

Democracy and Accountability in the Enlarged European Union

National Parliaments and the Control of Governments in European Affairs: Possibilities for the Newcomers

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The Laeken Declaration of December 2001 addresses, among other questions, the issue of the place of national parliaments in the process of ever closer European integration. It was more or less at that time, too, that a debate on the issue was launched in the candidate states. Initially, it had a rather general character, being part of the debate on the future political and institutional shape of the European Union, as clearly demonstrated by the contributions of the Polish government, and in particular of the Ministry of Foreign Affairs, from the years 2000/2001¹. It was only with time, as the negotiation process was drawing to a close, that a belief appeared, at least in the circles of analysts and political scientists in the candidate states, that the role of the national parliament in European integration was for the acceding states a crucial domestic political issue touching upon the very nature of their political systems.

I. The Determinants

In my argument I would like to focus, generally, on the case of Poland, as the one I know the best. At the very beginning it should be noted, however, that a few important determinants, external as well as domestic, need to be taken into account when considering the possible systemic solutions to be adopted in the candidate states concerning the future role of their national parliaments in the integration process. Now I will try to discuss briefly the most important ones.

Firstly, we have to do with a determinant resulting from the standards adopted by the EU on regulating the role of national parliaments. Generally, one can say that any solutions in this respect have to have an internal, domestic, rather than external character. The EU does not determine the way in which a given member state regulates the function of its national parliament. Evidently, under the Treaty of Amsterdam, the responsibility for properly including the national parliaments in the EU legislative process to ensure its democratic legitimacy at the national level rests upon the member states. Obviously, the EU does impose certain obligations in this respect: for example, in Declaration 13 to the Treaty of Maastricht, strengthened in 1996 (the obligation upon the government to ensure that the national parliament receives appropriate Commission proposals for legislation ‘in good time’ for information or possible examination). Nonetheless, one can say, generally, that there are no EU standards or universally binding models in this respect, and that the new member states will therefore have to work out their own original solutions.

Secondly, we have to do with a domestic constitutional determinant. For example, Article 95 of the Polish Constitution expressly provides that ‘the Sejm shall exercise control over the activities of the Council of Ministers within the scope specified by the provisions of the Constitution and statutes’². This means that under the above article Poland as a member state

1 *The Future of the European Union. The Polish Point of View*, The Polish Ministry of Foreign Affairs, Warsaw 2001.

2 All quotations from the Polish Constitution after: *The Constitution of the Republic of Poland*, Sejm Publishing Office, Warsaw 1997.

will theoretically have to work out some constitutional or statutory solutions to define the nature, scope and methods of parliamentary control over the activities of the Council of Ministers on European policy issues. This is especially important in the context of another constitutional provision (Article 146 para 4.9) stipulating that the government ‘shall exercise general control in the field of relations with other states and international organizations’.

Thirdly and finally, we also have to do with a determinant of a qualitative nature: even at the level of domestic affairs, parliaments are perceived, in the general opinion of the citizens of the candidate states, as institutions lacking public confidence, and the exercise by them of their constitutional legitimising and control roles is viewed very critically. For example, 20 per cent of Polish citizens declare that they have confidence in the parliament, while 33 per cent expressly declare their lack of confidence. In the Czech Republic, the parliament enjoys the support of 17 per cent of the citizens, while 45 per cent have a low opinion of it. In Hungary, the parliament has an 18 per cent support, while 41 per cent of respondents have a negative opinion.³

Lower House	Confidence	Neutral opinion	Lack of confidence	Undecided
Poland	20	38	33	9
Czech Republic	17	35	45	3
Hungary	18	37	41	4
Senate				
Poland	20	37	32	12
Czech Republic	14	27	54	5
Hungary*	-	-	-	-

*Hungary has a unicameral parliament.

As we can see, the figures are similar and demonstrate that we have to do with an erosion of public confidence in the central representative institution within the constitutional order in the candidate states. Worth noting are also the opinions of members of political elites (not only MPs) themselves, who have a very low opinion (in Poland, for example) of the parliament’s law-making capabilities, both in organisational and substantive terms. It is a widespread opinion among Poland’s constitutional lawyers that both the quality of laws made, and the general political atmosphere surrounding the processing of bills by the parliament have significantly deteriorated over the past few years. Opinions to this effect are voiced e.g. by members of Poland’s Constitutional Tribunal.

