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National/Regional Parliaments and EU Decision-Making under the New Constitutional Treaty

By
Hendrik Vos

A previous version of this paper was presented at the 2004 Maastricht Forum on "European Integration: Making the Constitution Work" which was held at EIPA on 19 November 2004

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Introduction

This paper is about the involvement of national and especially regional parliaments in EU decision-making. The focus on regional parliaments is justified by the fact that the relationship between regional parliaments and EU-institutions is hardly studied, although in a substantial number of member states, it are legislative regions and their parliaments that are most obviously confronted with EU legislation.

A number of relating questions will be adressed in this paper. The first question is about the actual possibilities national and regional parliaments have to influence European decisions. Secondly we look at the new provisions in the EU Constitutional Treaty: is the role of the national/regional parliaments strengthened and to what extent? Also, are there other possibilities to give parliaments a bigger say in the European decision-making and why are they not adopted by the Convention or by the IGC? And lastly, but very important, what preconditions must be fulfilled (especially by the national/regional parliaments themselves) to fully exploit the provisions and opportunities they have under the current treaties and the new constitution in a constructive way.

But we start with some preliminary remarks on the place of national/regional parliaments in the EU multilevel governance system.

Is There Still a Role for National/Regional Parliaments in the EU Multilevel Governance (MLG)-System? Preliminary Remarks

Studying decision-making in the European Union is a complex matter since there is no single model to describe the way decisions are taken. Different procedures apply to different policy domains and a whole range of informal practices makes things even more complicated. Since a couple of years, the MLG-metaphor is used to highlight the fact that different levels are involved (EU, national, regional, sometimes even local), as are different actors (also non-governmental actors). Moreover, by using the word 'governance' it is stressed that there is no single centre of authority ('government').

Literature on MLG tries to underpin these assumptions with empirical facts for different policy areas. But the debate about MLG offers more than a mere description of a way of governing the Union, it also brings more fundamental questions about the democratic character of this form of governance. The involvement of many actors (as suggested by the MLG-metaphor) could probably be seen as a good thing: territorial as well as functional interests do have a say in the policy formulation. From a democratic point of view it is desirable that as many voices as possible are heard in the decision-making process.

But we have to make some critical remarks. In the first place, the involvement of many actors in the decision-making has to do with only one aspect of democracy, that is the input-side. We can also look at democracy on output-side: the policy should be 'good' for as many people as possible. Participation is one, crucial, dimension of democracy, but it is not the only one. Effectiveness is important as well. I will briefly return to this point at the end of this section.

Secondly, although the involvement of many actors and interests in the policy formulation could represent added value, representation is not necessarily 'fair'. Especially when functional organisations and private actors are involved, important representation problems could arise. The most fundamental criticism is that some groups succeed more quickly in taking part in this type of governance than others. Put differently, some interests are for numerous reasons not organised strongly enough to take part in decision-making. E.g. economically well-endowed groups or highly organised groups have less difficulties in getting involved in decision-making than other groups (see e.g. Andersen, Burns 1996: 246; Katz, Wessels 1999: 244-245). Most academics agree that the evolution by which functional organisations are taking over functions from territorial representatives (members of parliament) cannot be stopped. Wessels and Katz say that "the most likely future appears to be a decline of parliamentary democracy." (Wessels, Katz 1999: 14) Almost ten years ago Andersen and Burns even talked about post-parliamentary democracy and they did mean the following:

"[...] formal parliamentary arrangements and decision-making are replaced to a large extent by the principle that directly affected parties have the right to participate in and influence policy- and law-making. This is the basis for self-representation and specialised representation in particular policy networks or sub-governments." (Andersen, Burns 1996: 234-235)

This is a huge challenge to our traditional view on democracy in which parliaments contribute towards the legitimacy of political projects. It is probably too early to speak of the final end of parliamen-

tary democracy, but it does not alter the fact that there is a shift in decision-making: from parliamentary bodies to groups and networks, in which public and private actors negotiate.

But because of the aforementioned representation problems, some kind of parliamentary involvement is still desirable, alongside the probably unstoppable tendency to involve other actors as well. More specifically, parliaments have a better position than many other participants in the process in order to keep an eye on the broad outlines of different measures. They can reflect on the consequences of policy choices in long term. They can also reflect on the political and often ideological choices which are included in the draft decisions and which are not always reflected on by experts and lobbies. European decisions – how technical they might look at first sight – involve political choices: about the relation between ecology and economy, about the importance of cultural diversity, about the range of social topics and of liberalisation, about agriculture and development etc. All European directives and regulations reflect in a certain way political choices and priorities and especially a vision of how European society has to look like. Members of parliament, mandated by the electorate, are in a good position to take this into account.

Moreover, parliaments can fulfil a warning function if it seems that certain less organised interests do not succeed in getting through the networks and as such are systematically threatened to be ignored. Furthermore, they can set the agenda by, basing themselves on their knowledge and analysis of regional and national problems, urging the EU to take action.

If parliaments succeed in contributing all this in the debate during the decision-making procedure, they prove their surplus value. The involvement of parliaments can enrich the European output qualitatively.

