at the National Council.

You have to know, that there are three Leagues of the ÖVP:

- the Workers' and Employers' League - the so called ÖAAB,
- the Farmers' League – the ÖBB, and
- the Business League – the ÖWB.

Chairman and deputies, as well as other members of the Group executives and presidium, are usually elected in the constitutive meeting of the parliamentary group at the beginning of every legislative period of the National Council.

The Parliamentary Group Executive is the highest organ and includes the following officials:

- Chairman,
- his/her Deputies,
- Second President of the National Council,
- Treasurer,
- Secretary,
- Head of the faction in the Federal Council and
- Director of the Group,

The **Parliamentary Group Presidium** is an important decision-making body and is made up of:

- the members of the Group Executive,

- a number of members of the National Council,
- a number of members of the Federal Council,
- Members of the European Parliament and
- Chairpersons of the individual parliamentary committees and sub-committees.

The advisors on parliamentary material are responsible for preliminary consideration before committee stage.
A qualified staff – at the moment about 50 - (experts, press secretaries) assist the members of parliament in their committee and plenary work.

The qualified staff also advise members of parliament in the publicity and in fulfilling commitments in the electoral constituencies.

We have in Austria - as above mentioned - two houses of Parliament: The National and the Federal Council.
They participate in the federal executive power that is all legislation and parliament control. The parliamentary control is mainly done by the opposition, minority and majority rights included

Let us see what the minority rights are:

- Right of Interpellation: Putting written and oral questions and "urgent questions" to the ministers.
- A minority has the right to instruct the Court of Audit to carry out a special control of the administration of public funds.
- A minority can call for the permanent sub-committees of the Committee of the Court of Audit to look at the topics covering federal administration.
- A minority has the right to call for an extraordinary sitting of parliament and special sessions,and has the right to challenge the constitutionality of federal laws by referring to the Constitutional Court as well as several other procedural matters.

Now let us look for Rights that have to find Majority Support in the National Council:

- The Right of Resolution,
- The Right of Citation (for example they can demand the presence of Federal Ministers),
- The Right of Information, which includes, for example, an investigation or experts' hearing,
- The Setting Up of a Parliamentary Commission of Inquiry,
- The Right to Pass a Motion of NO-Confidence,
- The Right to bring Legal Charges against Government and Ministers.

The last three rights can only be exercised by the National Council and represent the strongest instrument of parliamentary control.

Parliamentary Groups are benefitted in the Rules of Procedure:

1) The Presidents' Conference: The most important steering organ of parliament is the Presidents' Conference. The three National Council Presidents or Speakers and the chairpersons of the parliamentary groups are allowed to attend.
2) The parliamentary groups have to fulfill their parliamentary tasks. Therefore, premises and financial resources have to be given at their disposal.
3) The representation in the Committees and Sub-Committees of the parliamentary groups is based on the relative strength. Also, the chairperson of a Committee is based on this strength. Members of the National Council who do not belong to a parliamentary group can never be a full member of such a body.
4) The parliamentary group can bring reports of a government member or of the whole federal government into the National Council via committees for the final deliberation.
5) Starting from the beginning of the legislative period, special sittings of the National Council can be called by 20 members. If a parliamentary group has less than 20 members, all members have to sign.
6) Members of a parliamentary group are better placed for making contributions in debates than members who do not belong to a group.
7) In addition to the normal regulation members of a parliamentary group, it can introduce four further urgent considerations in the form of a written question, or can make urgent motions per year in plenary as a particularly important instrument of control.
8) In the National Council EU topics take place on demand by the parliamentary groups.
9) During the question hours supplementary questions can only be posed by representatives from the group.

Communication between citizens and the National Assembly in the process of European integration

Miodrag Popović

Advisor for international relations of the Speaker of the National Assembly of serbia

Today, we are discussing the topic that is very important for any democratic society. This has to do with bringing citizens closer to the decision-making process and how to increase their impact on representative institutions, particularly the national parliaments and the National Assembly of the Republic of Serbia.

This topic is of a great importance to us. Last June, the EU Council made a decision of historic importance for Serbia, by initiating accession talks.

This context raises the question of the inclusion and the role of the National Assembly, as the highest representative body, but also the impact of the citizens and civil society on the negotiation process. In this way, we presumably will have a comprehensive and consensus-based negotiation platform, for the areas where the negotiations, or rather, the harmonization, is conducted.

Is important to keep in mind, the current intensity and quality of the citizens' communication, with their elected representatives. Furthermore, it is important to examine, what the extent of civil society participation is in the legislative process, and in particular, what opportunities are available to the citizens of Serbia. Are they adequately informed about the work of the highest representative and legislative institution, and how may the citizens influence the legislative process?

The work of the National Assembly is transparent and public, as has been prescribed in the Law on the National Assembly. The same law also prescribes the way, in which the public office works. This is described with the following ways: the creation of conditions for television broadcast and webcast sessions of the National Assembly, with press conferences and the issuing of official statements, by permitting the operation of the representatives of the media

in the National Assembly, by allowing representation of the national and international associations and organizations, and interested citizens, with the examination of the documents and records of the National Assembly, with the availability of the shorthand notes and minutes of meetings of the National Assembly. It is also important to note, that the meeting of the working bodies of the public (except in the case of meetings of the Board for control of security services, when it convenes on closed sessions) is also public. I would especially like to emphasize, that we have introduced live streaming or live broadcast of board meetings over the Internet, along with live transmission of plenary sessions.

For almost a decade, we have practiced internship at the National Assembly, where the best students of Belgrade University, are engaged in parliamentary committees and caucuses, in order to be trained and to assist, but above all to make the board more transparent. In addition, transparency is achieved through group visits of general public to the National Assembly. Parliament programs for the citizens, are being developed and adapted constantly, to different target groups and their needs. Additionally, they are equally available to citizens who visit the National Assembly, but also to the people who use modern technology to communicate. For those citizens who can come to the National Assembly, there are several programs, including the monitoring of the session from the gallery, and for citizens who do not have this option, we are constantly preparing a number of informative publications, promotional films and a program of field visits called the Mobile Parliament.

I would also like to mention, the project of establishing offices for communication between citizens and MPs at the local level, was organized in cooperation with the National Democratic Institute. These offices are designed as a place where citizens can be in direct communication with MPs to express their views on specific issues and civic initiatives. The aim of the communication is to foster and develop cooperation between MPs and citizens. Citizens are in immediate proximity of parliamentary work and activities, and thus greater transparency and increased accountability of elected representatives of the people is exercised. Offices have opened in Leskovac, Novi Pazar, Belgrade Municipality Savski Venac, Valjevo, Zrenjanin, and continues with the opening of new offices to communicate with citizens at the local level.

In the context of the hearing on the opening of the National Assembly, I would like to refer to two special occasions, and examples of the result of this positive communication. On behalf of the National Assembly, the President of the Parliament Mr. Stefanovic, received an award from the Commissioner for Information of Public Importance, for his contribution in promoting the public's right to access information for the occasion of the International Day for the rights of the Citizens, on 28 September 2012. Another indication of such progress, was the adoption of the Law on Special Measures for the prevention of sex crimes against minors, known as "Maria's Law", which was initiated by the father of a late eight-year old victim, of sexual abuse.

In the context of the commencement of negotiations on Serbia's membership in the European Union, it is particularly important to emphasize the work accomplished by the Committee for European Integration. Besides drafting legislation according to the European agenda, the Committee also discusses plans, programs, reports, and information on the process of European integration with the ambitious aim, of monitoring the compliance of national legislation with the EU acquis.

The Parliament Committee for European Integration, has given special attention to the cooperation with civil society. It is of the highest importance to recognize the importance of communication in this process, particularly within Serbia, but also outside of Serbia; with the European institutions and all institutions and organizations, which execute the processes of EU integrations. I would like to remind you, that the Committee for European Integration in its founding year, back in 2003, in cooperation with international and non-governmental organizations (OSCE "Mission to Serbia", NGO "European Movement in Serbia", Friedrich Ebert Foundation) organized series of round tables, not only in Belgrade, but in many places throughout Serbia, which were aimed to cater towards the Serbian public, and dealt with topics such as the European values and other issues of similar importance, with the aim to strengthen the process of European integration.

Other parliamentary committees, hold public hearings, hearings on bills, and listenings on issues of importance to different segments of society. These are organized in addition to other activities, which have the general goal of European integration. These include inviting representatives of civil society and relevant organizations and calling on relevant social factors that suggest the best solutions that will bring us closer to the European Union.

When it comes to communicating with the public, I should note that Serbian citizens are able to exercise their rights through the Institute of applications and proposals, and thus are considered by the appropriate committees.

We are pleased that we have the support of international organizations, NGOs, universities, European institutions and the EU Member States which help us in harmonizing our legislation. When it comes to communicating with the public, the local authorities try to explain the process and benefits of pre-accession funds of the European Union and, above all, they promote common values and ideas to strengthen the cultural, political, economic and social ties with the European Union citizens. All this assistance is of paramount value.

Of particular importance is the proper inclusion of representatives of the National Assembly, especially of the Committee for European Integration in the negotiation process. The importance is even greater because the Parliament is the one which adopts legislation to harmonize with the European Union. The Government, in the best interest of its citizens and by having a

fully legitimate approach in the negotiations with the EU, also prepared the National Assembly to adopt the platform for negotiations on the accession of Serbia to the European Union. The Committee for European Integration, on 29 August 2013, formally decided upon establishing the "Working Group" so as to work out a declaration or resolution between the Government and the National Assembly in the negotiation process with the EU.

Of equal importance, is the fact that this institution functions as the place for discussing these laws, and generally focuses on the issue of joining European Union; it is the place where the voice of the citizens, who elected their representatives to represent them in parliament, should be heard. The media transmit, these discussions, and there are other modes of making Parliament visible to people so as to serve the purpose of making the European values more familiar and also, it is a way to make public the commitments we make in the process of negotiation and accession.

The results of the survey in which the question "Do you support the membership of Serbia in the EU?" was made for the Office for European Integration and was conducted last July, showed that 50% of Serbian citizens support this process, 24% are against, 19% did not vote, and 8% do not know. It should be also noted, that the percentage of citizens of Serbia who supported the process of the European integration was decreased (in terms of political parties, there is almost a consensus on this issue, because they all support EU integration), and that a large number of citizens of Serbia do not really know what it actually means, so my point is, that the public should be fully and continuously informed about the steps and measures taken to achieve this goal.

Therefore, it is necessary to work towards the adoption of a common strategy of communication, both towards citizens of Serbia and the European institutions.

The process of European integration, and the opening of negotiations with the EU accession, is to determine the dynamics and define the conditions when downloading a large-scale European legislation, which creates a legal framework for the life of citizens in contemporary European Serbia towards European standards. It is therefore essential, that the National Assembly, as the highest representative body, and citizens through civil society organizations, are appropriately involved in the negotiation process.

Приближавање грађана управљању. Комуникација грађана са Народном скупштином у процесу европских интеграција

Миодраг Поповић

Саветник за међународне односе председника Народне скупштине Републике Србије

Данас расправљамо о теми веома важној за свако демократско друштво, о приближавању грађана процесу доношења одлука и повећању њиховог утицаја на представничке институције, пре свега на националне парламенте, односно на Народну скупштину Републике Србије.

Ово је тема од посебне важности за нас пошто је у јуну о.г. Савет Европске уније донео одлуку од историјског значаја за Републику Србију о отпочињању преговора између ЕУ и Србије о приступању.

У том контексту се отвара и питање укључивање Народне скупштине, као највишег представничког тела и самих грађана преко организација цивилног друштва у преговарачки процес. На тај начин била би обезбеђена обухватна и консензусом заснована преговарачка платформа по областима о којима се преговори воде.

При том је од важности имати на уму од каквог је интензитета и квалитета досадашња комуникација грађана са својим изабраним представницима, одосно какво је учешће цивилног друштва на законодавни процес и посебно какве могућности стоје на располагању грађанима Србије буду адекватно информисани о раду највише представничке и законодавне институције и да утичу на законодавни процес.

Рад Народне скупштине је јаван, како је већ то прописано у Закону о Народној скупштини. Истим законом, предвиђени су и начини на који се јавност рада обезбеђује, кроз стварање услова за телевизијске и интернет преносе седница Народне скупштине, конференције за новинаре, издавање званичних саопштења, омогућавање праћења рада Народне скупштине од стране представника средстава јавног информисања, представника домаћих и међународних удружења и организација и заинтересованих грађана,

увидом у документацију и архиву Народне скупштине, у стенографске белешке и записнике са седница Народне скупштине. Такође, важно је напоменути да су и седнице радних тела јавне (осим уколико се ради о седницама Одбора за контролу службе безбедности). Желим посебно да поменем да је ове године уведен тзв. live streaming, односно директан пренос седница одбора преко интернета.

Већ скоро једну деценију постоји пракса стажирања у Народној скупштини, где најбољи студенти београдског Универзитета ангажовани у скупштинским одборима и посланичким групама, са циљем да се обуче и помогну, али пре свега да рад одбора учини још транспарентнијим. Поред тога јавност рада се остварује и кроз групне посете грађана Народној скупштини. Програми НСРС за грађане су развојни и прилагођени различитим циљним групама и њиховим потребама, једнако су доступни грађанима који посећују Народну скупштину, као и грађанима који користе савремене технологије у комуникацији. За оне грађане који могу да дођу у Народну скупштину, постоји неколико програма посета, као и програм праћења седница са галерије, а за грађане који то не могу, припремају се бројне информативне публикације, промотивни филмови и програм теренских посета- Мобилни парламент.

Треба поменути и Пројекат успостављања канцеларије за комуникацију грађана и народних посланика на локалном нивоу, који је реализован у сарадњи са Националним демократским институтом. Ове канцеларије су замишљене као место где грађани могу у директној комуникацији са народним посланицима да изнесу своја мишљења о одређеним питањима и грађанским иницијативама. Циљ такве комуникације је подстицање и развој сарадње народних посланика и грађана. Тиме се грађанима приближавају скупштински рад и активности, и остварује већа транспарентност и повећава одговорност изабраних представника према народу. Отворене су канцеларије у Лесковцу, Новом Пазару, у Београду-Општина Савски венац, Ваљеву и Зрењанину, а наставља се са отварањем нових канцеларија за комуникацију са грађанима на локалном нивоу.

У контексту расправе о отворености Народне скупштине хтела би да наведем два примера. У име Народне скупштине, председник Н. Стефановић је, на Међународни дан права јавности, 28. септембра 2012. године, добио признање Повереника за информације од јавног значаја, за посебан допринос у афирмисању права јавности на слободан приступ информацијама. У истом контексту треба поменути и доношење доношење Закона о посебним мерама за спречавање кривичних дела против полне слободе према малолетницима, тзв „Маријиног закона“, чије доношење је иницирао је отац осмогодишње Марије Јовановић.

У контексту отпочињања преговара о чланству Србије у Европској унији од посебне је важности рад Одбора за европске интеграције, који, поред разматрања предлога закона са европске агенде, разматра планове, програме, извештаје и информације о процесу европске интеграције са амбициозним циљем да прати усклађеност домаћег законодавства са acquis ЕУ.

У Одбору за европске интеграције, од самог оснивања придаје се изузетна пажња сарадњи са цивилним сектором. Од важности је што је препозната важност комуникације у овом процесу, пре свега са грађанима Србије, али и са европским институцијама и свим институцијама и организацијама, које су носиоци овог процеса. Желим да подсетим да је Одбор за европске интеграције од оснивања 2003. године, у сарадњи са међународним и невладиним организацијама (Мисија ОЕБС у Србији, НВО „Европски покрет у Србији", Фридрих Еберт Фондација) био организатор округлих столова, не само у Београду, већ и у многим местима широм Србије, који су имали за циљ да се српска јавност упозна са европским вредностима и другим питањима од важности за процес европских интеграција.

И други скупштински одбори организују јавне расправе и слушања о предлозима закона, а такође слушања о темама од важности за различите друштвене сегменте, између осталог и за процес европских интеграција, на које се редовно позивају представници цивилног друштва и представници релевантних удружења. Такође се позивају релевантни друштвени чиниоци да сугеришу најбоља решења која ће нас приближити Европској унији.

Када се говори о комуникацији са грађанством треба поменути да грађани Републике Србије имају могућност да своја права остварују преко института представки и предлога, које разматрају надлежни одбори.

Задовољство нам је што уживамо подршку међународних организација, невладиног сектора, универзитета, европских институција и земаља чланица ЕУ, у хармонизацији законодавства. Подршку уживамо и кад се ради о комуникацији са грађанима и локалним властима, којима покушавамо да објаснимо овај процес и бенефиције које имају од предприступних програма и фондова Европске уније, али пре свега заједничких вредности и идеја и јачања културних, политичких, економских и социјалних веза са грађанима Европске уније.

Од посебног значаја је адекватно укључивање представника Народне скупштине, посебно Одбора за европске интеграције у преговарачки процес. Значај је утолико већи што је управо парламент тај који усваја законе који се усклађују са законодавством Европске уније. У најбољем интересу грађана Републике Србије и пуног легитимитета наступа Владе у преговорима са ЕУ, Влада припрема, а Народна скупштина усваја преговарачке платформе за преговоре о приступању Републике Србије Европској унији. На седници Одбора за европске интеграције, 29. августа 2013. године је усвојена одлука о формирању Радне групе која ће радити на изради декларације/резолуције о сарадњи Владе и Народне скупштине у процесу преговарања са ЕУ.

Подједнак значај има и то што је управо ова институција и место где се расправља о овим законима и генерално о придруживању Европској унији, чиме је и место са кога се чује глас грађана који су изабрали своје представнике, који их репрезентују у парламенту. Медијски преноси оваквих расправа, као и други модалитети јавности рада парламента упознају јавно мњење са европским вредностима, али и обавезама које преузимамо у процесу преговарања, односно придруживања.

Резултати анкете у којој је постављено питање "Да ли подржавате учлањење Србије у ЕУ?" које је за потребе Канцеларије за европске интеграције спроведена почетком јула, показују да је 50 одсто грађана Србије подржава овај процес, 24 одсто је против, 19 одсто није гласало, а 8 одсто не зна. При том, треба имати на уму да је проценат грађана Србије који подржавају процес европске интеграције у опадању (што се тиче политичких партија, садашњи скупштински сазив готово да има консензус по овом питању) и да велики део грађана Србије заправо не зна шта то подразумева потребно, и на томе се и ради, да се јавност потпуно и непрекидно информише о корацима и мерама које је неоходно предузети за остваривање овог циља.

У том смислу потребно је радити на усвајању заједничке стратегије комуникације, како према грађанима Србије, тако и према европском институцијама.

Процес европске интеграције и отварање преговора са ЕУ о приступању представља одређивање динамике и дефинисање услова при преузимању обимног европског законодавства, које стварају законски оквир за живот грађана у савременој европској Србији према европским стандардима. Због тога је неопходно да Народна скупштина, као највише представничко тело грађана, и грађани преко организација цивилног друштва буду на одговарајући начин укључени у преговарачки процес.

Shifting boundaries of parliamentary governance. Empowering the representative function of parliaments

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ABSTRACT
There are two major challenges to representative democracy: New deliberative models of governance and the economic crisis. Instead of facing these factors competitively, democratic polities can respond by empowering parliaments through effective relations with the citizenry. This prospect may be realized under three major preconditions: through a revision of mechanisms of parliamentary representation, a more direct approach on institutional antagonisms and an adequate enhancement of the knowledge capacities of parliaments. More generally, the paper presents some directions of defense against the argument on the redundancy of parliamentarianism. It sets out some important parameters of multilevel governance and then examines what these entail for parliamentarianism.
Keywords: Governance, Organized Interests, Knowledge, Political Parties, Representation

1. Developments in Governance

Starting somehow heretically one should acknowledge that a growing complexity in the political organization of modern societies corresponds to the differentiation of areas that do not pertain to a strictly speaking political domain: developments in scientific knowledge and communication technologies, expansion and differentiation of markets and businesses, new values and rights. An underlying principle of specialization of activities along with the gradual deconstruction of pyramidical administration in many informal and professional domains, have resulted (over many decades now) in a de-concentration of traditional governing apparatuses. This development has often been associated with the establishment of more (in quantitative terms) democracy and is therefore recognized as highly appropriate. In areas that concern the representation and exercise of collective, more or less interests and rights, one can distinguish a great variety of inter-governmental and non-governmental organizations. These collective actors carry on a substantial part in processes of political decision-making, a trend that is coterminous with a deceptive (as we shall try to explicate) reduction of the powers of central governments and parliaments.

In this last respect, much of the current debate in the European world relates to what has been termed as the "hollowing out" or the "retreat" of the state [1]. Broadly speaking, there are three major areas in which such development is experienced [2]: in government in the context of supranational trans-governmental relations (for example in issues of dual sovereignty), in the national boundaries of statehood, where many collective agents (from cultural minorities to businesses) act at a distance from centralized governance and of course in the economy itself, where national economies are much less self-sustained than they used to be (from the recent crisis of the public sector to the well-established strategies of public/private partnerships and all relating issues of accountability).

The arising question for much of modern political science concerns the degree in which the diffusion of authority in new political forms results in the demise of the autonomy of political institutions that are traditionally gathered around the trichotomy of the separation of powers. The route of self-sustenance and non-intervention, which attributes to a constitutionally safe-guarded political authority, the control of the state, is gradually being redirected to a condition of 'post-sovereignty' with more involved international and non-state actors: cross-border environmental coalitions, multinational corporations, political and non-profit institutions, regional economic and political blocs, intergovernmental agencies. [3] In this much debated context of multilevel governance, a new array of complications arises: demands for institutional restructuring and citizen participation, calls for more transparency and openness as tools of legitimation, increased individuation of political interests, opaque forums of public discussion, representation deficits and, almost inevitably, corruption. Scholars agree, however, that the normative and juridical foundations of parliamentary democracies remain intact, notwithstanding debates on the breach of constitutional provisions.

Before moving into the corollaries for parliaments, let us briefly expose some basic, more or less known lines of defense.

a) At first, it must be ascertained that political institutions provide an agreed upon mechanism, primarily through elections, for setting out priorities, that is making difficult choices with respect to an expected shortage of means and contingent political costs. Those choices are usually made through legislative initiatives that have to be defended in parliament.
b) The interplay between dominant socio-economic partners and central administrations does not unfold in a context of national representation or legal mandates. It may be a

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1 See Strange (1996) and Sørensen (2004).

2 See Sørensen (2006) pp. 204-207.

3 Obviously the concept of governance embraces both non-state actors and divisions of political authority (for example in EU and federal governmental and legislative bodies). With a special emphasis to the second sector a useful source can be found in Enderlein et al. (eds.) (2010).

question on a self-authorizing executive power but it cannot replace parliaments[4].

c) Parliaments provide a legitimized platform of political dialogue, which is often instigated by scrutinizing government actions especially when these involve extended partnerships with the private sector. An indication of this is a wider effort to restructure the effective operation of parliaments' fundamental oversight functions, from their active involvement in amending and monitoring the implementation of the state budget, to their general role in holding governmental relations to non-state actors to account.

d) Although less formalized means of policy implementation demonstrate a proven potential, it is only through the mobilization of large scale resources and organization that coordination of policies is achieved. This is even more intense in transnational (EU) or federalist contexts.

e) In its interactions with social partners the state resorts to parliamentary legitimation, to the normativity of public benefit, before employing all available means of implementation (public bureaucracies or ministries).

f) Finally, political institutions were designed under the assumption of conflict. Markets tend to assume away social conflicts (and in the business world assume that the most powerful actor will win). On the other hand, social agents and networks such as NGO's, non-profit and voluntary associations are generally cooperative and non-competitive having no ex ante mechanisms of coping with fundamental disagreements.[5]

In short, when it comes in discussing and deciding on the implementation of an appropriate policy strategy, there are certain institutional structures that have the capacity to produce more coherent results. These structures are both democratic (hence, non-static) and predominant. Apart from their conventional articulation with respect to the majority principle, parliaments are indispensable parts of those structures, to the extent that certain criteria of administrative productiveness are more likely to be compromised with the demand for rational deliberation and criticism.