Therefore, when we speak of the role of the candidate states’ parliaments in the European legislative process, particularly in the context of the need to strengthen them, we should bear in mind that this issue ought to be considered in the light of these three aspects: the lack of any model European solutions, the constitutional obligation upon the parliament to scrutinize government activities at the national level, in the absence of any constitutional provisions concerning such scrutiny on European issues, and a phenomenon that could be described as internal ‘deparliamentarisation’ of the candidate states’ political systems. A

3 CBOS/TARKI/CVVM, report no. 2445, 1/2/01

'deparliamentarisation', let us add, that may intensify considerably upon these countries' accession to the European Union.

II. Pre-accession Experiences

Between 1999 and 2001, the Polish parliament, and Polish MPs and Senators, underwent an accelerated course in the practical operation of parliament on matters concerning European legislation and domestic law. It was at that time, too, that the Polish parliament first began seeking appropriate institutional and political solutions that would allow it to address the urgent problem of bringing Polish legislation in line with the *acquis*. The problem of delays in legislative alignment was pointed out quite clearly in the European Commission's Regular Report published in the autumn of 1999. This issue was mentioned as one of the biggest problems in the process of Poland's preparations for EU membership. Consequently, the Commission's standpoint was adopted in Poland that the number of laws aligning Polish legislation with the *acquis* enacted by the parliament was one of the best yardsticks by which to measure Poland's actual progress on the road towards EU membership. From the comments made in the 1999 Report one could conclude that representatives of EU countries, too, regarded the state of European legislation in Poland as one of the basic yardsticks by which to measure readiness for membership. At the time of the publication of the Report, the Polish parliament was facing the task of passing some 180 acts designed to bring Polish legislation in line with EU requirements. What was needed to enact such a great number of laws, often affecting sensitive economic and social interests within the country, was not only efficient operation of the government, responsible for drafting bills, but also, even more importantly, a stable parliamentary majority that would allow efficient enactment of these laws by the Sejm. In an attempt to deal with this situation, a special Parliamentary Committee on European Law (CEL) was established. It was set up under an amendment to the Sejm Standing Orders of 29 June 2000, and began to operate in July 2000. It is worth noting that the establishment of the Committee and the approval for its unprecedented, unconventional procedure were only made possible thanks to a full consensus among all political parties: those in power and those in opposition.

The CEL had two basic aims: to accelerate the process of passing European acts and build a stable parliamentary majority in their favour, and to send a strong message to Brussels that Poland was actually intending to make up for its legislative delays. To this end, the CEL was equipped with extraordinary powers. The CEL enjoyed a privileged position as compared to the other parliamentary committees; it operated under a 'priority of competence' rule. To put it differently, the other committees had been deprived of their main powers with regard to provisions bringing laws in line with EU requirements. Extracts relating to the *acquis* were taken out of bills, combined into groups (the 'horizontal' or 'package' method), marked with an 'E' sign, and transferred to the CEL under a 'legislative fast-track'. One has to admit that, from the perspective of their main aim, these methods proved effective. For example, while in May and June 2000 (i.e. before the CEL started to operate) the Sejm passed merely 7 acts containing provisions aligning Polish legislation with the *acquis*, in two autumn months as many as 34 laws of this kind were enacted.⁴

4 *Ibidem* and Wykaz ustaw uchwalonych przez Sejm w 2000 r. wniesionych z inicjatywy Rady Ministrów zawierających przepisy dostosowujące prawo polskie do prawa Unii Europejskiej (stan na 23-10-2000), (A List of Laws Enacted by the Sejm in 2000, Submitted by the Council of Ministers, Containing Provisions Aligning Polish Legislation with EU Legislation. The State as of 23 October 2000), <http://ks.sejm.gov.pl:8009/>.

Please note that the figures concern government submissions only (in May-June the Sejm enacted, in addition to the 7 laws introduced by the government, three bills drafted by other bodies). In July 2000 the Sejm passed 6 European laws, and in August it was in recess.

The Committee on European Law:

- In operation since July 2000
- Had to enact 180 laws and regulations aligning Polish legislation with the *acquis*
- Operated under an amendment to the Sejm Standing Orders, by a consensus between the parties in power and those in opposition
- The CEL enjoyed a priority of competence over the other parliamentary committees, employed the ‘package method’ and a legislative fast track
- The work it had done basically made it possible to make up for the delays in aligning Polish legislation with the *acquis*. However, a sharp conflict appeared between its efficiency and the legitimising and scrutiny roles, with the government and the parliament on the two sides.