For these reasons the European Parliament has an important role to play. This parliament has got considerably more power than before and its influence is often underestimated, but it did not take over all the traditional functions of national and regional parliaments. Crucial steps in the decision-making process escape a direct democratic control from the European Parliament, whilst national/regional parliaments have an opportunity to exercise control over e.g. Council of Minister-activities. So, all parliaments have their role in enforcing the legitimacy of European decisions and they are very complementary. It is for example not very realistic to suppose that the European Parliament should get the same role within the European construction as national parliaments in national politics. Many authors also point out the fact that there is no European ‘demos’: Europeans shall only perceive the European Parliament as ‘their’ parliament when they really *consider* themselves Europeans. All in all there are few ‘European organisations’ the population can connect to and that could contribute to a European citizenship. There are no real European political parties yet¹ and European elections still concern national topics. We also have to emphasise that the distance between the elected and his electors on European level is very huge: Wessels calculated that in the national parliaments there is one elected person per 54.844 inhabitants, while one European member of parliament represents 429.729 inhabitants (Wessels 1999a: 106). So for various reasons, the European Parliament cannot immediately take over all functions of the other parliaments. Who wants to enforce democracy in Europe cannot only pay attention to the European Parliament. Also the parliaments of the regions and member states have an important role to play.

At the political level as well it is often admitted that parliaments will have to contribute to the legitimisation of the European project. In the Convention, founded in December 2000 during the Laeken European Council, this topic was an important subject of conversation. The Laeken Declaration, in which more or less an agenda was set up for the convention debates, mentioned the matter explicitly and a number of questions were formulated:

“The national parliaments also contribute towards the legitimacy of the European project. The declaration on the future of the Union, annexed to the Treaty of Nice, stressed the need to examine their role in the European integration.

[...]

A [...] question, which also relates to democratic legitimacy, involves the role of national parliaments. Should they be represented in a new institution, alongside the Council and the European Parliament? Should they have

1. Art. 191 EC says that political parties play an important role in the integration within the EU: “They contribute to forming a European awareness and to expressing the political will of the citizens of the Union.” But until now, there are no real European parties; regional and national parties are a part of rather loosely structured political families on European level.

a role in areas of European action in which the European Parliament has no competence? Should they focus on the division of competence between Union and member states, for example through preliminary checking of compliance with the principle of subsidiarity?"

Although little or no attention was devoted to the role of *regional* parliaments, the same Laeken Declaration also stressed the importance of the subnational level in general, more specifically of the 'regions with legislative powers'.

During the Convention a lot of thought was put into the position parliaments will take in the EU of tomorrow. It was in this vein that 'Convention Working Group IV on the role of national parliaments' was set up. The questions from the Laeken Declaration, but also many others, created a framework for the debate. We will return to the results of this debate further in this contribution. That parliaments still have a role to play seemed to be the starting point.

One last remark: if we say that an involvement of national/regional parliaments in EU decision-making could represent added value from a democratic point of view, this does not mean that those parliaments should be capable of blocking every European measure. Therefore the need for a powerful European policy is too great. Current problems often have an international dimension or are by-products of economic, cultural and technological globalisation processes. Neither national states, nor regions are capable of regulating these processes. An isolated policy is just not enough. Only a vigorous European attitude (with respect for the principle of subsidiarity) can offer answers. Finding the balance between efficiency and participation in the EU is difficult, but complicating the decision-making process has important consequences that should also be taken into account.

National/Regional Parliaments in EU Decision-Making

This section explores the role national and regional parliaments actually (could) play in the EU decision-making process. We do make a difference between various types of decisions: Treaty revisions, legislative decisions and the prelegislative story². We also pay attention to the provisions under the new constitution. At the end of this section the most relevant information is summarized in a single table.

Treaty Modifications

Important and historic European processes such as Treaty Modifications concern the future of national and regional politics, because of the inherent consequences for their competences. This justifies the involvement of national and regional parliaments in this particular decision making procedure. The method that is traditionally used to revise treaties is that of the Intergovernmental Conference (IGC) (art. 48 EU): representatives of the governments of the member states negotiate during a couple of months in a very private atmosphere about the treaty revision, whereupon heads of state and government cut the final knot at a European Council. The text of the treaty that has come into being that way has to be ratified by all member states. How this occurs exactly, is arranged by every member state separately.

Parliaments and ratification

In practice we see that parliaments deal with the ratification, although in some member states also the population can vote about it in referenda. Generally speaking, members of parliament thus vote about basic treaties and the amendments made to them. Treaty modifications could also directly or indirectly affect the position of the regions and their competences in a number of Member States. So in some federal states regions also are involved in this ratification procedure because the federal Chamber (such as the German *Bundesrat*, in which regional ministers are seated) has to vote about the revision of treaties. Nowhere else the influence of regional parliaments is arranged as directly as in Belgium: both the approval of the federal parliament (Chamber and Senate) and of the five regional parliaments is required.

Although the parliaments involved in the ratification in theory dispose of a lot of power (they can prevent even one comma from being shifted, deleted or added to treaties), there is – precisely in the parliaments – a lot of dissatisfaction about the procedure for revising treaties. In practice, an agreement is made between the governments of the member states which is presented to the parliaments as ‘take it or leave it’. A refusal of ratification would immerse the EU in a constitutional crisis (Raunio, Hix 2001: 142). *De facto* the power of the parliaments is not that huge, although representatives of the government anticipate the probable reaction of the parliaments during the negotiations: they make sure they do not make decisions that are absolutely unacceptable for the home base (Munro 1996: 92).

Broadly speaking, however, we can say that an involvement in the processes leading to a Treaty modification (negotiation-phase) would probably be more important than disposing of an ultimate veto during the final ratification procedure. In a way this veto-power gives the ultimate means of control, but it has to be said that it does not mean that much in practice, just because it is ‘yes’ or ‘no’; an intermediate position is not possible.

