



POLICY PAPER

No. 27 (129), August 2015 © PISM

Editors: Wojciech Lorenz (Managing Editor)

Jarosław Cwiek-Karpowicz • Aleksandra Gawlikowska-Fyk • Dariusz Kałan
Piotr Kościński • Sebastian Płóciennik • Patrycja Sasnal • Marcin Terlikowski

The Best of Both Worlds: The Unexploited Potential of Inter-parliamentary Cooperation in the EU

Karolina Borońska-Hryniewiecka

During his first visit to Warsaw after re-election as prime minister of the UK, David Cameron found an ally in support of one of his ideas to reform the EU. Rafał Trzaskowski, the Polish minister for Europe, speaking on behalf of the Polish government, officially endorsed the British position to strengthen national parliaments in EU policymaking. Yet, the proposals to date either require treaty changes or are merely technical adjustments. In fact, much more could be achieved by enhancing the mechanisms of inter-parliamentary cooperation within the existing scope of the treaties. Although this would play very well with the current institutional climate of better regulation and more transparency, it also requires a genuine political will on the side of EU institutions and Member States, which seem to be the missing link.

EU Representative Democracy in Need of a Fix

One of the reasons behind the alleged lack of EU democratic legitimacy is the fact that its policies suffer from a deficit of parliamentary representation and accountability. European citizens perceive the EU as an executive power project. They see their governments, not parliaments, as representatives of their national interests in Brussels, and the bureaucratic European Commission (EC) as a decision-maker. The shift to intergovernmental decision-making as a response to the Eurozone crisis has marginalized national legislatures to the even greater benefit of the European Council. The European Parliament (EP), though formally empowered by the Lisbon Treaty, is still weak in terms of its democratic representativeness and political leverage. Electoral turnout in the 2014 European elections did not even reach 43%, and was the lowest ever. In the current legislature, the EP might have even less to do, as the European Commission significantly reduced the number of new legislative proposals in line with the “less but better” regulatory agenda.¹

National parliaments, in their own capacity, cannot (and should not) compensate for this gap in representation, as they represent national interests and national points of view. Yet they have a great role to play in the EU as legitimacy intermediaries. In this sense, as institutions that control their governments in EU affairs, as well as those transposing EU legislation into domestic orders, they are well suited to translate

¹ M. de la Baume, “The Parliament is bored,” *Politico*, 21 May 2015, www.politico.eu/article/parliament-bored-better-regulation.

the needs and wants of the different national *demos* into European policy approaches, and vice versa. This, contrary to some opinions, will not be achieved by improving the “yellow card” procedure, let alone by introducing a “red card” to block unwanted EU legislation. The former mechanism for subsidiarity control (known as the early warning system) has a very narrow and purely controlling character which does not allow parliaments to engage meaningfully in the process of EU policy creation.² Consequently, its effect on establishing a better link between citizens and the EU is very limited. The latter, controversial idea of a red card voiced by the British parties is unlikely to materialise, since it would require the widely unwanted treaty change, and it lacks the support of the majority of national governments and EU institutions.

A more constructive proposal for increasing parliamentary engagement in European affairs is the “green card” initiative developed by several national chambers. This foresees a way for a group of national parliaments acting together to make constructive suggestions for EU policy initiatives, and a means of reviewing existing EU legislation. The authors of the initiative envisage the “green card” as an additional, informal mechanism within the existing infrastructure of “political dialogue”³ through which parliaments and the European Commission exchange views on the content of EU policy proposals. As explained elsewhere,⁴ while in principle the “green card” is a positive project, its current design might challenge the established EU institutional balance and exacerbate tensions not only between national parliaments and the EP, but also between national legislatures and their governments. It has to be remembered that, although national leaders officially support the idea of increasing the democratic legitimacy of the EU, when it comes to concrete decisions they are not so willing to accept their legislatures’ stronger institutional standing in EU policymaking. As reported by participants of recent General Affairs Council meetings, the level of national governments’ outright opposition to the ideas of strengthening national parliaments by, amongst other things, the “green card,” is quite significant.

