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EU Legitimacy: Squaring the triangle

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Abstract

In this paper the attention is on EU legitimacy and accountability after the Five-Presidents Report of 2015 and the question on how to ensure input legitimacy (without jeopardizing output legitimacy) for the EU and its many policies. The paper analyses the problems and proposes solutions to involve EU citizens and national parliaments, in order to give citizens more ownership of EU politics. The proposals forwarded may be implemented in practical day-to-day politics and do not require treaty change, which is too time consuming to be effective on the short run.

Introduction

The Treaty of Lisbon lays down a dual legitimacy structure for the European Union (EU), under which the European Parliament (EP) and the national parliaments (NP) serve direct and indirect legitimacy functions respectively. Nowadays, the European Parliament has extensive political control powers vis-à-vis the European Commission, which includes the power to appoint the Commission President and the body of Commissioners and the power to dismiss the latter through a motion of censure. This relationship between the European Parliament, as the representative organ of the EU, and the Commission, as the main EU executive body, has created a glimpse or a beginning of a parliamentary system, similar to what is known at national level. At the same time many other EU institutions are not accountable to the European Parliament. While members of the European Council, the Council or the European Central Bank may be asked to appear in front of the EP for questions or to submit reports, these mechanisms do not go as far as to constituting fully fledged accountability. While the expansion of the powers of the European Parliament both vis-à-vis the European Commission and within the EU legislative process has unarguably narrowed the much criticized democratic deficit in the European Union, it is still generally felt that the EU enjoys less legitimacy and less democracy than its Member States. This was indeed one of the reasons for the origin of the two protocols to the Lisbon Treaty on the role of national parliaments (Protocols (No 1) and (No 2)), but also the mentioning of a necessary parliamentary cooperation in the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (TSCG or Fiscal Compact). The recognition of the role and the importance of parliamentary institutions at both EU and national level is the essence of the dual legitimacy structure in the EU. Nevertheless, criticism is still leveled at the 'legitimacy' of all of the EU's decisions and policies; the turnout for the elections of the European Parliament is not what could and should be expected; the democratic factor and the European Parliament appear/seem less visible and relevant than national parliaments; many important and major decisions (financial aid packages to EU states; banking union decisions; decisions in the context of the European Semester) still seem to escape full parliamentary/democratic scrutiny and consent. It has been argued that globalization projects such as the EU, with invasive and broad powers being transferred to an international (EU) context will never work. The idea is that globalization and sovereignty and democracy may not (never) be fully reconciled and that democracy and sovereignty therefore ought to trump globalization.¹ The question is whether this is true, or whether democracy and globalization may indeed be reconciled, given the need to meet supra-national challenges. Can it not be argued that multi-level democracy and legitimacy can exist and can be shared? Or that sovereignty (as a multifaceted concept) also benefits from globalization, in the sense that smaller states see their input in globalization increase through their participation. A de-facto rise in sovereignty?

We will in this policy paper analyze these issues and try to come up with answers and new approaches. For reasons of feasibility we will focus on ideas and solutions, which do fit in the existing treaties. That is because we believe that major new treaty reforms seem not attainable and that also legitimacy, accountability, visibility, and democracy can be furthered by small steps. The advantage is that our thinking can continue about, if necessary, bigger and large scale solutions.

A major question is whether EU legitimacy and accountability and democracy is better served by mechanisms on EU level, or that the present approach of dual legitimacy, accountability on the EU level and on the national levels with the respective national parliaments, is more suited to serve our aims. Do national parliaments indeed contribute to EU legitimacy or do they serve primarily their own legitimacy? Can legitimacy be shared: is it effective when it is shared? This issue will underlie our analysis and proposals. However we submit that for the time being it is relevant to try to break the legitimacy cycle, that is, that citizens and politicians feel that the EU lacks sufficient democracy and legitimacy, which for many is a reason not to develop EU structures and mechanisms through amendments of the treaties. A practical way seems to be to work on effectiveness of the EU (output legitimacy) and its deliverables, whilst at the same time improving within the existing treaties the accountability and legitimacy aspects (input

¹ D. Rodrik, *The Globalization Paradox, Democracy and the Future of the World Economy*, Norton & Company: London and New York, 2011.

legitimacy). The former aspect will be less the subject of this paper than the latter. The former aspect is however addressed in the Five Presidents report (and in the Van Rompuy documents) where they talk about further integration. It is also part of the debate between member states and the EU about subsidiarity and powers of the EU and the UK approach, where the underlying issue is what is the best division of powers between EU and member states. We will in this paper focus on the latter aspect, but bearing in mind that output and exercise of powers are related to the legitimacy aspect, and we seek solutions for bringing the EU as it is closer to its citizens and to increase lines of accountability and aspects of democracy.