2. Partly based on Peterson, Bomberg.

Involvement of parliaments in the negotiation-phase: IGC

Until recently there was no explicit involvement of parliaments in the negotiation-phase. Sometimes, under impulse of for example the national parliamentary committee that deals with European affairs, a national or regional parliamentary debate is organised at the start of an IGC. The final aim is to give the IGC-negotiators (head of government, foreign minister or their representatives) a 'direction'. It is easier for a national parliament to do so than for a regional parliament: national parliaments have more 'grip' on the national government. But in some federal states (e.g. Belgium, Germany) some regional parliaments as well hold a debate and take a position, trying to influence the negotiators. In reality however we notice that these debates (national or regional) are often superficial and that the same mantras are only repeated. This type of debate can give government negotiators a general sense of direction, but it can hardly guide them with the concrete negotiations. After all, it is difficult to monitor IGC-activities because of the lack of transparency in these negotiations.

Involvement of parliaments in the negotiation-phase: Convention-method

In Nice (2000) it was decided that a new method to prepare treaty revisions was desirable. National parliaments should be more involved in this. As an answer to this the European Council of Laeken (2001) set up a Convention. There was no treaty-base for this arrangement, but neither was it forbidden. In this Convention representatives of the parliaments played an important part: each national parliament had to send two delegates (as opposed to one representative of the government per member state). Also the European Parliament was represented well by sixteen members. Regional parliaments were not directly involved (although a member state was free to admit a representative of the federal Chamber or even of a regional parliament in the two-man parliamentary delegation). The Committee of the Regions did appoint six observers: representatives of the regions and local governments. It was the task of the Convention to prepare the next IGC (2003-2004). The Convention came up with a draft constitutional treaty which was to a large extent accepted by the IGC. This procedure can be seen as a new experiment to change the treaties (constitution) with an important participation of parliaments. Or better: of the representatives the parliaments have appointed. In most regions and member states it did not lead to long parliamentary debates. On the contrary, as we see it, most representatives worked in a way that isolated them from 'their' parliament. Broadly speaking, we cannot talk of a permanent feedback process. The convention formula offers possibilities to get a broader parliamentary debate going about important aspects of European integration, but it is not a guarantee in itself. It is up to the parliaments to organise the debate and give inspiration (maybe even a mandate) to the representatives. It is not very useful if this parliamentary debate restricts itself to repeating the mantras that have been in use for decades. In that case parliamentary involvement is a rather boring spectacle. Eventually the representatives will end up in a very dynamic negotiation process, where they are confronted with the often very diverse opinions of other participants. From superficial debates little inspiration can be drawn and in concrete *issues* they shall sometimes take points of view that are not necessarily based on the parliamentary debate. If national and regional parliaments really want to take up the debate about treaty modifications (and more in general about Europe's future), the whole negotiation process and the dynamic that lives in the Convention, have to be followed strictly and members of parliament shall have to take into account the visions of other regions and member states.

But generally speaking, the involvement by national and regional parliaments in the process and the signals that can be given in an early stadium could become more important and effective than the threat of a veto that can only be declared after the negotiations.

The role of parliaments in treaty modifications under the new constitution

Under the new constitution, the Convention-method for Treaty modification is not an option anymore, but becomes the normal procedure (article IV-443). A delegation of the Committee of the Regions in an advisory capacity is not an obligation (but this could be decided on an ad hoc-basis). There is also a more simple procedure for the modification of certain parts of the constitution. In this procedure the final say rests with the national parliaments as well. The installation of a Convention is however not required, but modifications that aim to widen the competences of the Union are explicitly excluded from this procedure (article IV-445).

Legislative measures

European directives, regulations or decisions (and in the future: laws and framework laws) do have binding power, be it in their entirety or with regard to the result. European rules have to be implemented by the member states and their regions or they draw margins limiting the legislative freedom of national and regional authorities. Anyway, they form the framework in which the following years national and regional transport and environmental and development policies etc. will be pursued.

In this overview, we focus on the part national and regional parliaments could play in the making of EU-legislation. We give a rather general image and we do not extensively discuss the various ways participation is dealt with in separate member states and regions. Sometimes there are separate arrangements in different pillars and for specific policy areas that (could) influence the role of national and regional parliaments. Here we restrict ourselves to generalisations and put emphasis on what is still called the first pillar (where most of EU activity takes place; moreover this concerns the domains of power of the regions). The legislative trajectory in these areas starts with a proposal from the Commission. The final decision is taken jointly by the Council of Ministers (by qualified majority vote) and the European Parliament. In some more sensitive areas the role of the European Parliament is only advisory and/or the Council has to decide by unanimity. Some other institutions, such as the Committee of the Regions and the Economic and Social Committee act in an advisory capacity. Some members of regional parliaments are a part of the Committee of the Regions, but its influence on decision-making is for various reasons so negligible³ that we do not discuss it further.

National/regional parliaments and 'their' ministers in the Council

In the Council, ministers of fifteen member states meet. The meetings are prepared by a Committee of Permanent Representatives (COREPER) that bases itself on discussions in numerous working groups, in which the member states are represented. The members of these working groups are often experts from the administration or diplomats connected to the Permanent Representation to the EU. Recent research shows that regional public servants and experts in federal states often are part of these council working groups, dependent on the points on the agenda (Boucké, Vos 2001: 134; Vos, Boucké, Devos 2002). Broadly speaking, a direct (national/regional) parliamentary control on what happens in the council working groups and the coreper is lacking in almost every member state.