2. Parliamentary Governance

2.1 Civil Society Agents

In narrowing our view to what these new developments in governance entail for parliaments, we may observe, at first, one major difficulty: the complexity implied in the steering of modern social conditions: in the economy, in multilateral relations, in new technologies, in public services and so on. This inability is mainly reflected in two major areas. In problems of agency loss, or 'democratic deficits', where parliamentary representatives and political

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4 Even Habermas for example, in his latest critique of the European Union could not envision a European transnational democracy (as opposed to executive centralized federalism) without an empowered setting of double mandates in the European Parliament. See Habermas, Jürgen (2012) p.20.

5 See Peters, B. Guy and Pierre, Jon, (2006) p. 217.

parties are progressively projected away from systemic developments in socio-economic relations and in problems of competence, where Members of Parliament lack sufficient and diversified capacities in dealing effectively with the complexity of issues included in political agendas. It is of course not possible -not to say unpractical- for national or regional representatives to engage in every known detail of policy-making. It is also impossible to obtain necessary specialized and technical knowledge with regard to a vast spectrum of problems. However, parliaments face a considerable competition from other forms of collective deliberation (policy networks, communities, social forums and interests groups), which prefer to deal directly with the issues that concern them. Quite often parliaments are at variance with these collective actors, particularly when the latter prefer to employ strategies of direct negotiations with central governments, rather than taking part in party politics or influencing Members of Parliament.

More generally, what parliaments are facing is probably a parallel, to the democracy of elected representatives' network of organized interests. The latter may be conceived on the basis of a relation of 'checks and balances' among interest groups as in the classical pluralist model in which government action is at the epicenter of concern.[6] There is also a more elusive interpretation in the broader perspective of actors in civil society. Political gains are obtained here through self-delegation, which is neither concentrated nor antagonistic; yet its ultimate objectives are not fulfilled outside state institutions. In this respect territorial representation based on the 'people' is unable to depict the differentiations at these levels of both public and private interests (from private industrial interests to regional environmental concerns).[7]

In either case, it appears that popular, national sovereignty, is facing considerable pressure from two parallel directions. On the one hand, parliaments have to cope with their interaction with lobbyists and pressure groups and eventually with the conflict between private and public interests.[8] At the same time, representative assemblies are in need of an adaptation mode with regard to the representation of interests that are not concerned with electoral politics. Such failures in representation have often been classified as a problem of agency loss whereby a considerable gap exists between the policy obtained through delegation and the citizens' desires. One apparent justification for this, is that citizens' demands

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6 See for example Bentley, Arthur (1967).

7 These collective actors emerging from civil society are elements of what Tom R. Burns termed 'organic governance'. For Burns these informal networks are not only knowledge competent but also enjoy a high level of legitimacy insofar as they realize certain notions of democracy namely the right to form groups in order to advance or protect interests. See Burns, R. Tom (1999) pp.167-194.

8 In the European context a basic problem has been the adoption of regulative measures given the intensification of lobbying in the European Parliament (opting for registration measures) and the Commission (which opts for incentive measures). See Chabanet, Didier (2011) pp.1-20.

at a national level are not only more complex and diverse, but also impossible to meet: for example, typical voters may demand a constant increase in various welfare expenditures, yet a constant reduction of taxes. Interests demands on the other hand are more coherent and better researched. They have specific aims and tangible methods of pursuing them. What however interests us here, are the internal and external to parliament restrictions that explain the following indicative symptoms[9]:

a) conflicting decisions (in legislation) which result in problems of policy coordination,
b) rent extraction when representatives use their authority to obtain private benefits,
c) indifference and lack of effort and finally a deep, general dissatisfaction (whatever actually the reason) with the political system.

But let us also look at the other side of the coin and point out some of the limitations of these new external actors of "dispersed" democracy.[10] Unlike parliaments, which have more profound normative bases in popular sovereignty, modern organizations of self-representation are more flexible and informal. Their non-public or non-state character however increases invisibility. Many function at the fringes of law and are usually concealed from public scrutiny. In addition, these new over-specialized and narrowly defined forms of non-parliamentary governance are unable to fully legitimize themselves under formal democratic arrangements. This element of over-specialization may result in an obvious disadvantage for the vast majorities of citizen populations with broad collective, national or international interests. In parliamentary proceedings a wider debate is established - a principle that guides the internal organization of parliaments themselves - in that MPs can express their dissatisfaction or at least reaffirm the power of the largest parliamentary group. Similarly, in elections voters may either express their disenchantment or simply accede to a pre-structure of political competences. But when it comes to the interplay of social agents with respect to political gains, and when this competition is situated in a background of distrust to the political system, the vast majority of party-voters stay far behind in negotiations on policy-change. Multinational corporations enjoy a better edge, which in itself implies a high risk of power–abuse.

One of parliament's great advantages in this respect can be already found in its normative assumptions of operation, namely popular sovereignty. Particular interests with strong public implications are technically and territorially different to those of vast national or international majorities, where issues are more pertinent (in systems of health and education). In other words, parliaments represent the governed in their relations with the governors and it is extremely difficult to substitute for this function. In addition, in spite of differences in history and organization, European parliaments share a common democratic

9 For an extended discussion of these particular aspects see Strøm, Kaare et al. (2007) pp. 708-747.

10 For a comprehensive overview of these limitations see Burns, R. Tom (1999) pp.182-184.

culture, one that allows for dialogue and evaluated decision, grounded in the rule of law, as well as in the protection and exercise of fundamental rights. This culture is manifested in voting procedures, in the organization of debates and sittings, in codes of conduct, in setting a coherent framework of MPs' rights and responsibilities, as well as in oversight and diplomatic competences. In the international domain, including that of diplomacy and foreign affairs, parliaments have acquired established, policy-oriented capacities through the function of inter-parliamentary assemblies or committees (such as COSAC), not to mention the newly increased capabilities (since the Lisbon Treaty) of national parliaments with regard to EU legislation. A key issue in this area has been the enforcement or marginalization of national legislatures with regard to European integration, which in itself designates an almost limitless number of policy areas that can be subject to shared national and EU competence.[11] Moreover, parliaments have developed robust and independent research services, which can provide and disseminate reliable information on diverse policy areas. A current discussion concerns the abandonment of the traditional model of an all-inclusive academic style of knowledge in favour of speedy, graphical and concise information[12]. In both respects, it is certain that a highly qualified research staff can help parliamentarians formulate informed opinions. All the above, amount to a solid foundation of parliaments that is relatively absent in non-state representative organizations.

2.2 Internal aspects of representation

But even within more conventional, internal aspects of representation (from electoral systems and political parties to the juridical and political role of Members of Parliament), parliamentary systems demonstrate an unparalleled durability. With regard to the issue of multilevel governance, the role of political parties is essential. Parties constitute the direct counterparts of civil society agents to the extent that, apart from their juridical position, themselves, they constitute primarily (or also) socio-ideological citizen-organizations.

Research has shown, for example, that parliamentary systems with cohesive – competitive parties, tend to be more effective and apparently restrict rent extraction.[13] Strong and clearly competitive political parties may promote accountability at whichever direction and possibly contain the above mentioned negative effects of the external actors of civil society. An atrophy of the political party may be accompanied by an atrophy in the partisan bonds in the civil service and, thus deal indirectly with the phenomenon of party clientelism or favoritism. Yet, changing party affiliations or political views more than often, may produce an obscure

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11 See O'Brennan, John and Raunio, Tapio (eds.) (2007).

12 In an interesting article on parliamentary libraries Iain Watt contrasts a traditional model of extended resources and unlimited knowledge with a model focused on 'speed, service and innovation'. The criteria applied for this comparison are the policy impact of parliamentary research and an understanding of the special character and needs of readers (Members of Parliament). See Wat, Iain (2010) pp. 47-60.

13 See Strøm, Kaare et al. (2007) pp.733-735.

picture of commitment leaving voters with simplistic, generalized information and confused political ties.

Nonetheless, whatever disenchantment is expressed against a political system, it is rarely directed against democracy or parliamentarianism as such. The fact remains, however, that over the last 2 decades public attitudes towards constitutionally established political institutions are generally low. This confidence deficit is reinforced through another important dimension of representation: information. One would expect that there will always be a gap between citizens' demands and representatives' ability or willingness to meet them, yet information is a critical issue with no less discrepancy. This is in a large part due to a continuing revolution in technologies and methods of evaluating and communicating relevant information. Given the overwhelming amount of disseminated information, it is difficult to filter out pointless 'noise' and focus on what is actually essential. People may be under-informed despite the vast abundance of news. Therefore, technological innovations and a disputable quality of transmitted knowledge may widen the information gap between citizens and their representatives. People would prefer politicians to be adequately and better informed, yet they would not accept an insurmountable gap of information between themselves and their representatives. [14]

With respect to parliaments, citizens are not adequately informed about the workings of a parliament or about the actual duties of its Members. Research has shown that in the United Kingdom for example, people tend to use the terms "parliament" and "government" interchangeably, while only a small percentage believes that parliament holds the government to account.[15] Increased transparency and accountability are methods of a considerable impact on public confidence, yet changes in institutional functions alone, may not guarantee an acceleration of a stronger relation between citizens (as individual voters or as organized actors) and parliament. Engendering a greater familiarity with all forms of political life and building on the already positive views that people have of their parliament, may offer a better chance of success. One way to achieve this, is perhaps for parliaments to be more closely concerned with issues of a particular or localized nature. This localization may not necessarily be territorial. It is a reaction towards the decomposition of public benefit into a diverse and self-conflicting backdrop of groups of interests, each having a specific identity (geographical, cultural or scientific) and well-defined objectives.

Still, parliaments do not operate in a void. The restoration of trust towards parliamentari-

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14 On the subject of information, see ibid. pp.740-743.

15 See Hansard Society (2010) pp.95-97.

16 It is an indicative fact that a growing distrust to a political system –following a series of policy failures – may explain the emergence of extreme wing politics much better than discourses on anti-globalization or xenophobia.

anism passes through the entire political system, of which it constitutes an indispensable part. In a comparative perspective however, parliaments enjoy a critical advantage, namely their role in holding accountable political and governmental practices. Scrutiny towards political practices can be exercised directly or indirectly by various - more or less established - institutional tools, from parliamentary self-regulation, to independent regulation that deals with any possible incompatibilities with political mandates and public offices, confidentiality of information, etc. (in Electoral and Criminal Codes). Of course, these methods, focused mainly on the status of a Member of Parliament, would perhaps be ineffective when the parliament in its principal relation with the government fails to defend its institutional autonomy and distinctive constitutional unity presupposed in its legislative function. A question to be addressed here, would concern the degree by which the auditing exercised by parliaments has the ability to oblige members of the executive to provide clarifications that may expose many dead-ends and vicious circles of proposed legislation. When parliaments are reduced to mere reactive institutions, casting a rather thin impact on initiatives coming from the executive, policy failure is more likely. Parliaments are essentially forums of political dialogue without formalistic antagonisms of interpretative rhetoric, monopolizing or substituting for the crux of their practical prospects. With regard to the large array of non-state or semi-state governance agencies, the parliament can re-affirm this autonomy (as a 'cabinet of the people' as Kelsen described it) by extending its scrutiny and monitoring function to them, while establishing simultaneously an open relation of support. This could be done by setting the grounding rules and principles of their participation in policy-making (the role of independent authorities may be of vital importance here). Nonetheless, an attempt at the institutionalization of actors in civil society, whichever direction it may follow, would certainly raise questions of freedom-restriction but parliaments cannot remain indifferent to these new developments of dispersed governance and must seek an appropriate design of participation.

Conclusion

In other words, the emergence of new levels and forms of governance need not imply that the parliamentary component of democracy has become superfluous or has no future role to play. It still remains the major basis for legitimizing political authority and regulation in European societies. We cannot take unresponsively the argument on the crisis of parliamentarianism. One major dimension of parliament's autonomy, is precisely an intermediary bond between governors and the governed. It is extremely difficult to deny such a role. Despite any apparent shortcomings, already from the 2nd world war to our days, parliaments have evolved at many levels. They have developed complex and more effective mechanisms of legislative and oversight operations, improved their infrastructures, employed more staff specialized in specific areas and in general have become competent institutional competitors to the executive power. All this amounts to an edifice, with the capacity to overcome both internal irregularities and external pressures. The representational essence of parliamentarianism however, is par-

ticularly re-affirmed when its instrumental capacity is re-directed to a non-competitive attitude towards developments in socio-economic organization, and a rather acute one towards anachronistic institutional arrangements.

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Jan Delnoy

In the crossroads between national and EU citizenship: Meaning, boundaries and legal aspects of free movement

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ABSTRACT
European citizenship constitutes one of the most important aspects of EU membership. It has special attributes that differentiate it from national citizenship. EU citizenship has become a legal source of rights to all citizens of the EU. They include, amongst others, the right to move and reside freely in the EU, the right to vote and stand as candidate in elections, the right to enjoy diplomatic and consular protection, the right not to be discriminated on grounds of nationality, and the right to address the EU institutions. Effectively, EU citizenship constitutes a point of reference in the attempt to transform the EU into a genuine political Union.
Keywords: Access to documents, Charter of Fundamental Rights, EU Citizenship, European Citizens' Initiative, Free Movement, Non-discrimination, Right to Vote

1. Introduction

European citizenship constitutes one of the most important aspects of EU membership. It confers **specific rights** to every citizen of the Member States, thus creating a common *"status europeus"*.

There were several attempts in the 70s and the 80s to establish the so called "Europe of Citizens". From the Tindemans Report of 1975 [1] following the European Council of Paris of 1974, until the European Council of Fontainebleau of 1984 and the "Adonnino Committee", which was set up and its subsequent report [2], the notion of "A People's Europe" used to dominate the debate, with a view *"to respond to the expectations of the people of Europe by adopting measures to strengthen and promote its identity and its image both for its citizens and for the rest of the world"* [3].

EU citizenship was finally enacted in 1992, by virtue of the Treaty of Maastricht. Originally, its scope was to convey a symbolic meaning; that the – then – European Community was not in-

terested only in economic principles, but it likewise addressed the citizens of the Member States. Nowadays, EU citizenship constitutes one of the fundamental rights of EU law.

The importance of EU citizenship is unquestionable; the Treaty of Lisbon has placed EU citizenship amongst the principles of EU law in Title II of the Treaty of the European Union (Article 9 TEU) and in the Second Part of the Treaty of the Functioning of the European Union (Article 20 TFEU).

2. Definition and characteristics

In order to trace the basic characteristics of "citizenship", one should have recourse to the ancient Greek and Roman law. Aristote identified the citizen with the participation in the public affairs (*politeia*), whereas under Roman law, the term was used to describe the rights and duties associated with the status of being a citizen of Rome (*civis romanus sum*) [4].

Nowadays, two words may be used in order to describe the legal bond that links a citizen with a specific state; "citizenship" and "nationality".

In both international law and national laws, the term "nationality" has the meaning that the national of a state is subject to the laws of this country, enjoys its rights and is subject to the obligations provided for in the legal order of this state. According to an obiter dictum of the Court of Justice, in one of its judgments, nationality constitutes a *"special relationship of solidarity and good faith between it and its nationals and also the reciprocity of rights and duties"* [5].

EU citizenship is not identical to the above definition of nationality.

More specifically, pursuant to Article 9 TEU, *"Every national of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship"*.

Therefore, EU citizenship has the following differences from the national citizenship:

Firstly, EU citizenship does not link an individual with a state, but with an international organization. Admittedly, in essence, EU is a form of international organization.

Secondly, EU citizenship **accompanies** the national citizenship and it does not replace it. According to EU law, the rules for acquiring the national citizenship are provided for exclusively in the national legislation. This means that every Member State is completely free to set the conditions to acquire the nationality of this Member State [6]. Therefore, under this principle, which was enacted by virtue of the Treaty of Amsterdam [7], EU citizenship is an additional attribute, dependent upon the existence of national citizenship.

Thirdly, EU citizenship is acquired automatically, when the conditions for acquiring national citizenship are fulfilled. This means that EU citizenship is lost when a person is no longer a national of a Member State of the EU. This equally means, that it is not possible to deprive a national of Member State from its EU citizenship. Nor is it possible, for a Member State to impose additional conditions in order to recognize the EU citizenship. For instance, a Member State is not allowed to provide for special administrative procedures in order to attribute or recognize the EU citizenship of a national of another Member State.

The above differences of EU citizenship from the notion of "nationality" have generated a legal debate on the term used to describe it. That is why the term used is "EU citizenship" and not "EU nationality", so as to differentiate it from the nationality rules, which create a genuine legal bond between a citizen and a state.

3. Rights emanating from EU citizenship

EU citizenship is not a theoretical notion of EU law. Following the subsequent amendments of the EU Treaties, nowadays, EU citizenship has become a legal source of rights to all citizens of the EU [8]. Pursuant to Article 20 TFEU, EU citizenship is likewise a source of obligations, even though – at present – they are not explicitly described in the Treaties [9].

Notwithstanding the above question, the rights emanating from EU citizenship are the following:

3.1 Rights provided for in the Charter of Fundamental Rights

Owing to the fact that the rights of every individual within the EU were established at different times, in different ways and in different forms, EU decided to clarify things and to include them all in a single document: The Charter of Fundamental Rights. The Charter was, initially, solemnly proclaimed at the Nice European Council on 7 December 2000. At that time, it did not have any binding legal effect.

Under Article 6 paragraph 1 TEU, the provisions of the Charter of Fundamental Rights have the same legal value as the Treaties. This constitutes one of the most important provisions of EU law.

The Charter entrenches all the rights found in the case law of the Court of Justice of the EU, the rights and freedoms enshrined in the European Convention on Human Rights and other rights and principles resulting from the common constitutional traditions of EU countries and other international instruments.

More specifically, the Charter does not include only fundamental rights, such as the ones provided for in the European Convention of Human Rights (i.e. presumption of innocence, prohibition of slavery, prohibition of tortures), but also the basic political rights of the citizens

(i.e. freedom of conscience, freedom of expression), the essential financial and social rights (i.e. right to create family, right to conduct business, right to property) and even the so called 'third generation' fundamental rights (i.e. data protection, guarantees on bioethics) [10]. One of the most fundamental rights of EU citizens under the Charter, is the right to good administration.

3.2 Right to move and reside freely in the EU

Pursuant to Article 20 paragraph 2 (a) TFEU in combination with Article 21 TFEU, every citizen has the right to move and reside freely within the territory of the Member State of his preference.

Originally, prior to the enactment of EU citizenship, the freedom to move and reside was recognized in respect of workers and their families, i.e. it was recognized to economically active individuals. More specifically, the freedom to move was dependent upon the fulfillment of two basic conditions; firstly that the person who exercised the right to move had, the necessary financial means so as not to burden the social assistance system of the host country and, secondly, that he had comprehensive sickness insurance.

It should be noted in this ambit that the term “worker” constitutes a notion of EU law, which is interpreted by the Court of Justice of the EU, independently of applicable national definitions [11]. Effectively, it is interpreted broadly, thus covering numerous types of working relationships [12].

Following the Treaty of Maastricht and the enactment of EU citizenship, the right to move is disengaged from the condition of exercise of financial activity. Nowadays, every citizen has the right to move and reside freely within the EU, and the Member States are prohibited from imposing restrictions which hamper the core of this right.

In this ambit, even the general principle of free movement, according to which EU law does not apply to purely internal situations [13], tends to be set aside. In recent judgments [14], the European Court of Justice has held that the absence of a cross-border link does not rule out the application of the Treaty provisions on EU citizenship [15], thus rendering EU citizenship a legal status on which rights are directly and unconditionally dependent [16].

Directive 2004/38/EC [17] provides for the specific conditions under which every EU citizen and his family can exercise the right to move and reside freely in another Member State.

Suffice it to note that EU law recognizes to EU citizens the right to move freely and reside in the host Member State unconditionally, for a period of up to 3 months. For an EU citizen to prolong his stay in the host Member State, certain conditions apply. If an EU citizen has

legally resided in the host Member State for a continuous period of more than 5 years, he acquires the right of permanent residence there.

The right to move freely and reside in another Member State is restricted for reasons of public policy, public security and public health, based exclusively on personal grounds of the EU citizen concerned. Economic reasons may, under no circumstance, justify the restriction to the right to move freely. In this ambit, EU citizens must be provided with the opportunity to be heard and seek effective legal protection should their fundamental right to move and reside is restricted.

The Court of Justice of the EU has held that Article 21 TFEU has immediate effect. This means, that every individual has the right to invoke Article 21 TFEU and the right to move freely in the EU before any administrative or judicial authority of any Member State. This equally means, that the EU citizens in the exercise of the right to move freely do not have to prove that they fulfill the conditions laid down in Directive 2004/38/EC. It is the Member State concerned, that has to abide with the provisions of the said Directive.

3.3 Right to vote and stand as candidate in elections

One of the essential aspects of any national citizenship involves the right of the nationals of a state to participate in the decision making process of the country, through the participation in elections.

EU law recognizes two aspects of this right:
Firstly, every EU citizen has the right either to vote his representatives for the European Parliament or to stand as candidate in elections for the European Parliament. The relevant details are provided for in Directive 93/109/CE [18], which lays down the arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals.

Secondly, every EU citizen has the right either to vote his representatives in the municipal elections of the host Member State or to stand as candidate in municipal elections of the host Member State, under the same conditions as the nationals of the host Member State. The relevant details are provided for in Directive 94/80/EC [19], which lays down detailed arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections by citizens of the Union residing in a Member State of which they are not nationals.

The recognition to all EU citizens of the right to participate in municipal elections has been a substantial innovation and also an important "victory" of the European Commission, which had to struggle through the disagreements of numerous Member States. Effectively, given that municipal elections enable the participation in national legal and political systems, the

participation of nationals of other Member States in them was considered as tabou [20].

Our attention should be drawn to the fact, that EU citizenship does not confer the right to vote in national elections, i.e. in the elections for the government of the host Member State. EU citizenship involves only the participation in municipal elections, i.e. in elections where the citizens decide on who is going to be responsible for their day to day problems, on a regional level.

3.4 Right to enjoy diplomatic and consular protection

Pursuant to Article 20 paragraph 2 (c) TFEU in combination with Article 23 TFEU, every EU citizen has the right to enjoy diplomatic and consular protection in the territory of a third country.

In essence, this right means that if a Member State of the EU does not have diplomatic or consular representation in a third country (i.e. a country that is not member of the EU), its citizens can seek diplomatic and consular protection from any other Member State that has diplomatic representation in this third country, under the same conditions as the national of this Member State.

This protection traditionally covers cases of accidents or severe illnesses, arrest or detention, repatriation, death, or loss of travelling documents. The latter is regulated in the Decision 96/409/CSFP of the Council, whereby, a common format emergency travel document has been established to be issued by Member States to citizens of the EU in places where those citizens' Member State of origin has no permanent diplomatic or consular protection [21].

