

THE DEMOCRATIC LEGITIMACY OF EUROPEAN ECONOMIC GOVERNANCE

CHANGE IN THE ROLE OF PARLIAMENT

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The Treaty of Lisbon is often referred to as “the treaty of the parliaments”. But the Economic and Monetary Union reforms implemented in response to the financial and sovereign debt crises have further diminished the role of the European and national parliaments in the legislative process. In return, however, the parliaments have been given greater powers in the area of accountability. Strengthening the democratic principle within EMU requires a greater degree of involvement by the parliaments. This means avoiding the use of intergovernmental agreements, organising a “euro area. committee within the European Parliament and holding an annual socio-economic convention to establish the broad guidelines of EMU policies.

1. From the “treaty of parliaments” to the crisis of parliaments

On December 1st, 2009, Bundestag president Norbert Lammert presented his vision of Europe at the prestigious Humboldt University in Berlin, focusing on the Lisbon Treaty, which had entered into force that day. He claimed the treaty heralded a new era for European democracy and citizenship: it was the “treaty of parliaments” (Lammert, 2009). However, this assessment did not take into account the brewing crisis: several weeks before, Greek authorities had revealed a major statistical manipulation of their public

accounts. In the spring of 2010 the Euro-zone was engulfed in a sovereign debt crisis.

Markets do not operate on the same timetable as democracy. The crisis merited an increased and effective involvement of parliaments to help manage and resolve the crisis. The reality was very different. The urgency of the situation necessitated quick and technical action that did not lend itself to parliamentary debate. The crisis accentuated the polarization in Euro-zone governance. The European Central Bank (ECB) and national central banks of the Euro-zone the (Eurosystème) “govern” the euro, while the Ecofin Council and the ECB determine the euro’s interest rate. The European Council, Ecofin Council, Ecofin’s Euro-zone committee, Euro-zone summits, Eurogroup, Germany, the Franco-German partnership etc., govern the economic Union. While parliaments are not excluded from crisis management, they are limited to an observer’s role rather than being a player (Poptcheva, 2012). Granted, the European Parliament, together with the Council, adopted six of the eight texts reforming and strengthening the Stability and Growth Pact.¹ However, under pressure from the markets and successive Council presidencies, legislative procedures were closed at the end of the first reading, making way for the kind of informal agreements that are often denounced for their opacity and the power they grant to the Council in relation to the Parliament (Costa *et alii.*, 2011). The European Parliament was also not able to secure its involvement in the development of financial assistance provisions. At the national level, the new mechanisms for coordinating economic policies and budgetary surveillance introduced by the *Six-Pack* and the *Two-Pack* strengthened the role of government *vis-à-vis* parliament, whose budgetary function in particular was weakened. The relegation of parliament was even more pronounced for countries receiving financial assistance; their parliaments were in effect required to “ratify” programs negotiated between their finance ministries and international lenders without being able, in practice, to exercise their constitutionally recognized powers.

1. The *Six-Pack*, a legislative package including five regulations – adopted by the Council alone – and a directive (OJEU L 306 of 23 November 2011) and the *Two-Pack*, which includes two regulations (OJEU L 140 of 27 May 2013).

After five years of crisis, some believe the situation has become worrisome. National legitimacy has been deprived of instruments, while European instruments lack legitimacy (Scharpf, 2011; Fitoussi, 2012). What role should parliaments be given then? Parliaments in the plural since in the two-level constitutional system, both the European Parliament and national parliaments assume the parliamentary role (article 12 TEU, Protocol n° 1).