For the ministers, who eventually cut the knot, this can be different: each minister has a responsibility for his deeds to 'his' national parliament. In this field there was a kind of 'permissive consensus' for a long time (Katz, Wessels 1999: 245): most parliaments did not interfere with European affairs and ministers could do what they wanted in the European meetings. When parliaments realised that European politics had an impact on their powers, this changed. In all member states and in some regions parliaments have already founded committees concerning European affairs (Raunio, Hix 2000: 156). The exact powers and the impact differ from state to state (Smith, Eivind 1996; Kassim 2000b: 240). Some of these committees concentrate on almost every measure that has to be discussed by the Council, while other committees only follow the general guidelines of Europolitics and can in the best case discuss points that are dealt with on European meetings of heads of state and government. The most extreme model consists of a minister asking a mandate for every session of the Council, in which can be found how far the minister can go in the negotiations and when he has to vote for or against. For various reasons this extreme system is not applied anywhere. In Denmark it is probably approached nearest.

Some parliaments are looking for ways to refine the system of the 'instructed minister' and especially enforce it: parliaments want to exert more supervision on how a minister behaves⁴. But suppose that in every member state parliaments gave their ministers precise instructions. If the ministers want to ex-

3. Problems have to do with for example the fact that it only concerns an advising organ, where Council, Parliament or Commission without any responsibility can ignore every point of view of the Committee of the Regions. Moreover, the composition of this Committee is quite unclear: it consists of representatives of both local and regional administrations, often with very different interests. See a.o. Vos 1997, 1999b.

4. Research by Katz in national parliaments shows that national members of parliament do answer 'too little' in great numbers to the question 'Does the national parliament exert too much or too little supervision on the position the government of your country takes in the Council?' (Katz 1999: 40-41) (the average on a 7-point scale in 10 countries was 5,22). Research among a large number of national (1392) and EU members of parliament (310) shows that a majority is in favour of the system of 'instructed ministers'.

ceed their mandate, they first have to give feedback to their parliament or they can be sanctioned by the home base. Obviously this would make the meetings more rigorous, looking for compromises will be more difficult and it would slow down the process. Decision-making, especially in the EU, where visions of various cultures and interests have to be reconciled, asks for compromises. Often *package deals* are necessary to overcome the deadlock and make headway. For this form of decision-making confidential meetings are required, with a limited number of participants who dispose of a relatively ample mandate (Sejersted 1996: 126; Smith 1996: 15). If twentyfive or more (also regional) parliaments mingled in the concrete negotiations and strictly defined the negotiation margins of the ministers and the members of the working groups, the dynamic of the negotiations would suffer from this. It would for example be crazy to formulate in an open parliamentary debate a relapse position; this would seriously weaken the negotiation position of the minister and the parliamentary influence would have the contrary effect (see Gustavsson 1996: 116). Kassim, Peters and Wright point out another element: "Even if there are not partisan differences over policy there may be sufficient institutional jealousy to create difficulties if the parliament is an active player in the co-ordination exercise." (Kassim, Peters, Wright 2000: 17). Put differently, there is a risk that parliaments will feel obliged to make it clear once in a while that they can block a measure. If each parliament does it in turns, there is danger of a deadlock in numerous dossiers. The conclusion of Hilf and Burmeister is probably correct:

"Any voting on EC secondary legislation by national parliaments would not lead to 'more' democracy but to a rather inefficient, if not chaotic, situation and thus finally to a demise in democratic legitimacy" (Hilf, Burmeister 1996: 74)

The situation becomes even more complicated if we turn to regional parliaments. In the situation where a regional minister is seated in the Council⁵ he/she has to defend a national position making it unrealistic to give this regional minister exact instructions from a regional parliament.

The idea of giving ministers an exact and well-defined mandate seems very tempting and is easy to implement (treaty modifications are not required for this), but it has a perverse effect. At first sight this measure seems very sound from a democratic point of view, but doing this would endanger the integration dynamics.

This does not mean, however, that national/regional parliaments have to stand by and watch when it comes to European decision-making. It is not because it is not realistic to mingle in the concrete negotiation process by taking away every room for manoeuvre from the ministers that parliaments have to turn away from Brussels. Parliamentary debates about various measures that are under discussion, can without a doubt embellish the vision of a minister and influence his/her point of view. The debate can contribute to the fact that the minister gets a clear view on national and regional importance and parliaments can give their ministers a clear direction or even recommendations, which could impossibly be ignored completely (Hilf, Burmeister 1996: 74). From that point of view it could be useful to let (both regional and national) members of parliament participate in the co-ordination committees where the 'national standpoint' is being formulated. If a final decision seriously deviates from the position parliament has taken, a minister can later be asked to give an explanation. Then a minister could justify why he/she had to accept a compromised point of view to prevent the realisation of a final text that was even further away from desiderata of parliament. If decision-making processes are followed closely by national and regional parliaments, they will be confronted with the points of view of other member states and interest groups, what allows them to situate the end result in a better way.

Observers have noticed that the switchover to more polls by (qualified) majority leads to the fact that the impact of national parliaments on European decision-making weakens⁶. Clear instructions can be given to a national minister, but it is possible that he has to taste defeat during a poll. Nevertheless, the

5. The conclusion that many legislative measures that are treated in the council are a regional matter in the federal member states, led to the fact that in the Maastricht Treaty the possibility was taken into account that a regional minister could be seated in the Council, if this minister could bind the whole member state (art. 203 EC). In most federal states a system has been worked out thanks to which regional ministers can effectively participate in sessions of the council meetings (together with a federal minister or not) (See a.o.: Cygan 2001: 164-165 (United Kingdom), 180 (Germany); Müller 2000: 214 (Austria); Hilf, Burmeister 1996 (Germany); Vos (1999a) (Belgium)).