It should be noted that even though the wording of Article 23 refers to both diplomatic and consular protection, there has been a debate whether the diplomatic protection is covered, especially following the Decision 95/553/EC of the Council regarding protection for citizens of the European Union by diplomatic and consular representations; its Article 1 refers only to consular protection [22].

This provision has demonstrated its practical usefulness in occasions of urgency or major humanitarian crises (for instance, in the earthquake of Tahiti in January 2010, in the earthquake of Japan in March 2011, in the volcanic eruption of Iceland in spring 2010). In all these cases, the diplomatic and consular protection was unified, independently of the nationality of the EU citizen that required assistance.

3.5 Right to address the EU institutions

One of the main preoccupations in the development of the EU was the realization that the

European Union and its institutions were distant from the EU citizen and his everyday problems. These preoccupations were addressed by the provision of the right of every EU citizen to contact the EU institutions. This communication takes the following forms:

Firstly, under Article 20 paragraph 2 (d) TFEU in combination with Article 227 TFEU, all EU citizens have the right to petition the European Parliament. This petition may take the form of a complaint, a request or a remark in one of the areas regulated by EU law and it must be of direct concern to the person making the petition. A special committee of the European Parliament has been established with responsibility to answer these petitions.

Secondly, under Article 20 paragraph 2 (d) TFEU in combination with Articles 24 and 228 TFEU, all EU citizens have the right to apply to the European Ombudsman. The latter is an institution that addresses instances of maladministration on the part of the EU administration.

Thirdly, under Article 20 paragraph 2 (d) TFEU every EU citizen has the right to address written questions or requests to all EU institutions in one of the official languages, and obtain a reply in the same language. According to the said Article in conjunction with Article 41 of the Charter of Fundamental Rights, this right is accompanied by the obligation of the EU administration to provide a justified answered and in a reasonable time.

It should be noted that even though Article 20 paragraph 2 (d) recognizes the right to address written questions or requests to EU institutions only to EU citizens, by virtue of Article 41 of the Charter of Fundamental Rights, the said right is recognized, effectively, to every physical or legal person [23].

Fourthly, Article 11 paragraph 4 TEU provides for the "European Citizens Initiative" [24]. The European Citizens Initiative constitutes a major innovation of the Treaty of Lisbon. According to this Article, if not less than one million EU citizens (this number represents approximately 0,3% of EU population) originating from at least one quarter of all Member States so wish (mainly through the collection of signatures within 1 year), they may invite the EU Commission – i.e. the EU institution which has the legislative initiative – to submit an appropriate proposal on a question of public concern. The details of the exercise of this right are provided for in Regulation 211/2011 [25].

Fifthly, under Article 15 paragraph 3 TFEU, every EU citizen has the right to access to documents of EU institutions. The latter, constitutes an aspect of the fundamental principle of transparency, which governs the functioning of the EU. Following the Treaty of Lisbon, the right to access to documents extends to the transparency of the proceedings of the EU institutions. The details of the exercise of this fundamental right are provided for in Regulation 1049/2001 [26].

3.6 Right not to be discriminated on grounds of nationality

Citizenship is inextricably linked with the notion of equality, since *"citizenship is about expanding and enriching the notion of equality by extending its scope through civil, political and social rights"* [27].

Even though, as already stated, EU citizenship was enacted only in 1992, the prohibition of all discrimination on grounds of nationality has been part of the EU *acquis* almost since the beginning (now, it is regulated in Article 18 TFEU). Nowadays, by virtue of the Treaty of Lisbon, both aspects of "nationality" are intertwined.

Under the principle of prohibition of discrimination on grounds of nationality, every EU citizen has the right to be treated on equal terms with the nationals of all other Member States, irrespectively of his nationality.

By the term "discrimination" we mean both direct and indirect discrimination. More specifically, when discrimination is directly linked with the nationality of the person concerned, we talk about "direct" discrimination. When a national measure does not discriminate on the basis of nationality, but on the basis of another criterion, which nevertheless leads to the same result, then an "indirect" discrimination exists (example: when the criterion used is the mother tongue or the place of residence).

The prohibition of all discrimination on grounds of nationality, is inextricably linked with the principle of equal treatment, which constitutes one of the fundamental principles of EU law.

To this effect, the Court of Justice of the EU has recognized the following aspects of equal treatment in respect of EU citizenship (indicatively):

- Right to enjoy a child raising allowance [28]
- Right of residence of students – student grants [29]
- National legislation granting the right to tide over allowances to its nationals only on condition that they have completed their secondary education in an educational establishment in their own Member State [30]
- Social security allowances paid to jobseekers [31]
- Handing down of surnames [32]

4. Concluding remarks

As it emerges from the above, EU citizenship is indeed one of the most important aspects of EU law and a point of reference in the attempt to transform the EU into a genuine political Union.

In this ambit, we shall agree with Prof. Guy Isaac that EU citizenship constitutes a dynamic

notion of EU law, which evolves as EU law progresses [33] and, hopefully, we are going to witness its expansion.

There is common agreement that unless the EU attempts to approach the citizen and render its administration and the decision making process more accessible, it is bound to languish and lose its scope.

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Modern Parliaments and Legislative Quality

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ABSTRACT

Although the strive of governments for legislative quality has been the subject of much debate in the last two decades, the contribution of modern Parliaments to this cause has not been documented. Parliaments are expected to scrutinise legislative drafts, but there has been little analysis on what legislative quality is, and what the precise and concrete criteria for its scrutiny at pre and post legislative stages are. This paper defines legislative quality as effectiveness of legislation, and introduces precise criteria for its scrutiny by Parliaments. It applies to all legislative texts but mainly to national implementing measures passed for the purposes of transposition of EU law, as a means of achieving accession to the EU.

Keywords: Legislative quality, pre-legislative scrutiny, effectiveness, transposition, legislation

I. Introduction

New states, or states emerging from a constitutional or jurisdictional break, have no option but to pass ad hoc laws as a means of creating the infrastructure of the new territory. As priority is with the economy and investment, donors surge into the new country in order to facilitate the creation of the legal infrastructure to set the new state on its way to stability. At this stage ad hoc drafting consultancies are the norm: the lack of local drafting capacity to copy with the immeasurable task ahead, invites for consultants from various jurisdictions who land in the new state and attempt to cope with the urgent demand for quick legislative solutions in the best way they know how: by replicating the laws of their jurisdiction of origin. At this stage, quantity is what is being requested, and quantity is what is on offer. The result tends to be a collage of legislative texts that create the legal infrastructure required, but by the means of a collage of translated foreign laws.

But, with time, the urgency of emergency dies down. The first phase of legislative recuperation completes, and the legal system matures. As the state solidifies constitutionality and legality, the second phase of legislative recuperation begins. Legislation is now viewed as a tool for

regulating citizen activities. Furthermore, its success depends on the production of results. Regulatory results require implementation of the legislation. But implementation requires implementable legislation, namely legislation that takes into account national needs, national ethos, national culture, and national legality. Thus, the legislative texts of the first phase stand out now as foreign and unsuitable. At the same time, the focus switches from the economy and the creation of a legal and financial and technical infrastructure, to the citizen. Priority turns to the citizen as the final main actor of regulation. Plus, quality of legislation becomes a priority: laws are passed to guarantee regulatory result.

Luca Bianconi [EU Delegation in Belgrade] identified the following weaknesses in the National Assembly of the Republic of Serbia: weak law-making capacity; and weak capacity to guarantee quality of the law-making activity. Natasa Vuckovic (Chair of the EU and International Committee) confirmed that NARS must introduce a process guaranteeing the effectiveness of legislation. Mr. Svolopoulos (Parliament of the Hellenic Republic and Project Leader) asked for concrete proposals for the monitoring of draft accession legislation both at the EU International Committee but, also at all NARS Committees.

The aim of this paper is to respond to these calls by identifying a concrete procedure of parliamentary scrutiny of draft accession legislation, and legislation in general, to award NARS effective weapons to contribute and guarantee smooth accession. The EP and the UK are used as case studies to identify such a process: the EP is the model Parliament for aspiring EU member states; and the UK Parliament are currently in the process of examining legislative scrutiny. However, which are the ultimate criteria for legislative scrutiny? The paper advocates that effectiveness of legislation constitutes legislative quality, and that effectiveness must be at the forefront of pre-legislative scrutiny.

II. What are the criteria of legislative quality used by the EP? The Smart Regulation Agenda [1]

The most recent innovation in the field of legislative quality in the EU is the Smart Regulation Agenda. [2] The October 2010 Commission Communication on Smart Regulation constitutes the formal passing from the old Better Regulation Agenda to the new Smart Regulation Agenda. The Commission identified three key messages in the Agenda. First, Smart Regulation is about the whole policy cycle and, thus touches upon the design of a piece of legislation, its implementation, enforcement, evaluation, and revision. Second, Smart Regulation remains a shared responsibility between the EU institutions and the Member States. Third, the views of

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1 For a fuller analysis see Helen Xanthaki, "EU Legislative quality post-Lisbon: the challenges of Smart Regulation" [2013] Statute Law Review, forthcoming.

2 European Commission, 'Smart Regulation in the European Union' Commission communication, COM (2010) 543, 8 October 2010, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX

users of regulation have a key role to play in Smart Regulation, as consultation is an element of democracy. [3]

There is no doubt that Smart Regulation is revolutionary. The reaction of the experts to the Commission's agenda has been positive, although already need for further action has been identified. This includes the need to carry out impact assessments for every new regulatory proposal, to improve the informative value of roadmaps, to make the Commission´s Impact Assessment Board more independent, to conduct systematic ex post evaluations from the end users' perspective, to strengthen the role of the High Level Group, and to consult the public. Smart Regulation presents obvious positive points. It follows Stefanou's identification of the drafting process as a part of the legislative process, which is a part of the policy process.[4] It confirms that EU regulation is a shared responsibility of the institutions and Member States. In addition, it affirms the need for in-depth consultation. Focus is placed on the simplification of EU law via the reduction of administrative burdens beyond the expected 25 per cent cuts in red tape by 2012; evaluation of law effectiveness and efficiency ex ante via fitness checks on key areas (environment etc.), and via strategic general policy evaluations; selection of the 'the best possible' legislation through Impact Assessment, improvement of implementation record via post-legislative scrutiny, SOLVIT, and EU Pilot; and achieving clearer and accessible legislation via simple language, codification, recasting, and e-access.

III. What criteria of legislative quality are used in the UK Parliament? [5]

In the UK, regulatory reform was at the epicenter of the manifesto of the Coalition government as is evident in "The Coalition: Our programme for government" document. The government undertook to cut red tape [6] by introducing a 'one-in, one-out' rule, whereby, no new regulation is brought in without another regulation being cut by a greater amount; [7] to end the culture of 'tick-box' regulation, and instead targets inspections on high-risk organizations through co-regulation and improving professional standards; to impose 'sunset clauses' on regulations and regulators to ensure that the need for each regulation is regularly reviewed; and to give the public the opportunity to challenge the worst regulations. The latter aim is formulated in the initiative known as The Red Tape Challenge, which encourages the private sector to help identify existing regulations that they believe should be removed from, or amended on, the statute book. The Coalition government reports that since 2011, its deregulation efforts have

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3 See http://ec.europa.eu/governance/better_regulation/smart_regulation/consultation_en.htm

4 C Stefanou, 'Drafters, Drafting and the Policy Process' in C Stefanou and H Xanthaki, Drafting Legislation: A Modern Approach (Ashgate Aldershot 2008), pp. 321–333.

5 For a full analysis see Helen Xanthaki, "Legislative drafting: The birth of a new sub-discipline of law", [2013] 1 IALS Student Review, 57-70.

6 For further information on the Red Tape Challenge, see http://www.redtapechallenge.cabinetoffice.gov.uk/home/index

7 http://www.bis.gov.uk/assets/biscore/better-regulation/docs/o/11-671-one-in-one-out-methodology

outweighed the costs of new domestic regulation by over -£850 million: the bulk of the regulatory savings delivered through private pensions' indexation in the First Statement of New Regulation, has now been offset by pensions' automatic-enrolment. Excluding private pension reform, regulatory savings to business since 2011 are expected to be at least -£160 million. [8]

Within the context of regulatory reform in the UK, each government department now has a Better Regulation Unit, whose task is to cut red tape and reduce regulatory overload. [9] Thus, the task of controlling the developing new regulation remains within the competent department. [11]Oversight of these units is undertaken via the 2009 Regulatory Policy Committee , which provides independent scrutiny of proposed regulatory measures, and the 2010 Cabinet Committee entitled Reducing Regulation Committee, which demands a robust case for each new regulation. The RPC undertakes its duty via the provision of external and independent challenge, on the evidence and analysis of regulations presented in Impact Assessments supporting the development of new regulatory measures proposed by the Government.[12] At the same time, the Better Regulation Executive within the Department for Business, Innovation and Skills leads regulatory reform by identifying and supporting the positive outcome of regulation, whereas the National Audit Office researches and reports on aspects of regulatory reform, such as Impact Assessment, Administrative Burdens Reduction, or the business aspect of regulation.

There is little doubt, that the UK has been very active in the field of regulatory reform. This is proved by a recent OECD Review of the UK's Better Regulation policy implementation, which pronounces the regulatory reforms in the UK as impressive. [13] Points of excellence identified by the OECD, include the effective balance between policy breadth and the stock and the flow of regulation; the breadth and depth of ex ante impact assessment exercises before regulation; the effective risk based enforcement of regulation; and the extensive application of EU's Better

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8 HM Government, "One-in, One-out: Third Statement of New Regulation", July 2012, http://www.bis.gov.uk/assets/biscore/better-regulation/docs/o/12-p96b-one-in-one-out-fourth-statement-new-regulation.pdf

9 For evidence of this policy see Department for Environment Food and Rural Affairs, "Better regulation evidence plan 2011/12 (Joint Evidence Plan with Defra and Environment Agency), April 2011, http://www.defra.gov.uk/publications/files/pb13490-ep-better-reg.pdf

10 For an example of Better Regulation with specific application to the environment, see Department for Environment, Food and Rural Affairs, "Red Tape Challenge – Environment Theme proposals", March 2012, http://www.defra.gov.uk/publications/files/pb13728-red-tape-environment.pdf

11 For the 2012 Report of the Committee see http://regulatorypolicycommittee.independent.gov.uk/wp-content/uploads/2011/09/Rating-Regulation-July-2011-FINAL-A.pdf

12 http://www.bis.gov.uk/assets/biscore/better-regulation/docs/o/12-p96b-one-in-one-out-fourth-statement-new-regulation.pdf; also see RPC, "Rating Regulation: An independent report on the analysis supporting regulatory proposals, January-June 2011", July 2011, http://regulatorypolicycommittee.independent.gov.uk/wp-content/uploads/2011/09/Rating-Regulation-July-2011-FINAL-A.pdf, p.7.

13 http://www.oecd.org/dataoecd/61/60/44912018.pdf

Regulation initiatives in the UK [14]. Points in need of further reinforcement identified by OECD, include the need to reinforce initiatives for citizens and public sector workers as a means of balancing the use of business as the main policy actors; the need to apply in practice even further, the excellent existing transparency and consultation processes; and the need to develop a longer term strategy of regulation.

In May 2013, the UK's House of Commons assigned the Political and Constitutional Reform Committee with the task to report on "Ensuring standards in the quality of legislation". Richard Heaton, First Parliamentary Counsel, stated that pre-legislative scrutiny of draft Bills (in Committee before the Bill is finalised) is "one of the best ways of improving legislation and ensuring that it meets the quality standards that Parliament and the public are entitled to expect". However, not all bills are suitable for pre-legislative scrutiny. Still, only a minority of bills are published in draft and fewer are discussed in Committee. It is interesting to note that a Code of Legislative Standards is currently being drafted.

IV. But, ultimately, what is legislative quality? [15]

In a search for a qualitative definition of quality in legislation, one can resort to functionality. If legislation is a mere tool for regulation, and indeed a tool only to be used if everything else will fail, [16] then a good law is simply a law that, if it enjoys support and cooperation from all actors in the legislative process, [17] is able of producing the regulatory results required by policy makers. In other words, a good law is simply a law that is capable of achieving the regulatory reform that it was released to effectuate or support. [18] A good law, is one that is capable of leading to efficacy of regulation. There is nothing technical at this level of qualitative functionality: what counts is the ability of the law to achieve the reforms requested by the policy officers. Plus, in view of the myriad of parameters that are unique in each dossier, there are no precise elements of quality at this level. If anything, this qualitative definition of quality in legislation is synonymous to effectiveness; it respects and embraces the subjectivity and flexibility of both drafting rules and conventions and, ultimately, of phronetic legislative drafting.

Then again, does the qualitative functional approach to the definition of quality in legislation signify that everything goes? The answer is of course, negative: legislative drafting is phronetic, it is not art. In phronetic legislative drafting one must be able to identify basic principles which,

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14 For a listing of such policies and their implementation in the UK, see http://www.bis.gov.uk/policies/bre/improving-eu-regulation/guiding-principles-eu-legislation

15 For a fuller analysis see Helen Xanthaki, "Quality of legislation: an achievable universal concept or a utopian pursuit?" in Marta Travares Almeida (ed.), Quality of Legislation (2011, Nomos, Baden-Baden), pp.75-85.

16 See S. Weatherhill, "The challenge of better regulation" in S. Weatherhill (ed.), Better Regulation, (2007, Hart, Oxford and Portland, Oregon), pp.1-19, at 19.

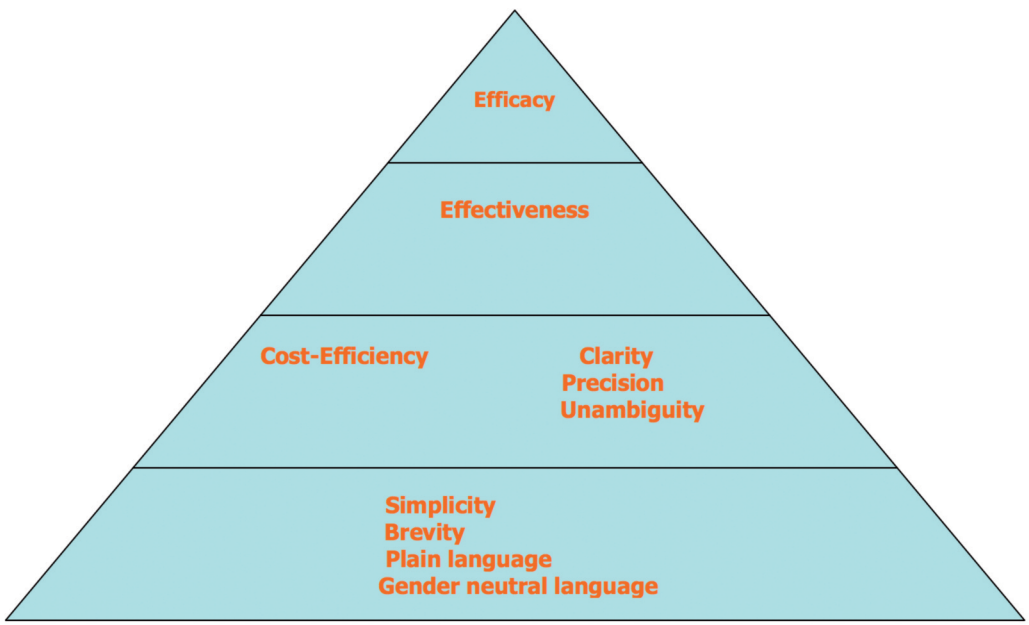
17 See J. P. Chamberlain, 'Legislative drafting and law enforcement' 21 (1931) Am.Lab.Leg.Rev. 235-243 at 243.

18 See L. Mader, 'Evaluating the effect: a contribution to the quality of legislation' 22 (2001) Statute Law Review 119-131 at 126.

as a rule, can render a law good. Cost efficiency, clarity, precision, and unambiguity are such principles: when applied, at least in the majority of cases, they lead to good laws. But, at the end of the day, each dossier carries subjective choices for the drafter, choices made on the basis of the ultimate functional test: effectiveness. What makes a law a good law therefore is the ability of the drafter to use the criterion of effectiveness consciously and correctly. What is correct application of the effectiveness criterion is a matter of debate and deliberation within the drafting team: after all, even drafters are human. Perhaps this is the beauty of a drafter's trade: there are no safety nets, no walls to hide one's nudity before the cruel sword of the end result.

In other words, since legislation is a tool for regulation, the definition of legislative quality can only be result-driven. Governments are elected to govern on the basis of their electoral mandate. Governing involves regulation of fields of activity. Regulation is achieved via, amongst others, legislation. And legislative drafting is a means of achieving regulation. Thus, legislation of good quality is legislation that produces the types, extent, and level of regulation required by the government. In other words, legislation of good quality is synonymous to effective legislation, namely legislation that is capable of leading to efficacy of regulation.

This can be achieved if the drafters follow the following hierarchy of drafting virtues:



V. What must Parliaments check for? a short list

- Preliminary provisions:
  - Title: Brief, accurate, to the point, unique, distinctive.
  - Preamble: Exclusively legal provisions on legal basis and legislative process.
  - Enacting clause: According to house style.
  - Commencement: Clear date.
  - Objectives provision: Measurable criteria of post legislative scrutiny.

- Substantive provisions:
  - Wording:
    - Clarity
    - Precision
    - Unambiguity

  - Content:
    - Within the scope of the constitution / law / legislation
    - Objectives achievable via means foreseen
    - Post-legislative scrutiny cycle / sunset clause

- Final provisions
  - Savings and transitional: these may also be placed in a schedule if they are long
  - Repeals
  - Consequential amendments: these may be placed in an annex especially if the repeals and consequential amendments are numerous and can conveniently be presented in a tabular form
  - Annexes

VI. And what about the transposition of EU laws? [19]

Ideally, transposition requires an effective EU measure applied by an effective national measure. However, EU measures are not always effective. This requires additional skills from national drafters, as they need to fill in the gaps of EU legislation in their national implementing measures. Transposition requires, first the identification of the desired regulatory results of the EU text; second, the determination of the current complete national position; third, a comparison of the national position with the minimum compulsory requirements and the optional requirements for compliance with EU law. The government must then decide what level of transposition is to be achieved: the minimum required or one including optional elements of regulation? On the basis of this political decision, drafters decide whether legislation is indeed

[19] For a full analysis see Helen Xanthaki, "Quality and transposition of EU legislation: a tool for accession and membership to the EU" 4 [2006] European Journal of Law Reform, pp.89-110.

needed at all. And only in this case, they will embark on drafting an effective national implementing measure.

The task of transposition is rather complex from a quantitative point of view: the sheer number of binding instruments that require transposition suffices to demonstrate the volume of the task ahead. In addition to the quantitative difficulty of accession, from a quantitative perspective, transposition is a multifaceted issue. First, the dynamism of the acquis, especially when soft law is taken into account, signifies that the goalpost for transposition is inevitably being moved further away as time passes. Second, the nature of EU instruments differs from the form of national, and indeed international, legal measures. This renders the understanding of their legal value, their degree of bindingness and the depth of their enforcement requirements a rather complicated task. Third, the terminology used in EU instruments tends to have an idiosyncratic meaning. The identification of the elements of the concept utilised in the acquis and the nuances of variation with the national concept, adds a layer of extra difficulty to the task of adequate and full transposition. Fourth, the acquis enters into aspects of national law that are outside the chapters of negotiation for accession.

