



The legal foundations for the participation of national Parliaments in EU matters

On 23 January 2014, the Polish Sejm submitted to the ECPRD network (request N° 2464) concerning the legal foundations for the participation of national Parliaments in EU matters. Whilst the request concerned more specifically the constitutional, statutory or other provisions on the matter, the answers emanating from 25 Member States (the parliaments of Denmark, Malta and Ireland did not answer), provide a very important document on the competences of national Parliaments in the definition of their governments' position within the EU. What follows is a summary of the findings. The information relative to the kind of documents that are sent to the Parliaments by the governments refers to the findings of COSAC's 17th Bi-annual Report of on EU Practices and Procedures (April 2012). The chapter on the control of subsidiarity was also based on the summary of a previous question to parliaments from the House of Lords, ECPRD database request N° .2658.

1. Legal Basis

Although a general reference to the EU is present in the Constitutions of almost all Member States, not all of these references explicitly refer to the concrete participation of national Parliaments in the fostering of the position of the government as far as EU's affairs are concerned. General references to the EU are found in the constitutions of **Belgium, Bulgaria, Greece, and Latvia**. Specific references as to the role of the Parliament are in the constitutions of **Austria, Croatia, the Czech Republic¹, Finland, France, Germany, Hungary, Lithuania, Portugal, Romania, Slovak Republic, Slovenia and Sweden**.

In **Spain's** Constitution, the references to the European Union concern the issues of budgetary stability and public debt.

As far as the **UK** is concerned, the Constitutional basis for the EU relations is the European Communities Act, 1972.

There are no explicit references to the role of Parliament in the constitutions of: **Cyprus, Estonia, Italy, Luxembourg, the Netherlands² and Poland**.

Some of the Member States have adopted specific acts or laws dealing with the role, rights and prerogatives of their Parliament as far as EU matters are concerned. This is the case for **Austria, Belgium, Croatia, the Czech Republic, Estonia, France, Germany, Hungary, Italy, Lithuania³, Luxembourg, the Netherlands, Portugal, Romania, Slovakia⁴, Slovenia, Spain and the UK**.

The 1974 Riksdag Act, although not regarded as a Fundamental Law of **Sweden**, has a special status. Some of its parts cannot be modified as ordinary laws.

With differing degrees of precision and detail, the Rules of Procedures of all national Parliaments deal with Parliaments' participation in the definition of EU matters.

2. Information of the national Parliaments

As far as the information of the Parliaments on EU matters, legislative acts and other EU documents is concerned, this is an already established obligation of the various Governments. The provisions in this area

¹ Art. 10b of the Constitution refers to the membership of the Czech republic in an international organization or institution.

² Art. 91 of the Dutch Constitution deals with the participation of the Netherlands in the international legal order in general.

³ The Statute of the Seimas is a specific legal act having the power of a law.

⁴ The Rules of Procedure of the National Council of the Slovak Republic is a legal act.

are finely detailed for **Austria⁵, Bulgaria, Croatia, Czech Republic, Estonia, Finland, France, Germany, Hungary, Italy, Lithuania, the Netherlands, Portugal, Romania, Spain and Sweden**. For the remaining countries the principle of the right to appropriate information is established but has received a lesser defined articulation in legal or statutory instruments.

As far as what kind of documents are transmitted to the national Parliaments or available to them via specific governmental websites is concerned, the Parliaments of **Austria, Bulgaria, the Czech Republic, Germany, Estonia, Finland, France, Hungary, Italy, Latvia, Lithuania, Portugal, Sweden, Slovakia**, the **Belgian Senate**, the **Romanian Senate** and the **Slovenian Drzavni Svet** (upon request) receive the documents destined to their national representatives at the CoRePer. Most of them also receive the documents for the Council Working Groups.

In some cases, the obligation for documental information not only consist in the transmission of documents and draft legal acts to the Parliament, but also implies the obligation of the Prime Minister or other members of the government to attend a specific debate, at a committee level or in the plenary, before and/or after meetings of the Council of the EU or meetings of the European Council. Such is the Case for **Bulgaria, Croatia⁶, the Czech Republic, Finland, Germany, Hungary, Italy, Lithuania, Luxembourg, Portugal, Spain, Sweden and the UK**.

3. Participation in the definition of the positions of the government in relation to EU matters

Generally, national Parliaments have been recognized as "actors" in the definition of their government's decisions in relation to EU affairs, although degrees of participation can vary considerably. While almost all the Chambers can express their position on draft EU legislative procedures or other documents considered relevant for them by holding debates, hearing members of their government exposing the position of the State on topical issues and by adopting opinions and resolutions on the specific procedures, what changes is the binding nature of such positions. In most cases it is stated that governments shall take the position expressed into consideration while negotiating at the EU level. However, this is not an imperative mandate and governments can often deviate from the opinion of their parliaments. Their only obligation being to account for the reasons for not following the opinion expressed. Several national Parliaments although have a clear, active role in the definition of their governments decisions and in the definition of the national position as far as EU legislative procedures are concerned. This is the case for **Austria⁷, the Czech Republic, Finland⁸, Germany⁹, Latvia, Lithuania¹⁰, Romania, Slovakia, Sweden and the UK¹¹**.