That is why national parliaments should not count on genuine political will in executive circles to support their inclusion in the EU legislative process. Nor should they develop tools to counter the empowerment of the EP. On the contrary, if they want to perform a meaningful representative function in the highly complex EU governance structure, they should invest further in complementing the EP’s influence in EU policymaking. These two parliamentary arenas are two sides of the same coin, and should positively stimulate each other’s evolutions. As unconvincing as it might sound for national parliaments, the EP has the capacity to act as a power multiplier for them by, for example, adding more institutional weight to their own initiatives. In this regard, the Treaty of Lisbon offers several possibilities for enhanced inter-parliamentary cooperation which, if used effectively, might enhance the two-level legitimacy of the EU. The current institutional climate of boosting better regulation⁵ and increasing the transparency of EU policymaking⁶ should serve to develop these ideas.

Towards a Joint Legislative Initiative

To date, the EP has rarely used its power to propose legislation, but rather relied on its prerogative to table amendments to draft legislative acts proposed by the European Commission. Yet, it might be heard from within the ranks of its administration that, in the light of a decreased number of legislative proposals from the Commission, the EP has the ambition to take a more pro-active approach to legislating. National parliaments should use this momentum. Instead of sidelining the EP in their “green card” proposal,⁷ national

² According to Protocol no. 2 on the Application of the Principles of Subsidiarity and Proportionality annexed to the Treaty of Lisbon, under the EWS, national parliaments can scrutinise EU draft legislative acts and issue reasoned opinions if they consider that a draft in question does not comply with the principle of subsidiarity. Depending on the number of reasoned opinions, parliaments can raise a “yellow” or “orange card” and the European Commission might have to reconsider, amend or withdraw its proposal.

³ Known also as the Barroso Initiative.

⁴ K. Borońska-Hryniewiecka, “The ‘Green Card’ Opportunity: Time to Rethink Parliamentary Engagement in EU Affairs,” *PISM Bulletin*, no. 41 (773), 23 April 2015.

⁵ www.europarl.europa.eu/news/en/news-room/content/20150612IPR65963/html/Talks-on-an-Inter-institutional-Agreement-on-Better-Regulation-to-open-soon.

⁶ K. Borońska-Hryniewiecka, “The Black Box of European Legislation: The Motivation (or Lack of It) behind Transparency in EU Policymaking,” *PISM Policy Paper*, no. 4 (106), March 2015.

⁷ K. Borońska-Hryniewiecka, “The ‘Green Card’ Opportunity...” *op. cit.*

parliaments could treat the EP as a facilitator in suggesting legislative solutions to the European Commission. In this vein, the EP, acting in the capacity of its indirect legislative initiative (Art. 225 TFEU),⁸ could perform the role of a leader in initiating legislation, supported by a group of like-minded national chambers. The process could be initiated, as in the case of the “green card,” by any parliament, but would be developed jointly with the EP by appropriate sectoral parliamentary committees. Although, unlike in the case of the “green card,” the legislative proposal would be submitted to the Commission by the EP, not by national parliaments, it would include reference to all parliamentary chambers subscribing to the initiative, which would surely add political weight to it. In this way, the EC would have the formal obligation to respond not only to the EP, as is currently the case under Art. 225 TFEU, but also to a number of national chambers presenting the same positions.