In the following we will first describe the two strands of EU dual legitimacy, by looking at the roles of the European Parliament and the national parliaments in that regard (section 2). In section 3 we will go into more detail with respect to the national level: can national parliaments indeed play a role in the EU's legitimacy discussion and do they play that role and do they use the full potential of tools that is available to them? In section 4 we will focus on the 2015 Five Presidents' report *Completing Europe's Economic and Monetary Union*, which contains proposals for further integration and for an increased legitimacy and accountability. In section 5 we will formulate conclusions and a list of ideas and suggestions for improvements. And finally recommendations will be summarized and formulated in section 6. We hope to contribute to the necessary debate on the EU's legitimacy and democracy, because we believe these aspects contribute to its *effet utile* (full effect) and to the conditions of its existence and growth and success.

Dual legitimacy: Democratic accountability mechanisms in the e(m)u and to member states

European Union democracy is based on two lines of democratic legitimacy, one provided directly by the European Parliament and one provided indirectly by the national parliaments of the Member States. To this effect, articles 10(1) and (2) of the Treaty on European Union (TEU) state that “[t]he functioning of the Union shall be founded on representative democracy. Citizens are directly represented at Union level in the European Parliament. Member States are represented in the European Council by their Heads of State or Government and in the Council by their governments, themselves democratically accountable either to their national parliaments, or to their citizens.”

In the beginnings of what is the now the European Union, democratic legitimacy was solely based on the national parliaments of the Member States and based on the fact that the latter have ratified the constituent treaties,² and that any decision to transfer powers to the European Union was taken with their will and consent. However, this line of legitimacy was increasingly blurred with every Treaty amendment that expanded the powers of the EU, and especially when the unanimity rule in the Council was replaced with qualified majority voting (QMV) in more and more areas, Member States – and with them also their parliaments – lost their right to veto decisions on EU level that they deemed undesirable. This in turn was perceived to undermine the national democratic processes in the Member States,³ and to trigger a process of de-parliamentarization in the EU, because decisions could be imposed on them, with which their parliaments might not agree.⁴ Thus, with the ministers in the Council possibly being outvoted, also the influence of national parliaments on decision-making therein decreased, making this strand of legitimacy open to question. At the same time, the second source of legitimacy began to develop through the European Parliament, which saw its first direct elections in 1979 as well as an increase of powers with every Treaty amendment, over time becoming a “new and direct and rather independent source of the democratic exercise of power”.⁵

Nowadays, the democratic legitimacy of the European Union is based on both the European Parliament and the national parliaments according to the Treaties. The EP, as the only directly elected representative organ of the EU, is the co-legislator of the Union together with the Council (art. 14(1) TEU). Under the ordinary legislative procedure (OLP), which is applicable to approximately 90% of cases, both institutions have the same powers and act on equal footing.⁶ However, in the other 10% of cases the EP only has consultative, cooperative or consenting powers and in matters concerning the Economic and Monetary Union (EMU), the EP also has very little to no power at all. Here, the OLP is only applicable in very few circumstances, namely Article 121(6) TFEU on the procedural aspects of the multilateral surveillance procedures, Article 129(3) TFEU for amending certain provisions of the European System of Central Banks (ESCB) and European Central Bank (ECB) Statute and Article 133 TFEU on currency law. In all other matters, the European Parliament merely holds a consultation or information power and where the Treaty provisions concern the exclusive powers of the Eurozone, the EP holds neither one.⁷ Next to its legislative powers, the EP also exercises functions of political control (art. 14(1) TEU). Such powers of political control are mainly directed towards the European Commission. Under article 17(7) TEU, the EP elects the candidate for Commission President on proposal of the European Council, taking “into account the elections to the European

2 K. Neunreither, “The Democratic Deficit of the European Union: Towards Closer Cooperation between the European Parliament and the National Parliaments”, in *Governments and Opposition* 29(3), 1994, p. 312.

3 B. Rittberger, “Constructing Parliamentary Democracy in the European Union: How Did It Happen?”, in B. Kohler-Koch and B. Rittberger, *Debating the Democratic Legitimacy of the European Union*, Rowman & Littlefield Publishers: USA, 2007, pp. 117, 133; B. Steunenberg and J.A.A. Thomassen, “Introduction”, in B. Steunenberg and J.A.A. Thomassen (eds.), *The European Parliament: Moving Toward Democracy in the EU*, Rowman & Littlefield Publishers: Oxford, 2002, p. 5.