6. See a.o. Rideau 1996: 167

resolution that is voted that way is also applicable in the member state where parliament was against it. The question posed by Smith is a very important one: “[W]ho should you charge in an instance where your own minister, in a case submitted to decisions by qualified majorities, actually voted against a controversial decision by which you are bound anyhow?” (Smith 1996: 15). The democratic deficit that threatens to arise that way can only be filled by giving the European Parliament the power of co-decision. For most areas that fall under the qualified majority ballot, this already is the case.

National/regional parliaments and the European Parliament

In many policy areas, the European Parliament is quite powerful and recent research shows that the points of view of the Parliament are taken seriously⁷: many by the Parliament voted amendments survive the decision-making procedure and can be found in the final texts, often against the original point of view of the Council. Michael Shackleton, a prominent observer: “legislation is not simply a product of agreement in the Council [...] the EP can alter policy outcomes in significant ways.” (Shackleton 2002: 107).

Before the first direct elections for the European Parliament (1979), the latter was composed of members of national parliaments. Formally speaking there are no links anymore between national or regional parliaments and the European Parliament. However, good contacts and a smooth interaction between on the one hand national and regional parliaments and on the other hand the European Parliament (informal or formalised in committees) can contribute to a better defence of specific national and regional interests. Concrete problems or concerns can be brought under the attention of members of the European Parliament from for example the same electoral district or the same political family. In most countries the same political parties compete for seats in the national/regional parliament and in the European Parliament. So party lines link members of the European Parliament with their colleagues in the national and regional parliaments. The headquarters of the political parties can act as some kind of an interface between them. This is a more informal technique for national and regional parliaments to get grip on European decisions.

How to deal with European matters in national/regional parliaments?

If parliaments want to keep an eye on the activities of their minister in the Council or want to follow what is going on in the European Parliament, it is of course important that they dispose of enough information. A protocol (no.9), annexed to the Treaty of Amsterdam, determines that all discussion documents and proposals of the Commission have to be delivered to the (national) parliaments. Regional parliaments are not mentioned in this protocol, but in practice the proposals of the Commission are also admissible via the internet, so members of regional parliaments can easily get them. Moreover, a period of at least six weeks is foreseen between the introduction of a proposal and the decision of the Council, exactly to give parliaments the time to think about it and maybe give their ministers some instructions.

Research shows that most parliaments do not succeed in playing the ball quickly. Some authors notice that the monitoring of European measures brings along practical problems. Norton says it this way “[t]he existing workload of some parliaments means that it will be difficult for them to be more involved in EU affairs.” (Norton 1996: 32; also Kassim 2000a: 44; Pedersen 2000: 232-233). In fact this is not correct, because sooner or later parliaments will be confronted with European rules anyway. Of course it is important that parliament disposes of (among others personal) support, but this is a matter of internal organisation for the parliaments themselves⁸.

It should be logical that the ‘functional’ or ‘technical’ committees of the parliaments, each for their own policy area, follow all relevant European initiatives from an early stage (and thus not the ‘Standing Committee for European Affairs’). For defining a national or regional interest the various specialised committees dispose of a lot of expertise and moreover will be confronted most directly with European rules when executing their activities. Also Sejersted sees it like this:

7. That does not alter the fact that there still are numerous areas (among others the second and third pillar) where the European Parliament has little influence, while national and regional parliaments neither have much to say. Here we can speak of a democratic deficit.

8. Sejersted studied the Norwegian Parliament and concludes that there are few parliamentary assistants that keep themselves busy with research concerning European affairs. (Sejersted 1996: 143)

“In order to influence European policy a parliament must integrate it into everyday parliamentary life, and look upon it as an extension of national policy, not as an extraneous matter to be treated separately and with care.” (Sejersted 1996: 156)

European politics do not have to be snuggled away; it is a matter for all the members of parliament.

The role of parliaments in making legislation under the new constitution

The aforementioned protocol (no.9), annexed to the Treaty of Amsterdam is preserved in a revised way. The “Protocol on the Role of Member States’ National Parliaments in the European Union” says that not only draft legislative acts, but also consultation documents, the annual legislative programme and other instruments of legislative planning shall be forwarded to the national parliaments by the Commission. National parliaments shall also have minutes from the legislative Council’s meetings. These provisions on the supply of information apply to both chambers of bicameral systems, but regional parliaments are not mentioned at all. (But in fact, most of these documents can also be found on the internet.) Just as in the Amsterdam-Protocol interparliamentary cooperation (COSAC) is encouraged. CALRE, the Conference of the European Regional Legislative Assemblies, is not mentioned.

More innovative for the parliaments is another protocol: the “Protocol on the Application of the Principles of Subsidiarity and Proportionality”.

Subsidiarity means that what a smaller unit can do in an adequate way does not have to be done by a larger unit, unless it performs better⁹. This is the situation at this moment: in a Protocol (no. 30) annexed to the Treaty of Amsterdam, it is said that the Commission has to justify its legislative proposals in the light of subsidiarity. The Council and the European Parliament have to investigate this and take into account the subsidiarity principle throughout the decision-making procedure. In other words, self-discipline of the European institutions is very important. Judicial control on subsidiarity on European level is practised nowadays by the Court of Justice. But at the moment an appeal for annulment because of violation of the subsidiarity principle can only be started by directly and individually involved persons, member states, the Council, the Commission or the European Parliament. National parliaments cannot directly commence a proceeding. Neither can regions (and their parliaments).