The idea of joint parliamentary initiatives should not be treated as an abstract institutional innovation, since it stems from the very centre of the EP’s operational core, that is, from its Committee for Constitutional Affairs (AFCO). In a response to a March 2015 COSAC⁹ questionnaire about the “green card,” AFCO expressed its openness to consider further developments in the dialogue with national parliaments in the framework of the right of initiative that the EP enjoys under Art. 225 TFEU.¹⁰ In this vein, the inclusion of national parliaments in its legislative initiative could be envisaged in light of wider EU inter-parliamentary cooperation provided for by Article 9 of Protocol I of the Lisbon Treaty, which leaves it to the discretion of the EP and national parliaments to determine the organisation and promotion of their effective and regular cooperation within the EU. Since the provision does not preclude any options, it could be assumed that joint elaboration of legislative proposals, which the EP would later submit to the European Commission, would not require treaty changes. From the legal point of view, it could be feasible to formalise such cooperation by a memorandum of understanding, but it could be also initiated on a more informal basis, simply by doing it in order to test its feasibility. The trial “green card” on food waste, initiated in June 2015 by the House of Lords,¹¹ could have been a good start as it relates to a salient socio-economic issue of interest to citizens and NGOs, thus to the EP, and will be addressed by the EC in an economy package circular. Yet national parliaments decided to go ahead on their own.

Apart from proposing new legislation, such joint parliamentary exercise could also amount to an amendment procedure based on improving EU regulations already in place. In fact, out of the whole current EU legislative output, new legislation constitutes only around 30%, while the rest consists of amending the existing body of EU law.¹² That is why there is plenty of potential for parliamentary input in revising and improving the existing legislation in line with the EU Commission’s agenda for better regulation. Cooperation with the EP in this field would constitute the most effective Europeanisation mechanism, allowing members of national parliaments (MPs) to channel their positions up to the EU level legislator and increase the feeling of ownership of the amended legislation. It would also play an essential role in driving European integration forward, by allowing a common examination and understanding of various policy issues as well as smoother transposition of EU legislation into national law. Finally, as the proposed solution relates to the pre-legislative stage of suggesting legislation, it would not have a negative effect on the length of the EU policy-cycle.

A Two-Directional Feedback Loop

It is without doubt that amending existing laws requires prior knowledge of their actual functioning on the ground, and for this another form of inter-parliamentary cooperation requires improvement. In 2014, the

⁸ The European Parliament may, acting with a majority of its component MEPs, request that the European Commission submit any appropriate proposal on matters on which it considers that a Union Act is required for the purpose of implementing the Treaties. If the EC does not submit a proposal, it shall inform the European Parliament of the reasons.

⁹ Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union.

¹⁰ Detailed response of the AFCO Committee to the 23rd Bi-annual Report of COSAC—www.cosac.eu/53-latvia-2015/plenary-meeting-of-the-liii-cosac-31-may-2-june-2015.

¹¹ www.parliament.uk/business/committees/committees-a-z/lords-select/eu-select-committee/news-parliament-2015/green-card-food-waste.

¹² Data obtained from the Legal Services of the European Parliament. Compare: www.dimiter.eu/Eurlex.html.

president of the EP, Martin Schulz, issued a letter to national chambers expressing the will to consult with them in the process of improving EU legislation. He offered national chambers a new way to share their positions or background knowledge on the implementation of legislation that the European Commission intends to amend. An overview of their reactions reveals that the vast majority of parliaments confirmed their willingness to share their knowledge on the extent to which EU policies or spending programmes were working on the ground, and on whether they had produced the intended effects.¹³ Yet not much has followed since then. Some parliaments have argued that the task of monitoring EU legislation lies in the hands of the European Commission, and parliamentary activity in this area would be contrary to the treaties. As much as the first statement is true, the second one is not. In order to be able to scrutinise the EC's proposal for amendments of existing EU legislation correctly, they have to keep track of it. Moreover, MPs are representatives of citizens affected by a mixture of EU and national regulations in everyday life, so they should not try to disconnect from this fact.