2. The democratic principle of European economic governance

Technicality, efficiency, confidentiality and independence are the principles known to shape the definition and practice of the Eurosystem's monetary policy in the Euro-zone. The economic Union has the peculiarity of determining how member states conduct their economic policies. States must treat their policies as an issue of common interest and coordinate them within the Council in line with the coordination and surveillance regime spelled out in the treaties (art. 121 and 126 TFEU) and secondary law (Stability and Growth Pact, *Six-Pack* and *Two-Pack*). These features were invoked during the negotiation of the Maastricht treaty (1991) to diminish the European Parliament's role, going against the trend in other political areas of the European Community (Community pillar). The three constitutional revisions made since then have only introduced marginal improvements. The European Parliament is only co-legislator in three of the twelve legislative procedures included in EMU (articles 121 § 6, 129 § 3 and 133 TFEU). For the remainder, that is, the adoption of the most sensitive issues, the European Parliament is consulted, and in some instances only informed. This parliamentary relegation is questionable on both political and legal grounds.

The European Union is founded on the value of democracy (article 2 TEU). Its functioning is founded on representative democracy based on a two-level system: citizens are directly represented at the 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 (article 10 TUE).

Legally, the Court of Justice has recognized the “fundamental democratic principle that the people should take part in the exercise of power through the intermediary of a representative assembly” (ECJ, 1980, pt. 22). The democratic principle also implies that the power to adopt an EU measure that can alter the non-essential elements of an EU legislative act must be exercised by a European institution that is democratically accountable (ECJ, 2013, pt. 85). In an assessment of the United Kingdom’s implementation of Community law measures on European elections, the European Court of Human Rights opined on the existence of a “truly democratic political regime” in the EU (ECHR, pt. 48), which it has recognized to be *sui generis* in nature. As the part of the EU structure that best reflects efforts to ensure a “truly democratic political regime,” the European Parliament has a twofold responsibility. It is an integral part of the EU’s legislative process; and it is the principal instrument of democratic control and political responsibility in the European Union’s system.

EU economic and monetary policy is subject to the democratic principle, given that it is fully integrated in the EU legal system. The democratic principle is all the more necessary since economic governance is characterized by its institutional complexity and by the major economic, social and financial impacts of measures taken in this area on the eighteen Euro-zone member states, their economic operators and their 330 million European citizens. No supposedly democratic regime would survive long if representatives of the citizens were not involved in the adoption and oversight of public policy (Van Rompuy, 2012). In October 2012, the European Council stated that, “strong mechanisms for democratic legitimacy and accountability are necessary” (European Council, 2012; Ministers of foreign affairs, 2012). This will be no easy task and nothing indicates that the task is even at the top of the political agenda, but there is a distinction here between the means of expressing the democratic principle. The principle is not limited to the participation of representatives elected by the people in legislative processes. Representative institutions are intended more to submit governing bodies to the judgment of the governed. Accountability is also a democratic element of the representative link (Manin, 1995: 301). It is in this second area that developments will probably be most noteworthy.

3. Parliamentary relegation in decision-making

The relegation is twofold, affecting both the European Parliament and national parliaments. It is not likely to change.

3.1. *The relegation of the European Parliament*

In EMU, member states exercise their economic and budgetary policy powers within the EU coordination and surveillance framework. This coordination is above all a state matter; the European Parliament has limited involvement. The latter is informed after the fact of the Council's recommendation for the broad guidelines of the economic policies and the results of multilateral surveillance (article 121 § 2, §5, TFEU). It is consulted (simple opinion) on the provisions adopted by the Council to replace the protocol on the excessive deficit procedure (art. 126 § 14 TFEU). The treaties' weakening of the legislative function is compounded when member states act in concert to keep the European Parliament at arm's length by using instruments outside the EU framework, be it international public law treaties or soft law. Negotiations of the European stability mechanism and the Euro Plus Pact are a case in point. The Parliament was only able to secure the right to send no more than four observers (including one substitute) to the intergovernmental conference on the treaty on stability, coordination and governance (TSCG) and to present its position at the special February 18 ministerial meeting on the intergovernmental agreement creating a Single resolution fund.

