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## **“ The Position and Functions of National Parliaments in the EU – Implications for the EU Enlargement ”**

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# Main thesis and questions explored

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- **Thesis: After the Lisbon Treaty (“The Treaty on Parliaments”)** of 2009 EU is clearly moving from the initial de-parliamentarisation to a re-parliamentarisation, especially by strengthening the role of both the EP and NP. This is having a significant effect on the separation/ balance of power in the EU, as well on the future formation of the EU as a new polity in Europe by moving it from the predominant nature of technocratic-regulatory polity to a more parliamentary polity;
- **Focus on the Questions:**
  1. What are the significant changes with respect to the role of NP in the legal and political system of the EU after the Lisbon Treaty?
  2. How these are/may change the separation/balance of power in the EU?
  3. How and in what direction the new role of NP may influence future formatting of the institutional design and the nature of the EU polity (ontologically and axiologically)?



## Why the focus on the role of NP in the EU ? – The context of the debate on the so-called democratic deficit in the EU

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### **The standard picture and arguments in the debate on the democratic deficit :**

- Ever since its inception, the EU institutional design favors and strengthens the MS governments on the expense of NP;
- The weakening of the NP is not compensated with transforming the EP into a “real parliament” (at best, it is only a EU co-legislator with the Council);
- EU elections are not “real elections” (no real political parties and alternatives) and no European Demos;
- The design of the EU institutions is not familiar and understandable to the EU citizens, more importantly, they are not analogous to the model/system of division of powers in the MS parliamentary democracies (EP is not a full fledged legislator, the ministers on national level are transforming into legislators on the EU supranational level, EU commissioners resemble ministers, but in essence they are only technocrats);

**Overall result:** Pressure for EU re-parlamentarization in accordance with the European legacy (political *acqui*) where parliaments are the locus, the<sup>3</sup> symbol and the embodiment of parliamentary (and state!) sovereignty!

# WHAT IS CONSIDERED “NATIONAL PARLIAMENT IN THE EU”?

## On the term “National Parliament”:

- In the body of EU law, for the first time mentioned in the EU law with the Maastricht Treaty of 1993 (Declarations no. 13 and 14);
- In the main EU treaty texts with the Lisbon Treaty of 2009 (60 years after the establishment of the EC/EU!!!);
- Previously, NP referred only contextually as “national authorities” or implicitly “according to the constitutional requirements”, etc.

## Definitional content:

- Principle of constitutional subsidiarity (different parliamentary traditions, unicameral, bicameral NP, (non) elected MPs);
- So called “COSAC –criterion”;
- As of now: 28 NP, 15 unicameral, 13 bicameral = 41 parliamentary chambers;
- + 5 NP of candidate countries/observer status (Albania, Macedonia, Montenegro, Serbia, Turkey);

## THREE PHASES IN POSITIONING OF NATIONAL PARLIAMENTS IN THE EU

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**1<sup>st</sup> Phase: EU Affairs treated as foreign policy (1950ies – mid 1980)** - only German and Belgian ratification laws of the EU Founding Treaties oblige the governments to inform parliaments in EUA, and only German Bundesrat ( in 1957) and the Belgian NP (in 1962) introduce specialized EU Affairs Committee;

**2<sup>nd</sup> Phase: Waking-up and institutional reforms for parliamentary europeanization (mid 1980- 1990)** – encouraged by 3 events:

- a.) Membership of Denmark and G. Britain in (MS with “glorious parliamentary sovereignty traditions”);
- b.) Termination of the dual mandate of national MPs in the EP in 1976;
- c.) European Single Act of 1987 (transfer of significant competences to the EU level and majority rule in the cooperation procedures).

**Result** – introduction of specialized parliamentary EU Affairs Committees and of some forms of parliamentary reservations/ mandates for governments in the EU Affairs in ALL NP ;

## THREE PHASES IN POSITIONING OF NATIONAL PARLIAMENTS IN THE EU

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### **3<sup>rd</sup> Phase: “Constitutionalisation” of NP’role in the EU in the EU Treaties and in the MS constitutions**

#### **a.) EU Treaties:**

- Maastricht Treaty of 1993, Declaration no. 13 and no. 14 - obligation to inform NP and strengthening inter-parliamentary cooperation via COSAC;
- Amsterdam Treaty of 1999 ( the content of the Maastricht Declarations become legally binding through the Protocol on the Role of NP in the EU);
- - Laeken Declaration of 2001 insists on “role of NP in the European architecture” and includes a mandate for the Convention for Europe 2002-2003 to focus on the role of NP in the EU (national MPs are the most numerous block on the Convention, and there is a special working committee on the role of NP);
- Lisbon Treaty of 2009 (almost identical as the European Constitution regarding the position and the role of NP);