That is why, in addition to existing inter-parliamentary communication, national parliaments should establish a mutually beneficial feedback loop with the EP. In this sense, national parliaments would share their positions on the implementation of EU legislation, and propose suggestions for amendments. In exchange, the EP would keep parliamentary chambers informed about the developments of the regular legislative process at the stages over which they currently have no control. The most pressing example is the mechanism of the "trilogues,"¹⁴ the goal of which is to speed up the legislative process. It is estimated that, after the Lisbon Treaty, around 80% of EU laws were agreed before the first reading, through such trilogues—although their formula, while including representatives of the EP, fails to ensure a satisfactory level of transparency.¹⁵ As there is no mention of trilogues in the treaties, these meetings are held behind closed doors. It is especially concerning for parliaments, since the deal that emerges from trilogues often bears little resemblance to the draft previously agreed by the lawmakers and external experts. Now is a particularly salient moment for national parliaments to arrange their cooperation with the EP on this matter, as the EU Ombudsman has launched an investigation to improve the transparency of trilogues.¹⁶

Inter-parliamentary Conferences as a Policy Specific Oversight

Another potential area in which national parliaments should seek more effective engagement in EU policymaking are the two large scale sectoral inter-parliamentary conferences (IPC), recently established in the field of foreign and security policy, and in economic affairs. They gather representatives of national parliaments and the EP to exercise oversight of fields that are of strategic importance to national sovereignty, but in which the EU co-shapes policy solutions.

The IPC on Common Foreign and Security Policy (CFSP), set up in 2012, marks an overall positive development in parliamentary supervision of international affairs. Yet its functioning could still be improved by better prioritising its agendas and shortening the time allowed for parliamentary speakers and extending that of scrutinising representatives of other institutions such as the High Representative for Foreign and Security Policy, or the commissioners. At the end of the day, the role of parliaments is to oversee the activities of executives, and to this end, they should ask questions. With respect to scrutiny of international treaties, particular pressure should be placed on the European Commission to make the documents related to the Transatlantic Trade and Investment Partnership swiftly accessible to national parliaments in the same way that they are accessible to the EP.

¹³ *Ibidem*.

¹⁴ Inter-institutional consultations between the European Commission, the EP and the Council.

¹⁵ B. Fox, "Secret EU Lawmaking: The Triumph of the Trialogue," *EuObserver*, 4 April 2014, <https://euobserver.com/investigations/123555>.

¹⁶ www.ombudsman.europa.eu/press/release.faces/en/59975/html.bookmark.

While the CFSP conference is an example of a relatively well-functioning IPC, the same cannot be said about the conference on Economic and Financial Governance (the “Art. 13 Conference”).¹⁷ Established in 2013, as an afterthought of the Fiscal Pact adopted outside the EU legal framework, and thus outside parliamentary scrutiny, it is supposed to restore democratic control over the increasingly integrated financial and economic policy framework of the EU. One of the ways to achieve it is by giving national parliaments and the EP the possibility to oversee the implementation of the European Semester (ES). As much as the idea seems perfectly legitimate, since the ES affects domestic budgetary policies, traditionally the prerogatives of national parliaments, it also seems problematic for the EP, which has the ambition to play an active role in evaluating the ES and perceives itself as the right forum in which this control should be exercised. As a result, the two institutions, instead of working together against their declining influence over economic and fiscal governance, keep on arguing.

Regrettably, the principle controversy does not refer to the core of economic governance, to different ways of boosting competitiveness, or to increasing investment, but to the scope of the conference and its rules of procedures. In general, there are two different visions of its operation. While most national parliaments would like to turn it into a genuine oversight body with at least a minimal ability to take collective decisions, the EP would like it to remain weak discussion forum with narrow scope for operation. But the developments within the Art. 13 Conference reveal differences not only between national parliaments and the EP but also between Member States. Germany (through the position of the Bundesrat) supports the EP stance, preferring a conference of limited scope that takes no decisions, while France says that it should be able to make political recommendations and even adopt conclusions in order to ensure democratic accountability of EU economic governance.¹⁸

