



COSAC - Working Group on the Role of the National Parliaments in the European Union

Minutes of the meeting of 27 April 2022

Mr Jean-François Rapin (FR – Senate), President. – My dear colleagues, I would like to begin by welcoming two new members to our working group, who join us following the renewal of the composition of the Portuguese Assembly. I therefore warmly welcome Mr Miguel Iglésias and Mr Paulo Moniz. We look forward to your contributions.

Our meeting today will be devoted to hearing two academics specialised in the European Union: Mr Christian Calliess, professor of public and European law at the Free University of Berlin and Mr Daniel Innerarity, professor of philosophy at the University of Zaragoza.

Mr Innerarity has unfortunately been unable to travel to join us in person, and has sent us a video message instead. After listening to it, you will be able to send him your questions by electronic mail. I propose that we listen to this message first before giving the floor to Mr Christian Calliess.

Mr Daniel Innerarity. – The Treaty of Lisbon has been dubbed the "Treaty of Parliaments" for it introduces numerous provisions relating to representative democracy and the role of the parliaments within the European Union. However, these provisions have not managed to reverse the general trend

towards the weakening of parliaments that we have seen at both national and European levels.

In my opinion, the possibilities for greater inclusion of the national parliaments in the construction of European legislation are limited today. It is often argued that greater involvement of the national parliaments in the European decision-making process would enhance the democratic legitimacy of the European Union. This was the reasoning that led the Treaty of Lisbon to give the national parliaments a role in European affairs. The Treaty specifies that the national parliaments are the guardians of the principle of subsidiarity in the European legislative process and can therefore trigger the early warning mechanism. However, there is good reason to doubt the effectiveness of this tool. In practice, the power of the national parliaments has proved to be limited. There are few interactions between the national parliaments, which largely explains their low level of involvement in the European decision-making process.

I am therefore sceptical as to the effectiveness of this mechanism. Firstly, a national parliament is unlikely to express a different position to that taken by its government at the Council. In addition, this practice weakens the deliberative capacity of the European institutions. Let us take the example of the Danish Parliament. In Denmark, the Parliament gives its government a binding mandate to orient the actions it takes in European matters. Thus, although it ostensibly involves the Danish Parliament in the affairs of the Union, at the same time it prevents it from participating directly in the deliberations conducted in Brussels. You will therefore concur, I think, that greater parliamentarisation of the European institutions does not systematically lead to them becoming more democratic.

In addition, reinforcing the role of the national parliaments in the institutional architecture of the EU could actually limit the room for manoeuvre their respective governments have in European negotiations. It is true that greater involvement of the national parliaments would allow the European institutions to be closer to the "grass roots", but at the time it would reduce their propensity to negotiate at the transnational level.

This would therefore amount, in my opinion, not to strengthening the legitimacy of European decisions at national level, but rather at European level. It would no longer be a question of getting closer to Europe's citizens, but rather of closing the transnational gaps that still persist to encourage greater European integration. The national parliaments must therefore think carefully about how they could contribute positively to the development of European standards.

Finally, there is one last reason that leads me to think that national parliaments will not see an increase in their powers in years to come. This has to do with the political culture of these entities. National parliaments are not ready to take the demands of the other Member States into consideration, any more than they are used to justifying the positions they adopt on European matters to their voters.

For all these reasons, reinforcing the role of the national parliaments would not improve the European decision-making process. To my mind, they will remain relatively weak actors within the European Union.

Mr Christian Calliess. – The principles of subsidiarity and proportionality are key factors in the participation of the national parliaments in European affairs (Articles 5 and 12 of the Treaty on the European Union). Compliance with those principles implies that the national parliaments retain their areas of competence. This means that the effective application of these principles at European and national level is crucial, to guarantee both the fair division of competences within the Union, but also the place of the parliaments within this organisation.