However, the issue of the effectiveness and legitimacy of CEL work immediately arose. Judging the CEL’s work, even Committee members voiced their doubts as to whether its special procedure did not impinge upon the parliament’s legitimising and control roles. The following doubts were voiced in this context:

Firstly, it was suggested that the government transferred ill-drafted bills to parliament, demanding their enactment under the pressure of time. Secondly, an opinion was voiced that many of the submitted bills went beyond the scope of plain alignment of Polish legislation with the *acquis*. Thirdly, it was believed that the government often transferred bills to the CEL without regard to the national priorities. Fourthly, there was a general observation that the government had a tendency to use the CEL in a manipulative way, as a ‘legislative machine’.

Even this cursory selection of criticisms clearly shows the extent of problems the Polish parliament may find itself confronted with in its work upon Poland’s accession to the EU. A conflict between efficiency on the one hand, and legitimacy and scrutiny on the other hand manifested itself with particular sharpness here. One has to note, moreover, that the CEL was only a temporary arrangement, operating solely on the basis of an amendment to the Sejm Standing Orders and a political cross-party consensus.

III. The Needs

Generally, one can say that the powers of the parliaments from the EU candidate states should be strengthened. They should be equipped with appropriate instruments to allow them to control government policies. There is an objective need to strengthen the role of parliaments on European issues in the candidate states, including Poland, given, in the first place, the need to enhance the legitimacy of the accession process itself. The objectives of such a strengthening should be as follows:

- a) National parliaments are important instruments of the implementation of the *acquis*, of the adoption of European regulations. A parliament may play an important role here in particular in the implementation of directives. A new EU member’s parliament may also be a ‘bottleneck’ in the process of the adoption of the *acquis*, leading to a slowing down or even serious neglect. This may have political and legal consequences in the future both for the member state itself and, indirectly, for the legal order of the EU as a whole. A great deal depends here on technical and organisational questions. If, for example, we were to

answer a question today whether the Polish parliament is prepared for this role in technical and organisational terms, the answer would have to be 'no'.

- b) National parliaments are an important element in the active making of Community law, provided that they are able to join consciously in the law-making process at the stage of drafting legislation. Here, it is no longer a matter of the adoption of legislation, but, rather, of sharing in its drafting. A great deal depends here on the knowledge and expertise of the MPs themselves, which may be expected to increase with time, but not only. Laying down appropriate cooperation rules between the legislative and the executive is another important point. Theoretically, the government is capable of rationing out information on draft legislation to the parliament and, as shown by Poland's domestic practice, is apt to behave in this way, treating the parliament in a very manipulative way. The same may happen when the government transfers documents concerning EU legislative work to parliament. This is probably the second 'bottleneck'. Cooperation between national parliaments at the preliminary stage of legislative work, not only within the COSAC framework, but also direct collaboration at the sector level (between sectoral committees) may have some importance for a conscious and active joining in the legislative process. And, finally, cooperation between national parliaments and the European Parliament, and in particular the role Polish MPs may play in the EP, acting in collaboration with the Polish parliament and government, may be the last factor.
- c) From the point of view of a country embarking upon membership, the strengthening of the parliament's role, especially in the aspect of active involvement in the making of Community law, is a matter of crucial importance in the context of the domestic political debate on the preservation of the state's sovereignty within the EU. It also has some psychological importance for the country's citizens in the context of the general problem of the democratic deficit in the European integration process. The main benefit, however, concerns the concept of sovereignty in the domestic debate, as it makes it possible in practice to preserve this concept and to give it a new sense of shared sovereignty, of sharing, through law-making, in the integration process.

It is worth noting in this context that in Poland's debate on the future role of national parliaments, the option of representation of the member states' national parliaments in some form of a second chamber of the EP has virtually disappeared. It seems that, after the initial enthusiastic opinions on the idea (appearing since Fischer's speech in 2000), there is no support for a solution of this kind any more in Polish policy.