4 M. Nettesheim, “Developing a Theory of Democracy for the European Union”, in *Berkeley Journal of International Law* 23, 2002, p. 363.

5 Neunreither, *supra* note 2, p. 312.

6 B. de Witte et al., “Legislating After Lisbon – New Opportunities for the European Parliament”, Study prepared in the framework of the European Union Democracy Observatory (EUDO), Florence, 2010, p. 26.

7 A. Maurer, “From EMU to DEMU: The Democratic Legitimacy of the EU and the European Parliament”, IAI Working Papers 13|11, 2013, p. 5.

Parliament”, and votes the Commission as a body into office. Thus, as was also seen in the 2014 EP elections, the political composition of Parliament after elections has considerable influence on who will become the next Commission President and thus on the political direction of the Commission in general. Once in office, the Commission as a body remains responsible to the European Parliament, which under articles 17(8) TEU and 234 TFEU may vote on a motion of censure against the Commission leading to the latter’s dismissal *en bloc*.

The national parliaments, on the other hand, provide democratic legitimacy mainly by holding to account their national ministers and heads of State or government in the Council and European Council respectively. The instruments at their disposal range from the right to demand information and the power to influence the government’s position in EU negotiations to the power to sanction the government for the latter’s actions on EU level. Instruments on the right to information of parliament are instruments that ensure that parliaments receive information on EU affairs and that require the government to inform parliament on its negotiation goals and strategies (such as hearings or committees). This relates not only to the quality and the quantity of information given, but also to the (early) timing thereof as well as the time period given to parliament to process the information. Instruments intended to give national parliaments influence on the government’s actions in EU negotiations have as an aim to give parliaments the chance to consider a matter before a decision is taken by the ministers at EU level. An example of this type of oversight mechanisms are scrutiny reserves, which do not allow for the government to make a decision on EU level before domestic scrutiny has finished, or mandating procedures, which allow for parliament to instruct the government with regard to its position in EU decision-making. While these powers are applicable *ex ante*, the power to sanction the government for deviating from its prescribed position comes into play *ex post* after a decision has been taken on EU level, and includes in parliamentary systems, as an *ultima ratio*, the possibility to dismiss the government through a motion of censure.

However, because the powers of the national parliaments vis-à-vis their governments in these matters are a matter of domestic constitutional law, effectively the powers of the national parliament to hold to account the national ministers in the Council or European Council are dependent on which Member State they belong to. As a consequence, the possibilities – both legally and factually – of a national parliament to effectively mandate and scrutinize its ministers in EU matters might be much stronger in some Member States than in others, making it impossible to talk about a strand of democratic legitimacy stemming from “national parliaments” as a whole. Rather, it must be looked at each national parliament individually with regard to their political control powers over the government under their own domestic constitution. In this regard, it must, however, be noted that under the Treaty of Lisbon, national parliaments now do also have a direct role in EU decision-making, independently from their governments in the Council and European Council. Thus, Protocols (No 1) and (No 2) on the Role of National Parliaments in the European Union and on the Application of the Principles of Subsidiarity and Proportionality give them both information rights – which are not dependent on the domestic constitutional provisions because the rights stem from EU primary law – and the right to object to legislative proposals on grounds of subsidiarity, which will be analyzed in more detail below.

Overall, both lines of EU democratic legitimacy seem not to be without contestation. On the one hand, the European Parliament is supposed to provide direct legitimacy as the only directly elected institution in the EU. But at the same time it could be questioned if a true European representative democracy can exist “without an underpinning elite or public commitment to EU-wide electoral competition”⁸, especially because there are still existential areas, especially in the EMU, in which the EP does not have any legislative functions. In his book *What’s wrong with the EU & How to fix it*⁹ Simon Hix contends that what the EU needs is more open political competition. This would promote policy innovation, foster coalitions across the institutions, provide incentives for the media to cover developments in Brussels, and enable citizens to identify who governs in the EU and to take sides in policy debates. And indeed such competition would provide transparency and (reasons for) choices, instead of the system which is now geared towards pure consensus, agreements, collaboration, lengthy meetings and fuzzy processes where it is questionable who in the end is the decision maker. That is a benefit, but also a downside. Politics should, as Hix argues, be more central to the Brussels policy process,