## THREE PHASES IN POSITIONING OF NATIONAL PARLIAMENTS IN THE EU

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### **3<sup>rd</sup> Phase: “Constitutionalisation” of NP’role in the EU in the EU Treaties and in the MS constitutions**

#### **b.) ON THE LEVEL OF MS (changes in constitutions, law and parliamentary rules)**

- 1992 –Germany is the first MS that gives a constitutional status to the Committee on European Affairs (with a substituting effect vis-à-vis the plenary in the European Affairs ) + in 2006 introduces legislature on cooperation between both houses of the federal parliament with the federal government in the European Affairs;
- - 2008 – France is the first MS that introduces a constitutional amendment for the role of the parliament in the protection of the principle of subsidiarity, including obligation for the government to submit action for infringement before the Court of Justice of the EU, when the parliament requires that;
- - Through COSAC exchange of “best practices and procedures” many other MS follow;

# OVERVIEW ON THE ROLE OF NP IN THE “GOOD FUNCTIONING OF THE EU” AFTER LISBON TREATY

1. **Ratification Function of the EU treaties:** Traditionally weak because of “European Solidarity” (only 2 cases of NP refusal to ratify), additionally weakened by (obligatory) referendum mechanisms (Ireland, France); After Lisbon, strengthened by the so-called “**convention method**” and **veto right** in 6 months period in the simple revision procedures of the treaties (*parassele* clauses);
2. **(Greater) Role in the European legislative process, after Lisbon expressed in two forms:**
  - a.) **Transposition of EU legislature-** insignificant legislative discretion, domination of by-legal acts of the executive and independent regulatory bodies. **New tendency:** NP introduce required opinions by the parliamentary EACs, reports on the EU legislature that is transposed (France, Germany, Belgium) and control of implementation (Denmark and G. Britain);
  - b.) **(Individual) Protection role in the application of the principle of subsidiarity** – NP are the “guardians” of the legislative border between the MS and the (institutions of) the EU: NP receive EU legislative proposals IN THE SAME TIME AS the MS governments, accompanied with statement for compliance with principle of proportionality and subsidiarity – NP may give reasoned opinions in 8 weeks time when they find that the legislative proposals are not in compliance with the principle of subsidiarity;

# OVERVIEW ON THE ROLE OF NP IN THE “GOOD FUNCTIONING OF THE EU” AFTER LISBON TREATY

## **c.) “Early warning system “ as a collective role function of NP in the protection of the principle of subsidiarity (but not of proportionality!) in the areas of exclusive competences of the EU:**

- Each NP has 2 votes which provoke certain procedural activities in the European legislative process (“yellow” and “orange” cards), but those are not legally binding for the European legislator;
- Right of action on the grounds of infringement of the principle of subsidiarity before the Court of Justice of EU (but, only through their governments! – this provoked constitutional change in France to legally bind the government to take action in such cases);

# OVERVIEW ON THE ROLE OF NP IN THE “GOOD FUNCTIONING OF THE EU” AFTER LISBON TREATY

## 3. Control function over MS governmental activities in the European affairs

a.) **Time of control:** *ex-ante* (parliamentary reservations, opinions, mandates) and *ex- post* (reports, PM and ministerial hearings and reporting); Post – Lisbon: tendency to strengthen ex- ante control;

### b.) What is controlled?

- regulated by Article 12 of TEU and the Protocol on the Role of NP + MS rules

- Precise list of which EU documents (mostly, draft legislation) sent to NP in the same time as to the MS governments ( by the Commission, by the Council, etc. ) + evaluation of implementation policies of the EU in the area of freedom, security and justice , especially political monitoring of Europol and evaluation of Eurojust activities ;

- On MS level there may be additional matters for control (Example: Austrian constitution provides for NP participation in nomination procedure for national member in the E.Commission, judges in the ECJ; examples followed by Hungary, Lithuania, Czech Republic)

# OVERVIEW ON THE ROLE OF NP IN THE “GOOD FUNCTIONING OF THE EU” AFTER LISBON TREATY

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## c.) Models of parliamentary control over the government:

- **Documentation Model (G. Britain)** - Control over content of EU (legislative) documents ex-ante –explanatory memorandum by government – parliamentary reservation;
- **Procedural/Mandate Model: (Denmark and Finland)** – does not focus on the content of the documents , but on the information, following of the process of legislative and political decision-making on the EU level (negotiation positions) – mandates for governmental ministers;
- **Mixed/Hybrid Model (Holland)- (special subsidiarity committee);**
- All models are **models of political control** (reservations and mandates are flexible and politically binding; exception is Austria where they are legally binding and legal basis for impeachment of a minister before the Constitutional Court)

# OVERVIEW ON THE ROLE OF NP IN THE “GOOD FUNCTIONING OF THE EU” AFTER LISBON TREATY

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## d.) Legal basis for the parliamentary control over the government in the European Affairs:

- **Constitutional** (Germany, France, Finland, Romania, Slovenia);
- **Ratification laws/instruments:** (Denmark, Ireland);
- **Laws regulating the relations parliament-government in the European Affairs** (Germany, Slovenia, Poland, Hungary);
- **Parliamentary rules** (G. Britain)

# OVERVIEW ON THE ROLE OF NP IN THE “GOOD FUNCTIONING OF THE EU” AFTER LISBON TREATY

## 4. ) Role of NP in the EU Enlargement process with new MS :

- **Lisbon Treaty** – obligation to notify NP of any application for accession to the Union in accordance with the Article 49 of TEU (sanctioning previous practice in many NP to be involved in the accession procedure);
- **Interesting development:** The 2008 amendment to French Constitution (88-5) – obligatory referendum for each new MS.

# SUMMING – UP THE PARLIAMENTARY “DISTURBANCE IN THE FORCE” OF THE (INTER)GOVERNMENTAL SYSTEM OF THE EU

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## I. HORIZONTAL DISTURBANCE ON A MEMBER STATES LEVEL:

- **Relations NP-Governments are legally regulated both on national and supranational level**
- **“Mini Parliaments for EU”** - Specialized parliamentary bodies for European Affairs (tendency for a constitutional status) and establishing a clear “committee system” (EAC-plenary-other committees), with special EU Affairs procedures (de-planarization, de-politization, political prestigious, special procedures, building-up parliamentary expertise services and administration);
- **Models of parliamentary control** (parliamentary reservations and mandates);
- **NP and NG receive the EU documents in the same time** (wider scope of documents, precise identification of what documents);
- **Build-up of common internal parliamentary-governmental EU Information System** (Pioneering examples: Lithuanian LINESIS, EUDOC in Hungary and Poland, Austrian Law on Information on EU from 2012) – EU info is not a monopoly and tool for parliamentary dependency and manipulation by the MS governments!!!
- **Greater Influence over nominations** of commissioners, ECJ judges, etc<sub>4</sub> and in the process of EU Enlargement;

## II. (THE NOVELTY OF) THE VERTICAL DISTURBANCE ON THE SUPRANATIONAL LEVEL:

- **The “convention method”** in the regular procedures for the revision of EU treaties and right of veto in the case simple revision procedures;
- **The Early warning system** in the protection of the principle of subsidiarity (first example of collective and coordinated action of NP on supranational level);
- **Action before ECJ for infringement of the principle of subsidiarity;**
- **Stronger and more visible political presence and inter-parliamentary cooperation on the supranational level”**
  - **COSAC**(established in 1989) has gained a legal status in the EU treaties and post-Lisbon gained the competence to take positions and give opinions of the most important EU issues, mostly concerning the EU treaties (3/4 majority, legally non binding for the NP);
  - **Conference of EU Speakers** (established 1975);
  - **IPEX** (Interparliamentary EU Information Exchange) – main NP parliamentary information base, especially in the EU legislative process and control mechanisms, reasoned opinions of the EC and NP in the application of the principle of subsidiarity);
- **NP Officers in Brussels** ( pioneered by the Danish Folketing in 1991);
- **Direct and more intensive relations with the EU institutions** (European Parliament and the European Commission)

# National Parliaments – European Parliament

- **Cooperation through COSAC**, EU Speakers Conference, convention method;
- **On national level:** ( MEP participate in the work of the NP, with or without right to vote in the EAC, addressing the plenary);
- **On supranational level:** Bilateral meetings, joint conferences, EP Directorate for cooperation with the NP, European Centre for parliamentary research and documentation (ECPRD);
- **In the EU legislative process**, especially in the procedure for the application and protection of the principle of subsidiarity ;