In view of these complexities, how can transposition be achieved in practice? In responding to the task, from a legal point of view, national authorities are faced with dilemmas concerning the choice of the type of national implementing legislative measure and dilemmas, related to the means that can achieve quality of the national implementing legislation. So, how can national authorities select the appropriate normative level? Three main considerations are taken into account: the extent of legislative intervention required for full transposition; the type of the main EU instrument for reception; and the object of the national implementing measure.

The extent of legislative intervention required for the reception of EU instruments by the national law of the aspiring or current member state relates to the choice of a normative rather than an alternative means of regulation and to the choice of normative level.

If, at the time of evaluation, national law does not regulate the purpose of the EU instrument under transposition, the need for regulation – and indeed regulation in compliance with the acquis – is undisputed. In this case, the five tests of legislative subsidiarity- proportionality, adequacy, synergy and adaptability - have been passed at the EU level when the EU institutions produced the regulatory legal instrument in pursuance of a legislative process. Thus, the need for legal regulation must be taken for granted. As for the choice of national implementing legal instrument, selection is also limited exclusively to secure and legally binding national forms of primary legislation. The same principles apply in the case of prior national regulation that is archaic or in radical and direct clash with EC law. In these cases, the options available for national implementing measures are limited to the passing of a core law supplemented by delegated legislation dealing with technical and administrative details.

In cases where there is prior national legislation in the field under transposition, national authorities tend to have a wider selection of options. At the legislative level, the five tests are applicable to ensure that further regulation is indeed necessary. When prior national regulation is complete when compared with EU regulation, each of the tests must be repeated applying national circumstances. In view of prior national laws, is further regulation required? If so, would further regulation be proportionate to the aim that EU regulation sets out to achieve? Could it be, that current national regulation is adequate for the achievement of EU aims? Would the proposed new regulatory measures be received smoothly? Is further regulation necessary, or can a wider interpretation of current regulatory measures, perhaps with a simple addition of a reference to the EU instruments, lead to the desired effect? The answer to these questions will depend on the results of the comparative analysis between national and EU regulation. If, and only if, the five tests are not passed at the legislative level, will national authorities proceed with the same five tests at the legal level. There, the extent of incompatibility of national law with EU law under transposition, will dictate the position of the selected national legal instrument in the hierarchy of sources of national law. In cases where existing national law is incomplete, supplementation of its core provisions via a legal instrument of the same hierarchical level would be necessary. A law will be supplemented by another law or, even better technically, by an amendment to the existing law. Delegated legislation would be appropriate, if the legal intervention needed for the achievement of complete transposition, aims to take the goal of primary legislation further, to introduce technical or detailed provisions necessary for the implementation of primary legislation, to introduce administrative arrangements necessary for primary legislation, to bring primary legislation in force, or to supplement or amend part of primary legislation. Notwithstanding the significance of the extent of legislative intervention required, the form of EU instruments under transposition influences the choice of national authorities to a great extent. From a legislative point of view, at least in theory, the five tests of subsidiarity, proportionality, adequacy, synergy and adaptability have been met when the decision to proceed with legal regulation was made at the EU level. Similarly, the level of legal instrument selected by the EU in the first place is attributed both to the legal basis of the instrument but also to the order of the selected form in the hierarchy of sources of EU law. The legal instrument selected passed, at least in theory, the five tests. Thus, the choice of EU institutions in the EU legislative process leads the way to evaluations and choices to be made by national authorities in the national legislative process for the introduction of implementing measures.

In practice, the provisions of the constituting treaties are generally suitable for inclusion in national constitutions or constitutional principles.

Regulations are directly applicable, so they form part of the national laws of the member states without the need for express implementing measures. In pursuance of the principle of synergy, Regulations are drafted in a manner that allows their smooth reception by national laws as

they stand. In general, therefore, Regulations do not require transposition. However, this does not relieve national authorities from the task of evaluating their provisions against existing national law. If Regulations are in complete contrast with prior national legislation, the latter must be amended or repealed altogether. Implied amendment may be considered adequate for the purposes of transposition. However, it hinders clarity in the national law of the member state, which cannot be condoned. Moreover, it may leave ground to judicial interpretation and application contrary to EU law, which in turn may lead to judicial state liability claims. If Regulations affect existing national law in part, the task of national authorities is to evaluate the extent and manner in which national law is changed by the reception of the Regulation. In this case amendments via alteration, substitution or incorporation will ensure synergy while respecting adaptability. In the rare case where the Regulation complies fully with prior national law, aspiring member states may not act or may either add a reference to the Regulation in the purpose clause or explanatory materials of the national legal instrument, or may draw an express cross reference to prior national laws in the enabling clause of the national law to which the Regulation is annexed.

Directives require attention by national authorities as they merely set aims to be achieved allowing national authorities to exercise their autonomy in the process of implementation. Of course, autonomy is not boundless. National authorities must ensure full application not only in fact but also in law. National authorities are responsible for ensuring that the Directive is fully implemented by adopting such legislative or administrative measures as may be appropriate. In the absence of prior national regulation, or when prior national legislation is in clash with the provisions of the Directive, the latter requires full transposition via legislative measures. In cases of prior partial regulation, and in view of the nature of Directives, they are commonly transposed via delegated – and in rare occasions primary – legislation. However, the power to use delegated legislation for the purposes of transposition must be included in national legislation by means of an enabling clause. In cases where the national legal system already secures the aims pursued by the Directive, implementing measures are not necessary.

Decisions are transposed via administrative acts or delegated legislation, addressed to whom they are addressed. Recommendations and Opinions require no transposition, as they are not legally binding. However, they do serve as authentic interpretation of stronger, legally binding legislative texts and they are subject to judicial review before the CJEU. Last but not least, judgements of the European courts, and especially persistent case-law of the European Courts, must be viewed as binding, and must be included in national implementing measures.

Apart from the extent of legislative intervention required for full transposition and the type of the main EU instrument for reception, national authorities base their choice of national implementing measure on the nature and object of the field under treatment. In other words, national authorities take into account the legal and legislative drafting criteria applicable for the

selection of legal form in customary national legislative drafting. After all, transposition is ultimately a legislative drafting exercise.

Legal criteria relate to the substantive field of law to which the implementing measure refers. Legislative drafting criteria refer to technical requirements for the classification of the national implementing measure as primary or executive legislation. When it comes to legal criteria for the choice of form of the national implementing measure, national authorities identify the substantive field of law of the proposed measure. First, national legal custom may require that regulation in specific areas of activity is reserved for special legal forms. In this case, for reasons of synergy, national authorities will comply with custom. This would be the case with the introduction of new crimes in the national legal order; this is traditionally reserved for criminal laws or special criminal laws. Second, areas of minor importance are rarely considered worthy of legislative intervention via laws. In this case, regulation takes the form of administrative acts, internal circulars or other lower forms of regulation. An example of such an area, concerns the levels of compensation awarded to farmers whose crops have been destroyed by natural phenomena. Third, areas of increased significance are commonly reserved for higher forms of legislation. This refers to legislation affecting issues falling within the exclusive competence of the constitution and constitutional provisions, restrictions of citizens' rights, taxation, electoral issues or the establishment of a public body.

When it comes to legislative drafting criteria national authorities take into account technical drafting issues that affect the choice of form of the national implementing instrument. The main factor in favour of a law, in the formal sense, refers to the need for parliamentary legitimatisation of the proposed measure in cases when there are special needs of democratic legitimacy such as a serious compromise of fundamental rights, in the following instances: When important authority or powers are introduction and attributed, when the measure is expected to have significant political, economic or social consequences, or when the proposed solutions are of controversial political character. Another factor in favour of a law, in the formal sense, refers to the characteristics of the proposed measure, namely to the wide circle of addressees, to its general application and to its nature as a legally binding text high in the hierarchy of sources of national law. The main factor in favour of delegated legislation or administrative acts refers to the existence of authorisation for regulation in this manner. Thus, the constitution or constitutional principles must not prohibit the delegation. The authorisation clause must be introduced in a law. The clause must delimit precisely the scope of the delegation. The clause must determine the aim and the means of the delegated regulation. Another factor in favour of delegated legislation or administrative acts, refer to the characteristics of the proposed measure, namely the need for flexibility of regulation, the technical or detailed nature of the normative matter and the need for repetitive acts.

At the end of the day, the choice of format of the national implementing measure concludes

to choices related to context of the national legislative texts, and choices related to the policy and, if necessary, the legislative solution can serve harmonisation only if they are made on the basis of one criterion: that of effectiveness. Effectiveness is the legislator's contribution to the efficacy of national implementing measures. Effective meaning that the norm produces effects, that it does not become a dead letter.

VII.Conclusion: Who will take this further?

There is a direct link between quality of legislation with certainty in the law, and ultimately the rule of law and human rights. Demanding that citizens comply with bad laws knowingly can be viewed as a form of entrapment of citizens. Is it not within the mandate of the National Assembly, to defend the rights of citizens for clear, precise, and unambiguous legislation as a means of achieving effective regulation? Especially, when accession is an additional reward?

And so, although it is the task of the executive to draft legislation of good quality, modern Parliaments have a crucial role to play in scrutinising the product offered to them by the executive. Policy considerations set aside, Parliaments have to scrutinise legislation under the prism of legislative quality as well. Legislative quality is synonymous to effectiveness of legislation. It is imperative for the modern Parliamentarian to become aware of what effectiveness is, and how it can be achieved. It is also imperative to understand the elements of transposition as a special genre of drafting. The effort of training in legislative quality is great. But the rewards for the country are certainly worth it.

Recruitment/selection procedures of personnel in the EU Parliaments/ public sector: a key tool in modernizing governance structures

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ABSTRACT
Recruiting the best candidates for the public workforce, is important at a time when growth-enhancing strategies require appropriate institutions of governance and forms of public management to deliver results and high quality services. Human resources management systems, such as recruitment procedures and career development, are considered as indispensable for bringing about necessary cultural changes, as well as improvement in the performance of public administration. Government efficiency and effectiveness, depend on the talent of public sector employees and the quality of their knowledge and skills.
In Greece, the personnel recruitment process, under the current regulatory framework is entrusted to the Supreme Council for Civil Personnel Selection (ASEP), which is an independent authority responsible for securing the faithful implementation of the provisions on public sector staff recruitment. ASEP is not subject to supervision and control by government bodies or other administrative authorities, but to parliamentary control according to Parliament's Rules of Procedure. During its operation, ASEP has managed to reverse established attitudes and practices, restoring trust on the part of citizens, proving the independent authority's ability to carry out successfully its institutional mandate in the interest of safeguarding the principles of meritocracy, transparency, objectivity and consolidating the rule of law.

1. Introduction

Steps toward European consolidation require a high-performing public service, able to contribute to government's strategic objectives. A key challenge is to make the public sector more competitive, innovative and inclusive. New approaches to delivery are taking root, reflecting the demands of public service users and the possibilities that Information and Communication Technology (ICT) offers in redesigning services. In the transformation of traditional bureaucracy into a modern and flexible organization, the individual becomes the focus, underlining the importance of human resources for reaching the organization objectives. The status of public

administration and its adjustment to the rapidly changing needs of society and government is currently a universal debate in European countries. In this political and societal context, "Good Administration" has emerged as an inclusive concept, indicating the overall objective of the modernization process. The global financial and economic crisis is a challenge for governments to use the civil service in a more strategic, rational and equitable manner. If the public sector workforce represents a significant share of public expenditure, the fact remains that civil servants are key partners to help government maintain credibility and stability. Civil service system is a key issue to enhancing government's performance and good public governance. In what ways could the capability of the civil service to implement policy and to fulfill the expectations of the government and citizens, be sustained and increased? Making the recruitment process fairer and more flexible to attract talented people is one issue. Re-organization of the public service to increase flexibility and mobility of public bodies and individual public servants is another. Rationalizing and strengthening the institutional framework to support an effective HR strategy is crucial when addressing 21st century challenges.

2. Recruitment Policies and Instruments

Efficiency and effectiveness in government's performance depend on the talent of public employees and the quality of their knowledge and skills. In order to meet emerging challenges, it is crucial for public organizations to assess their human resources requirements in a strategic fashion, in order to secure talent and capacity. This results in: developing an effective workforce plan, which allows having the right number of people at the right place with the right competencies; and increasing the efficiency, responsiveness and quality of service delivery. Investments in the quality of strategic workforce planning guarantees that an organization is staffed by people who perform effectively. Planning for the competencies needed in the organization is an essential step to secure a competent workforce now and in the future. Strategic planning is a key instrument for setting a longer term context for government's action. This is important as the competences and qualifications of the workforce change and those changes can affect not only the public workforce, but also, the overall labor supply. It is essential for all public organizations to develop a capacity for effective workforce planning, as a way to confront rapidly developing economic and financial crises and social change. Effective workforce planning requires high-quality information and discussion linked to organizational strategies and efficiency concerns.

A critical question arises: "How effective are recruitment arrangements in selecting the right staff, in terms of skills and competences?"

Making the recruitment process fairer, more transparent and more flexible to attract talented people with a mix of backgrounds, experience and perspectives is a key consideration.

In the European Union, central government systems range between career-based and posi-

tion-based systems. A career-based system is characterized by competitive selection early in public servants careers with higher-level posts open to public servants only. In contrast, in a position-based system, candidates apply directly to a specific post and most posts are open to both internal and external applicants. Career-based systems may cultivate a dedicated, experienced group of civil servants while a position-based system provides flexibility bringing new skills into workforce at higher levels. Position-based systems are trying to maintain government coherence and collective culture through more centralized systems for senior management. Career-based systems are tending to increase the number of posts open to external competition, increasing accountability for performance at an individual level.

Flexibility, combined with competency-based recruitment and a focus on increasing the diversity of the workforce, is necessary for public services to renew their skill base to meet changing service needs. The foundation of an effective recruitment/selection process, is the establishment of a soundly based competency framework, which facilitates the assessment of candidates and ensures that successful candidates meet the Institutions' needs. Competency assessment is a useful tool, to judge how well an internal or external candidate fits the requirements of a job. Recruitment and selection criteria must be in line with workforce planning, and the processes should be regularly audited to avoid unfairness. The appointments of members of governance bodies must be based on merit, with adequate safeguards for the integrity of the recruitment process, good induction and training and suitable terms of appointment.

3. Recruitment and Selection in EU Countries

In Belgium, there has been an attempt to replace the educational qualification requirements (diplomas) with competency requirements. That means that people can also be appointed to specific functions, as long as they can demonstrate the necessary competencies, even if they do not have the required diploma. Sometimes people are willing, and through experience, are able to do certain functions, but for one reason or another, do not possess the required diploma. If that is the case, the Minister for Civil Service Affairs can decide to overrule the obligation of having the necessary diploma to perform, or even to apply for those specific jobs. SELOR, the federal selection and recruitment agency, will then organize tests to assess whether the competencies that correspond to the required qualification level have been mastered, although acquired outside the system. This competency philosophy can be applied in selection procedures in case of scarcity of specific qualifications in the labor market.

In France, measures have been taken in order to foster diversity in the civil service and promote equal opportunities. The French civil service is a career-based system and access is achieved, indeed, through competitive examination.

The European Personnel Selection Office (EPSO) has adopted new selection methods shifting from knowledge to competency-based assessment, for the selection of EU staff, in order to

improve the validity and reliability of the processes used to predict a candidate's in-job performance.

In the **Netherlands**, competencies are specifically used in creating job profiles for the senior public service, and in assessment centers that check on the presence of certain competencies required for a post.

4. Promising practices from the Greek experience of staff recruitment

In **Greece**, public sector recruitment is mainly oriented towards finding the most qualified candidates for groups of similar positions (e.g. administrative jobs, technical positions, research posts) according to the required educational level and the specialization or content of the job vacancy (e.g. administrative assistants, accountants, engineers, nurses etc.). The personnel recruitment process, under the current regulatory framework, is entrusted exclusively to **the Supreme Council for Civil Personnel Selection (ASEP)**. ASEP was established by Law 2190/1994 (Official Government Gazette Issue No.28/3.3.1994) as **an independent authority** responsible for securing the faithful implementation of the provisions on public sector staff recruitment. The role of ASEP has been further enhanced under the 2001 Constitution amendment, as the institutional guardian of the principles of **transparency**, **publicity**, **objectivity** and **meritocracy** in the civil personnel selection. ASEP is properly equipped, with its experienced and knowledgeable staff, well tested systems and infrastructure, to carry out any additional work or project entrusted by the State. Every year, ASEP presents a detailed report on its operation to the Parliament's Committee for Independent authorities. There is close cooperation with all ministries (especially with the Ministry of Administrative Reform and E-government, the Ministry of Interior, the Ministry of Finance and the Ministry of Education, Lifelong Learning and Religious Affairs), public organizations and local authorities, but the selection procedure is basically centralized.

The ASEP selection process, in order to be timely, *accessible* to all candidates, *cost-effective* and also safeguard the principles of meritocracy, *fairness*, *objectivity* and *transparency*, is highly structured and formalized. More specifically:

1. All the announcements for open positions or proclamations, as well as all the results of the selection process are published in the Official Government Gazette and the Council's website (www.asep.gr).
2. All the candidates that fulfill the necessary minimum requirements set by law are eligible for the open positions.
3. No matter how large the number of candidates, each and every one is evaluated fairly, based upon specific, objective and transparent, graded criteria which differ according to the category of the offered position and relate to the candidates' qualifications, experience and/or performance in tests/exams.
4. Every participant in the selection process, has the right to an appeal or objection in case

he/she does not succeed, and to request further information regarding the criteria applied and the evaluation conducted.

All the formality, however, necessary for ASEP to fulfill its constitutional obligation for objectivity, neutrality and openness does not render the process inflexible, because ASEP is not only trying to find the most qualified and capable candidates for a job, but also to respect people's special needs and abilities. For example, provisions exist for disabled people in written exams, separate priority lists for candidates who have many siblings etc.

Civil servants' selection system is career-based, with two separate selection processes:

1. One for newly recruited civil servants who enter the central public administration at entry level positions, and
2. A second for senior civil servants, who are already public sector officers in order to be promoted to a higher rank in the hierarchy (from Department Heads to Directors and then to General Directors).

In the Greek public sector there are two main groups of civil servants:

a) Permanent employees, either employed in the central administration with the privilege of high job security protected by the Constitution, or in the wider public sector with indefinite duration contracts.
b) Seasonal or temporary employees, who have signed fixed-term employment contracts, project agreements or part-time employment contracts.

A proclamation or notice of vacancy, usually includes several job openings for different employer organizations. Candidates interested in these positions, need to submit an application form with their preferences (in order of priority) regarding the employer (central administration, public authority or organization), the specialization of the offered positions and the location of employment.

The application form contains in a structured manner all the information that can be found in a CV, such as contact details, information on education, previous employment and other skills or attributes related to the offered position.

For **permanent staff positions**, ASEP organizes and implements four main recruitment procedures:

a) **Written examinations / concours**. They consist, as a general rule, of several subjects according to specialization and there are 80-100 multiple choice questions or a number of written essays required for the different related fields. Each session lasts about three hours, whereas the whole process may take two or more days (always on weekends), depending on the number of participants. This procedure is applied mainly for the recruitment of pri-

mary and high school teachers, ministry of finance employees and employees of the Bank of Greece. Moreover, ASEP organizes special concours and exams for disabled candidates as well, with processes that respect their special needs, such as separate examination centers with easy access, oral exams if the candidates are unable to write, etc.

b) Evaluation of applications (CV), accompanied by official documents/ transcripts, based upon certain objective, graded selection criteria, defined by the recruitment law currently in force, such as: grade point average, number of postgraduate degrees, months of work experience, knowledge of foreign languages, as well as social criteria, namely: being member of a large family, place of residence, number of underage children, long term unemployment. Different selection criteria apply for each category position (secondary education, university graduates' posts) and a certain number of points are assigned to *each selection criterion*.
c) Interviews (mainly for specific positions related to health care and public safety, mandatory for scientific/research positions). They are structured, consisting of questions that cover the fields of academic accomplishments, professional experience and personality characteristics.
d) Practical ability tests / practical tasks (for specific technical or administrative positions). They consist of several different tasks, used to evaluate specific skills and attributes necessary for the effective execution of the duties or assignments of the offered post. Depending upon the type or nature of the tasks, the practical ability test may require the use of a computer and its duration varies from half an hour to an hour and a half. Such practical tests have been applied to the recruitment of air traffic controllers, museum guards, typists and postal services employees.

Note that (a) is combined with (b), (b) can be combined with (c) when an interview is deemed necessary by ASEP or (d) when there are practical skills to be evaluated.

Note that (a) is combined with (b), (b) can be combined with (c) when an interview is deemed necessary by ASEP or (d) when there are practical skills to be evaluated.

For the eligible candidate, his/her **final score is the sum of all points** earned from: i) the qualifications, as found in his/her application and proved with official documents, ii) the results of the written examination (if required), iii) the social criteria, such as place of residence iv) the results of the General Knowledge and Abilities Test (optional), v) the interview report or the performance in the practical tasks (if an interview or a practical ability test is conducted).

As far as tests and practical tasks are concerned, ASEP maintains and uses a database of multiple choice questions, in several subjects, which are revised more or less every two years. When there is a written exam/ concours under implementation, ASEP forms a Formal Examination Committee, with University professors and researchers as members, whose task

is to revise the database by putting new questions or practical tasks and/or removing old ones. This is a highly confidential procedure, and all the members of the committee have to sign a confidentiality agreement and to officially declare that they do not have relatives participating in any of the on-going competitions.

The selection process flow is shown in Fig. 1

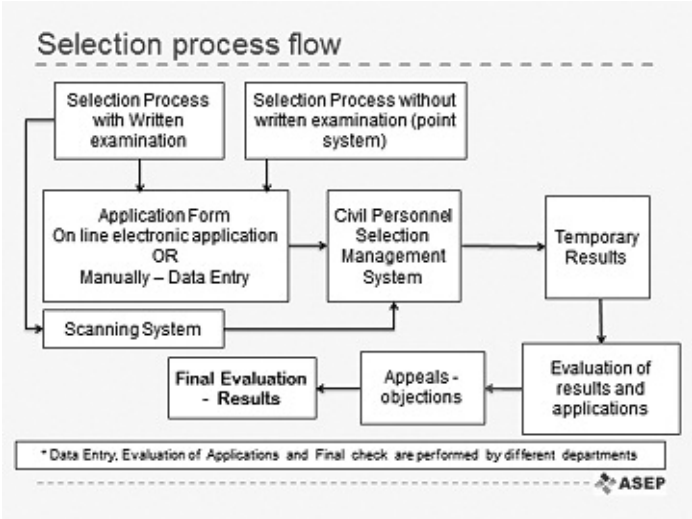

Figure 1 – selection process flow

4.1 Current infrastructure and future goals of ASEP IT Department

The current information system of ASEP was implemented in the context of the 3rd CSF (Community Support Framework of the European Union), providing the necessary infrastructure for G2C (government to citizen) services, which includes the necessary hardware and a Web Portal that provides layer 3 services.

The Levels of integration of e-Government services are:

1. Reference services (information);
2. Communication services (forms download);
3. Interactive services (electronic forms);
4. Transactional services (full electronic settlement);
5. Personalized services.