8 D. Judge and D. Earnshaw, *The European Parliament*, 2nd ed., Palgrave Macmillan: UK, 2008, p. 87.

9 S. Hix, *What’s Wrong with the EU and How to Fix It*, 1st ed., Polity Press: Cambridge, 2008.

with clearer coalitions and identifiable winners and losers, at least in the short term. The risks are low because the EU has multiple checks-and-balances. Yet, the potential benefits are high, as more open politics could enable the EU to overcome policy gridlock, rebuild public support, and reduce the democratic deficit. On the other hand, national parliaments should provide indirect legitimacy through holding their respective ministers and heads of State or government in the Council and European Council to account. But at the same time it seems difficult to talk about “national parliaments” in general because the legal and political settings in which each of the 28 national parliaments work differ so greatly from one another; each of them are part of another political system with their own individual understanding and structuring of government-parliament relations.¹⁰ So while article 10 TEU clearly provides for the concept of dual legitimacy in the EU, the question is whether this concept was in fact put into effect under EU law or whether article 10 TEU merely “defines an ideal state of democracy, which European practice seeks to conform gradually through future reforms of the Treaties”.¹¹

¹⁰ Judge and Earnshaw, *supra* note 8, p. 87.

¹¹ C. Antpoehler, “Enhancing European Democracy in Times of Crisis? – The Proposal to Politicize the Election of the European Commission’s President”, in: Fabbrini et al. (eds.), *What Form of Government for the European Union and the Eurozone?*, Hart Publishing, 2015, p. 228.

Yellow and orange cards and political dialogue

Europeanisation has led to a decreasing role of national parliaments in European decision-making process. Member States are bound to implement EU legislation once it is finished. Until the Treaty of Lisbon national parliaments lacked sufficient powers to actively participate in the European decision-making process and thus to influence new EU legislation.¹² According to article 12 TEU, the general role of national parliamentary chambers in the European Union is to “contribute actively to the good functioning of the Union”. To improve the participation of national parliaments within the EU decision-making process and by that increasing legitimacy of the European Union, the Treaty of Lisbon introduced the ‘Early Warning System’ (EWS). The EWS focuses on the control of the principle of subsidiarity by national parliaments. According to article 5(3) and article 12(b) of the Treaty on European Union, national parliaments can check compliance of new legislative proposals with the principle of subsidiarity in accordance with the procedure set out in Protocol 2, the so called ‘subsidiarity check’. This is only possible in those areas in which the European Union does not have exclusive competence. The principle of subsidiarity applies to all EU institutions but in practice it is most significant for the legislation procedure initiated by the Commission.

After a national parliament has finished the subsidiarity check it can submit a reasoned opinion to the composer of the legislative proposal. In this the parliament explains why it is of the opinion that the proposal is not in compliance with the principle of subsidiarity. A national parliament or chamber of a national parliament has eight weeks to send its opinion. This time limit starts once the new legislative proposal is translated in all the official languages of the EU.¹³ An opinion can be seen as a vote against the legislative proposal. Each parliament can submit two votes, one for each chamber in case of a bicameral parliamentary system. In case of a unicameral system, the chamber can submit two votes.¹⁴ In a bicameral system both chambers are treated equally and independently from each other. It is not necessary to work as one. It is therefore possible that both chambers have a different outcome to their subsidiarity check.

The European Union has 28 Member States. Since every parliament has 2 votes this means that there are 56 votes in total. If 1/3 of all the votes allocated to the national parliaments, which means 19 votes, are submitted, the parliaments as a group draw a ‘yellow card’. In this case the Commission, or the institution concerned, shall review its legislative proposal but is not obliged to withdraw it. The Commission must give reasons to maintain, amend or withdraw the draft. In the area of freedom, security and justice the threshold is a quarter of the total votes.

Next to the yellow card option, the Treaty included also a stronger ‘orange card’ procedure. If more than 28 votes (at least ½ of the overall votes) have been cast, the proposal has to be reviewed. Again the Commission can decide to maintain, amend or withdraw the proposal but in this case it is more difficult to maintain the proposal. If the Commission chooses to do so it will have to send its opinion and all the reasoned opinions of the national parliaments to the Council and the European Parliament, the Union’s legislator. They will consider whether the proposal is in compliance with the principle of subsidiarity, taking in account the reasoned opinions of the national parliaments and the one from the Commission. If then the members of the Council by a majority of 55% agree with the national parliaments that the proposal is not in compliance with the principle of subsidiarity, the proposal shall be rejected.¹⁵

Due to the rather high thresholds the EWS has not been and probably will not be triggered very often. Research shows that countries do start the subsidiarity check but aren’t able to complete it within the time frame, which means they couldn’t send a reasoned opinion in time.¹⁶ Besides the thresholds and the time frame, parliaments have not been working together effectively to

12 A. Cygan, “The Parliamentarisation of EU Decision-Making? The Impact of the Treaty of Lisbon on National Parliaments”, *European Law Review* 36(4), 2011, p. 481.