When they are involved, European parliamentarians' influence on legislative or intergovernmental works is a real democratic gain in both form and content. Among other improvements, the European Parliament introduced in the *Six-Pack* the principle of a public debate with the Commission, the Council President, the European Council president, the Eurogroup president and relevant member states on sanctions taken in the context of budgetary and macroeconomic surveillance (economic dialog). The TSCG also includes several of the Parliament's recommendations, including the treaty's compatibility with EU law or the cooperation between the European and national parliaments (Fasone, 2012).

Maintaining significant democratic legitimacy in economic governance reforms assumes that the reforms are first and foremost

conducted within the EU framework and in line with the Community method. The conclusion of agreements among member states is only permissible if there is no legal basis for EU competence; it is then imperative that the European Parliament – as well as the Commission and if necessary the European Central Bank – assist in the negotiations as observers. The Council's decision to establish a single resolution on the basis of an intergovernmental agreement is highly questionable from this perspective. Furthermore, the TSCG's content should be implemented as quickly as possible, rather than be delayed by the maximum term of 5 years stipulated in its article 16. Its substantive obligations are already essentially set out in the *Two-Pack*, which came into force in May 2013. This reintegration will allow the European Parliament to fully exercise its oversight and information powers, which it derives from EU law.

In this context, how can parliamentary participation in the legislative process be strengthened?

The Lisbon treaty offers the option of using a special legislative procedure instead of the ordinary legislative procedure (art. 48 § 7 TEU). In the area of EMU, this bridging clause affects nine provisions, including aforementioned articles 121 § 2 and § 5, and 126, as well as articles 125 § 2 (specify definitions for the application of the prohibited referred to in articles 123 to 125 TFEU), 127 § 6 (confer specific tasks upon the ECB concerning policies on prudential supervision), 128 § 2 (measures to harmonize the denominations and technical specifications of all euro coins intended for circulation), 129 § 4 (review provisions of the Statute of the ESCB), 132 § 3 (ECB's power to impose financial penalties) and 134 § 3 (status of the economic and financial committee). However, it is unlikely the bridging clause will be implemented, given the numerous safeguards. The substitution of the procedures requires a unanimous decision from the European Council. Before making this decision, the European Council must inform national parliaments, which in turn have six months from the date of the transmission to oppose the initiative. The opposition of a single parliament can prevent the measure's adoption.

Regarding a revision of the treaties on the basis of article 48 § 6 TEU (simplified revision procedure for part three of the TFEU), or even article 48 § 2 TUE (ordinary revision procedure), the past twenty years have demonstrated that this would be a sensitive and

uncertain exercise. The conclusion of an inter-state agreement that just included member states in the Euro-zone (Goulard, 2014) would be permitted so long as this agreement did not ignore the competences of the Union, so long as it helped achieve the objectives of Community treaties, and if possible, so long as it respected the Community's institutional framework. Such strengthening of the Euro-zone's economic governance would in a way complete reforms adopted since 2010 by widening the gap between two systems of governance – one general and the other reserved for member states using the euro. Incidentally, this raises the question of the European Parliament's unitary dimension in a differentiated monetary Union. In other words, should there be a Euro-zone Parliament? In the aftermath of the crisis, the EU legislator fully deployed the potentialities of article 136 TFEU, which can serve as a basis to adopt provisions specific to the Euro-zone in order to strengthen the coordination of economic policies and budgetary discipline. Obviously, in the Council only the representatives of these states can vote for the measures affecting them. Eurogroup meetings are recognized by the Lisbon Treaty and have a stable presidency. And the TSCG has formalized the meetings of heads of state or government of the Euro-zone. Is this configuration transferable to the European Parliament? If the idea of a Euro-zone budget were to be proposed, its submission to a vote only by Euro-zone representatives seems to make sense (von Bogdandy *et alii.*, 2013). However, what may seem obvious is relative: such a perspective flies in the face of the principles of unity in the representation of citizens and of unity in the institutional framework, as well the status of European citizens,² and should therefore be rejected.