The existing information system, which consists of job search services and updated applications, consists of ASEP owned hardware / software and encompasses the following subsystems:

A. Internal operations' subsystems

1. Civil Personnel Selection Management System for employment opportunities fully implemented by ASEP.

2. Civil Personnel Selection Management System for supporting 'tailor made' personnel recruitment procedures, for other institutions such as government agencies, Banks, Greek Civil aviation, Euro control – recruitment of air traffic controllers, guards for museums etc.
3. Administration support systems such as Human Resource Management, Warehouse Management System (filing and tracking candidate applications), Document Management and Workflow System.
4. Isolated Scanning System, to support the variety of written examinations that ASEP provides (examinations for the educational and bank personnel, a General Knowledge and Abilities Test for all applicants, and more)

B. Portal

1. Dynamic and easy search for employment opportunities and employment/tests results.
2. Online services:
   a) Registration, online application forms suited for the employment position candidates apply for (permanent, seasonal or temporary employment, level of education)
   b) Online objection forms (if applicants object to certain employment results or accumulated points)
   c) Applicant's history (list of all electronic applications submitted, employment results)
   d) Applicant management profile

3. Capability to send Information Mobile Text Messages (SMS) to candidates.
4. Online calculation of applicant's points for each criterion.
5. Employment search related polls.
6. Newsletters
7. Dynamic list of contractors of law 164/2004 and 180/2004.
8. Latest employment news section.
9. Public sector information section.

ASEP website (www.asep.gr) is daily updated.

In the context of the budget incorporation of the National Strategic Reference Framework (NSRF), the first goal is to implement the required technical framework towards the creation of an applicant registry (database) aiming at completing layer 5 G2C (government to citizen) services, by providing citizens a complete framework for submitting and following their application for a vacancy in the public sector. In addition, the implementation of G2G (government to government) services will result in minimizing bureaucratic overhead for both public administration and citizens. Furthermore, operational costs will be reduced by the integration of the hardware infrastructure with the Greek Government-datacentre (G-cloud).

Moreover, ASEP plans to implement the project with the title: "Codification of the legislative and regulatory acts concerning ASEP, and relative integrated IT application for the needs of ASEP and citizens". The above project consists of the following actions: a) collecting all laws and relative acts and creation of a draft code and b) submitting a proposal for a new legal code, in order for ambiguities and contradictions to be removed from the law and legal voids to be filled.

Taking into account all of the above, plans for the ASEP system extensions, include upgrading electronic services currently offered by ASEP, ensuring more efficient recruitment services for both new and senior civil servants within the public sector. Upgrading civil personnel selection services offered, will provide advanced fully electronic services to the public, including the disabled (e_ASEP).

5. Reorganization of the Public Sector or Getting Ready for the Future

A changing world increasingly demands flexibility as far as Human Resource practices are concerned, in order to organize the workforce around current priorities and to prepare for future challenges. As Administrative reform aims at rationalizing government structures at a time of limited financial and human resources, adjusting and reallocating the public service workforce have become policy priorities. Public workforce restructuring requires a forward-looking assessment of organizational capabilities, with a strong focus on issues such as delivery of services, working across organizational boundaries and innovation. The economic crisis may have focused attention on costs, but investment in the skills and management capacity of the public service is even more important for dealing with current and emerging challenges. A key issue for governments, is how to maintain and improve the capacity of the public service; a challenge for governments is to avoid the loss of talent, capacity, morale and trust. Mobilizing the skills and competencies of the public workforce will help to develop and implement better policies. The management function plays a critical role in releasing the talent available in the public workforce and making use of it in an efficient and effective manner.

Important issues must be examined, such as the type of civil service that is needed, its role in the society, and its contribution to the wider aims of the government. In order to correctly detect what issues must be addressed, consultation with stakeholders such as interest groups, civil society organizations, trade unions and other groups is crucial. The challenge is, to implement workforce productivity improvements that recognize the balance between the costs, the quality and the continuity of the service while considering and planning from the outset the workforce implications of any public service reform.

In order to address issues of productivity, quality and other longer term challenges, reforms of the public service involve initiatives to adjust size and allocation. When an employee's function or position is eliminated due to restructuring, the employee is surplus. If several employ-

ees occupy similar positions and perform the same function, the identification of staff as surplus is based on the 'reverse order of merit'. Well-defined rules regarding the selection criteria are applicable here (merit appraisal) to safeguard transparency and fair treatment.

6. Efforts towards modernizing Greek governance structures

ASEP has been assigned the added responsibility for designing, organizing and supervising the written examination for the selection of public sector management staff, which will evaluate their knowledge of public sector operations and their management abilities. ASEP, with its extensive previous experience of organizing written examinations (e.g. the General Knowledge and Abilities Test), is ready to take up this new project. The examination aims to assess public sector executives' knowledge of the legal framework in public administration, of the basic management principles, as well as their general knowledge and aptitudes (e.g. how up-to-date they are with current events, their analytical thinking and logical reasoning abilities). Additionally, ASEP is directly involved in the restructuring of the public sector with a view towards increasing efficiency and effectiveness. Therefore, ASEP will be supervising:

a) the process of public sector organization evaluation and personnel appraisals, and will be intervening where the independent authority sees fit in order to safeguard the principles of **transparency**, **publicity**, **objectivity** and **meritocracy** in the process.
b) the mobility scheme, also prescribed under recent law 4093/2012, as the **chair** of the **Tripartite Commission** (with General Directors of the Ministries of Finance and Administrative Reform & E-Government serving as members) responsible for assessing the staffing needs of the public service administration. Moreover, ASEP provides valuable know-how and expertise in the staff reallocation process and evaluates the candidates' applications for transfer

7. Conclusion

In improving the capacity of the public service, the public workforce should be seen as an asset and part of a broader managerial reform. Organizations will have to attract the required skills through flexible, inclusive and merit-based HRM practices from recruitment and training to career development and promotion. In the future, public workforce is likely to be characterized by increased geographical mobility and personnel with a wide variety of backgrounds, experiences and competencies that will be required to meet social needs.

Information and Communication Technology (ICT), is likely to be an important driver of workforce reorganization in the coming years. The development of ICT is important because of its potential for improving service quality and expanding choices for citizens and businesses. Citizens are demanding more integrated, individualized and accessible services, while businesses are demanding that governments become more efficient, agile and innovative. ICT provides for automatisation of information processing and electronic communication (e-government)

making public service workforce, flexible as well as innovative.

More needs to be done on the evaluation of the mechanisms and practices regarding recruitment provisions in the public sector. The results of the evaluation should be communicated among competent authorities and be translated into action. The modernization process of governance structures demands the adaption of the methods of personnel selection to meet an organization's current and future needs in an efficient way, while remaining true to the principles of meritocracy and transparency.


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Broadcasting the Parliament: Practices all around the world

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ABSTRACT

One of the strongest direct channels of communication for the Parliament is Television Broadcasting, because it gives the public direct access to information. Television dramatically extends the ability of the citizens to actually watch and listen as laws and policies are made, from the relative handful of people who can sit in the Parliament's public galleries to virtually the entire nation. People are, therefore, better able to asses for themselves the performance of their elected Parliament and Government. The citizen becomes more than a simple spectator, and the journalist is no longer the sole analyst of the parliamentary news. As such, Television becomes a vital tool for reconciling society with democracy.

Although Television broadcast of Parliamentary proceedings started with the advent of Television in the 1940s by the public broadcasters all over the world, the first television channels dedicated to parliamentary news appeared in Canada and the USA in 1979, and in Europe, the first such channels appeared much later, in the 1990s. In the rest of the world, many countries also have parliamentary channels, and, where there is no dedicated channel, public television takes the responsibility of broadcasting the most important sessions.

Ownership and modus operandi of Parliamentary Channels, differentiates a lot from country to country - but, in most of the cases, the channel is owned and operated by the Parliament - and the most important issues related to operations, are the program and the budget, which depend on infrastructure (technology, studios, staff) and program content. The program may consist of the Parliamentary proceedings, programs related to the Parliament's activities, news and political talk shows, as well as, non-parliamentary cultural programming, such as cultural talk shows and documentaries. In trying to reach a broader audience, a parliamentary channel may, also, consider to enrich the service with the use of technology, through digital and Web-TV, the exploitation of its Audiovisual Archives, by creating a Radio Station, and with European content and cooperation.

Keywords: Broadcasting, Communication, Audience, Media, Program, Television, Web-TV

1. Introduction

It is evident today that, however the three roles of a Parliament (Legislation, Representation, Oversight) are weighted, their effective performance requires Open Communication between the parliamentary bodies and the citizens. Open Communication is not merely a way to "pass the message" of the activities of the Parliament, but it represents a new way of conceptualizing and conducting core parliamentary roles. Parliaments have to develop communication strategies that will enable them to educate and inform citizens about parliamentary affairs and the work of parliamentary committees, and to encourage greater public engagement in representative democracy. In this context, consideration should be given to the various ways in which the Parliament can inform and dialogue with the public, and to the role which the media can play, as their influence on the Parliament and the Government is entirely elementary and normal.

The problem, though, is that today, Parliaments, are confronted with many challenges in engaging with the media, as there is less media coverage of the parliamentary proceedings, from both public and private television stations. There are also, competing priorities in the fundamental issue of who decides what is reported on or shown. The media has an insatiable appetite for information which sells well and is typically, instantaneous, sensational and ephemeral, and the MPs tend to see media opportunities politically, according to party and other more subjective interests. As such, the Parliament has to target opportunities to present a positive image of proceedings and the institution, to help overcome public apathy, disenchantment, dissatisfaction or ignorance, and, since, Communication passes virtually exclusively via the media, there is a strong need to create direct channels of communication between the Public and the Parliament.

One of the strongest direct channels of communication for the Parliament is Television Broadcasting, because it gives the public direct access to information. Television dramatically extends the ability of the citizens to actually watch and listen, as laws and policies are made, from the relative handful of people who can sit in the Parliament's public galleries to virtually the entire nation. People are, therefore, better able to asses for themselves the performance of their elected Parliament and Government. The citizen becomes more than a simple spectator, and the journalist is no longer the sole analyst of the parliamentary news. As such, Television becomes a vital tool for reconciling society with democracy.

Several countries have identified the problem and decided to either establish a parliamentary television channel, or increase the time dedicated to the parliamentary sessions by their public broadcaster. In Europe, in particular, most of the EU members have a parliamentary channel, as well as the European Parliament, which also has a very developed Web-TV channel, dedicated to its parliamentary proceedings. In the last ten years, several reports have tried to map the practices of the parliamentary channels in the context of the European Union, but only a couple have tried to address the issue on a broader, global, context.

In this context, the presentation addresses issues such as the historical development of Parliamentary channels all around the world, the mission and the objectives of a TV channel dedicated to broadcasting the Parliament, ownership, modus operandi and programming structure of Parliamentary Channels, as well as activities adopted in order to reach a broader audience, such as digital and Web-TV, and cooperation between European Parliamentary Channels.

2.1. The role of a parliamentary television channel

As we all know, in theory, the main Functions of a Parliament are three (3): the Representative, the Legislative - Regulatory, and the Oversight - Control (part of which is, also, the Budgetary, meaning the oversight of the state budget). In practice, today, what actually happens is that the legislative – regulatory function is, basically, a formality, as all bills come from the Government. As a result, of the diminished role of the Parliament in legislating - as opposed to the Government – focus has shifted and added value has been given to the oversight and representative functions of the Parliament.

But, the political reality, which has raised fundamental questions about the effectiveness of Parliaments in holding Government to account, and the financial and economic crisis in Europe, which has created difficulties for a large number of citizens, resulted in the total lack of citizens' confidence in the Parliament's effectiveness for political action and in the MP's capacity to solve their various problems (such as unemployment, healthcare, safety, etc.) So, there is a discrepancy, today, between citizens' expectations of how the Parliament and the MPs should operate, and the reality. This has created a perceptional gap with strong negative connotations in the minds of the citizens, what we, usually, call, the democratic paradox, meaning, the contrast between what was promised and what has actually come about – the, so called, broken promises of the politicians.

Therefore, it is obvious that, as the parliament derives its authority from the public, maintaining it requires to continuously evolve and adapt to public expectations. Which means that, there is a strong need for the Parliament to re-connect with citizens through various actions. The main target of all such actions, is to achieve transparency in a political reality that has a negative effect on the Parliament.

One way to re-connect with the public, is to take actions that will enable the citizens to reaffirm the fact that the Parliament is well and truly the first legitimate body of democratic debate and the MPs, and they alone, are primarily entrusted, by the citizens (their constituents), with the task of legislating and controlling the government's policies, and, as such, the Government, both in its management of daily business and in its definition of future policy, is the first to have an obligation to account to the Parliament, as parliamentary control over governmental actions constitutes an essential element of democracy.

It is, therefore, evident, that however the three roles of a Parliament are weighted, their effective performance requires Open Communication between the parliamentary bodies and the citizens. Open Communication is not merely a way to "pass the message" of the activities of the Parliament, but it represents a new way of conceptualizing and conducting core parliamentary roles. Parliaments have to develop communication strategies that will enable them to educate and inform citizens about parliamentary affairs and the work of parliamentary committees, and to encourage greater public engagement in representative democracy. A communication plan for Parliaments, thus, today serves a dual purpose: to increase public understanding of, and to increase public engagement in parliamentary operations.

In this context, consideration should be given to the various ways in which the Parliament can inform and dialogue with the public and to the role which the media can play, as their influence on a Parliament that is in direct touch with public opinion and on a Government anxious to explain and to obtain the population's support and participation, is entirely elementary and normal. The problem, though, is that today, Parliaments are confronted with many challenges in engaging with the media, such as: there is less media coverage of the parliamentary proceedings, from both public and private television stations, and there are competing priorities in the fundamental issue of who decides what is reported on or shown. The media has an insatiable appetite for information, which sells well and is typically, instantaneous, sensational and ephemeral. On top of that, the MPs tend to see media opportunities politically, according to party and other more subjective interests.

As such, the Parliament has to target opportunities to present a positive image of proceedings and the institution, to help overcome public apathy, disenchantment, dissatisfaction or ignorance. For a parliament, traditional advertising and marketing evaluations, such as viewership ratings and market shares in Television, have little relevance; community outreach is a far more important concept. Since, then, Communication passes virtually exclusively via the media, there is a strong need to create direct channels of communication between the Public and the Parliament.

One of the strongest direct channels of communication for the Parliament is Television Broadcasting, because it gives the public direct access to information. Television dramatically extends the ability of the citizens to actually watch and listen as laws and policies are made, from the relative handful of people who can sit in the Parliament's public galleries to virtually the entire nation. People are, therefore, better able to asses for themselves the performance of their elected Parliament and Government. The citizen becomes more than a simple spectator, and the journalist is no longer the sole analyst of the parliamentary news. As such, Television becomes a vital tool for reconciling society with democracy. It must be noted, here, that against this, it was claimed that television would trivialize and distort the work of the Parliament, the MPs would be tempted, by the presence of cameras, to play to the gallery to get themselves

on television, and that the equipment – the cameras, the bright lights, wires trailing everywhere, and technicians operating the equipment – would all be too intrusive in the daily operations.

The mission, therefore, of a TV channel dedicated to broadcasting the Parliament, is to improve people's perception of politics and politicians, by creating a service that provides a full, fair and accurate account of proceedings and the political process (raw and unedited) – an open forum which reflects the social and political diversity of the respective country, with access to information for all. In this context, the main objectives of the channel are: to present parliamentary work, unedited and uninterrupted, without any commentary (Plenary sessions, Committees, etc.), to explain parliamentary work to the public in a clearly understandable manner, and clarify the political issues, jargon and tactics.

2.2. Historical development and operational structure of parliamentary television broadcasting

Although Television broadcast of parliamentary proceedings started with the advent of Television in the 1940s by the public broadcasters all over the world, the first television channels dedicated to parliamentary news appeared in Canada (CPAC, originally and until 1991 as CBC Parliament) and the USA (CSPAN) in 1979, as private nonprofit organizations, with the aim to provide the citizens with access to the political process.

In Europe, the first such channels appeared much later, in the 1990s: Phoenix (in Germany) in 1997, BBC Parliament (in the UK) in 1998, LCP-AN and Public Senat (in France) in 1999, HP-TV (in Greece) in 2000, in Spain also in 2000, in Portugal in 2002, etc. Today, in the European Union, twenty (20) out of twenty-eight (28) EU Members have TV channels dedicated to broadcasting the Parliament, as well as EU's TV channels (EbS and EuroParl-TV.) In the rest of the world, many countries have also parliamentary channels: for example, in Australia they have A-PAC (Australia), in India they have Doordashan Lok Sabha TV and Rajya Sabha TV (India) as the parliamentary system is bicameral, as well as in many countries in Latin America and Asia.

Where there is no dedicated channel to broadcasting the Parliament, usually public television takes the responsibility of broadcasting the most important sessions: for example, ORF in Austria, YLE in Finland, STV2 in Lithuania, STV2 in Slovakia, RTS in Serbia, etc. Actually, in most of the countries, national broadcasters are obliged by law to carry daily or weekly reports on their country's parliamentary proceedings.

Ownership and modus operandi of Parliamentary Channels, differentiates a lot from country to country, but, in most of the cases, the channel is owned and operated by the Parliament (as in France, Spain, Italy, Germany with Bundestag-TV, Portugal, Belgium, Luxembourg, Switzer-

land, Greece, India, etc.) Nevertheless, in some countries parliamentary channels are owned by the private sector (USA, Australia, Canada), or by public television broadcasters, as is the case in Germany with Phoenix which is owned by ZDF and ARD, in Sweden with ST24 Direct which is owned by SVT, and in Denmark with Dk4 which is owned by DKTV. There is also the case of the United Kingdom, where there is a mixed system, as the parliamentary channel is organized through the Parliamentary Broadcasting Unit Ltd (PARBUL), a private company owned by the major broadcasters but controlled by a board of directors which has members from both the two Houses of the Parliament and the Broadcaster shareholders.

The size, structure and organization of the channels differentiates also according to country specific peculiarities, such as the political and parliamentary system (unicameral vs. bicameral), the size and composition of the population, the amount of parliamentary work in the plenary and the committees, but, in general, the most important issues related to operations are the rules and oversight mechanisms between the Parliament and the channel (control of the material produced but independent from government), the program (strictly parliamentary or other), the additional services (such as internet, radio, sponsorship, connection with local communities and youth, access to people with disabilities), the infrastructure (studios, staff, etc.) and the budget, which depends on infrastructure and program content. The program, now, may consist of the following:

1. Parliamentary proceedings - plenary sessions, committees, political groups - as remains strictly in Italy, Portugal, Spain, Belgium, etc.,
2. Programs related to the Parliament's activities - news, local and European, activities and portraits of the President & MPs, political talk shows and panel discussions related to laws passed, as is the case in France, Germany, the UK and Greece, and
3. Program not directly related to the activities of the Parliamen,t such as cultural and educational programs, as is the case in France, Germany, Greece and Denmark.

For successful broadcast of the parliamentary proceedings, the most important issues to consider are the infrastructure in the Parliament (technology such as cameras and microphones in the plenary, studios and staff), the Rules of Coverage or otherwise called the Guidelines for Electronic Coverage (meaning the camera language), preparing and educating the MPs how to behave in front of the camera, as well as some other issues, such as direct and indirect advertising. It must be mentioned, here, that all Parliament Television channels are commercial free (in France, actually, it is clearly stated in the relevant Law: art.3 of Law No.99-1174/99 "Portant creation de La Chaine Parlementaire").

If the channel decides that it will include news and political talk shows, then it has to define the content with a focus in political neutrality, make sure that there is the necessary infrastructure such as studios, carefully select journalists as they have to be both experienced and impartial, and also, decide whether it will have any European Union related content, (EU Insti-

tutions such as the European Parliament, the Commission and the Council, EU events such as the signing of Treaties, meetings and celebrations, EU policies such as directives, national debates over EU policy, and exchange of programs between respective parliamentary or public channels.)

As television is a twenty-four (24) hours seven (7) days a week service, and the works of the Parliament are not enough to cover the whole program, the TV station may decide to enrich the program, in order to avoid constant repetition or the card, as is common practice in many parliamentary channels. In such an endeavor, the core of the non-parliamentary program, should be related to the broader role of the Parliament. As such, it should focus in politics, history, sciences, culture, arts, education and the environment, by acquiring high quality local and international programs, like documentaries which, consecutively, means agreements with suppliers and sales agents and dubbing or subtitling. The channel may, also, decide to create original programming - in house productions - such as cultural-educational talk shows, as in the USA where they have a weekly program about books.

In any case, what we must always have in mind is the end receiver, the target audience of such a TV channel. As it is a public service, it is theoretically targeted towards all the citizens, which means that it does not fall into the typical practices of distribution, marketing and advertising evaluation methods. In practice, it is targeted to a niche market, as the viewer profile of such a channel is very narrow. It is mostly watched by people already committed to a strong interest in politics. Nevertheless, in an effort to reach a broader audience, a parliamentary channel must find ways to enrich its Service, with the use of technology, through digital and Web-TV, by exploiting its audiovisual archives with video on demand of sessions, by starting a Radio Station as in some countries (USA, Australia), and by promoting European cooperation, with meetings and exchange of programs between respective parliamentary or public channels.

Today, public pressure on Parliaments is greater than ever. By adopting such an initiative, as is a dedicated channel to parliamentary proceedings, the Parliament, eventually, will enforce its way into becoming what it should be in the first place, a forum for the articulation of public opinion.

3. Conclusion

It is evident today that, however the three roles of a Parliament (Legislation, Representation, Oversight) are weighted, their effective performance requires Open Communication between the parliamentary bodies and the citizens. Open Communication is not merely a way to “pass the message” of the activities of the Parliament, but represents a new way of conceptualizing and conducting core parliamentary roles. Parliaments have to develop communication strategies that will enable them to educate and inform citizens about parliamentary affairs and the work of parliamentary committees, and to encourage greater public engagement in representative

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The mission of a TV channel dedicated to broadcasting the Parliament, is to improve people's perception of politics and politicians, by creating a service that provides a full, fair and accurate account of proceedings and the political process. In this context, the main objectives of the channel are to present parliamentary work, unedited and uninterrupted, without any commentary, and to explain parliamentary work to the public in a clearly understandable manner, and clarify the political issues, jargon and tactics. Although Television broadcast of Parliamentary proceedings started with the advent of Television in the 1940s by the public broadcasters all over the world, the first television channels dedicated to parliamentary news appeared in Canada and the USA in 1979, and in Europe, the first such channels appeared much later, in the 1990s. In the rest of the world, many countries also have parliamentary channels, and where there is no dedicated channel, public television takes the responsibility of broadcasting the most important sessions.

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Improving parliamentary control procedures through further democratization of parties' operation and promotion of interests of voters

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ABSTRACT
In many Parliaments, especially in emerging democracies, the control of the government is well organized, however it remains largely formal. Absence of dialogue with civil society could be, in some cases, responsible for low scores in parliamentary control performance. In that view, a long term suggestion in order to strengthen parliamentary capacities, could take into consideration the context referring to the operation of political parties since they channel -at least a part of- interests to Parliament and the Government. By democratizing further their internal organization, and respecting their parliamentarian members' freedom to act according to their parliamentary consciousness, political parties could come closer to citizens and articulate and represent their interests better before Parliament.
Keywords: Political parties, party discipline, internal party democracy, electoral system, funding of political parties

I. Introduction

On the occasion of examining parliamentary control procedures in Serbia, and having at the same time in mind the Hellenic system, I would like to contribute with some brief remarks that could perhaps trigger further discussion on how parliamentary performance in oversight, reflects internal democratization of the organization and function of political parties.