Although the same, positions of EP and the German Bundesrat are dictated by two different motivations. While the EP wants to prevent the creation of any additional parliamentary forum in which it would not have a majority, Germany wants to keep the ES as a rule-based fiscal discipline tool under the control of the European Commission and the EP rather than allowing it to be “weakened” by a forum of 28 vocal players questioning its principles to the benefit of national interests. In a similar vein, the former president of the European Council, Herman Van Rompuy, observed that, while the provisions for democratic legitimacy and accountability in the field of economic governance should ensure that the common interest of the union is duly taken into account, national parliaments are not in the best position to do this in full.¹⁹

This state of affairs results in an institutional impasse regarding the Art. 13 Conference. Since its first meeting in 2013, in Vilnius, it has not adopted its rules of procedure or agreed the scope of its agenda. It seems that, as long as political leaders do not strike the right balance between their visions of this body, it will exist only on the paper.

Time to End Institutional Hypocrisy

A more careful overview of the debate about strengthening national parliaments in EU policymaking reveals that the air is filled with a sense of hypocrisy. On the one hand, national leaders call for empowering national chambers, while on the other the same voices avoid discussions about concrete ways to achieve this at EU Council meetings. While the European Commission’s leadership places special emphasis on forging a new partnership with parliaments, the EC vice-president, Frans Timmermans, responsible for contacts with national parliaments, does not want to “enter into a potentially complex procedures” of a “green card” The EP is in favour of stronger parliamentary oversight of EU economic governance, but only if it is centralised in the EP, rather than exercised jointly with national parliaments. Finally, national

¹⁷ This name comes from Article 13 of the Fiscal Compact treaty, which says that “the European Parliament and the national parliaments will together determine the organisation and promotion of a conference in order to discuss budgetary policies and other issues covered by this Treaty.”

¹⁸ I. Cooper, *Parliamentary oversight of the EU after the crisis: On the creation of the article 13 inter-parliamentary conference*, Luiss School of Government Working Paper, 21/2014.

¹⁹ H. Van Rompuy, *Towards a genuine Economic and Monetary Union*, 5 December 2012, p. 16, www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ec/134069.pdf.

parliaments are also showing their false good will by side-lining the EP in their quest for a “green card,” at the same time expecting to be supported at the IPC level.

At the end of the day, the true victim of this double dealing is the democratic legitimacy of the EU, about which everybody is complaining. In order to change it, both institutional players have to realise that neither the EP nor the national parliaments will achieve much more by buffering and mitigating each other. In the executive-dominated EU, communication between the two parliamentary levels is essential for the sharing of information, debating policies, and reaching a common understanding of how things work in practice, which is something that is sometimes lacking in national capitals or in Brussels and Strasbourg.

It seems that the timing for the launch of genuine inter-parliamentary cooperation has never been better. First, by the end of this year, the European Commission intends to sign the renewed inter-institutional agreement on better regulation with the EU Council and the EP. It would be advantageous for the EP to complement this agreement with a memorandum of understanding with national parliaments who, by feeding it the necessary information, might strengthen its position in the legislative process and enhance its legitimacy. Second, the EP desperately needs to revitalise its stance as an EU co-legislator, and present itself as an EU player with a stake. National parliaments should use this opportunity to their benefit, by jointly preparing “green card” proposals. Finally, in light of the British pre-referendum demands, David Cameron will keep a close eye on the EU’s moves in dealing with the national parliaments question. In this regard, Poland should suggest to the UK that, in the field of inter-parliamentary cooperation, the potential of the treaties is not yet being fully exploited. It should be followed by a genuine effort by national governments committed to the idea of strengthening national parliaments, to back further efforts at inter-parliamentary cooperation in EU affairs. At the EU level, the EP AFCO committee can be viewed as the principal ally and a driver of this cooperation, as it is composed of people with the right mindset, who understand that national and EU legislators have a complementary role to play in the EU. It intends to organise a joint inter-parliamentary committee meeting this autumn, which could be a good opportunity to discuss all these issues.