One specific consideration is the so called "reservation" right. In some of the Member States the Chambers can impose a reservation on draft acts of the EU which implies the obligation for the government not to take a stand before the Council of the EU until the Parliament either makes a final decision or until the end of a

⁵ The Federation has the obligation not only to inform the Chambers, but also the Land diets and municipalities "in so far as their own sphere of competence or other important interest of the municipalities are affected".

⁶ The Prime Minister can either submit a written report to the Parliament or accept an invitation by the Speaker to present the position of the Republic of Croatia for the meeting of the European Council at the session of Parliament or at the session of the Committee prior to the holding of the meeting of the European Council.

⁷ The Federation or a Federal Minister in the framework of a specific project affecting matters in which legislation is incumbent on the Länder or which is aimed at establishing a binding legal act which would affect the adoption of federal laws in the field regulated by said legal act may deviate from an opinion adopted by the Federal Council or by the National Council only "*for compelling integration and foreign policy reasons when negotiating and voting in the EU*". Both the Federal and the National council can, within an appropriate delay, object to the intention of the Government to deviate from the opinions.

⁸ The nature of the power of the Eduskunta is not legal but political.

⁹ The Basic Law establishes that " Before participating in legislative acts of the EU, the Federal Government shall provide the Bundestag with an opportunity to state its position. The Federal Government shall take the position of the Bundestag into account during the negotiations". Art. 23 (1) & (3) of the Basic Law.

¹⁰ The Annual Working Programme of the European commission, as well as any other EU document, are scrutinized by the specialized committees and by the Committee on EU affairs of the Seimas and are divided into highly relevant, relevant and moderately relevant. The Government must take into account the opinions of the Seimas on highly relevant and relevant proposals and documents.

¹¹ The two Houses have been given a power of scrutiny and opinion before the government notifies the Council of the EU of the decision to take part in the adoption and application of proposals in the area of Freedom, Security, Justice and Home Affairs and/or to opt-out from new proposals.

defined delay. This is the case for: **Bulgaria, the Czech Republic, France, Germany, Italy¹², Lithuania, the Netherlands, Romania, and Slovakia.** Due to the nature of their institutional structure and to the relations of the Parliaments with their own governments, the role of the Parliament in the definition of the EU matters is significantly stronger in the case of **Austria, Czech Republic, Finland, Germany, Lithuania and Sweden.** Members of the **Austrian and German Bundesrat** can request to be part of the negotiations when the draft legal act of the EU concerns matters over which they have competences at the national level.

4. Control of the Principle of Subsidiarity and other competences

Following the entry into force of the Lisbon Treaty, all the chambers have acquired the prerogative to oppose a legislative proposal by the European Commission or by other competent EU institutions on the basis of competence as provided in the Treaty on the EU, the Treaty on the Functioning of the EU and in the annexed protocols (I and II). The degree of this exercise varies from one country to the other. All Chambers can state in a reasoned opinion why a draft EU legislative act does not comply with the principle of subsidiarity. This decision is taken either by the competent committee alone, as is the case for the **Czech Republic, Latvia, Romania, Slovakia,** or by the plenary of the Chamber following the vote in the competent Committee, as is the case for **Austria, Croatia, Estonia, Finland, France, Germany, Hungary, Italy, Lithuania, Luxembourg, the Netherlands, Poland, Portugal, Slovenia, Spain and Sweden.**

Due to its special institutional composition, **Belgium** has a slightly more complicated framework in dealing with control over respecting the Principle of Subsidiarity by EU draft legal acts. In substance, the scrutiny and voting mechanism is articulated in such a way as to involve all federal, regional and communitarian entities of the State. The distribution of votes follows this structure. Once the reasoned opinion is adopted, it is forwarded to the competent EU institutions as according to the treaties.