Modern parliamentary democracies are based on the party system, which functions according to certain principles. As cited a long time ago, parliamentary system is the constitutional organization of the antagonism of parties for the conquest of powers [1]. Political parties perform vital functions in representative democracy, providing the principal vehicles for the representation of citizens' interests, framing political choices at elections and forming the basis for government [2].

1 J. Barthélemy (1904), p. 145 et seq.

2 UNDP and IPU (April 2012), Global Parliamentary Report, p. 16 - 17 et seq.

Without underestimating some modern alternative ways to express public opinion and participate in public life, communication from the electorate to the Parliament and the Government seems to still be filtered primarily through political parties. Also, in spite of the increasing distrust against them, and the political institutions in general, political parties are considered as key players in the parliamentary system. Parliamentary procedures are mainly designed for political parties or parliamentary groups.

In light of the above, an overall consideration in developing capacity for parliamentary oversight could perhaps refer to the relative political and legal framework regulating the function of political parties. As cited by Ph. Norton, western European Parliaments are considered representative mostly because they defend and promote the interests of the people represented and they are freely elected [3]. Political parties do not represent the people, but rather some specific interests; yet, under certain conditions, they offer the possibility to lead people's various requests, needs and demands to parliamentary majorities and satisfy them.

II. Democratic deficits in the operation of political parties affect quality of parliamentary procedures

When researching into parliamentary performance scores during oversight over the Executive it is reasonable to wonder whether the system in force leaves MPs the space they need in order to fulfill their parliamentary duties. Apart from the institutional framework for parliamentary business, the Constitution and the Parliamentary Standing Orders or Rules or Procedure, MPs also comply with the directives they receive from the political parties they belong to. The Constitution and the Parliamentary Standing Orders or Rules of Procedure aim, usually, at safeguarding the powers of the Parliament and its members, while the party line aims, mostly, at promoting internal party coherence. The boundaries between the accomplishment of parliamentary duties and the fulfillment of party responsibilities are often thin. Nonetheless, it is a fact that a much disciplined party membership, can later transform into timid and weak-willed parliamentary mandate. Apart from that, absence of democratic elections and collective decision-making processes with regard to the selection of candidates and party governing bodies could deprive the party from the desired connection to its electoral basis.

II.1 Party discipline

In performing their duties MPs enjoy free parliamentary mandate. This means, basically, that the electorate cannot oblige them to act in a certain way.

But the exercise of free parliamentary mandate may collide with the obligation to obey party instructions. In exercising parliamentary control, MPs find themselves in the position of questioning not only a rival parliamentary group, but also the one that they belong to.

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3 Ph. Norton (ed) (2002), p. 2 et seq.

And they have to be fearless enough to carry out their mandate. It is stated that in cases where the mandate of MPs depends on the will and whim of the parties, there is a high risk of an excessive influence over MPs by the party [4]. At the level of simple association, this may not, in a certain context, seem to be of specific interest or impact. Yet, at the level of parliamentary representation of citizens, when members of political parties are elected as MPs, if MPs deviate from what both, voters and themselves, hoped the MPs were able to pursue during their mandate, it is a situation, which may lead to a breach of their relationship to their voters.

On the other hand, the lack of internal cohesion and discipline in parties could lead to malfunction of parliamentary operation, since parliamentary work could not progress. Parties need to be responsive to public attitudes and needs, but they also need a degree of cohesion in order to form a solid collective representation [5].

II.2 Party discipline in combination to the electoral system

The level of party discipline often varies, depending on the electoral system adopted. It is noted, in general, that in candidate-based systems MPs are more inclined to have regular contact with individual voters, since their election depends on personal votes. In contrast, in party-based systems (such as the closed list systems), MPs are prone to have closer links to organized interests, since their major concern is whether they will be included in the list and in what rank [6].

In Greece, due to the electoral system, the electorate operates as a serious pressure factor to MPs.

MPs are elected through a preferential list proportional electoral system for a 4 year mandate. The voters select specific candidates within the party list by marking a cross next to the candidate's name. A percentage –not more than one twentieth per cent of the total number of MPs (15) – may take seats from the allocation of seats to parties according to their strength without voting (constituency ballot). Today, the number of MPs (stipulated in the Constitution and the electoral law) which are not elected, but their seats are provided by allocation, is 12.

It is worth mentioning, that in the past a closed list system entered into force in Greece [7].

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4 See European Commission for Democracy Trough Law (Venice Commission), Op. No. 405/2006, CDL(2007)037, Strasburg, 9.3.2007, and Op. No. 405/2006, CDL-AD(2007)004, Strasbourg, 19.3.2007.

5 UNDP and IPU, op. cit., p. 46 et seq.

6 See D. M. Farell (2001), p. 168 et seq.

7 See Law 1303/1982.

Accordingly, the election of MPs was effectuated in the order the candidates appeared in the party list. The law was challenged as unconstitutional before the Supreme Special Court [8] on the grounds of violation of the principle of direct ballot and the representative principle [9]. The Supreme Special Court evaluated the above mentioned arguments as unfounded, but, as noted in theory, the problem lied elsewhere: the law promoted the centralization tendencies within parties without guaranteeing selection and ranking of candidates in the list through democratic procedures. As a result the party's social basis was deprived from the right to select the party's candidates [10]. The Law was abolished in 1989 (Law 1847/1989). It is interesting to read in the Explanatory Report of the abolishing Law 1847/1989, that the introduction of the closed list system was not accompanied by enlargement of democratic procedures in the internal organization, and operation of parties so as to ensure valid and reliable choices regarding the candidates and the order of their appearance in the list.

Another issue to be taken into consideration, is whether the situation is different in constituency-based systems than in regional and national list systems. In proportional electoral systems, the best way to maximize proportionality is to have an entire country as one vast constituency, but, as noted in theory, this national-level representation may reduce the contact between representatives and voters [11]. In this latter case, a question that could be raised is whether MPs feel alienated from the electoral body and do not feel directly accountable to it.

In Greece, with the exception of the allocation of seats to parties according to their strength, the seats are divided among 56 constituencies. MPs come from all these constituencies. It is highly unlikely that a certain region will not be represented in the Parliament. However, the Hellenic Constitution provides that MPs represent the Nation, implying that they must not behave as regional representatives satisfying exclusively regional needs, but they must behave above and beyond specific or local interests, in the interest of the whole country (article 51 par. 2 of the Hellenic Constitution).

As a result of these characteristics in electoral law, Greek MPs are in contact with the electorate and are easily accessible to voters. They report to their constituents about their performance in office, and they feel accountable on both collective (party) and individual

8 The Supreme Special Court is established by article 100 of the Hellenic Constitution.

9 As established by articles 51 par. 3 and 51 par. 2 of the Hellenic Constitution, respectively.

10 D. M. Zakalkas (1996), p. 412 et seq.

11 D. M. Farell, op. cit., p. 80. See also remarks in the connection of electoral systems and party discipline in Zdzisław Kędzia and Agata Hauser (2011), p. 6 et seq, and in R. Pelizzo, R. Stapenhurst and D. Olson (eds) (2006), p. 49.

basis [12]. On the other hand, it should be mentioned that the preferential vote system in Greece has fostered the establishment of electoral clientelism. Competition between candidates, in order to be elected in the same electoral district, can lead to relations of dependence between MPs and electorate - or even worse, between MPs and their financial sponsors.

II.3 Internal organization of parties

The political parties' internal structure is decided mainly by the parties themselves due to their freedom of self-establishment, which, in several cases, is constitutionally based [13]. It is a question, whether the legislator may interfere in matters of internal organization and operation of parties without violating their right of free association. But, as noted in the OSCE Guidelines, "(...) some regulation of internal party activities can be considered necessary to ensure the proper functioning of a democratic society. The most commonly accepted regulations are limited to requirements for parties to be transparent in their decision-making and to seek input from their membership when determining party constitutions and choosing candidates" [14].

The lack of rules regarding democratic election of governing bodies, internal governance and accountability in political parties often leads to weak political action as well.

III. Democratic deficits in the operation of political parties affect quality of parliamentary procedures

A possible review of the political parties' organization and operation framework towards a more democratic orientation could possibly have an impact on the parliamentary performance of MPs.

Under the given circumstances, a key point is to ensure independence of MPs within their political party by guaranteeing their status on constitutional basis, so that they will represent the electorate and defend their interests by acting according to their "parliamentary consciousness" [15]. Various constitutions worldwide stipulate the above. For instance, article 60 par. 1 of the Greek

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12 See relative IPU Framework Questions 5.1 and 5.2.under title 7 (How accessible are MPs to their voters?): How systematic are arrangements for MPs to report to their constituents about their performance in office? How effective is the electoral system in ensuring accountability of Parliament, individually and collectively, to the electorate, and EC Assessment Framework Questions 2b. and 2a. under title iv) The Representative Function: How systematic are the procedures for ensuring that parliamentarians regularly consult and communicate with their voters?, How accessible are individual parliamentarians to their voters? in IPU (2012), Self-Assessment, Benchmarking for Parliaments: Self-assessment or minimum criteria?, Annex B.

13 See for instance article 29 of the Hellenic Constitution.

14 OSCE and European Commission for Democracy Trough Law (Venice Commission) (2011), p. 49.

15 See European Commission for Democracy Trough Law (Venice Commission), Op. No. 405/2006, CDL(2007)004, Strasburg, 12.2.2007.

Constitution provides that "Members of Parliament enjoy unrestricted freedom of opinion and right to vote according to their conscience", a disposition that should be read in combination and not in contrast [16] with internal democracy applied within political parties [17]. In the direction of strengthening MPs' individual status, some complementary steps could also be efficient training programs regarding their parliamentary rights and duties that can also be addressed to parliamentary groups [18] and a wider publicity of MPs individual performance records. Publicity may generate personal popularity of MPs, which could possibly function as guarantor for their permanence in the lists and in the party in general [19].

In matters of internal organization of political parties, state interference entails the risk of violating their rights, but some steps to securing transparency in political parties' decision-making and communication with their members could possibly be examined in the future, in order to guarantee a certain level of internal democracy.

At this point, it would be interesting to examine the European Commission' s Proposal for a Regulation on the statute and funding of European political parties and European political foundations [20], amending existing legislation (Reg (EC) 2004/2003 of 4/11/03) governing political parties, which sets standards on internal democracy, governance, accountability, transparency and respect for the values on which the Union is founded, as well as on strict reporting and on control requirements of funding and administrative sanctions.

This proposal aims to encourage and assist the European political parties and their affiliated political foundations, by creating conditions that allow them to communicate with European citizens, represent and express their views and opinions, and to provide a stronger link between European civil society and European institutions. As stated in the Explanatory Memorandum "... European political parties should be helped to develop their capacity to express and channel the will of citizens with respect to elected offices and other representative functions at the European level, which are crucial for European representative democracy as a whole; ...". Al-

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16 P. Fountedaki (1986), p. 167 et seq.

17 See also various recommendations in detail regarding the safeguarding of free parliamentary mandate cited in Zdzisław Kędzia and Agata Hauser, op. cit., p. 22 et seq.

18 In European Commission (October 2010), Engaging and Supporting Parliaments Worldwide Strategies and methodologies for EC action in support to parliaments, p. 84 party-focused parliament programmes, like training to define the roles, responsibilities and appropriate interactions between parliamentary party caucuses and the extra-parliamentary political party in order to promote better representation and participation, training and advice to party caucuses on how to engage and consult with civil society during legislative and oversight processes, training to party caucuses on how to interact and cooperate with the media for more transparent and accountable legislative and oversight processes, are given. As underlined, the potential for improving oversight is substantial.

19 Personal popularity of an MP among voters is considered to make disciplinary party measures against him difficult, in Knut Heidar and Ruud Koole (2000), p. 256.

20 Brussels, 12.9.2012, COM (2012) 499 final 2012/0237 (COD).

though, the legal base for the proposed Regulation is Article 224 Treaty on the Functioning of the European Union, the wider legal context for the Commission's proposals includes Article 10 par. 4 of the Treaty on European Union and Article 12 par. 2 of the Charter of Fundamental Rights, which state that political parties at European level contribute to forming European political awareness and to expressing the political will of citizens of the Union [21].

Accordingly, in order to be recognized as European political parties, such organizations will have to meet, among others, high standards on internal democracy and governance. In suggested par. 2 of Article 4 *Governance and internal democracy of European political parties*, rules on internal party democracy that must be included in the statutes of European political parties cover, among others, "(b) the rights and duties associated with all types of membership, including the rules guaranteeing the representation rights of all members, be they natural or legal persons, and the relevant voting rights, (c) the functioning of a general assembly, at which the representation of all members must be ensured, (d) the democratic election of and democratic decision-making processes for all other governing bodies, specifying for each its powers, responsibilities and composition, and including the modalities for the appointment and dismissal of its members and clear and transparent criteria for the selection of candidates and the election of office-holders, whose mandate must be limited in time but may be renewable, (e) the party's internal decision-making processes, in particular the voting procedures and quorum requirements ... ". The Proposal, further, connects the right to apply for funding to previous registration of the parties in a Registry established within the European Parliament (articles 6 par. 1 and 12 par. 1). The application shall be accompanied by "(b) the party or foundation statutes, which shall include, as required by Articles 4 and 5, the written political program of the party, or a description of the purpose and objectives of the foundation, as well as the respective rules and provisions on governance and internal party democracy" (article 6 par. 3). If the European Parliament finds, that "... a European political party has failed to respect the minimum rules on internal democracy required by Article 4(2), the European political party or the European political foundation in question may be removed from the Registry, forfeit its status in accordance with Article 11. It may also have any ongoing decision on Union funding received, under this Regulation withdrawn or any ongoing agreement on such funding terminated, and any Union funding recovered, including any unspent Union funds from previous years" (article 22 par. 1).

It is worth noticing, that the prerequisite of democratic internal organization for awarding public funding to political parties was introduced and supported by part of the theory in Greece in the early 80's [22].

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21 UK House of Commons, European Scrutiny Committee on 07/11/2012: 19th Report, on IPEX.

22 See D. Tsatsos, P. Fountedaki and D. Zakalkas views in the D. M. Zakalkas, op. cit., p. 448 et seq.

This opinion goes further than the OSCE's minimum requirements for the receipt of public funding that include registration as a political party, proof of a minimum level of support, gender-balanced representation, proper completion of financial reports as required (including for the previous election) and compliance with relevant accounting and auditing standards [23].

IV. Conclusions

So, concluding, democratic deficits in the operation and internal organization of political parties could lead to their "disconnection" from civil society. By strengthening individual status of MPs who are also members of political parties, and promoting political parties' internal democracy, political parties could probably function on a more democratic basis; of course, under a specific constitutional context that ensures at the same time stability in governance. The aim is, to help political parties and individually MPs preserve and further their contact to citizens in order to represent them efficiently in parliamentary procedures and promote their interests. Efficient representation of citizens is obviously needed, especially during the exercise of parliamentary oversight against the government in order to hold it accountable for actions or omissions that affect people's interests and lives.

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Organization and operation of the services of EU Parliamentary Chambers after the economic crisis

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ABSTRACT
The present comparative study presents significant conclusions concerning the operation and the organizational structure of E.U. member states' parliamentary chambers. The study is focused to the 2009-2011 period in order to identify any attempts of rationalizing the parliaments' operational costs in the context of the economic crisis.
Keywords: Administrative structure, economic crisis, E.U., Human resources, MP, operational cost, Parliament, Parliamentary chamber

1. Introduction

This paper is a part of a comparative study that was conducted in 2011, on behalf of Hellenic Parliament and presents significant conclusions concerning the operation and the organizational structure of E.U. member states' parliamentary chambers. The study is focused on the period 2009-2011, a period of economic crisis in Europe and across the Atlantic, in order to identify any attempts of rationalizing the parliaments' operational costs.

The synthesis of answers, may serve as a useful tool for the political leadership of parliamentary chambers offering an amount of information that can be used to make better decisions and to respond to questions about the operational costs of these Chambers, or dilemmas regarding the necessity of offered services. As is obvious, an argument is better supported when comparative evidence exists. It may also act as a shield to protect democratic institutions from accusations and derogatory comments. Parliamentary chambers lie at the core of the demo-

cratic process. We may improve and modernize them to be more efficient and cost effective. The results of this questionnaire can contribute to this effort.

In "Parliaments' Human Resources" chapter, the number of employees employed by parliamentary chambers, according to their labour relationship and changes made, in relation to the number of employees having retired, are described. Moreover, it presents the ratio of parliamentarians to personnel and the differences between the salary of parliamentary employees and the salary of other civil servants.

"Parliaments' Administrative Organization" records issues of administrative structure of parliamentary services, potential changes – alterations in chambers' administrative chart, due to the economic crisis. It is noteworthy, that the number of parliamentary chambers that abolished services in the last three years was very small. On the contrary, in the last three years, some chambers have proceeded to creating new services.

The following image shows the participation of the E.U. Parliamentary Chambers to the questionnaire.

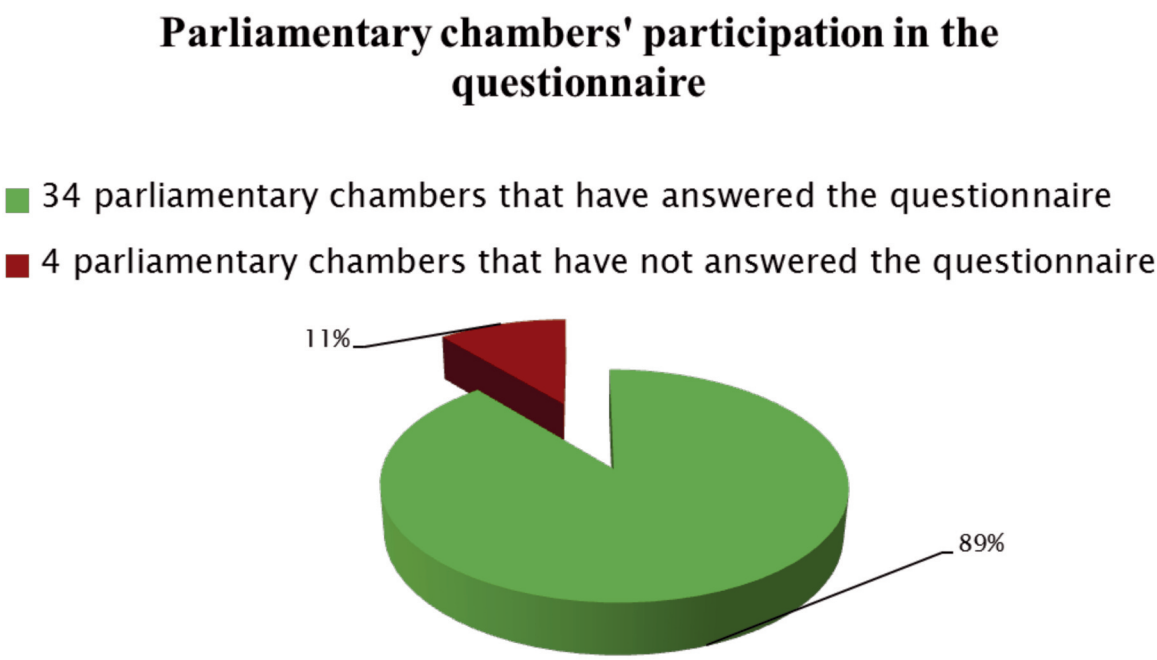


Image 1

It is noted that the statistical data imprinted in the section N/A (No Answer) of the graphs in this study relate to the percentage of the parliamentary chambers, which did not answer to the question related to each graph.

2. Parliaments' Human Resources

Introduction

This chapter deals with questions concerning the number of employees employed by parliamentary chambers during the reviewed period, according to their labour relationship and changes (if existing) made in the last three years, in relation to the number of employees having retired or having been fired or departed voluntarily.

Moreover, based on the answers, it attempts to record the ratio of parliamentarians to personnel, differences (if any) between the salary of parliaments' employees and the salary of other civil servants, allowances paid in addition to basic salary as well as the retirement system (pension scheme) applied in parliamentary personnel and other civil servants.

2.1 Change in the total number of the employees

The **total number of parliamentary personnel** has remained unchanged in fourteen (14) chambers {**Austria, Belgium** (Chambre des représentants & Sénat), **France** (Assemblée nationale), **Germany** (Bundesrat) **Denmark** (Folketing), **Estonia** (Riigikogu), **Malta** (Il Kamra tad – Deputati), **Netherlands** (Eerste Kamer), **Poland** (Senate), **Slovenia** (Državni zbor & Državni svet), **Czech Republic** (Poslanecká sněmovna & Senát)}.

A reduction in the total number of personnel is recorded in ten (10) chambers: {**France** (Sénat), **Italy** (Senato della Repubblica), **Ireland**, **Portugal** (Assembleia da República), **Romania** (Camera Deputaților), **Sweden** (Riksdagen), **Finland** (Eduskunta), **United Kingdom** (House of Commons), **Netherlands** (Tweede Kamer), **Greece** (Vouli Ton Ellinon)}.

Respectively, an increase in the total number of employees can be observed in eight (8) parliamentary chambers {**Bulgaria** (Narodno sabranie), **Germany** (Bundestag), **United Kingdom** (House of Lords), **Cyprus** (Vouli ton Antiprosopon), **Lithuania** (Seimas), **Luxembourg** (Chambre des Députés), **Hungary** (Országgyűlés), **Romania** (Senatul)}.

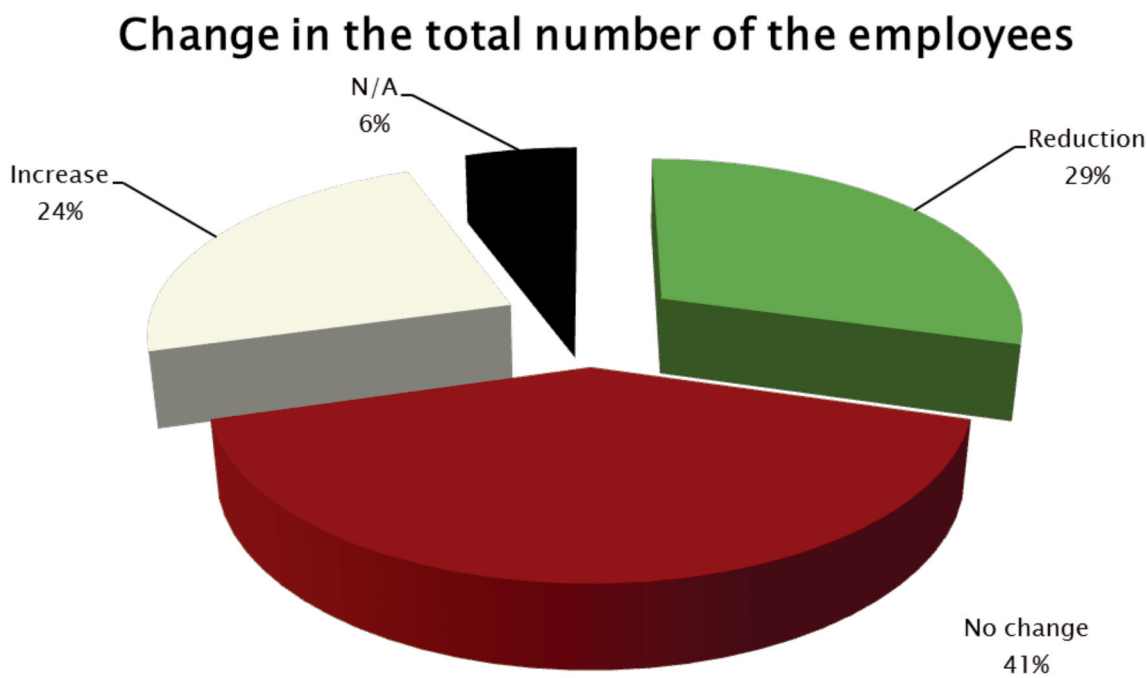


Image 2

2.2 Permanent employees' number

In the majority of parliamentary chambers (18), the total number of employees has remained unchanged {**Czech Republic** (Poslanecká sněmovna & Senát), **Sweden** (Riksdagen), **Slovenia** (Državni svet), **Poland** (Senat), **Hungary** (Országgyűlés), **Netherlands** (Tweede Kamer & Eerste Kamer), **Lithuania** (Seimas), **Estonia** (Riigikogu), **Greece** (Vouli Ton Ellinon), **Denmark** (Folketing), **Germany** (Bundesrat), **France** (Assemblée nationale), **Belgium** (Chambre des représentants & Sénat), **Austria**, **Malta** (Kamra tad – Deputati)}.