The Protocol which is attached to the new constitution starts with the statement that the Commission shall consult widely before proposing legislative acts. It says explicitly that the regional and local dimension shall be taken into account. The Protocol is especially innovative in the sense that it includes an extra ‘test’. During the Convention debates various scenarios were formulated to extend political control (the foundation of an ad hoc inspection body, the entry of a representative of the parliaments in the national delegations of the Council etc.). Finally the Convention and the IGC have decided to set up an ‘early warning system’ of a political nature, intended to reinforce the monitoring of compliance with the principle of subsidiarity by national parliaments, without complicating or lengthening the legislative process too much. If national parliaments think the principle of subsidiarity is being breached, they can sound the alarm within six weeks from the date of transmission of the draft legislative act. National parliaments have to consult regional parliaments when it concerns matters belonging to the competences of the latter. Where at least one third of national parliaments issue reasoned opinions on the Commission proposal’s non-compliance with the principle of subsidiarity, the Commission shall review its proposal. After such review, the Commission may decide to maintain, amend or withdraw its proposal. The Commission must give reasons for its decision.

The Court of Justice shall have jurisdiction to hear actions brought by Member States on grounds of infringement of the principle of subsidiarity, where appropriate at the request of their national parliaments. Regions and their parliaments are not mentioned, but new is that the Committee of the Regions also will have the possibility to bring actions to the Court of Justice when it concerns the subsidiarity principle in those areas where they have to be consulted.

It is clear that if national parliaments and (more indirectly) regional parliaments want to take up this new role and be a watchdog over the principle of subsidiarity, they have to follow up European legislation from the early stages. Six weeks is a short time, so they must play the ball quickly if they want to

9. See the note of Inigo Mendes de Vigo to the members of the Convention concerning the mandate of the working group on the subsidiarity principle (CONV 71/02 2002: 2).

use the early warning mechanism. Pieces of draft legislation have to be studied in detail and this can only be done by the functional/technical standing committees (see above).

The prelegislative phase

Practice shows that once the decision-making process formally starts, namely when a proposal for a regulation, directive or other legislative measure is introduced to the Council and to the European Parliament, there is little space left for fundamental changes. Above it was said that national and regional parliaments have an interest in following the current decision-making in depth. If these parliaments *only* concentrate on pending legislative proposals, then they are overtaken by the events.

The *brainstorming phase* is very important in European decision-making. Especially what concerns activities in the framework of the first pillar, the Commission tries to get a more exact picture in this phase of what lives in the member states and among other people and organisations involved. It is wasted effort for the Commission if means are invested in drawing up a legislative measure many member states and powerful interest groups are against (Decock 2001: 13). So around certain policy topics the Commission creates temporary or lasting, formal or informal networks. Functionally organised interests are involved in this and the Commission will regularly (through the Permanent Representation) ask the member states to delegate experts to preparatory meetings.

If it concerns policy topics that in federal states fall within the atmosphere of the competence of regions, it happens that expertise has to be sought in the regional administration. In that case it is possible that members of the regional administration become a contact person for the Commission. Also many 'regional information offices' that appeared out of the blue during the past decades on and around the Schumanplein often succeed in taking part in this phase of decision-making if it concerns topics that are important for them. In many respects they function in the same way as functional lobby groups. During this whole process national and regional parliaments are hardly involved (Pernice 2001: 15). Often they do not even know that there are preparatory discussions going on.

National/regional parliaments and their involvement in informal preparatory negotiations

Because of the informal character of these processes it is not easy for parliaments to stay informed about what 'is going to happen'. Of course it helps if a parliament has good contacts with interest groups and especially if it is informed by 'its' government when this government is invited by the services of the Commission for consultations. In practice, this information comes from the member state's Permanent Representation to the EU. Most regions with legislative powers have close links or even their own representative in those Permanent Representations (via the regional information office to the EU) (Vos, Boucké, Devos 2002). Most of the time a relatively detailed assessment can be made of the expected Commission initiatives. With some *fingerspitzengefühl* for European politics it is possible to estimate quite precisely what topics will be discussed on the preparatory level. So if a national or a regional parliament wants to know what is going on in the brainstorming phase, there are channels it can use.

Given the importance of the prelegislative phase it is not only useful to organise parliamentary debates about European measures that can already be found in an advanced stadium of decision-making (as we said before), but it is also useful to study European green and white papers, the programme of work of the Commission etc. in the relevant functional or technical standing committees of national and regional parliaments. A parliament can deduct from this which decisions are planned on medium term and can think about the consequences. If a parliament judges it can add a specific point of view to the discussion, there is no reason not to do it. It can make a 'written statement', it can give instructions to a national or regional expert in a specific working party or it can make (informal) contacts with the European Parliament which – since a generalisation of the co-decision procedure – is involved more and more in the prelegislative process. If all kinds of lobbies can make clear their points of view, it is probably legitimate a parliament does the same by making clear a point supported by a majority in this parliament. The prelegislative phase does not have to be the private hunting ground of experts and functional interest groups. Some authors say it very explicitly:

“It has [...] been argued that national parliaments should re-think their way of operating, and start to act more as lobbyists, especially before the Commission [...]” (Sejersted 1996: 148)

Or:

“It will become more and more important to see, to what extent candidates for membership of the parliaments [...] are able to participate in the European communication and networking systems, to pass the will of the people over to the European level.” (Pernice 2001: 17)

In the first section of this contribution we talked more extensively about the added value national as well as regional parliaments still have in the European decision-making system, besides functional organisations.