As far as the actions before the European Court of Justice are concerned, almost all Chambers can take the decision to lodge such actions, in accordance with the institutional dispositions concerning the legal representation of the State. Namely this is the case for **Austria, Belgium, Bulgaria, Croatia, Czech Republic, Estonia, Finland, France, Germany, Italy, Latvia¹³, Lithuania, Luxembourg, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Sweden** and the **UK.** The parliaments of **Hungary and Spain** can also request the lodging of an action before the ECJ, but the national government can oppose such a request. Finally there are no dispositions of this nature for **Greece and Cyprus¹⁴.**

5. Role in the nomination of candidates at EU institutional level

Some of the Parliaments have a role in the procedure leading to the nomination of candidates to EU institutional positions such as members of the European Commission, the Court of Justice of the EU, the Court of Auditors, the Board of Directors of the European Investment Bank, the European Bank of Reconstruction and Development, This role is a consultative one, whereby the Chambers may hold hearings with the designated nominees or issue an opinion on the designated candidates such as in the case of the parliaments of **Bulgaria, Croatia¹⁵, Hungary¹⁶, Italy¹⁷, Poland¹⁸ and Romania.** Other Parliaments have the actual power of approving or rejecting the nominees foreseen by the government. This is the case for **Austria, the Czech Republic¹⁹ and Lithuania.**

¹² This mechanism can also be triggered by a request of the permanent conference for the relations between the State, the regions and the Autonomous Provinces of Trento and Bolzano.

¹³ This possibility derives from general provisions of the Constitution and from the Rules of Procedures of the Saeima.

¹⁴ The House of representatives may request from the office of the Attorney General to lodge such an action.

¹⁵ The EU Affairs Committee holds a hearing with the government candidates before a final decision has been taken. the committee issues an opinion on the candidate.

¹⁶ The Committee dealing with European Union affairs and the standing committee competent with regard to the activity of the position in the European Union may hear the candidate.

¹⁷ The competent committees may audition the Nominees after their entry into function.

¹⁸ The competent committees of the Sejm must be notified by the government of the proposed candidates. before the Committees have expressed an opinion, or at least before the expiration of a delay (21 days), the government cannot officially present any candidature.

¹⁹ The Chamber of Deputies.

Country	Constitution	Legal Act
Austria	BGBI Art. 23c to 23f	Federal Act on Information on EU-Matters Rules of Procedures of the national Council (they have the are a Federal act)
Belgium	Art. 168	Art. 92 of Special Law of 1980/1992 Art.
Bulgaria	Art. 4, 22, 25, 42, 85, 105	
Croatia	Art. 142 to 152	Act on the Cooperation of the Croatian parliament and the Government of the republic of Croatia in European Affairs
Cyprus	Nihil	nihil
Czech Republic	Art. 10b and Art.	Act.90/1995 Coll. of April 19, 1995 Rules of procedures of the Chamber of Deputies; Act 107/1999 and amendments Standing Rules of Senate
Estonia		Art. 20 of the Government of the Republic Act of 13.12.1995, RT I 1995, 94, 1628 and following amendments; Riigikogu Rules of Procedure and Internal Rules Act
Finland	Sections 96 and 97, but also 1, 50, 93, 94 and 95	
France	Art 88 (1) to (7)	Ordonnance 58-1100 of 17 November 1958
Germany	Art. 23, 45, 52(3a)	Responsibility for Integration Act; Act on Cooperation between the federal Government and the German Bundestag in matters concerning the EU; Act on Cooperation between the Federation and the Länder in the EU Affairs etc.
Greece	Art. 28 (2) & (3); Art. 70 (8)	
Hungary	Art. E and Art. 19	Act XXXVI of 2012 on the National Assembly, Chapter VI
Italy		Law n. 234/2012 containing "General provisions on the participation of Italy in the framing and implementing of EU legislation and policies"
Latvia	Section 68	
Lithuania	Constitutional Act of 13 July 2004 on the Membership of the Republic of Lithuania in the EU	Statute of the Seimas, 17 February 1994, No I-399, Chapter XXXVIII
Luxembourg		Law of 3rd July 2008 on the approval of the Lisbon Treaty
Netherlands		The Dutch Act of Approval on the Treaty of Lisbon (adopted in 2008)
Poland		Act of 8 October 2010 on the cooperation of the Council of Ministers with the Sejm and the Senate in matters relating to the Republic of Poland's membership of the European Union.
Portugal	Art. 161, Art. 163(f)	Law no. 43/2006 as amended by Law no; 21/2012 of 17 May 2012
Romania	Title VI, Art. 148(5)	Act on Cooperation between the Parliament and the Government in the field of EU affairs (Law no. 373/2013)
Slovakia	Constitutional Law 397/2004 Coll.	Act of the National council of the Slovak Republic No. 350/1996 Coll. on Rules of Procedures, Section 58a
Slovenia		Act amending the Act on Cooperation between the National Assembly and the Government in EU Affairs
Spain	Art 135	Law 8/1994, of 19 May, regulating the Joint Parliamentary European Union Committee.
Sweden	Instrument of Government (constitutional law) Chapter 10, art. 3	Riksdag Act, chapter 10
UK	European Communities Act 1972, and amending Bills	

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