We should note, however, that at national level, there are limits to the implementation of this control. To overcome this, I propose a set of measures designed to close these gaps. These measures are part of a new working method based on the White Paper on the Future of Europe, presented in 2017 by the Juncker Commission. Five scenarios were proposed at the time. One of them envisaged a new working method which was supposed to improve the effectiveness of the European institutions by concentrating their efforts on pre-defined political priorities. A similar reflection could be conducted on the control of subsidiarity: in this area it would also be quite possible to select measures on the basis of the political opportuneness of controlling them.

At the same time, the European Union could relinquish certain competences. On this subject, the report presented by the task force on subsidiarity set up by the Juncker Commission already put forward a certain number of proposals to lighten the European agenda. This report was also taken up by the Conference organised by the Austrian Presidency in 2018. My proposal covers some of the same ground as that report.

First of all, the national parliaments could retain certain competences that the European Union would choose not to exercise.

Furthermore, it is important to develop a sort of "culture of subsidiarity" at European level, but also within the Member States. This implies a need to develop a common language - in other words, to determine precisely what the principle of subsidiarity covers. The European institutions and Member States have very different understandings of this principle today. It is therefore important to establish a sort of "subsidiarity interpretation grid". This is something that was in fact suggested by the task force I have just mentioned. This idea of a "grid" was also used by the European Commission in a report issued in 2018.

Then, we could imagine the national parliaments being more involved during the consultation phase that the Commission launches systematically before adopting a legislative instrument. This would enable the national parliaments to alert the Commission at the very beginning of the legislative process if a provision fails to comply with the principle of subsidiarity. We could also consider the creation of a document compiling all the opinions expressed by the bodies involved in the preparation of the legislative act in question concerning compliance or otherwise with the principle of subsidiarity. This document should then be included in the Commission's legislative proposal. In this respect, the subsidiarity grid mentioned earlier should be binding on all the European institutions. It is only if this condition is met that a discussion could be established between the stakeholders in the European legislative process.

In addition, it would be worthwhile giving the national parliaments the possibility of issuing a green card. That would give them a constructive role in the legislative process, unlike the early warning system, which only gives them a

right of veto. The green card system would solve a certain number of problems relating to compliance with the principle of subsidiarity: firstly, it would allow new texts in line with the principle to be put forward, and those that do not comply to be repealed. A threshold would need to be set for this purpose. It could be interesting to introduce a system whereby one third or a quarter of the national parliaments could come together to submit a legislative initiative to the Commission.

It would also be important to create a European platform on subsidiarity to bring together the expertise of the European bodies, to support, strengthen and improve this procedure. A "subsidiarity council" could be set up to oversee the expertise delivered on the subject, from the subsidiarity grid through to the "subsidiarity statement".

The European Union also has a duty to come closer to its citizens by restricting European legislative instruments to general guidelines and allowing more leeway to the Member States and their parliaments, under the Directives. European legislation could therefore concentrate on achieving results rather than on the mechanisms of compliance allowing them to be achieved. It could also be based on new practices, such as comparative analysis. A system of ex-post evaluation of European legislation should be developed along with "end-of-life clauses" for obsolete legislation.

In the final analysis, the European Union must concentrate on achieving pre-determined political objectives whilst complying with the principles of subsidiarity and proportionality. In addition, the development of an inter-institutional platform dedicated to the principle of subsidiarity would be welcome. Above all, it is necessary to arrive at a common definition of subsidiarity.

Mr Jean-François Rapin (FR – Senate), President. – The idea of the common interpretation grid has probably not received the attention and interest it deserved.

Mr Christian Calliess. – Yes, that is a problem. The European Commission developed the idea based on the work done by the Task Force led by Franz Timmermans in 2018, and the national parliaments were involved in that

process. It needs to be promoted: it constitutes a first common definition of the principle of subsidiarity. In 2018, the Austrian Presidency did not make it a priority and the Member States did not support it, even though the subject was addressed at the Bregenz Subsidiarity Conference organised by the Austrian Presidency.