The importance of capacity building in the national/regional parliaments

But once again, participation in the prelegislative process can only occur when parliaments succeed in anticipating the formal decision-making process. To do this, parliaments have to keep an overview on what is about to happen in the legislative field. This requires good contacts with the Permanent Representations and/or the regional information office to the EU. It also requires a thorough insight of the members of parliament and their staff in the less formal (but not less crucial) side of the European decision-making process and the preparedness to participate in this (what is not really a traditional parliamentary activity). But it is a unique and relatively effective possibility to influence decision-making:

“If in Community affairs it has become more precarious to mandate or influence national ministers, then the lesson for national parliaments is surely that they will have to try harder to influence the Commission or the European Parliament at earlier stages.” (Munro 1996: 95)

The prelegislative phase and the new Constitution

The prelegislative phase is a mostly informal happening. It is not discussed explicitly in the new constitution, apart from the emphasis on the fact that the Commission (and other institutions) shall consult widely before adopting a proposal (Part I, Title VI: The democratic life of the Union). This is also mentioned in the Protocol on the Role of the National Parliaments. A better communication between the Commission and the parliaments is recommended but (because of the informal character) the constitution remains vague on how to organise this.

Summary table

Without pretending to be complete, next table gives an overview of some of the most notable possibilities national parliaments have to influence European decisions (modification of treaties, legislation, prelegislative phase). In a second column we look at the regional parliaments: are they able to use the same channels and provisions? And if yes, automatically? Or does it depend on the internal situation and provisions in the Member State? Some general remarks are given in the third column, e.g. an assessment of the importance of this particular way to influence the European Union. In the last column, we give an overview of what needs to be done by national/regional parliaments in order to fully exploit this specific way to influence European decisions. In other words, what are the preconditions, the critical success factors which have to be fulfilled by the parliaments themselves if they want to ‘use’ this particular channel to put their stamp on European decisions.

TREATY MODIFICATIONS

Actual situation

New provisions under the Constitution

(Potential) role of national parliaments	And regional parliaments?	Remarks	Preconditions/critical success factors
Parliament can demand from the national government to be involved in the formulation of the M.S. standpoint (to be defended in the IGC)	Depends on the 'openness' of the M.S. government	It is difficult to monitor IGC-activities (lack of transparency), and thus difficult to control the M.S. representatives	<ul style="list-style-type: none"> – Parliaments must be able to provide the negotiators with useful arguments – Fundamental debate on EU-future in parliament to make it possible to formulate a well-thought position – Realistic analysis of different IGC-scenarios
Ratification: final vote on IGC-result	If M.S. decides so	<ul style="list-style-type: none"> – 'Take it or leave it' – In some M.S.: referendum 	<ul style="list-style-type: none"> – Debate on the outcome of the IGC
Optional: installation of a 'Convention' to prepare the IGC. Members of national parliament are represented in this Convention.	If the national parliament decides to include a member of a federal chamber or of a regional parliament in the delegation	Allows for a bigger involvement in the decision-making process	<ul style="list-style-type: none"> – Regular feedback by the representatives to the Parliament (to avoid the situation in which the representatives work 'isolated' from their parliaments). – Follow-up of the Convention debates in the parliament – Fundamental debate on EU-future in parliament to make it possible to formulate a well-thought position, which has to be defended by the representatives.
Convention method: required for fundamental Treaty changes. Members of national parliament are represented in this Convention.	If the national parliament decides to include a member of a federal chamber or of a regional parliament in the delegation	Allows for a bigger involvement in the decision-making process	<ul style="list-style-type: none"> – Regular feedback by the representatives to the Parliament (to avoid the situation in which the representatives work 'isolated' from their parliaments). – Follow-up of the Convention debates in the parliament – Fundamental debate on EU-future in parliament to make it possible to formulate a well-thought position, which has to be defended by the representatives.

**LEGISLATIVE MEASURES
(ESPECIALLY 1ST PILLAR)**

Actual situation

	And regional parliaments?	Remarks	Preconditions/critical success factors
Scrutiny of ministers in the Council (Parliaments receive information and there is a min. 6-week time period between the introduction of a proposal and the Council decision)	<ul style="list-style-type: none"> – Only indirect, even if a regional minister is in the Council. – M.S. can decide to involve regions in the formulation of a national position. – No direct information from EU-institutions (but often available on the internet) 	<ul style="list-style-type: none"> – Radical system of ‘instructed minister’ will obstruct EU decision-making, but parliaments can give a direction or recommendations to ministers – Most useful if members of parliament participate in the co-ordination committees where the ‘national standpoint’ is being formulated. 	<ul style="list-style-type: none"> – Permanent attention for EU developments in different policy areas. – Technical/functional committees responsible for follow-up of European legislation in ‘their’ area of competences: MPs should not treat EU as ‘foreign policy’ – Capacity-building in parliaments: how to deal with European decision-making procedures? – Parliament should be able to play the ball quickly. – Ministers should appear before parliament before and after Council meetings.
Contact with Members of European Parliament: giving them information, recommendations, etc.	Idem	<ul style="list-style-type: none"> – Mostly informal – Especially via party affiliation 	<ul style="list-style-type: none"> – Permanent attention for EU matters in all policy areas. – Follow-up of European legislation by political parties. – Capacity-building in political parties: how to deal with European decision-making procedures?
If a national parliament thinks the principle of subsidiarity is breached, it can sound the alarm within 6 weeks. If 1/3 of nat. parliaments do so, the Commission shall review its proposal. Parliament can request their M.S. to bring actions to the Court of Justice	National parliaments have to consult regional parliaments in the process of monitoring compliance with the principle of subsidiarity. No direct involvement, no access to Court	<ul style="list-style-type: none"> – no ‘red card’ role for parliaments: the Commission may decide to maintain its proposal 	<ul style="list-style-type: none"> – Follow-up of European legislation from the early stages. Pieces of draft legislation have to be studied in detail and this can only be done by the functional/technical standing committees. – Parliament should be able to play the ball quickly.