# National Parliaments – European Parliament

- **Direct communication since 2004** (The Barosso Commission)
- **Commissioner in charge of NP-EC relations** (the Commissioner for Inter-institutional relations). Regular visits to NP by Commissioners (also addressing COSAC on regular basis);
- Post-Lisbon **EC legal obligation to submit (legislative) and other documents to the NP** in the same time as to the national governments
- **Reasoned opinions** to the NP in the procedures for the application of the principle of subsidiarity;
- Since 2006 EC submits its annual policy strategies for NP' input (February- March) and then its annual working and legislative programs (in October, with the accent on the legislative proposals);



## THE CHALLENGE OF TRANSFORMING THE EU FROM A TECHNOCRATIC POLITY INTO A PARLIAMENTARY POLITY

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- Most changes in the role of NP are based on the principle “from empirism to institutionalism” - there is a clear pressure tendency towards parliamentarisation of the EU. Why?
- Three paradigms that explain it:
  - I. First Paradigm - Westphalian Paradigm:** The historical-intellectual *acqui communitaire* of the Westphalian European State (Weberian model of hierarchical power over the demos on demarked territory)
- **Parliaments are and must be the locus, the embodiment and the symbol of both (state) sovereignty and the popular sovereignty**
- Is this possible in a polity that is not a state? Are democracy and parliamentarism possible beyond the statehood? Debate over the nature of EU as a polity (international intergovernmental organization, sui generis polity, moving toward (federal) statehood)

## Second Paradigm: The Jurisprudence on sovereignty and democracy of ECJ and of national (constitutional) courts



### I. ECJ Jurisprudence:

- The principle of direct application of EU Law (*Van Gend en Loos*, 1963) was argued also with declaring that EU treaties are not only MS treaties but also **“treaties between the peoples of Europe”** (constitutional charter of the EU,, -*Les Verts*, 1986);
- Principle of supremacy of EU Law (*Costa v. ENEL*, 1964 r.) - where EU was declared to a new and original legal order, separate from the international law and with its own institutions and legal identity;
- **Implications on the nature of the EU polity as NEW POLITY WHOSE SOVEREIGN ARE THE PEOPLES OF EUROPE EMBODIED IN ITS OWN INSTITUTIONS** (not mentioned, but implied - **EUROPEAN PARLIAMENT**)
- This later influences the strengthening of EP competences, the Maastricht concept of EU citizenship, treating the basic citizen’ rights as “general principles of EU Law”, Lisbon Charter on fundamental rights...

## Second Paradigm: The Jurisprudence on sovereignty and democracy of ECJ and of national (constitutional) courts

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### II. German Constitutional Court (*Solange I* - 1974, *Solange II* - 1986, *Brunner* - 1993 и *Gauweiler* - 2009 )

- EU treaties must be in accordance with the national constitutions i.e. the “constitutional identity of the state” (federal principle, democratic principle, separation of power, basic citizen and human rights – eternity clause)
- Only the German federal parliament is an embodiment of the German Volk and entitled for Kompetenz-Kompetenz, not the EU which is not a state but international organization; (*Staatenverbund*);
- **Thesis of no – demos no- EU statehood** (no common language, history, pol.parties, media, public discourse);
- **Implication on the nature of EU polity: EU is a international organization that may grow into statehood of parliamentary democracy (the eternity clause must be preserved!) only if there is a creation of an European demos in a socio-cultural sense;**

## Third Paradigm: The theoretical-normative discourse on sovereignty and democracy in the EU polity

Four concepts on the sovereignty in the EU and their implications on the parliamentarism in the EU:

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- **CONCEPT OF ONE-DIMENSIONAL ( UNITARY) SOVEREIGNTY :**
  - A.) NATIONAL VERSION (promoted by the national constitutional courts and the liberal intergovernmentalism) ) - **Stronger role for NP;**
  - B.) SUPARANTIONAL VERSION ( ECJ)- **EP as THE PARLIAMENT of EU** (as a federal state or supranational polity;
- **CONCEPT OF SHARED SOVEREIGNTY:** (S.D. Krasner) – state sovereignty is not unitary, it is multidimensional and MS transfer some of the it to the EU – EU as a multi-level (“quasi-federal”) polity with **Multi-level parliamentarism (NP-EP);**
- **CONCEPT OF PLURALISTIC SOVEREIGNTY:** (N. Walker) – EU is a polycentric polity with pluralism of constitutional authorities which are not in a hierarchical not heterarchical relations. Legal sovereignty does not imply territorial exclusivity, but functional - EU is a “dominantly functional community” – **Pluralistic heterarchical parliamentarism in which NP are territorially exclusive while EP is not, but it is a parliament of “functional unity”;**
- **CONCEPT OF POST-SOVEREIGNTY** (N. MacCormick) – EU is a sui generis polycentric polity of both MS states and EU that are not completely sovereign – the concept of sovereignty is replaced with the principle of subsidiarity (which decision on what level) – **Pluralistic parliamentarism of “rational-legal subsidiarity” of a polity with “mixed constitution” (technocratic<sup>21</sup> parliamentary polity)**