In a smaller number of chambers (10), a reduction of permanent employees is recorded {**Romania** (Camera Deputaților & Senatul), **Finland** (Eduskunta), **Ireland**, **Italy** (Camera dei Deputati & Senato della Repubblica), **France** (Sénat), **United Kingdom** (House of Commons), **Portugal** (Assembleia da República), **Slovenia** (Državni zbor)}.

It may be observed, that the greatest reduction in the number of permanent employees is recorded in **Portugal** (Assembleia da República) (from 372 permanent employees 2009 to 341 permanent employees in 2011).

In an even smaller number of parliamentary chambers (5), an increase in the number of permanent employees is recorded {**Luxembourg** (Chambre des Députés), **Cyprus** (Vouli ton Antiprosopon), **United Kingdom** (House of Lords), **Germany** (Bundestag), **Bulgaria** (Narodno sabranie)}.

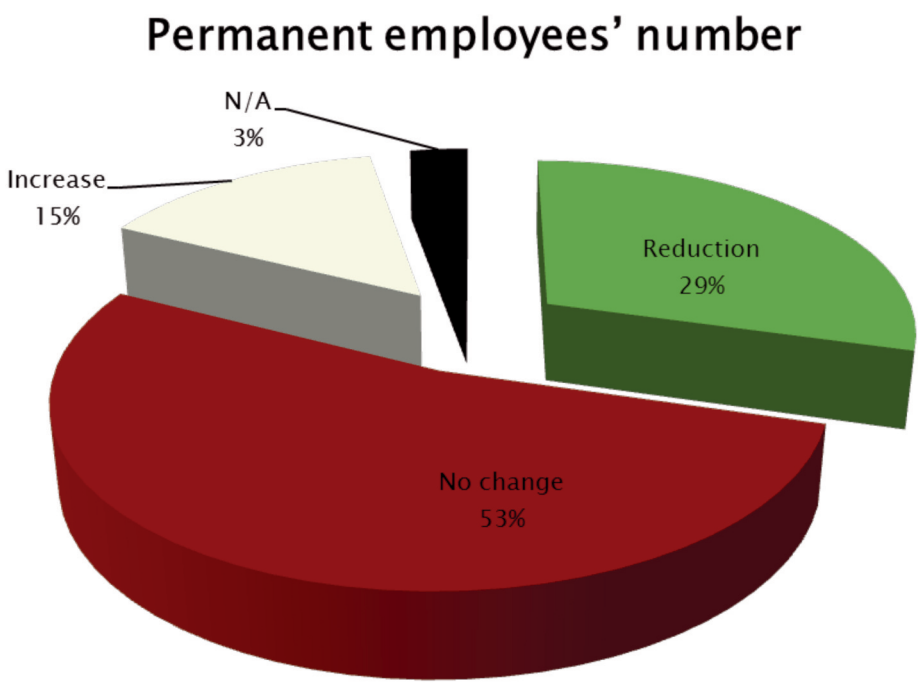


Image 3

2.3 Fixed term employees' number

In the majority of chambers, the number of employees on fixed contracts has remained unchanged {**Belgium** (Chambre des représentants), **Greece** (Vouli Ton Ellinon), **Denmark** (Folketing), **Estonia** (Riigikogu), **United Kingdom** (House of Lords), **Italy** (Senato della Repubblica), **Ireland**, **Cyprus** (Vouli ton Antiprosopon), **Malta** (Kamra tad – Deputati), **Netherlands** (Eerste Kamer), **Lithuania** (Seimas), **Hungary** (Országgyűlés), **Slovenia** (Državni zbor & Državni svet), **Czech Republic** (Senát), **Finland** (Eduskunta)}.

In a smaller number of parliamentary chambers (6), a reduction of employees on fixed contracts is recorded {**Germany** (Bundesrat), **Poland** (Senat), **Portugal** (Assembleia da República), **Romania** (Camera Deputaților), **Sweden** (Riksdagen), **Czech Republic** (Poslanecká sněmovna)}.

Respectively, in an even smaller number of chambers (4), an increase in the number of employees on fixed contracts is recorded {**Austria, Germany** (Bundestag), **Romania** (Senatul), **United Kingdom** (House of Commons)}.

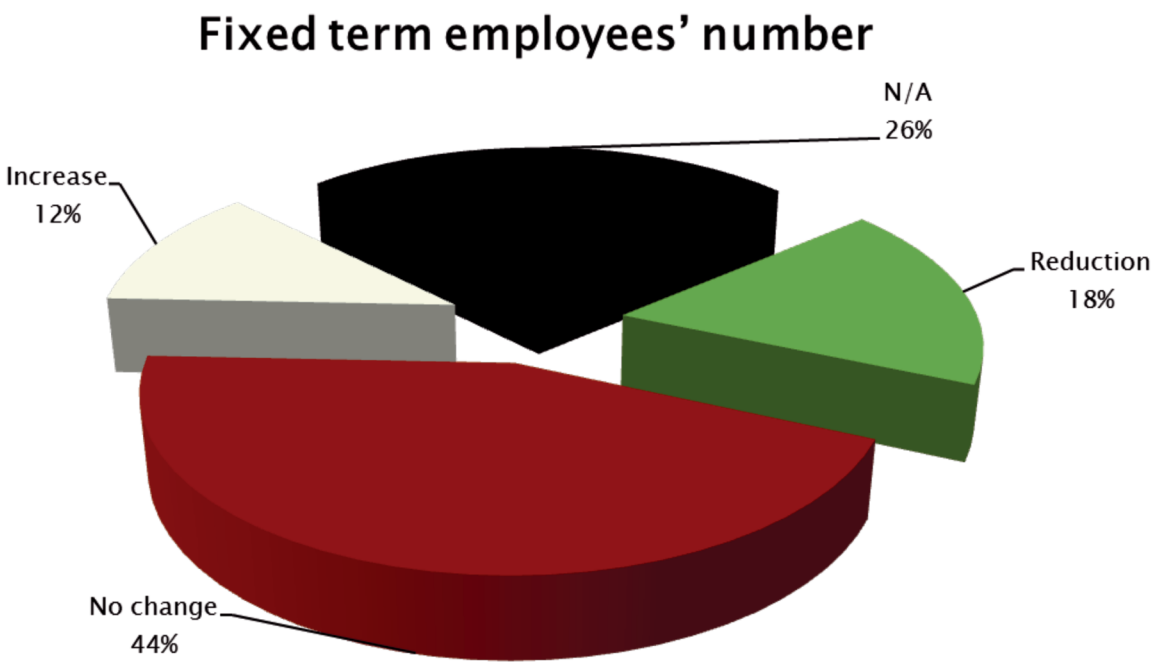


Image 4

2.4 Revocable (politically appointed) employees' number

In the majority of chambers (9), the number of revocable employees (politically appointed) has remained unchanged {**Austria, Ireland, Lithuania** (Seimas), **Poland** (Senat), **Romania** (Camera Deputaților), **Czech Republic** (Poslanecká sněmovna & Senát), **Finland** (Eduskunta), **Greece** (Vouli Ton Ellinon)}.

In a smaller number of parliamentary chambers (4), a reduction of revocable employees is recorded, {**Belgium** (Chambre des représentants), **Bulgaria** (Narodno sabranie), **Estonia** (Riigikogu), **Italy** (Senato della Repubblica)} whereas, it is noteworthy, that there is no record of increase in the number of revocable employees in any parliament.

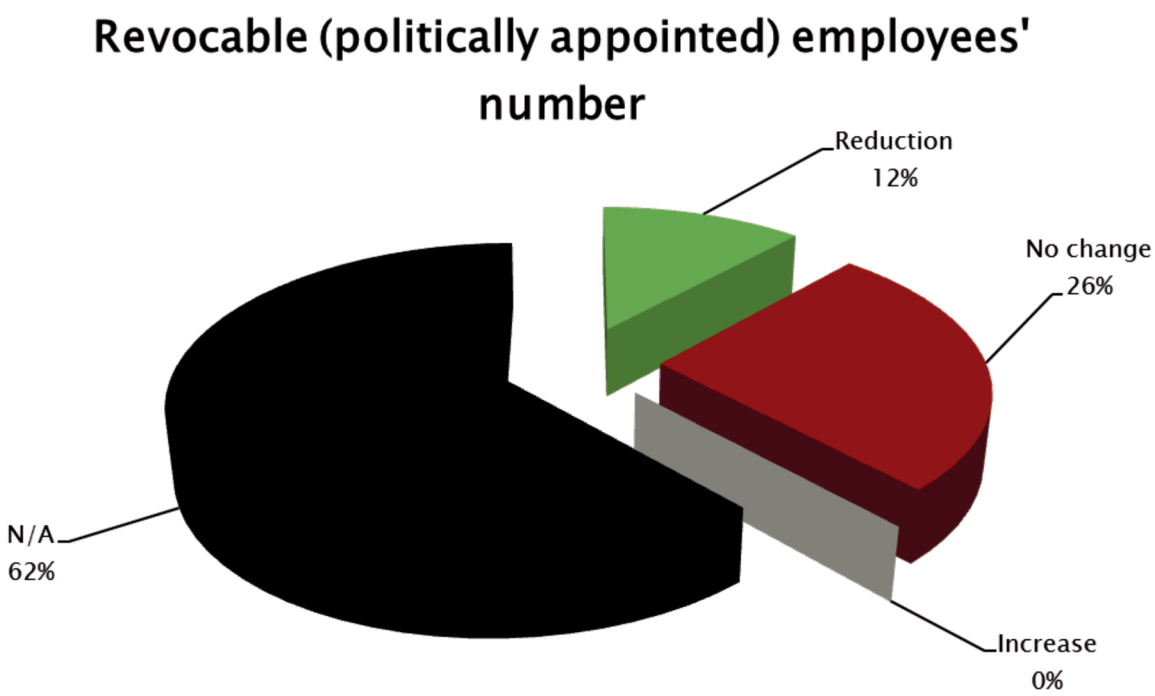


Image 5

2.5 Annual number of permanent employees' Retirements

Regarding permanent parliaments' employees having retired, the following are observed as concluded from the answers' processing:

- In the last three years, it seems that in the majority of cases the annual number of permanent employees having retired has either remained stable or increased.
- More specifically, the annual number of permanent employees having retired has remained more or less the same in fourteen (14) chambers {**Belgium** (Chambre des représentants), **Estonia** (Riigikogu), **Ireland**, **Italy** (Senato della Repubblica), **Cyprus** (Vouli ton Antiprosopon), **Lithuania** (Seimas), **Luxembourg** (Chambre des Députés), **Netherlands** (Tweede Kamer & Eerste Kamer), **Sweden** (Riksdagen), **Czech Republic** (Poslanecká sněmovna & Senát), **Slovenia** (Državni svet), **Malta** (Kamra tad – Deputati)}.
- In the same respect, the annual number of permanent employees having retired has increased in twelve (12) chambers {**Austria, Bulgaria** (Narodno sabranie), **France** (Sénat), **United Kingdom** (House of Lords), **Spain** (Senado de España), **Hungary** (Országgyűlés), **Portugal** (Assembleia da República), **Romania** (Camera Deputaților & Senatul), **Slovenia** (Državni zbor), **Finland** (Eduskunta) and **Greece** (Vouli Ton Ellinon)}.
- On the contrary, in a smaller number of chambers (5), a decrease in number of permanent employees having retired has been recorded {**France** (Assemblée nationale), **Germany** (Bundestag), **Poland** (Senat), **Italy** (Camera dei Deputati), **United Kingdom** (House of Commons)}.

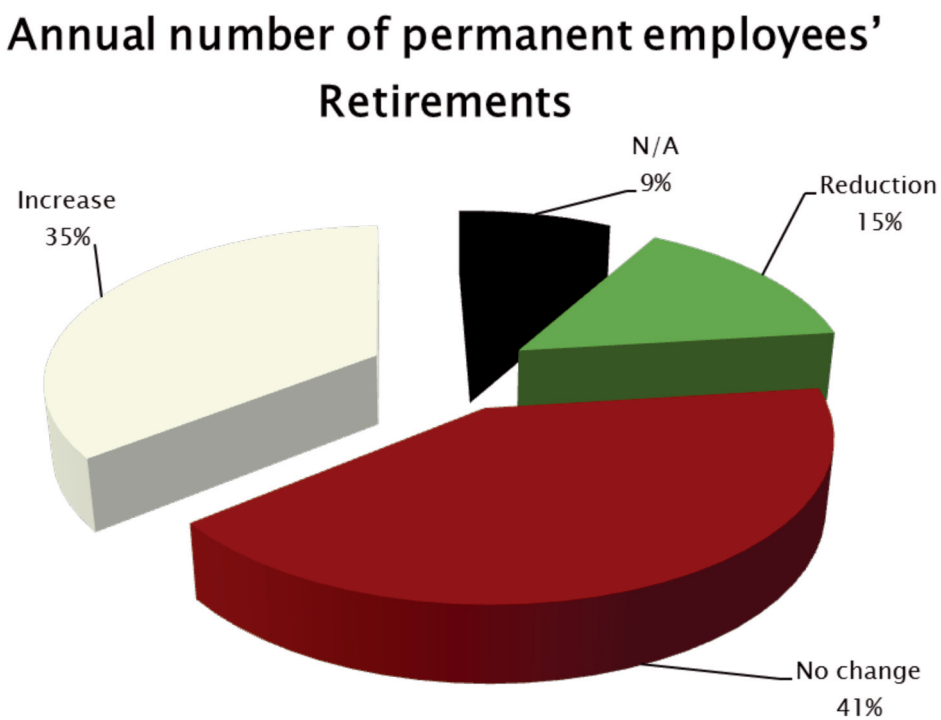


Image 6

2.6 Ratio of parliamentary employees per MP

The study concerning the ratio between the number of parliamentary employees and the number of MPs in each chamber varies significantly. From processing answers, the following is concluded:

- Ten (10) chambers employ from two (2) to three (3) employees per parliamentarian {**Bulgaria** (Narodno sabranie), **France** (Assemblée nationale), **Denmark** (Folketing), **United Kingdom** (House of Commons), **Italy** (Camera dei Deputati), **Hungary** (Országgyűlés), Poland (Senat), **Romania** (Camera Deputaților), **Czech Republic** (Senát), **Finland** (Eduskunta)}.
- Seven (7) chambers employ from one (1) to two (2) employees per parliamentarian {**Austria** (Nationalrat & Bundesrat), **Germany** (Bundesrat), **Estonia** (Riigikogu), **Ireland** (Dail Eireann & Seanad Eireann), **Luxembourg** (Chambre des Députés), **Portugal** (Assembleia da República), **Finland** (Eduskunta)}.
- A smaller number of chambers (5) employ from three (3) to four (4) employees per parliamentarian {**France** (Sénat), **Italy**, (Senato della Repubblica), **Cyprus** (Vouli ton Antiprosopon), **Lithuania** (Seimas), **Slovenia** (Državni zbor)
- Four (4) chambers employ from four (4) to five (5) employees per parliamentarian {**Belgium** (Chambre des représentants), **Germany** (Bundestag), **Netherlands** (Tweede Kamer), **Greece** (Vouli Ton Ellinon)}
- And another four (4) chambers employ less than one (1) employee per parliamentarian {**United Kingdom** (House of Lords), **Slovenia** (Državni svet), **Netherlands** (Eerste Kamer), **Malta** (Kamra tad – Deputati)}

- Lastly, a ratio of more than five (5) employees per parliamentarian is observed in **Belgium's** Sénat.

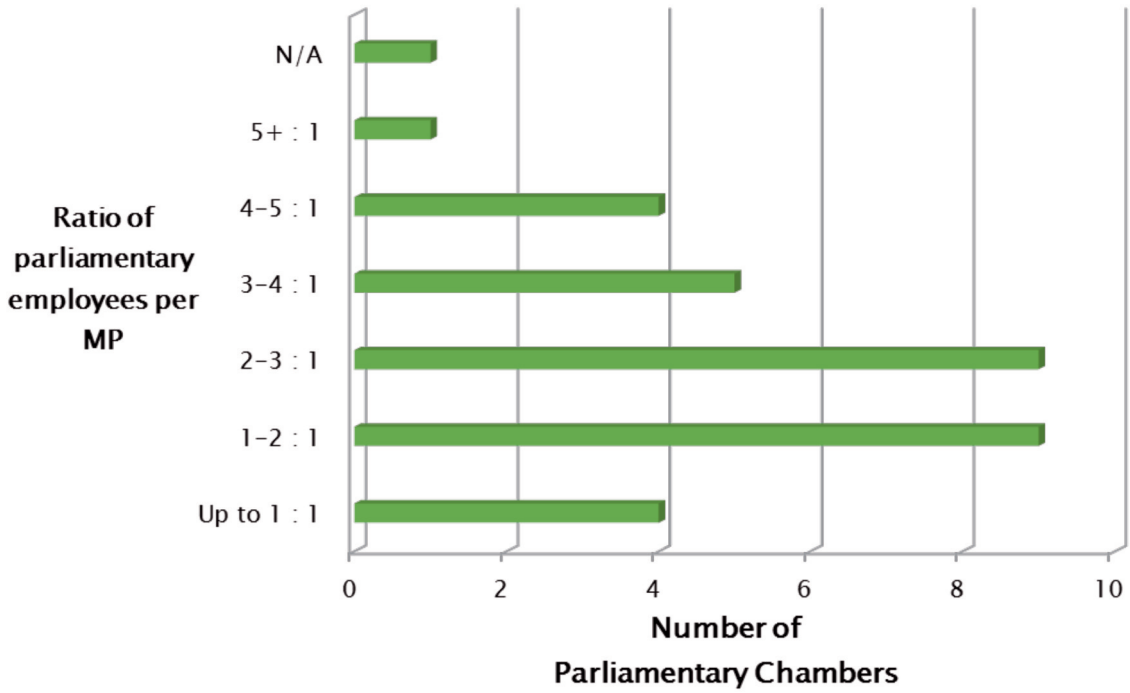


Image 7

2.7 Difference in salary of parliamentary employees and other civil servants

Here, we present the percentage difference (%) between the (basic) salary of parliamentary chambers employees and the basic salary of other civil servants.

At this point it should be noted that answers given are not comparable due to the variety of payroll systems applied in each country. However, the following remarks can be made:

- There seems to be no difference in salary of parliamentary employees and of other civil servants, in nine cases (9): {**Denmark** (Folketing), **Estonia** (Riigikogu), **United Kingdom** (House of Lords), **Ireland, Luxembourg** (Chambre des Députés), **Romania** (Senatul), **Slovenia** (Državni zbor & Državni svet), **Bulgaria** (Narodno sabranie)}.
- Higher recorded salaries are received by parliaments' employees as compared to other civil servants, in more chambers (11) {**Belgium** (Chambre des représentants & Sénat), **France** (Assemblée nationale & Sénat), **Lithuania** (Seimas), **Netherlands** (Eerste Kamer), **Poland** (Senat), **Portugal** (Assembleia da República), **Romania** (Camera Deputaților), **Finland** (Eduskunta), **Greece** (Vouli Ton Ellinon)}.
- It must be noted that in **Greece** (Vouli Ton Ellinon), as of 2011, there is no difference in the salary of parliament employees and that of the other civil servants.

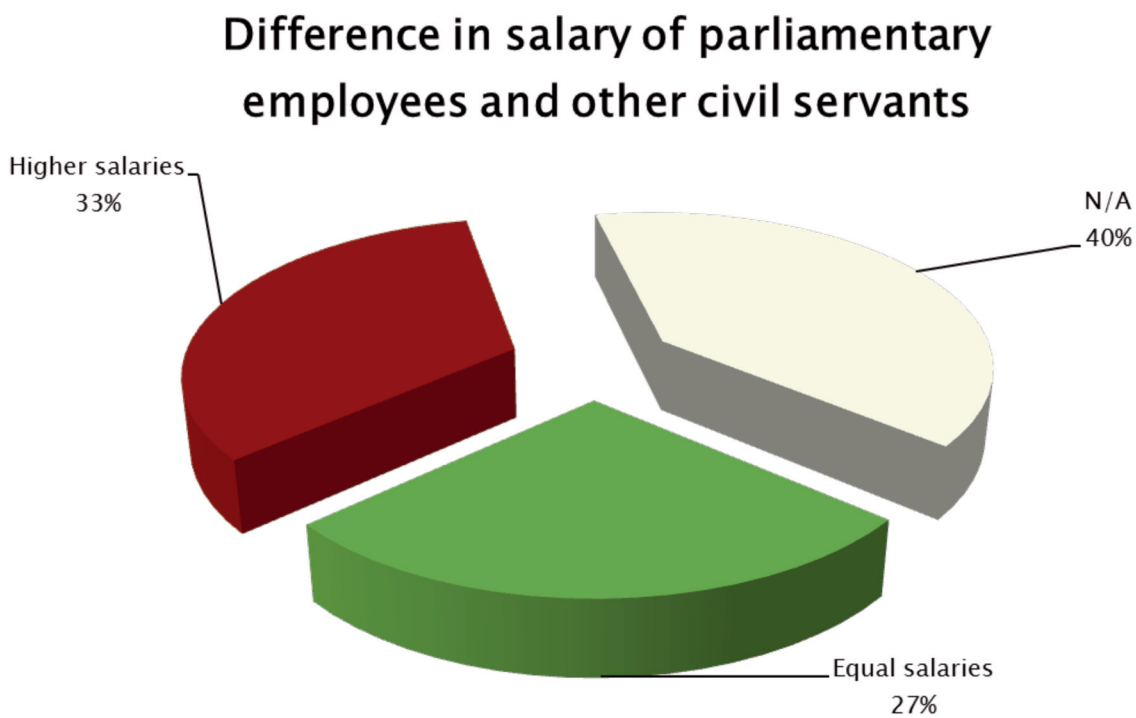


Image 8

3. Parliaments' Administrative Organization

Introduction

This chapter called *"Parliaments' Administrative Organization"* concerns issues of administrative structure of parliamentary services. In order to have a better look at the administrative parliamentary structure, Parliaments were asked to answer whether the economic crisis affected their administrative structure in its total.

It is observed that the vertical axis of the following images corresponds to the number of the parliamentary chambers, which did not answer the question related to each graph.

3.1 Change to the number of DGs, Directorates & Departments

In this section, chambers were asked to point out any changes (abolishment or newly established services or modifications) concerning their administrative services.

It is worth mentioning that, according to answers, the number of chambers, which abolished services in the last three years, was very small.