13 Article 2 Protocol 1.

14 Article 7 Protocol 2.

15 Ibid.

16 See P. M. Kaczynski, “Paper Tigers or Sleeping Beauties? National Parliaments in the Post-Lisbon European Political System”, CEPS Special Report/February 2011; P. De Wilde, “Why the Early Warning Mechanism Does Not Alleviate the Democratic Deficit”, OPAL Online Paper No. 6/2012.

make the EWS work. So far a yellow card has been drawn twice.¹⁷ In May 2012 the first yellow card was issued. The Commission's proposal for a regulation on the exercise of the right to take collective action within the context of the freedom of establishment and the freedom to provide services, also known as 'Monti II', received 19 out of 54 votes c.q. reasoned opinions that the proposal was not conform the principle of subsidiarity. The Commission withdrew its proposal. Another yellow card was issued in October 2013 by 14 chambers of national parliament against the regulation on the establishment of the European Public Prosecutor's Office. The Commission did not withdraw this proposal but it decided to maintain the proposal, saying that it would probably be implemented through enhanced cooperation.¹⁸ Not one single orange card has been issued so far.

There is no 'red card', which would mean a veto, in the EWS. Several committees of national parliaments discussed the introduction of a 'green card' to enhance the influence of national parliaments on EU policies and legislation. Since it is a green card it should contain something positive. It could call for new legislation or the amendment or repeal of existing legislation. The chamber prepares the draft proposal. A suggested threshold for a draft proposal to qualify as a green card is one quarter of all available votes. Again every parliament has two votes and in case of a bicameral system one vote per chamber. Instead of sending a reasoned opinion to the Commission a vote is cast by co-signing the proposal.¹⁹

The forerunner to the EWS but still in practice is the "political dialogue". Since 2006 the Commission is engaged in a dialogue with national parliaments. Under what has become known as the "Barroso initiative" the Commission has committed to voluntarily send its new legislative proposals and consultation papers (green and white papers and communications) directly to national parliaments. By involving the national parliaments in the decision-making process, the Barroso initiative aimed to strengthen the democratic basis of the Union. Once national parliaments receive the documents the parliaments check the proposals on infringement with several principles like the principle of conferral, subsidiarity, proportionality and political accountability but are also allowed to assess any other legal and political aspect of the proposal. In case of an infringement the parliament sends a reasoned opinion to the Commission explaining why there has been an infringement of one or more of the principles. The national parliaments may also send a positive opinion to the Commission. If the Commission replies, which it almost always does, it tries to reply within three months. It is however not obliged to reply and there is no legal instrument to sanction the Commission for not replying to national parliaments. Both national parliament's opinions and the Commission opinion will be published on the Commission's website. Next to the written dialogue between the Commission and the national parliaments, there is also a part where Commission officials and members and representatives of national parliaments meet face-to-face in various parliamentary forums.²⁰

What started as a voluntarily practice turned into a right of national parliaments when the Barroso initiative was laid down in Protocol 1 on the role of national Parliaments in the European Union.²¹ Parliaments now have the right to receive the Commission's draft legislative proposals and its amended drafts.²²

When the reasoned opinions of national parliaments do not meet the threshold for the yellow or orange card procedure, the Commission will reply to the opinions under the political dialogue. The difference between the political dialogue and the EWS is that the dialogue is managed bilaterally between the Commission and each national parliament where the EWS only works when parliaments cooperate. Moreover, the EWS is based on treaties where the Barroso Initiative, the actual dialogue, is not. The scope of the political dialogue is broader than the EWS since the EWS only covers the principle of subsidiarity.

17 P. Kiiver, "The Early-Warning System for the Principle of Subsidiarity: The National Parliament as a Conseil d'Etat for Europe", *European Law Review* 36(1), 2011, p. 100.

18 European Parliament website, Factsheets on the European Union 2016: "The Principle of Subsidiarity", available at: http://www.europarl.europa.eu/ftu/pdf/en/FTU_1.2.2.pdf (last visited on 5 February 2016).

