

National Parliaments and Democratic Control in the EU

Introduction

There have frequently been calls for national parliaments to take on a greater role in EU matters. For some commentators, the closer involvement of national parliaments (NPs) in the EU is necessary because they are the clearest repositories of popular legitimacy. In an extreme statement of this view, the then Prime Minister John Major argued in 1994: 'The European Parliament sees itself as the future democratic focus of the Union. But this is a flawed ambition, because the European Union is an association of States, deriving its basic democratic legitimacy through national parliaments.'

This brief note will suggest that the closer involvement of NPs in EU policy-making can make only a limited contribution to improving democratic accountability in the EU. This note will also consider how national parliaments could be associated with treaty change and examine the general link between national parliaments and democratic legitimacy.

NPs and EU policy-making

National parliaments, it is frequently argued, are the real political losers of European integration: their power is said to have been reduced significantly by the empowerment of the EP and the Commission and by the increased autonomy of national governments in Council negotiations. It is often further argued that scrutiny of EU policy-making is difficult due to a lack of transparency at Union level and a lack of resources at national level.

Recently, there have been moves to rectify this supposed loss of influence through the installation of an 'early warning mechanism', which was first proposed in the Convention and was included in the Constitutional Treaty. Despite the failed ratification of the Constitution, the main aspects of the mechanism have been informally agreed by NPs through the Conference of European Affairs Committees, known by its French acronym COSAC. As a result, NPs will now examine new Commission proposals and assess whether these pass the tests of subsidiarity and proportionality¹. The Commission will be requested to take the NPs' opinions into account, especially if over one third of parliaments object to the proposed legislation.

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EDITOR'S NOTE

This is the twenty-ninth in a series of regular *European Policy Briefs* produced by the Federal Trust. The aim of the series is to describe and analyse major controversies in the current British debate about the European Union.

We would welcome comments on and reactions to this Policy Brief. Other Policy Briefs are available on the Federal Trust's website www.fedtrust.co.uk/policybriefs. This Policy Brief has been submitted to the Trust's Working Group on 'Democracy, Legitimacy and Accountability in the European Union', chaired by Professor Vernon Bogdanor. For more information, please visit www.fedtrust.co.uk/democracy.

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Other EU institutions have shown willingness to co-operate with NPs. The Commission has pledged its support to this new mechanism and will from now on transmit all new proposals and consultation papers directly to NPs. This goes beyond the current treaty requirements, which only state that each government 'may ensure that its own national parliament receives [proposals and consultation papers] as appropriate'. At the June 2006 European Council, EU leaders stated that:

'The European Council notes the interdependence of the European and national legislative processes. ... The Commission is asked to duly consider comments by national parliaments – in particular with regard to the subsidiarity and proportionality principles. National parliaments are encouraged to strengthen co-operation within the framework of the Conference of European Affairs Committees (COSAC) when monitoring subsidiarity.'

The Constitutional Treaty had included the 'early warning mechanism' in the form of a protocol, whereby the Commission would have been obliged to reconsider a proposal if one third of NPs objected to it on the grounds that it violated the principles of subsidiarity and proportionality. The NPs would have been given a six-week time period in which to formulate their opinion on the legislation. The Commission would have been free to decide whether to maintain, amend or withdraw the proposal, but would have had to justify its decision. The protocol also stipulated that all Commission consultation documents, its annual legislative programme and the Council's minutes and decisions would have been forwarded to NPs, a change the Commission has now pledged to implement despite the stalled ratification process of the Constitutional Treaty. Most changes included in the Constitution have thus been agreed voluntarily, so that very little seems to have been lost through the defeat of the Constitution. Of course, voluntary informal agreements lack treaty basis, but the Commission is unlikely to ignore the reasoned

opinion of one third of the EU's parliaments.

Even though these institutional changes mark the first time that NPs will be directly associated with the European policy process, their impact will remain limited. Above all, it needs to be questioned whether NPs are in fact granted a new and significant power through the 'early warning mechanism'. The power is not new to the extent that NPs have already been able to object informally to EU legislation through their scrutiny procedures if they wanted to. Nor is the power significant, as it is purely negative, with NPs only able to express a dissenting view, not even amounting to a veto. This mechanism does not allow NPs to be constructive actors, for example by placing new legislation on the agenda.

Moreover, the precise features of the envisaged mechanism increase the limitations imposed on parliamentary action. NPs will be at a disadvantage, as they will examine legislative proposals rather than the final outcome of the policy process: the final legislation may have changed substantially from the proposal they originally scrutinised. In addition, NPs can only object to legislation on the specific grounds of subsidiarity and proportionality. Yet subsidiarity seems to be a very minor problem in EU policy-making, with existing evidence indicating that only a small proportion of legislative proposals throw up genuine issues of subsidiarity.

Proportionality, on the other hand, is a broader and less well-defined concept. COSAC itself places most emphasis on the 'early warning system' as a protection against infringement of the subsidiarity principle, but proportionality, which concerns financial and administrative burdens, may give NPs more opportunities to criticise Commission proposals. It would be surprising if NPs do not attempt under the new arrangements to make use of proportionality to object to EU legislation.