New provisions under the Constitution

PRELEGISLATIVE PHASE

Actual situation and new constitution

(Potential) role of national parliaments	And regional parliaments?	Remarks	Preconditions/critical success factors
Parliaments as lobbyists	Idem	Interesting way to influence decision-making.	<ul style="list-style-type: none"> - Parliaments must be able to make an assessment of expected Commission initiatives (capacity-building!) - Participation in European networking systems - Establishing links with Permanent Representation and Regional Information Office (to get information about the 'brainstorming phase')

Conclusion

In this contribution we started with the argument that parliaments still have an important role to play in governing the EU. This is true for the European Parliament, but also for national and regional parliaments. They do not need to become frills, such as for example the royal families, who are still there for the symbolics, but in general have no real power. Parliaments can be crucial links in the legitimacy of the European project: they still have responsibilities for inspiring, influencing, orientating the policy. During the past decades national parliaments began establishing specialised standing committees in order to follow up European politics. Meanwhile, various regional parliaments have followed this example. But this does not necessarily mean that they succeed in getting involved in European decision-making. The new constitution strengthens the position of the national parliaments to some extent but it remains to be seen if the parliaments can seize the occasion.

Turning back to the questions formulated in the introduction of this contribution, we come to the following conclusions:

- (1) European treaties make it possible for national parliaments to get involved in European decision-making to a certain extent. E.g. scrutiny of national ministers is facilitated by the fact that they get information and that a minimum 6-weeks time period is foreseen for the evaluation of proposals. The table at the end of the previous section summarizes some of those provisions in the first column. It also makes clear that there are rather informal methods (not explicitly mentioned in the treaties) to participate as well. E.g. parliaments can participate in the formulation of a national position (to be defended in the Council). The new constitution strengthens the position of the national parliaments to some extent, e.g. by giving them a role in the control of the principle of subsidiarity and by introducing the Convention method as a standard procedure for revising the treaties.
- (2) There are more radical alternatives to strengthen the position of parliaments. We can think of a red card role for parliaments (if parliaments raise the alarm the Commission should withdraw its proposal) or the introduction of a (whether or not merely advisory) second chamber at the European parliament, a kind of senate composed of representatives of the parliaments. Those radical alternatives have some disadvantages: there is a risk of blocking EU-decision-making or lengthening the process. A stronger role for parliaments does not mean that they should be capable of blocking every European measure. After all, it is not useful that every measure – before being applicable – finds a parliamentary majority in each of the (already twenty-five) member states and their regions. At first sight, this would be very democratic (member states or regions shall not be confronted any more with European rules, which they do not support), but this would end the European integration process. The Union would not be able any more to take these vigorous decisions, which are necessary to handle the international problems or to ‘harness’ the globalisation.
- (3) Regional parliaments are not referred to in the existing treaties, and only to a very marginal extent in the new constitution. This is somewhat strange because many European rules have a regional dimension: for several policy areas in different member states primarily the regions are involved in the European rules and have to implement them. In these domains, regional parliaments are confronted with exactly the same challenges as national parliaments. The fact is that all these parliaments find

that their legislative freedom is seriously restricted and that it is not easy to control the European activities of the ministers. It is remarkable that one speaks about *national* parliaments and as such forgets about *regional* parliaments.

- (4) Despite the marginal attention for regional parliaments in the treaties and the new constitution, individual member states can decide to involve their regional parliaments in European decision-making almost to the same extent as national parliaments (e.g. the treaty ratification procedure, in the formulation of the national standpoint for specific legislative measures, ...). Whether regional parliaments can make use of these possibilities depends to a large degree on the internal situation in the member states (see the second column in the aforementioned table).
- (5) The realisation of the potential added value of national/regional parliaments depends on the provisions in the treaties (and the new constitution), on the internal organisation of the member state (especially important for regional parliaments) but also to a large extent on the way the parliaments handle European politics. Even without important institutional modifications parliaments can considerably increase their influence on European decision-making. There are many ways to participate in the incredible dazzling and dynamic process of European decision-making. Parliaments can be involved in the realisation of the (national) point of view which will be defended in the Council, contacts can be made with the European Parliament (whether or not formalised), members of parliament can become part of or make contacts with the networks where the European legislation is being prepared, parliaments can sometimes take up a position together etc.

So there is especially an important responsibility for the parliaments themselves: the ultimate condition remains that parliaments should be prepared to integrate the European politics in their daily activities. They should not treat EU matter as foreign policy. It is important that parliaments especially work proactive and, proceeding from their specialised standing committees, follow and judge the developments in the different policy areas. This can make them strong players in the concrete decision-making processes.

For national and regional parliaments this means a whole new challenge: new techniques and work methods should be handled in order to 'silver' their potential added value. In this contribution we have argued that it is too early to proclaim the end of parliamentary democracy (Andersen, Burns 1996). European integration, however, has changed political reality in the member states enormously. Parliaments, both regional and national, do have a European role in this new context. It is not simple to take it up, but there is no alternative. A parliament (national as well as regional) that ignores this role is made redundant.

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