19 Tweede Kamer, "The 'Green Card' Discussion Paper", 19.01.2015, available at: <http://www.tweedekamer.nl/kamerstukken/detail?id=2015D00583&did=2015D00583> (last visited on 5 February 2016).

20 J. Davor, "The Barroso Initiative: Window Dressing or Democracy Boost?", *Utrecht Law Review* 8(1), 2012, p. 81.

21 Article 1 of the Protocol.

22 Article 4 Protocol 2.

The five presidents' report and the president discussion

During his term in office as President of the European Council Van Rompuy had already in 2012 started working on a project entitled *Towards a genuine economic and monetary union*. This project dealt with the need to build an integrated financial framework, an integrated budgetary framework, an integrated economic policy framework and strengthened democratic legitimacy and accountability. In the first three domains a lot of work has been done, but improvements pertinent to democracy, legitimacy and accountability have not truly come about. In recent years the UK Prime Minister, Cameron, necessitated by euro sceptics in his own party, delivered speeches pleading for less EU and the need to renegotiate parts of the EU relationship with the member states. These speeches culminated in a promise to hold an in /out EU referendum at the latest in 2017. Furthermore, more citizens in quite a few Member States doubted the added value of the (further) EU integration, and this citizen was picked up or exploited by political parties who made euro skepticism part of their platform: and some of these parties even managed to form a party in the European parliament in 2015. The economic and financial crisis and the need felt to further integrate (banking union, economic coordination, European Semester) fueled at the same time unease that indeed further integration was taking place, major disasters occurred and were discussed and slowly handled in summits and meetings, but still without being embedded in democratic structures and without clear accountability schemes.

Five presidents in the EU (therefore the so called five presidents' report) delivered in 2015 a report entitled *Completing Europe's Economic and Monetary Union*: Juncker (Commission), Tusk (European Council), Dijsselbloem (Eurogroup), Draghi (ECB) and Schulz (European Parliament). They address first of all the need for further integration in three substantive domains: Economic Union (Convergence, Prosperity, Social Cohesion); Financial Union (Integrated Finance for an Integrated Economy); and Fiscal Union (an Integrated Framework for Sound and integrated Fiscal Policies). The final paragraph discusses 'Democratic Accountability, Legitimacy and Institutional Strengthening', and is the starting point for this paper. The five presidents discuss output (integration) and input (accountability). They propose the following steps (1) Strengthening parliamentary oversight (by the European Parliament) as part of the European Semester. Reference it had to the Economic Dialogues that have taken place between Commission, Parliament, Council and Eurogroup. (2) Enhanced inter-parliamentary cooperation (national parliaments and European Parliament) for instance within the context of the annual European Parliamentary week. (3) The possibility for national parliaments to invite a Commissioner for a presentation about the draft budget and possible recommendations.

A suggestion by the five presidents is to strengthen the timing and added value of these parliamentary moments, as was also already done in the renewed European Semester. Specifically the idea is for the European parliament to hold a plenary debate before the Annual Growth Survey is presented. Secondly the European Parliament could hold a second dedicated debate upon presentation by the Commission of the Country-Specific Recommendations.

Thirdly, Commission and Council representatives could participate in the European Parliamentary Week. Fourthly, the Commission should work out model arrangements to make the interaction with national Parliaments more efficient. National Parliaments should be closely involved in the adoption of National Reform and Stability Programmes. And finally the European Parliament should organize itself to assume its role in matters pertaining especially to the euro area.

Other issues include the following: consolidating the external representation of the euro; integrating intergovernmental solutions within the EU legal framework; give a greater role for the Eurogroup and its president in the European Semester; and to provide for a euro area treasury: as the euro area evolves towards a genuine EMU, some decisions will increasingly need to be made collectively. A future euro area could be the place for such collective decision-making.

Many of the issues proposed by the five presidents may have an impact on legitimacy and do relate to accountability, such as providing for a larger role for the European Parliament. Plenary debates, at early stages in the European Semester process are certainly relevant, but are less

than full democratic involvement, which would imply that the European Parliament is given (or assumes) a formal role in the relevant decisions. Providing for more contacts between Commission and national parliaments seems to be a good step, since it deepens the dual legitimacy and may provide national parliaments with information and tools and provide for discussions in national parliaments. The report also appears to interact with national constitutional law when it states that national parliaments should be involved in national reform and stability programmes; in conjunction with the proposal to work out model arrangements for the interaction with national parliaments, it appears that indeed the presidents seek legitimacy and accountability also on that level, which may seem to imply that national parliaments will have to assume a role under European law as well. A uniform and well-balanced role and ensuing powers for national parliaments could be argued to be the consequence of dual legitimacy, but also conflicts with or sits in national constitutional law and political practice.