Generally speaking, on the basis of a model presented by the Polish expert Professor Jan Barcz⁵, one can identify the following areas concerning the role of a national parliament in decision-making on European issues at the national level, as a key problem for the candidate states faced with the question of the future role of national parliaments in European integration:

- The flow of information from the government to the competent parliamentary bodies responsible for European affairs,
- Instruments of cooperation between the parliament and the government in working out a standpoint on issues considered by the European Council,

5 Jerzy Barcz, Division of competencies in the European Union. The Role of National Parliaments in the EU from the Polish Perspective, CSM 2002, www.csm.org.pl

- Cooperation between MEPs and members of the national parliament, and collaboration between national parliaments,
- Involvement of intermediary, regional and self-government bodies in the decision-making process,
- Involvement of the national parliament in the selection of government candidates for EU institutions.

To recapitulate the present section: judging from the case of Poland, one can identify two main ‘bottlenecks’ that may appear in legislative matters in the acceding states. The first one may result from the parliament’s technical and organisational inability to receive legislative and legal documents from the EU, which may disrupt the domestic application of the *acquis*. The second “bottleneck“ may result from an asymmetrical division of powers between the government and the parliament in the process of sharing in the making of Community legislation, because of the government’s ‘rationing out’ of information on the bills being drafted, which may result in limiting the parliament’s role.

IV. Possible Solutions

As far as the Polish case is concerned, one can say that the national parliament is now prepared very poorly indeed for the role it could play upon Poland’s accession to the EU, particularly in the aspect of active involvement in the making of European law. In this respect, working out proper cooperation mechanisms between the government and the parliament is the key problem. Upon accession to the EU, the competencies of the present Parliamentary European Integration Committee will expire. This means, in practice, that unless proper modifications are introduced, the Sejm question time may become the parliament’s only instrument for controlling the government’s European policy. As a situation of this kind is difficult to imagine, the Polish parliament will no doubt find it necessary to establish new competencies of the committee and define them. Theoretically, there are three possibilities:

1. The committee, and its competence concerning government policy, may be provided for in the Constitution,
2. The committee, and its competence may be set up, and its scope of competence defined, under a relevant statute, in accordance with aforementioned Article 95 of the Constitution, as is the case with the parliament’s special and investigating committees,
3. The committee, and its competence may be set up, and its scope of competence defined, by virtue of an amendment to the Sejm Standing Orders, as was the case with the CEL.

From the perspective of changes to the country’s political system, the first option would probably be the optimum one, as it would give the committee a special, constitutionally confirmed role. The government would thus be placed under a constitutional obligation to observe the rules of cooperation. This would entail--if we were to follow the Austrian way, for example--appending a special, separate section to the Polish Constitution, concerning the parliament’s (and, consequently, also the committee’s) scrutiny and legitimising roles with regard to government policies, including the rules of control over the selection of candidates for positions in EU institutions. This is, however, practically impossible in Polish realities, as the ruling coalition of the Democratic Left Alliance and the Labour Union, represented both in the cabinet and by the president [and enjoying a parliamentary majority], does not want to launch any kind of constitutional debate under any circumstances. It can even be said to be

scared stiff of any debate of this kind. This is a major obstacle to anchoring parliamentary scrutiny over the government's decisions on European issues in the Constitution. On the other hand, it is difficult to imagine that an anchoring of this kind should be totally lacking. This means that there is no chance of enacting comprehensive constitutional provisions in Poland, for example, as some EU countries did after the last enlargement. It is possible, however, that the problem will be dealt with 'in small steps'. Therefore, as regards point one on the above list of areas concerning the national parliament's role in decision-making on European issues at the national level, i.e. the flow of information from the government to the competent parliamentary bodies responsible for European affairs, the enactment of a minimalist provision in the Constitution, in the chapter on parliamentary powers, seems to be a probable solution. By a 'minimalist provision' I mean one saying that the parliament will take a stance on government decisions concerning integration issues, and that the government is obliged to submit to it appropriate draft legislation sent in by the competent EU bodies. All the other aspects of cooperation between the parliament and the government, including the competence of the committee on European affairs, would have to be defined in the Sejm Standing Orders. This is a minimalist solution, yet it may prove the most realistic one in political terms. It means, however, that all the other areas described above concerning the role of the national parliament in decision-making on European issues at the national level will not be regulated in any transparent way. They will, rather, be determined *ex-post*, as a result of political practice and the short-term balance of power between political parties and between the government and the parliament. Obviously, this may not be the best solution for parliamentary scrutiny of decisions on European issues, especially in a country that has had no experience in these matters so far. Nonetheless, this will be the only politically acceptable solution.