Mr Markus Töns (DE - Bundestag). – First of all, I would like to thank Mr Calliess for his work, which has the merit of reminding us that the regions are also involved in these issues. The Committee of the Regions has already made a certain number of comments on European legislation under discussion, but does not have any right of veto. If it is not granted such a right, how can the Regions be heard and involved in the European legislative procedure? It is important to improve the acceptability of the legislation, including at local level.

Mr Christian Calliess. – The Committee of the Regions is very important and already has a wide-ranging consultative role in the European legislative process. This Committee is also a guardian of subsidiarity. It could legitimately be included in the group working on the development of the subsidiarity grid mentioned earlier. This means that the Committee of the Regions must be strengthened, in particular by giving it the possibility of issuing orange cards and green cards. In any case, the notion of subsidiarity needs to be clarified and unified across all of the European institutions.

Mr Miguel Iglésias (PT). – First, I would like to congratulate the French Presidency of the Council of the European Union, and particularly Jean-François Rapon, on the excellent work done over the last few months within the COSAC.

I must also say that I agree with the conclusions of the recent meetings. It seems to me that it is indispensable to strengthen inter-parliamentary relations on European matters, whilst avoiding increasing the complexity and bureaucratic aspects of these processes, which would create an even greater distance between us and Europe's citizens. It is also necessary to take account of the fact that certain parliaments suffer from a shortage of personnel.

I would also like to reiterate the importance of the regions within the European Union, including the most remote ones. As the elected representative of the

Autonomous Region of Madeira, this is a subject that is particularly close to my heart. We should try to include these regions in our discussions, so as not to further ostracise them.

Mr Jean-François Rapin (FR – Senate), President. – Rest assured, dear colleague, we will try not to overburden the national parliaments, but rather to make their actions more effective.

Ms Francesca Galizia (IT – Chamber of Deputies) – What kind of profile should the subsidiarity body mentioned by Mr Calliess have and how would it operate?

Mr Christian Calliess. – It is essential that the process of subsidiarity be questioned throughout the European legislative process. To allow this, a set of common tools, such as the subsidiarity grid, must be available to put fair control into practice. The subsidiarity body could then be tasked with drawing up the grid and, in doing so, would be contributing to the improvement of European legislation. It could also be tasked with clarifying any grey areas that emerge in the implementation of the control procedure for the principle of subsidiarity. This body would be made up of representatives of the national parliaments, the European Commission and the European Parliament, as well as representatives of the Committee of the Regions. Ministers would be excluded. It could meet two or three times a year and would have a permanent secretariat. It would be an informal organisation, operating beyond the bounds of the institutional agreements.

Mr Igor Pimenov (LV). – A national parliament is not an indivisible atom: in it there sits a majority supporting the government alongside an opposition. Their positions are often very different. Parliaments take decisions by majority vote and in most cases the result will correspond to the opinion of government, rather than that of the opposition. As an academic, have you taken these specific circumstances into account in your work?

Mr Christian Calliess. – Under the Treaties, national parliaments have a duty to control compliance with the principle of subsidiarity. I consider that, in this area, we need a subsidiarity grid that will provide objective legal criteria based on Article 5 of the Treaty on the European Union. This is therefore a purely

factual form of control: that being the case, it matters little whether those exercising it are part of the opposition or on the government side. The political debate must take place at the time of drawing up the grid, not when it is applied.

Independently of your question, the use of a subsidiarity grid would enable the Commission to respond to concerns raised by the parliaments more quickly. The adoption of a common language would help to improve the identification of the points of contention between the institutions in relation to subsidiarity.

Finally, there is nothing to prevent national parliaments enriching the grid proposed by the Commission working group. It would even be wise if they were to take on its drafting, since it will be a central element in the future functioning of Europe. As for the subsidiarity body, it could support them with drafting the grid.

Mr Jean-François Rapin (FR – Senate), President. – My dear colleagues, our working group will meet three more times: the next two meetings will aim to discuss a common proposal, before the final meeting on 14 June in Paris.