Conclusions and ideas

We believe that much more can and should be done to increase national parliaments' roles and powers in the EU and to expand the European Parliament's remit. This relates to a large extent also to our opinion that legitimacy as such is inextricably linked to visibility and acknowledgement by the citizens. It is possible to organize more plenary debates, more meetings between the various parliaments during Parliamentary Week, and earlier involvement for parliaments in the EU decision-making processes, but if these features are not truly perceptible to citizens, they will not really contribute to greater legitimacy. They might contribute to more accountability, to more democratic scrutiny, and to representative involvement; but in order to improve the legitimacy of the EU it is not only necessary for accountability, scrutiny and involvement by parliaments to occur, it must also be visible to the public. This means that such mechanisms must take place in public and give rise to public discussion, debates, probing questions and pertinent responses and a concrete and specific vote or decision as a conclusion. Many of our conclusions therefore cannot but presume that the European Parliament and the national parliaments undertake their activities in public and are seen to exercising their scrutiny and involvement as relevant and well informed actors, as representatives of the citizens. And that they do perform their tasks and exercise their powers and are seen to be doing it as part of one EU, seeking to contribute to the EU and its overall duties to take care of all its citizens. In other words, specific issues of legitimacy must be the responsibility of the MEPs, the national parliaments and all other actors, in the sense that responsibilities are invoked and discussions are being held, on EU policies and on Member States' roles in contributing to those policies, in the joint interest of the EU and its Member States. Legitimacy of the EU may only be served if all stakeholders acknowledge its basic value and values. Citizens may not be convinced of the benefits and added value of the EU if its stakeholders and national parliament and national government consistently are not seen to accepting the joint overarching values and fundamental added value. No institution or organ or organization can fully withstand consistent internal bickering and promotion or superposition of national self-interest.

No matter what, specific short term and concrete solutions can be put forward that may contribute to a greater visibility of EU's achievements and activities and to a greater and more intensive citizens' involvement, be it largely through its representatives.

We have for the purposes of clarity clustered our solutions in three categories:

1. Visibility and Transparency

As we have argued one of the aspects of legitimacy is visibility, transparency and acknowledgement. It would be upon all actors, specifically all parliaments, to bring the EU closer to its citizens and to create ownership in national parliaments for EU matters and therefore also among the citizens. National political parties may be seen to influence EU policies into the directions they prefer. How to do this? One way is to organize discussion on EU matters more structurally in all national parliaments. The national government may submit an EU policy document to its parliament for a broad discussion; or a national parliament may make the State of the Union (of the President of the Commission and the Commission's agenda) a subject in a debate and of scrutiny.

Commissioners ought to be more structurally invited by national parliaments to participate in debates about EU matters and broad policies and to engage in a discussion. It would furthermore be advised to return to the practice that European summits (European Council meetings) take place on a rotating basis in Member States in order to re-create visibility and ownership within the hosting Member State.

Finally we suggest that a greater visibility and presence of the President of the European Council and of the Commission President will be strongly promoted in Member States, for example through regular visits, television appearances, public questions and answer sessions, presence in national parliaments, and related events.

2. Involvement of national parliaments

Partly related with the previous category and building on it is the suggestion to fundamentally increase national parliaments' participation and involvement in EU policy and policies and projects. This would require a broader application of the political dialogue than is the case presently and a wider application and use of the tool of reasoned opinions, for example by expanding the scope to more documents than only legislative acts. In these respects we strongly suggest that the Commission and the EU institutions apply the two EU Protocols in that respect on a wider scale. We specifically think of the following possibilities:

- An extension of the tool of reasoned opinions to also include policy aspects and questions of legal basis and issues related to quality issues such as proportionality and quality of legislation. Presently the possibility of reasoned opinions only exists for legislative acts to advance issues of subsidiarity. However, a political agreement might be possible in the sense that all partners and actors concerned agree to apply and use the procedure of reasoned opinions also outside the domain of subsidiarity. That would indeed enable national parliaments to participate more strongly and more actively, and in the end, that EU policies find more legitimacy.

- There is presently an eight-week time limit for national parliaments to hand in their reasoned opinions which is a rather short period and seems to inhibit parliaments from drafting and forwarding comments, also considering that parliaments are assemblies and that managing a majority might be complicated and does require more than a few weeks. An extension of the eight weeks with another four is necessary. We do realize that the Protocol stipulates eight weeks, however we believe that an agreement between all partners to allow a longer period, or to permit an extra four weeks when warranted or when a certain number of parliaments so requests, is feasible.