However, nothing precludes that some accommodation be reached in the Parliament to allow European MEPs from Euro-zone member states to tackle issues of common concern together. The commission on “economic and monetary affairs” (ECON) could create a subcommittee including Euro-zone members³ (Piris, 2012). During parliamentary debates on the assignment of ECB tasks regarding prudential supervision, it was proposed that the

2. Among other rights, citizenship grants each citizen the right the right to be a voter in a member state other than the one of which s/he is a national. How to treat the Danish member elected in Germany ?

Parliament create a permanent committee including members from states that are part of the Euro-zone: this committee's role would involve a hearing with the president of the ECB's surveillance committee and an examination of issues linked to the execution of surveillance tasks.⁴ A similar system could replace the one the Commission outlined in its legislative proposal establishing a single resolution mechanism: a committee including a reduced number of MEPs from the relevant parliamentary commission and selected by their colleagues to hold confidential discussions with the executive director of the single resolution council.⁵ In a complementary manner, just like the “Baltic Europe” intergroup that brings together MEPs from states surrounding the Baltic Sea, a “Euro-zone” group could be created at the parliamentary level, or just in a few parliamentary commissions (“economic and monetary affairs”, “internal market” and “employment and social affairs”).⁶ Legislative reports or initiatives focusing on the Euro-zone should also, in principle, be assigned to MEPs from a member state using the single currency... This rule is already unofficially followed in practice. For subjects that are likely to affect member states that are not part of the Euro-zone (competitiveness, for example), a co-rapporteur would be designated. A complementary logic would dictate that only the parliaments of Euro-zone member states should be able to monitor compliance with subsidiarity as stipulated in article 5 § 3 TEU and the protocol n° 2 for legislative measures based on article 136 TFEU. The parliaments of non-Eurozone member states currently have enough votes to request a review of a Euro-zone measure.⁷

3. Art. 190 of the European Parliament's rules of procedure. However, art. 186 of the rules of procedure require that its composition reflect “to the greatest extent possible the composition of the European Parliament.” The notion of “to the greatest extent possible” should be interpreted loosely.

4. European Parliament, commission for economic and monetary affairs, amendment n°888 of Werner Langen to article 21 § 3 of draft regulation COM(2012)0511 (draft report of Marianne Thyssen), 30 October 2012, C7-0314/2012.

5. Art. 41 of the regulation proposed by the Parliament and the Council COM(2013) 250 final, 10 July 2013. The provision remained unchanged in the political agreement reached in the Council on 18 December 2013.

6. Art. 32 of the European Parliament's rules of procedure.

7. Each Parliament has two votes. The Parliaments of member states outside of the Eurozone have a total of twenty votes. The threshold required to trigger a review process for a legislative proposal presented by the Commission is one third of the total number of votes, that is, sixteen.

Furthermore, we believe that the rehabilitation of the European Parliament's legislative role must also be based on an improvement of its ability to negotiate with the Council. At the technical level, the ECON Commission should solicit external and multidisciplinary expertise on economic governance on a more regular basis, for instance through the systematic organisation of expert panels before any debate on a major legislative topic or proposal. A committee of MEPs elected by their colleagues for their recognized knowledge of monetary, economic or banking issues could be established within this commission for a term (or half a term), for the purpose of accompanying rapporteurs in their duties. With respect to procedure, the European Parliament should only enter informal negotiations with the Council on the basis of a clear mandate adopted by a commission with substantive expertise (a priori the ECON commission).

3.2. The relegation of national parliaments

In the aftermath of the crises, budgetary discipline was strengthened by the *Six-Pack* and the *Two-Pack*. While budgetary issues remain a national competence, the pressure placed by EU institutions (Commission, Council), bodies (Economic and financial committee) and groups (Eurogroup) grows the more the sustainability of a state's public finances becomes questionable. The noose tightens as the threat of default rises.