The general conclusion, as resulting from the answers was, that the economic crisis has not affected overall parliamentary organizational structure. Concerning developments in the number of General Directorates, Directorates and Departments, it is observed that in most cases

(21/34), their number has remained unchanged. The number of General Directorates, Directorates and Departments has been decreased in only seven (7) cases, and increased in three (3). The number of General Directorates, Directorates and Departments varies between different Parliamentary Chambers.

According to the replies, organization charts present, in their majority, small numbers of General Directorates, Directorates and Departments. More specifically:

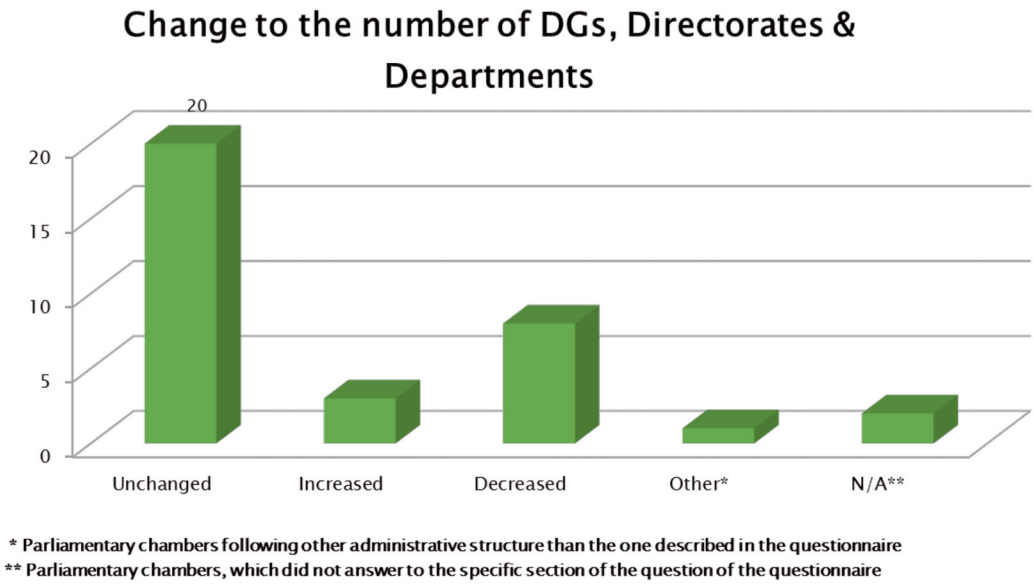


Image 9

At the level of General Directorates, their number varies from 0-6, with most chambers (10) stating that there is no provision for "General Directorates" in their organization chart. From the remaining participants, most of them (7) stated that they have 2 General Directorates.

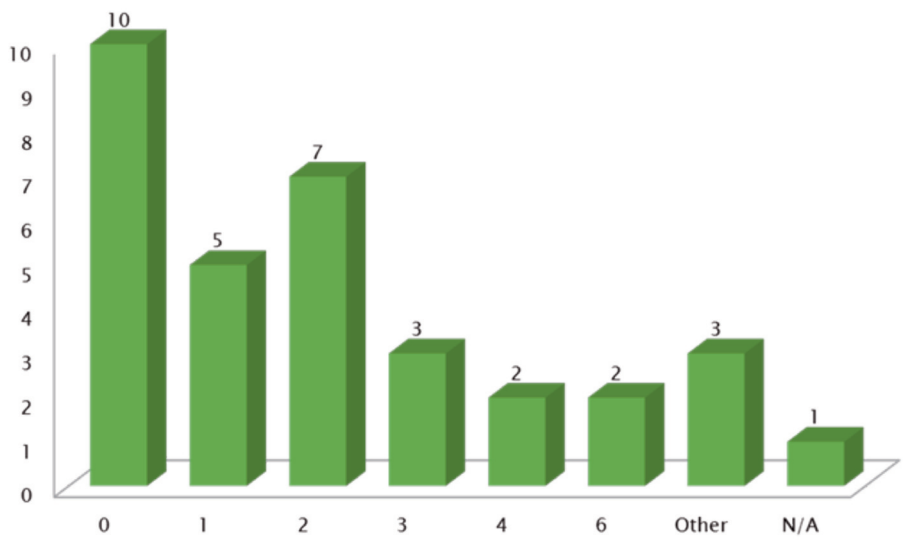


Image 10

At the level of Directorates, six (6) stated that there is no provision for "Directorates" in their organization chart, whereas from those having stated that they have Directorates, (24 chambers), their majority (14) mentioned maintaining 6 to 20 Directorates.

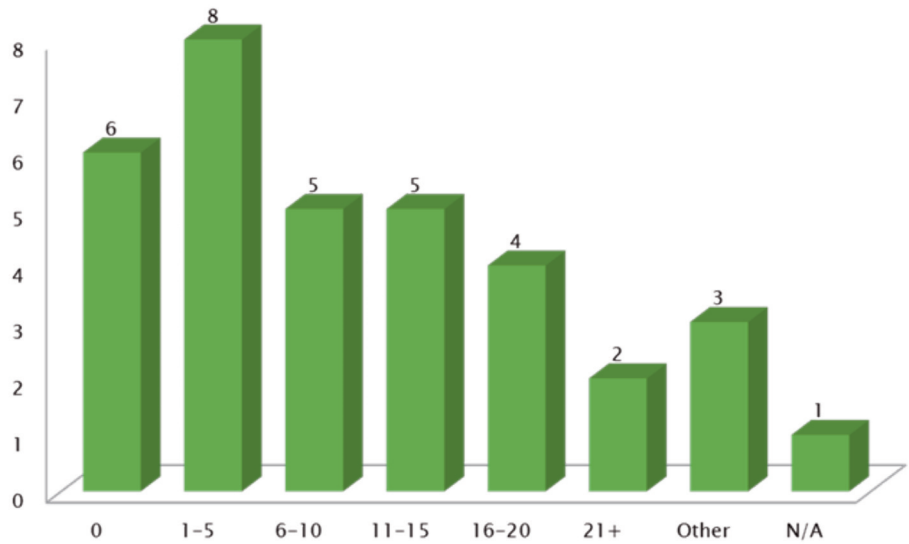


Image 11

At the level of Departments, the majority of replies submitted (15/26) suggest that their number is up to 20 Departments.

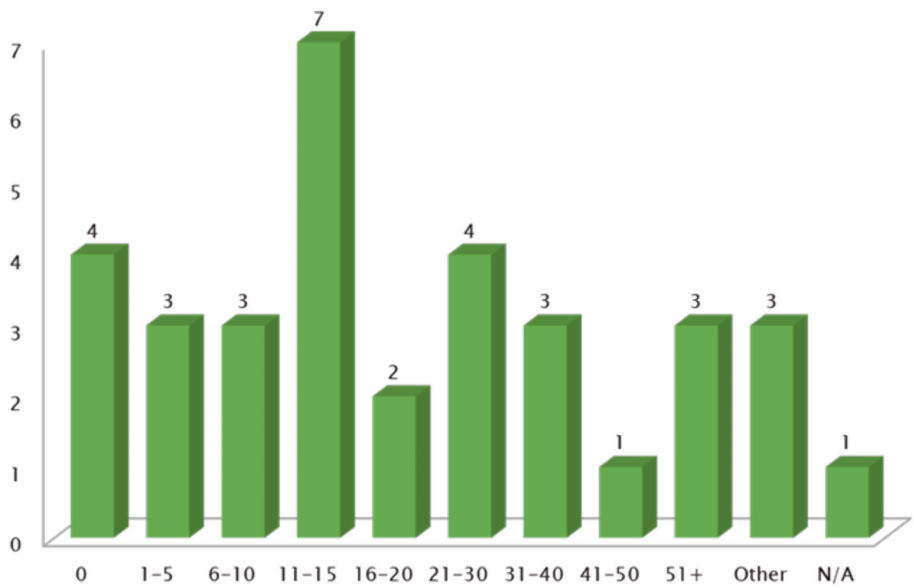


Image 12

3.2. Number of Departments per parliamentary chamber

In the framework of this comparative study, the ratio between General Directorates, Directorates and Departments per number of employees presents particular interest.

More specifically:
At the level of General Directorates, the ratio varies from 1 General Directorate per 12 employees to 1 General Directorate per 671 employees.

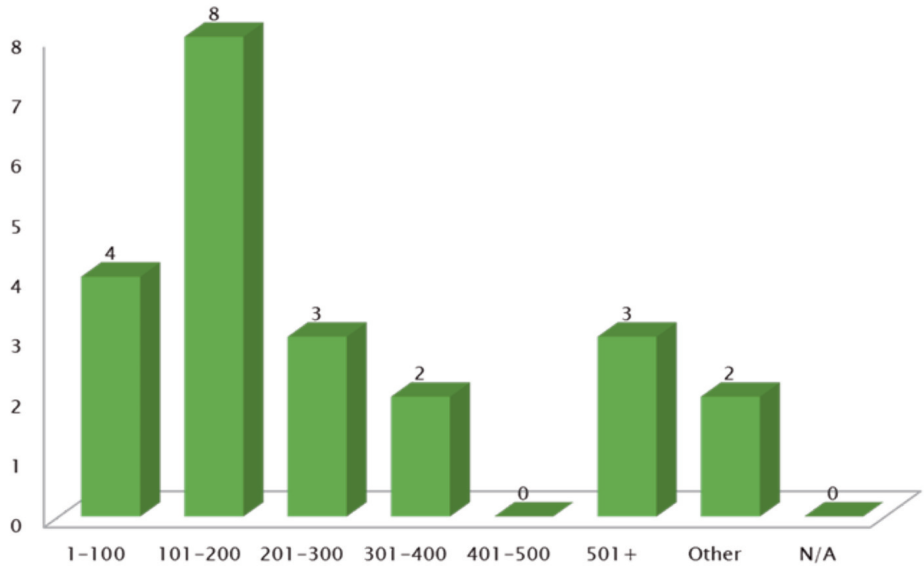


Image 13

At the level of Directorates, the ratio varies from 1 Directorate per 6 employees, to 1 Directorate per 381 employees.

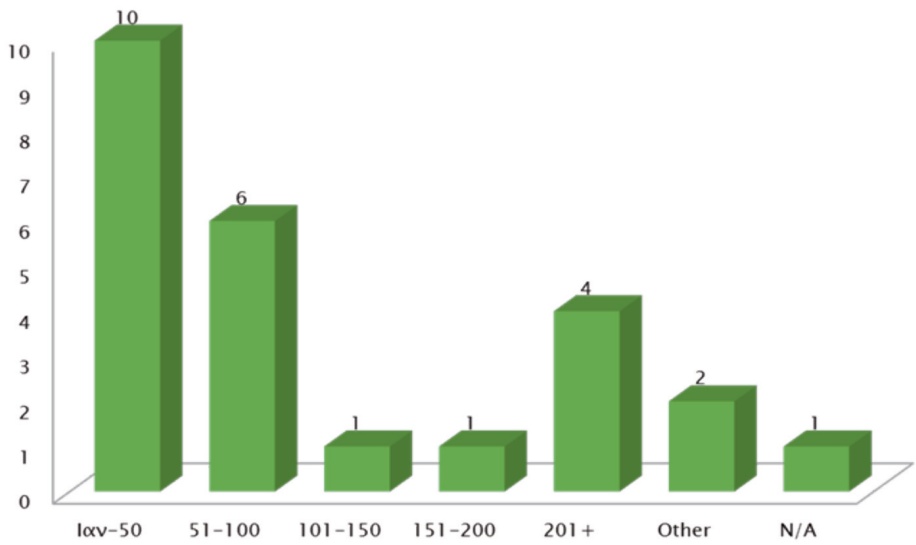


Image 14

At the level of Departments, the ratio varies from 1 Department per 5 employees, to 1 Department per 135 employees.

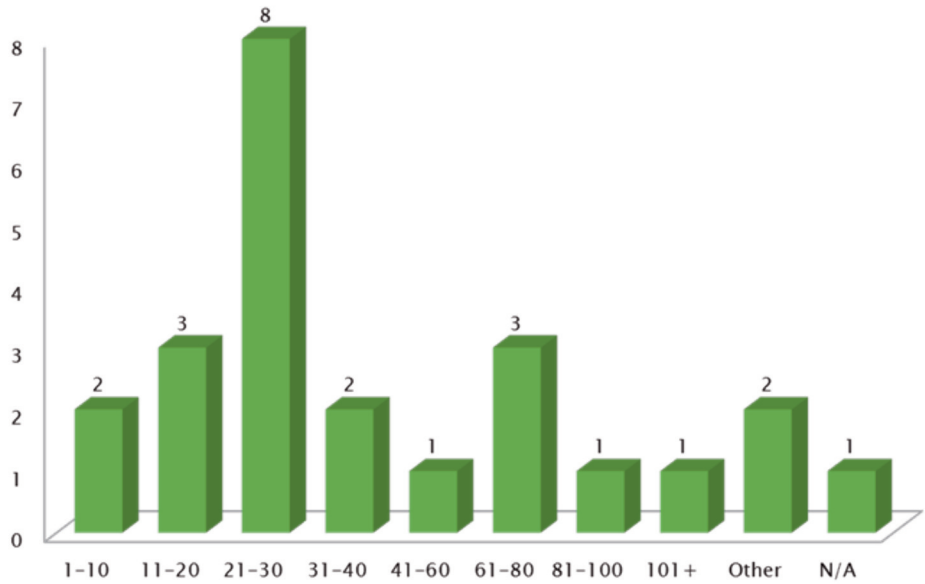


Image 15

4. Conclusion

The presentation is a part of a comparative study which was distributed to the parliamentary Secretaries General so that they use the material contained therein either as an arsenal of arguments in the public debate concerning the operation of the parliamentary chambers or as a source for reflection on the need to change things in each one's parliamentary body.

5. Acknowledgements

Special thanks to the Secretary General of the Hellenic Parliament for providing the questionnaire [1] as well as, to all his colleagues who participated in this study and even more those who made suggestions at the preliminary phase as to how better formulate it.

REFERENCE

[1] QUESTIONNAIRE ON THE ORGANIZATION AND OPERATION OF THE SERVICES OF E.U. PARLIAMENTARY CHAMBERS AFTER THE ECONOMIC CRISIS

ABSTRACTS

Rethinking the role of Standing Orders: procedural instrument or political statement?

Dr. Stephanos Koutsoubinas
Democritus University of Thrace, Greece

ABSTRACT

In the european parliamentary tradition since the great political revolutions of 18th and 19th centuries up to now, the Standing Orders were the main procedural pending of the great political issues laid down in the constitutional text. Today, with the evolution of the parliamentary regime and the accession to this model of more European countries, we have, maybe, to rethink this role. The Standing Orders are, also, a political statement of the way each country intends to configure its everyday political life.

The role of research and knowledge services for the parliamentary control of the government

Dr. Matthias Reuss
Deutscher Bundestag

ABSTRACT

The presentation sketches the structures, functions and working methods of the Research and Knowledge Services of the German Parliament. It discusses the role of the guiding principles that form the basis for the work of these Services, such as their independence of the executive branch, political neutrality, non-partisanship, objectivity, confidentiality, the individual responsibility of the authors, and the initiation of any research activities by the demand of individual MPs. The framework conditions of contemporary parliamentary democracies, where the system of checks and balances has evolved from the parliamentary supervision of the government to the minority parties' scrutiny of the parliamentary majority and the government, are taken into consideration.

Standardisation for Normative Systems: Requirements and Approaches

Dr. Schefbeck Günther
Austrian Parliament

ABSTRACT

The production of rules within normative systems follows specific patterns, which show a wide variety in detail but have some general concepts in common. Thus, standardisation approaches, which are typical for an advanced stage of the introduction of new technologies, also may apply to the procedural and technical support for normative systems. The presentation is to outline some general functionalities and requirements of normative systems, and to show how experiences and best practices in the production of legal texts may be made use of in standardisation approaches. Some concrete emerging standards will be presented, which may be adapted to support specific normative processes or serve as benchmarks for support system development.

EU Challenge – The National Assembly's of Republic of Slovenia role in the negotiation process and beyond

Uršula Zore Tavčar

Secretary of the Committee on Foreign Policy of the National Assembly of the Republic of Slovenia

ABSTRACT

EU membership was a main priority of Slovenian policy. The National Assembly had been awarding special attention to convergence of Slovenia to EU and had been acting in the direction of achieving this goal. It has been actively involved in the negotiations process, as well as the process of harmonisation of legislation.

Its active role meant executing supervisory function over government, it provided legitimacy to the negotiations process and insured the necessary measure of transparency and wide informity. Transparency and clarity were crucial for forming strong trust in the EU among the Slovenian public and resulted into wide support, which was formally confirmed on the referendum in March 2003.

The membership to EU meant that changes in the activities and role of the National Assembly have to be adopted. Special attention had been put on exceeding democratical deficit and preserving the active role of the National Assembly regarding adoption of decisions concerning EU.

Working through a reappraisal of the parliament's role in modern democracies

Dr. Alain Delcamp

Former Secretary General of the French Senate - Deputy President of the French Constitutional Law Association

ABSTRACT

Historically parliament was at the beginning of modern democracies which were all based on "representative regime".

Regarding the institutional debates during quite all the XXème century, the" parliament based democracy" had nevertheless been hardly disputed and considered in many aspects as out of date: from economic, social and even political points of view.

Paradoxically, today is a new opportunity for parliaments: the alternative models Marxist or authoritarian as well as failed and at the same time the need for collective and individual autonomy has exponentially grown. Quite all the topics are today contested and discussed. We are in the age of «communicational democracy".

All the new revolutions including "Arab spring" despite some chaotic and even bloody evolutions are waiting for free elections and ask first for the respect of the people voice.

This context is a good opportunity for parliament revival but it is not sufficient.

Parliaments themselves have to adapt the traditional model, taking into account the fact that classical separation of powers is now counterbalanced by the strength of parties and "majority rule" -also discipline from outside- and that governments have more possibilities than parliaments even to introduce legislation.

The reappraisal depends on the way in which parliaments will reconsider their different roles: not necessary in considering that legislation is the first role but scrutiny and control of transparency effectively and equity of governmental and administrative decisions. Parliaments have to be watchdogs for democracy and the voice of people including its diversity. So they must be

themselves indisputable regarding respect of minorities, improvement of pluralism in their working, transparency; be attentive by innovative channels to the expectations of opinion, including in their procedures as many as possible segments of "participative democracy", keep a constant attention to information, explanation, pedagogy; the necessity of showing all the faces of every problem in their debates, the necessity to be "in line" and "on line" with the citizens.

These duties have to be exercised not only regarding internal affairs as formerly but also external ones including European ones which stood in fact in a medium zone :not exactly inside but not exactly outside.

Parliaments have to step up their investigations on the government European policy making and participation in council of misters decisions. One of the best way to explore in that purpose should to increase parliamentary cooperation with the other national chambers and conquer an original position, making Europe closer to national preoccupations, beside european parliament in charge of general reflection about European future.

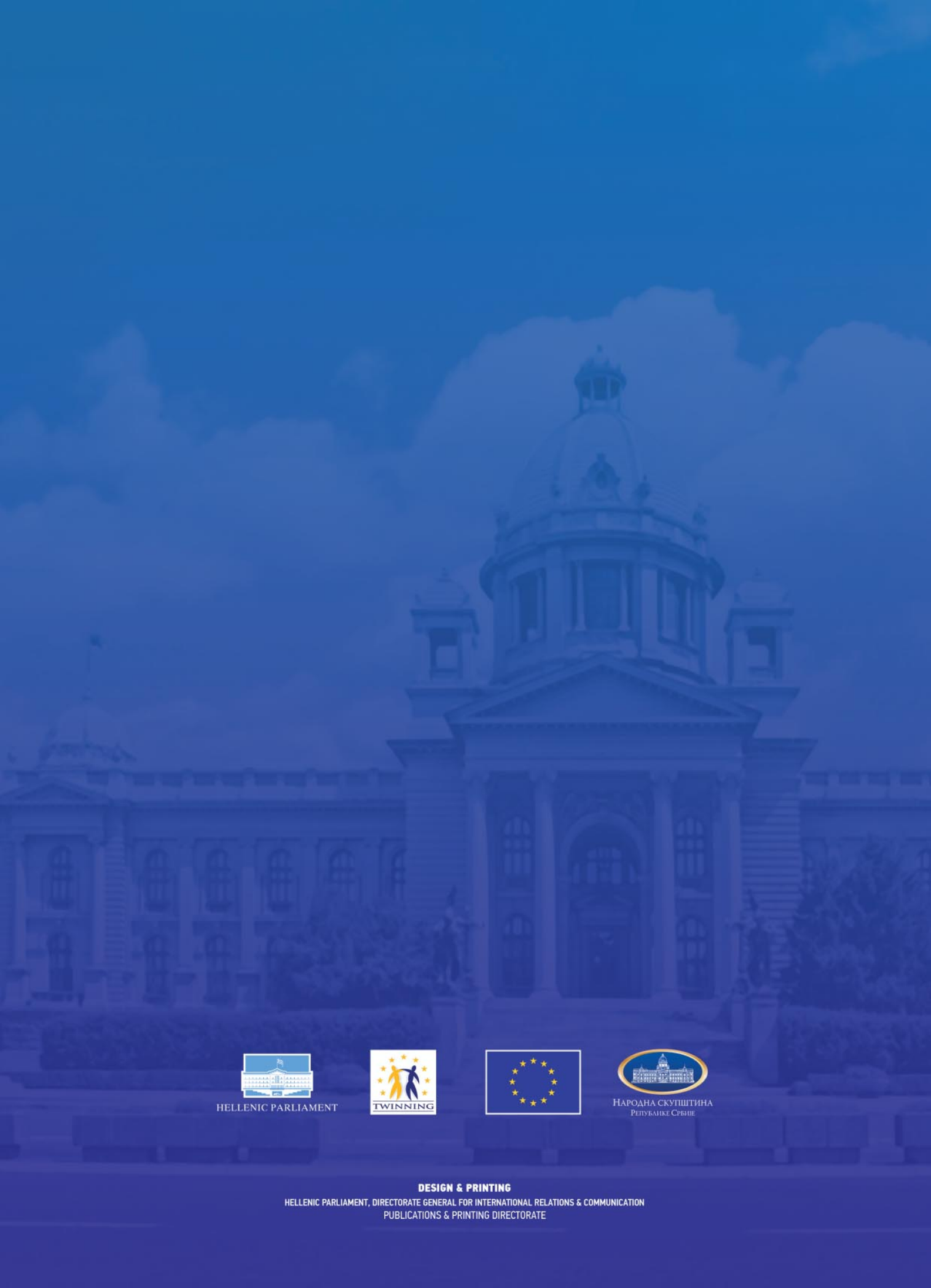
How citizens influence legislation and parliamentary oversight by submitting complaints to Independent State Bodies

Jan Deltour

Head of the Legislative Secreteriat of the Belgian house of Representatives

ABSTRACT

Independent State Bodies (ISB), such as the Ombudsman Institute and the State Audit Institution, have expertise in specific areas (e.g. investigating cases of maladministration, auditing the use of public money). An essential characteristic of these institutions is that they are independent from the Executive and are accountable to Parliament. They constitute a form of "extra-parliamentary" scrutiny of the Executive. ISB act when Parliament instructs them to do so, they may act on their own initiative and also when citizens lodge a complaint. After the results of these investigations have been reported to Parliament, MP's may then use the more traditional tools of parliamentary scrutiny (questions, interpellations, committee) to control the Executive. ISB may also recommend to Parliament to adopt new legislation.



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