- So far only two successful yellow cards were issued, that is, only twice the parliaments managed to succeed in having a sufficient number of subsidiarity objections. We believe this limited number is partly due to the eight-week time limit and partly due to the restriction of the yellow card/reasoned opinions procedure to the subsidiarity principle. Our proposals forwarded above will certainly lead to a greater use of the procedure and mechanism, which will also lead to a larger interest in national parliaments for EU matters. It will contribute to putting EU lawmaking and policymaking on the top of every parliament's agenda and will make the mechanism work better and serve its purposes more effectively.

- In the EWS all parliaments are equal and each of them will have to draft its own objections and reasoned opinions. We suggest that the national parliaments coordinate more closely their efforts. This could be done more effectively and intensely by having a 'parliament rapporteur' for each piece of draft legislation to which quite a few parliaments appear to have objections. This rapporteur will draft a reasoned opinion, will consult the other parliaments and can ensure a timely submission and joint effort in this respect. National parliaments could also decide to appoint rapporteurs on a rotating basis, for instance in parallel to the presidency of the Council.

3. Recognition of national parliaments on EU level and consultation

Our third category focuses on involving national politicians in highly visible EP events and in strengthening national parliaments' roles as a joint dual legitimate factor in the EU. We suggest strengthening the ties between national prime ministers and national ministers with the EP. This could be concretized through having regular speeches and questions and answer sessions in the EP with national politicians. That will link national politicians to the EP, strengthen the EP as central democratic EU actor, and will also be perceived by national citizens as relevant events.

Annually the national member states' parliaments and the EP meet in Brussels during Parliamentary Week (usually in February). That is a good opportunity for national parliaments to interact and to set joint strategies and agendas and coordinate efforts and to exercise their roles as envisaged in the Fiscal Compact and under the EWS and political dialogue. We believe that parliaments ought to intensify this sort of collaboration.

Recommendations

Our recommendations can be summarized as follows:

1. Actions of national parliaments should be made more visible to increase and strengthen legitimacy and so that they can be seen by their national citizens as democratic EU actors and participants.
2. National parliaments are recommended to structurally devote time on the floor of the house to EU policy and strategy.
3. European Commissioners and the President of the European Council must be more present and visible on the national level, by entering into discussions with(in) national parliaments and visiting Member States and have European Council meetings on a more regular basis in Member States.
4. The EWS should be expanded to also cover comments outside the realm of subsidiarity, so as to enable parliaments to widely communicate comments and concerns, and to give them a bit more time in voicing their reasoned comments. It could also be envisaged to apply the EWS in practice that reasoned objections by more than half/more than two thirds of the member states parliaments will have to lead to a full reconsideration of the proposal by the Commission and reasoned argument as to how to proceed.
5. It is recommended to the national parliaments to set up structures to facilitate successful yellow cards and an efficient use of the EWS system and political dialogue.
6. It is submitted that the EP may more extensively engage in discussions and debates with national governments and their (prime) ministers.
7. Finally it is our idea that parliaments should intensify their collaboration and expand events such as the Parliamentary Week.
8. We have refrained from recommendations that might entail treaty amendments. However, it appears to be that an institution on EU level, which resembles a senate, might serve its purposes as to legitimacy as well. Federal states have a senate, which represents the constituent entities and their citizens and they seem to serve that role well. However, we notice that some first chambers in Member States (House of Lords, Dutch First Chamber) have taken it upon themselves to carefully scrutinize EU policies and legislation. Within Parliamentary Week the first chambers may be starting to work on a meeting with their equals with a set task to combine efforts and function as an informal EU senate. Member States without senates evidently may participate as well with representatives whom they select for that purpose. This new joint meeting of first chambers could exercise scrutiny, voice national concerns, divide tasks in drafting reports and coordinate other tasks and become visible as contributing to legitimacy and voicing citizens' ownership.

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In een vrije staat dient iedereen die in het bezit kan worden geacht van een vrije wil, zichzelf te besturen. De wetgevende macht zou dan ook bij het volk in zijn geheel moeten berusten. Maar aangezien zo iets in de grote staten een onmogelijkheid is en ook in kleine staten op veel bezwaren stuit, dient het volk vertegenwoordigers aan te stellen die alles moeten doen wat het volk zelf niet kan.

Montesquieu, *Over de geest van de wetten* (1748)



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