The *Six-Pack* has maintained this pressure within the framework established by articles 121 and 126 of TFEU, that is, essentially in the form of recommendations and, for the Euro-zone, decisions of formal notice and sanctions. The *Two-Pack* goes a step further: the two regulations of 21 May 2013 (n° 472/2013 et n° 473/2013) of the European Parliament and the Council were also adopted on the basis of article 136 TFEU – a provision allowing the Union to enforce budgetary discipline over Eurozone states alone. Thus the Union has strengthened its budgetary grip and has a tighter hold over member states and their authorities responsible for the budgetary procedure (Allemand and Martucci, 2012).

The EU framework is above all procedural: the *Six-Pack* directive sets a “common budgetary framework” and the *Two-Pack* provides for “common budgetary rules”. The framework is also substantive: the TSCG and the *Two-Pack* call for introducing “numerical budg-

etary rules” into national law (Martucci, 2013). The framework is more or less tight for member states depending on the powers that the Council and the Commission have over them. A state receiving financial assistance is subject to heightened surveillance that reduces the state's leeway, since the Union approves the macroeconomic adjustment programme on which the financial assistance is contingent. This is far removed from Maastricht's original philosophy, based on the idea that “the pooling of the monetary instrument implies that states are left with the other instruments of political economy” (Conseil d'analyse économique, 2000).

No wonder the Bundesverfassungsgericht now actively participates in the legal debate over EMU. The German constitutional court considers that the weakening of national parliaments' budgetary powers to the benefit of the Union runs afoul democratic principles (Bundesverfassungsgericht, 2011, 126). The European Parliament's involvement is not deemed sufficient compensation in terms of democratic legitimacy. Unlike national parliaments, “the European Parliament is not a representative body of a sovereign European people” (Bundesverfassungsgericht, 2009), according to the German constitutional court. In a two-level constitutional system, this can be interpreted as calling for a greater role for national parliaments, as constitutionally recognised by the Lisbon Treaty.

4. The promotion of parliament in accountability

The monetary Union includes parliamentary oversight that respects the independence of the ECB and NCBs in the Eurosystem. Indeed, the accountability mechanism should not be seen as implying that parliamentary assemblies can give “instructions” to the Eurosystem, as article 139 TFEU categorically prohibits. However, this mechanism is compatible with guidance of the decision-making process to infuse it with democratic legitimacy.

First, the European Parliament is consulted in the procedure to appoint members of the ECB's executive board (articles 283, paragraphe 2, second line, TFEU and 12.2, of the statutes). While its opinion is not binding, its effects are not negligible given that the candidates must appear before the Parliament's ECON commission. At the national level, under primary law, states determine the

nomination process for members of the decision-making bodies of their central banks; in practice, these nominations are made by executive powers (head of state or government) 75% of the time, and by parliaments only 11% of the time (Bank for International Settlements, 2009).

Next, the European Parliament cannot challenge the responsibility of ECB members in the same way it can with respect to the Commission. It can only push the ECB on its duty to be accountable under article 284 § 3 TFUE. Thus, the ECB presents the European Parliament with an annual report that the latter can critically discuss. In 2005, MEPs rejected the ECB's annual report (Parliament 2005) without eliciting any reaction whatsoever from the ECB, as the Parliament's rejection was not binding. On the basis of article 284, paragraph 3, line 2, TFEU, the ECB and the European Parliament set up a "monetary dialog" consisting of trimestrial appearances of the President or a member of the executive board in front of the ECON commission. These appearances are taken very seriously! This an opportunity for executive board members to explain monetary policy, and for MEPS to criticize it.

In most members states, national central banks must also be accountable to parliamentary bodies at various intervals of time (BIS, 2009). More innovative still are provisions stipulating that the ECB and Single Resolution Council (SRU) submit their report to the national parliaments of member states participating in the Banking Union. These parliaments can request that the ECB and SRU provide written responses to any observation or question they submit about prudential supervision missions. They also have the ability to invite the president or a member of the ECB's surveillance council to exchange views on the surveillance of the state's credit institutions in the presence of a member of the relevant national authority. The same is applicable to SRU's executive director.