Inevitably, NPs will take varying advantage of the opportunity given to

them. Some lack the resources to be able to scrutinise in depth and in a short period of time the complicated legislative proposals made by the Commission. Proposals that are sent out during a recess period may not receive any significant scrutiny within the six-week period at all. In addition, detailed work on European issues is not always attractive to national MPs, who often prefer more prestigious work in high-profile committees to the unglamorous detailed consideration of European legislation, much of which appears highly technical.

Beyond the proposed mechanism's practical limitations, it has to be remembered that the majority in any national parliament usually also forms the government of that country, which is of course represented in the Council. Thus, an NP majority is unlikely to oppose an EU proposal that its government will support in the Council. It is conceivable that more NP criticism of proposed European legislation would occur in countries with coalition governments, where one partner could vote with the opposition to support a reasoned opinion against an EU proposal, but this would probably be a rare occurrence. It is argued by some commentators that greater scrutiny by NPs could generate national debate on individual items of EU legislation, thereby increasing public awareness. However, it seems unlikely that the parliamentary examination of the conformity of EU proposals with the principles of subsidiarity and proportionality will of itself generate much focussed attention among EU publics.

The difficulties associated with involving NPs more fully in the European Union's legislative process perhaps suggest that the most appropriate role for national parliaments is still the control and scrutiny of their own executive, directly represented in the Council. NPs have organised this scrutiny process in various ways. Some countries, such as Denmark and Finland, have very tightly-run mechanisms, where ministers regularly have to update the European Committees. In Denmark, the

Parliament even gives its ministers an explicit negotiating mandate for Council meetings. Whereas some countries conduct scrutiny through a Europe Committee, others assign each dossier to an appropriate specialised parliamentary committee. In general, executive-dominated parliaments, such as those in Spain, Portugal or Greece, provide less control of their executive. It has to be noted that how NPs organise scrutiny of their executive is, in the end, their own responsibility and cannot be decided at the European level.

NPs and treaty change

National parliaments are already associated to the process of treaty change in the EU. In most member states, it is – at least partly – through parliamentary ratification that treaties are adopted. As successive treaties have meant that NPs have agreed to the reduction of their own powers, one would imagine that parliamentary ratification of these treaties should be an important act.

However, in reality ratification of treaties by NPs is generally uncontroversial. After all, the governments that sign the treaties are supported by a majority in the parliament. Moreover, parliamentary Euroscepticism is in most member states of the European Union reserved for fringe parties. Parliamentary failures – such as in the case of the European Defence Community in 1954 – or even problematic ratification – as in the case of the Maastricht Treaty in the UK – are therefore rare. As ratification is rarely in doubt, controversial debate does not tend to take place in parliamentary chambers, and media coverage of the process is usually limited. It is difficult to argue that ratification by NPs has led in reality to increased awareness of EU matters among their national electorates.

It is also worth considering whether NPs should be more closely involved with the elaboration of amendments to the European treaties. Recently, national parliamentarians were involved in the

drafting of the European Constitutional Treaty through their membership of the Convention, where they were even in the majority, providing 56 of the 105 members. Their participation cannot be said to have led to significant improvements in the perceived democratic legitimacy or general public awareness of the project. The final draft of the Constitutional Treaty was still negotiated by member state governments in an Intergovernmental Conference, and it is difficult to see where exactly national parliamentarians had a clear influence on the document.

NPs and democratic legitimacy

Finally, we need to be sceptical about claims that national parliaments are the true repositories of popular democratic legitimacy. It is true that MPs are the political actors most closely linked to voters in the national political system. In many EU countries, MPs are probably a first port of call for citizens wishing to express their opinion or lodge a request. Through constituency work and local campaigning, parliamentary representatives can put a human face on the political process and make national politics seem less distant.

However, the political legitimacy of NPs in Europe should not be exaggerated. Much of their purpose – at least in parliamentary systems – is simply to provide the majority to support a government and adopt its legislation. This is the primary focus of elections, with less attention given to the MPs' day to day actions in policy-making and scrutiny. Indeed, in the UK opinion polls suggest that a bare majority of voters know the name of their local MP.

Eurobarometer indicates that national parliaments do not enjoy a higher level of trust than other political bodies. In its Spring 2005 edition, 35 per cent of respondents said that they 'tend to trust' their national parliament. While this was more than the 31 per cent and the 19 per cent who said the same about their national government and political parties respectively, the NPs

still fared less well than the European Union (44 per cent), the national legal system (50 per cent) and the UN (52 per cent). In popular discourse, it has to be added, MPs are not always treated with the respect constitutional theory might accord them: a widespread view of parliamentary representatives in many countries is that they are excessively numerous and under-employed. It is not clear that involving national MPs more closely in the processes and policies of EU integration would automatically increase the legitimacy of decision-making on EU matters.

Conclusion

There is ground for scepticism about the benefits that a closer involvement of NPs in the European legislative process might bring. A direct association with policy-making is questionable in theory, as NPs are already represented in the Council, and difficult in practice. Any positive impact on the national debate arising from an enhanced role for NPs in EU affairs has to be weighed up against these deficiencies. NPs have a clear and necessary role in treaty change, but this has not proved a significant tool in heightening public awareness. We have to treat with care the easy assumption that the deeper involvement of national parliaments is a step that is necessarily beneficial for the popular legitimacy of the EU.

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¹ The principle of subsidiarity states that legislation should only be passed by the EU if the objectives can be best achieved at Union level. The principle of proportionality states that EU legislation should take care to minimise its financial and administrative burden and be commensurate with the objective to be achieved.