# MODEL OF A STANDARD DEBATE ON THE DEMOCRATIC DEFICIT AND DEMOCRATIC STANDARDS IN THE EU

- ❖ **Majone-Moravcsik: Defending the so-called democratic deficit and EU as technocratic polity**
- ❖ We need new standard what is democratic to fit EU! We cannot use the same standards as for MS!
- ❖ Deeper economic integration without shrinking the sovereignty of MS is only possible with de-politization in the creation of EU policies (EU's technocracy institutions) - **Democratic deficit is democratically justified!**
- ❖ **Derivative legitimacy from national level!**
- ❖ EU only has regulatory functions (in mostly the economic sphere) without political "allocation of values" or redistribution of values (EU supranational bodies are just as expert-based regulatory agencies in MS) – legitimacy of results.
- ❖ EU does not have crisis with democratic deficit, but crisis of trust (more transparency, better expertise, more judicial control, **more parliamentary control on national level**)

- **Follesdal –Hix: Democracy standards for EU should be the same as for the MS, and eliminate the democratic deficit! – towards a supranational parliamentary polity**
- – EU is a political system which does allocate and redistribute, political values, and needs a political set-up and control of institutions just as in the MS
- Full transparency of the EU legislative process
- **Transforming the relations between EP-EC as parliament-government**
- Formation of pol.parties, and real European Elections <sup>22</sup>

## THE DEBATE OVER THE EUROPEAN DEMOS VS. EUROPEAN DEMOI

A.) **The CONCEPT OF ETHNIC, ORGANIC DEMOS/DEMOI** of ethnic, organic demos (demoi) of the Volk-ish jurisprudence of the German Constitutional Court

*VERSUS*

B.) **THE CONCEPT OF CIVIC EUROPEAN DEMOS** with a “civic constitutional patriotism” (Habermas, Weiler, MacCormick) – EU Constitution (Constitutional Charter) with defined rights, developing the EU public and political space (media, pol. parties, citizenship)



# NATIONAL PARLIAMENTS AND THE CHALLENGING PERSPECTIVES OF THE EU POLITY BETWEEN THE TECHOCRATIC AND PARLIAMENTARY POLITY

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- I. **RETURNING BACK TO CLASSICAL INTERNATIONAL ORGANIZATION**  
- Model of Westphalian consequent intergovernmentalism (least likely!);
  
- II. **EU AS AN INTERGOVERNMENTAL TECHNOLIS (MOVING TOWARDS MORE MIXED TECHOCRATIC-PARLIAMENTARY POLITY)**  
(AS of now, with stronger parliamentary role, especially of NP) -The status quo would more-less remain: combination of the **derivative democratic legitimacy** of some of the supranational institutions (E.Council, E. Council of Ministers) with **technocratic (functional) legitimacy of results** of other supranational institutions (E. Commission), but with strengthened of the **democratic- parliamentary legitimacy** ( EP and NP roles, more transparency (Majone, Moravcik) – Model of sui generis supranationalism;

# NATIONAL PARLIAMENTS AND THE CHALLENGING PERSPECTIVES OF THE EU POLITY BETWEEN THE TECHOCRATIC AND PARLIAMENTARY POLITY

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- III. **EU AS A FEDERAL PARLIAMENTARY STATE** (Mancini) with EP as a federal parliament. EP may have 2-3 chambers (EP, NP, Council of ministers) – Model of Westphalian European federal statehood);
- IV. **EU AS A SUPRANATIONAL “PURE” PARLIAMENTARY POLITY (: POSTSOVEREIGN PARLIAMENTARY POLITY)** – Model of comparative supranationalism (S.Hix). Parliamentary Democracy going beyond statehood and state sovereignty – and, SURVIVING;

THANK YOU FOR YOUR ATTENTION!