In the wake of the crisis, parliaments increased their oversight of government – especially since their legislative involvement was constrained. The European Parliament established a special commission on the financial, economic and social crisis in 2009. At the national level, 109 plenary debates and 180 commission debates were organised across all the parliaments of the 27 member states between March 2011 and March 2012 (Heffler *et al.*, 2013).

This development should be furthered and strengthened. A framework agreement between the European Parliament on the one hand and the Council and European Council on the other should specify the practical details of how to exercise democratic responsibility in implementing the coordination and surveillance of economic policies. The agreement would also cover the relations between the Parliament and Eurogroup and the Euro-zone summit. Since the accountability is related to activities and subjects that are specific to the Euro-zone, this once again raises the question of whether a Euro-zone Parliament is needed. The aforementioned practical solutions would be able to address this issue.

5. Inter-parliamentary cooperation

The Lisbon Treaty recognizes that national parliaments actively contribute to the proper functioning of the Union. It invites the European and national parliaments to strengthen their cooperation (art. 12, f) TEU; protocole n°1 on the role of national parliaments in the Union, annexed to the treaties). The conference of specialised parliamentary committees (COSAC) is the designated forum for this cooperation. Meanwhile, the TSCG provides for the parliaments to create a conference bringing together the representatives of relevant commissions from the various parliaments to debate budgetary policies and other issues it covers (art. 13 TSCG). Thus, an inter-parliamentary Conference on economic and financial governance met for the first time in Vilnius on 16 and 17 October 2013. Its remit went beyond the TSCG framework to also include the implementation of the European Semester: this conference replaces the European parliamentary week organised by the European Parliament in January 2013 and January 2014. The conference includes representatives of the European Parliament's ECON commission and *all* member state parliaments. Yet article 13 of the TSCG limits parliamentary cooperation to the parliaments of participating member states. This contradiction is worth lifting.

Finally, we believe the materialisation of inter-parliamentary cooperation requires “unifying moments”. These could come in the form of a Union Convention that, like the Convention on the future of Europe, would bring together representatives of the European Parliament, national parliaments and perhaps socio-

economic organisations. This Convention could be held every five years following the European elections. It would seek to provide the broad strategic guidelines of political, economic, social, environmental and energy policies in the Union over the legislature's term.⁸ This convention would not be intended to supplant the European Parliament: it would be devoid of any legislative or constitutional power. Its authority would stem from the relevance of its proposals and the multiple political legitimacies that would participate in this endeavor. Like the Convention on fundamental rights or the Convention on the future of Europe, this body would not require any change to the treaties to be implemented. Community institutions could politically commit to take into account the conclusions adopted by the Convention in defining EU policies.

6. Principal recommendations

- Avoid using inter-state agreements to complete Euro-zone governance, or at the very least grant the European Parliament observer status during the negotiations;
- Integrate the content of the treaty on stability, coordination and governance into EU law before the 5-year term stipulated in its article 16;
- Articulate the content of the treaty on stability, coordination and governance with current EU law in force.
- At this time, focus on strengthening the European Parliament's legislative role through practical arrangements rather than through a revision of the treaties;
- Within the European Parliament's ECON commission, organise a committee or subcommittee composed of MEPs from Eurozone member states to (i) prepare and discuss legislative and non-legislative texts on the Eurozone; and (ii) oversee EU activities that exclusively focus on the Eurozone;
- Strengthen the European Parliament's external technical expertise on economic governance by systematically organ-

8. This corresponds to a moment of renewal for European economic strategy or its mid-term assessment. A tri-annual period could also be considered, following the timeline for the adoption of integrated guidelines.

ising expert hearings before any major debate on the Eurozone;

- Adopt a framework agreement between the European Parliament, the Council, the European Council, the Eurogroup and the Euro-zone summit to detail the practical ways of exercising democratic responsibility in EMU;
- Organise an EU socio-economic Convention every five years to define the EU's broad strategic guidelines.

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