

EU Governance : Is there a useful role for National Parliaments?

By Juliet Lodge

Suggested Citation: Juliet Lodge, *EU Governance : Is there a useful role for National Parliaments?*, 2 German Law Journal (2001), available at <http://www.germanlawjournal.com/index.php?pageID=11&artID=107>

[1] National parliaments across the EU have not played much (if any) role in the development and further integration of the EU. With few exceptions, they have had a very limited role in reviewing, overseeing, monitoring, controlling or influencing EU legislation. Few have had an influential role in respect of the control of the positions adopted in Council meetings by national Ministers. Some have had a genuinely hostile and obstructive attitude towards MEPs and have been reluctant to share information, resources, premises let alone ideas with them on an on-going basis that would permit them to influence policy outcomes at EU level. Instead, in some states some national parliaments have depicted the EP as a rival for authority and implicitly for the loyalties of the citizens within their states. It has taken years for this situation to be remedied. Even now, there are legacies of unwillingness on the part of national MPs for genuine dialogue and effective ongoing debate with the European Parliament.

[2] National parliaments' influence vis-à-vis the EU – the Commission, the Council and the European Parliament, as well as the Committee of Regions and ECOSOC – remains at best weak. While dialogue is desirable, it is not practicable to add another layer of 'talk' onto the system. National MPs were not especially effective before direct elections, and the dual mandate is cumbersome and a heavy individual burden on MPs.

[3] Is there another way in which national parliaments could play a genuine role vis-à-vis EU level issues directly rather than via the medium of another institution (the European Parliament) or Euro level parties?

[4] This paper suggests three possible routes. It does not probe the expansion of the European Parliament's power (which is inevitable and desirable). It addresses purely the potential role for national parliaments in respect of discrete policy areas under pillar III, links with the European Parliament, and reform and oversight of Euratom.

Summary:

1. national parliaments should develop their potential for two-way communication to use, refine and exploit existing procedures in order to have a complementary role in discrete (sensitive) policy areas open to rapid development under pillar III and in respect of European Council 'instructions' and major policy initiatives
2. national parliaments should engage with their citizens to discern and distill public views which they can present to each other and to EU institutions via the periodic convening of a Think-Tank-Forum of National Parliaments in existing EU buildings (no new institution is prescribed)
3. national parliaments and the European Parliament should examine the Euratom treaty to enhance democratic accountability for policy priorities and options in respect of nuclear energy and related environmental and public health concerns.

Introductory preliminary remarks and underlying assumptions

The following assumptions are made about the European Parliament:-

The European Parliament

[5] It is entirely right and just that the European Parliament's power should develop. It is the supranational 'grand Forum', the 'voice of the people', the legislature and public guardian of the EU's 'conscience' and commitment to freedom, security and justice and the maintenance of human rights and values taken for granted in, and precious to, the component member states.

National Parliaments

[6] National parliaments (MPs and national parties) traditionally are supposed to control executives and legislate on the basis of the majority will. They perform numerous additional functions which relate and reinforce these functions. These will not be discussed here. However, the extent of public disengagement from traditional politics cannot be effectively and justly and legitimately countered simply by the new mechanisms of e-direct democracy (which is potentially discriminatory and non-inclusive). Nor can the parameters of political debate and the communication of the issues of the day simply be left to the vagaries of media coverage with all that implies for arbitrary editorial skewing and presentation of incomplete, shallow and sometimes trite and misleading arguments.

[7] If this is all that the public sees in terms of the political process, it is not surprising that it ultimately fails to elicit public engagement and that national elections lose their apparent relevance. There are, of course, additional reasons for the decline in electoral participation (where this is not mandatory) but this is outside the scope of this paper.

[8] It would be desirable for parliaments to resume their more traditional educative and communicative functions vis-

à-vis citizens. This would require a change in their self-perception. MPs would need to see the educative and communicative functions vis-à-vis citizens (and also MEPs) as a duty and not simply as an optional extra, or an unconscious extraneous outcome determined by the whim of either national media or national governments, executives or interest groups and interested (biased) lobbyists and parties.

Specific roles for national parliaments in the EU

Suggestions

1. Two way communicator and intermediary legitimator

[9] It is neither feasible nor desirable to insist that national parliaments play a role (by which is implicitly meant) and have an influence over the shape and content of all EU policy proposals and political outcomes. Universal and comprehensive involvement of NPs is neither practicable nor desirable. Limited, targetted involvement might, however, enhance public interest, engagement, democratic accountability and legitimacy.

[10] National parliaments, having been excluded or having self-excluded and largely isolated themselves from an interventionist/participatory role in the formulating, passage and adoption of EU policy proposals, have a guaranteed place in the EU's pre-constitutional set up. But they lack a clear role and set of functions.

[11] They should build on their existing potential to play an educative and communicative function vis-à-vis citizens in the national setting and should construe this role as a *duty* incumbent on MPs.

♣ Where clearly identifiable and specific EU issues are concerned national parliaments could designate an inter-parliamentary group of MPs to act specifically as the national parliament's public voice on EU matters.

This would facilitate participation; get all voices heard through democratic vehicles; and may well assist in the development of parliamentary consensus and public consensus.

♣ It would be incumbent on those MPs to inform their own parliamentary constituencies (as specialised committees do in a more narrow context) and to liaise outside with other agents that aggregate opinion and are able to act as multipliers and two-way communicators : local governments, unions, interest groups, voluntary bodies, ngos, etc.

[12] In distilling opinion and channelling it to their own national parliaments (and parties), they might then be in a better position to funnel views to Members of the European Parliament and to have a real influence on informing policy outcomes. This, in turn, might help to legitimise those outcomes in the eyes of the public and those who feel that the EU is somehow too distant, unconnected to citizens, alien, bureaucratic and unintelligible.

2. Partner of the EUROPEAN PARLIAMENT

[13] The national parliaments cannot reasonably be expected to assume the above mantle in respect of all areas of EU legislation. Their specialised committees would be quickly overloaded even if they had the capacity to do so (which is doubtful). Therefore, the objective of the exercise would be undermined and results contrary to what was initially desired would be the likely outcome : a diminution not a reinforcement of public interest, engagement, and legitimacy.

[14] It would, therefore, be more useful to construe the role of national parliaments as that of the partner of the European Parliament in areas of EU activity which are not subject to effective parliamentary control at either supranational or national level. Where?

a) pillar III is an obvious area where parliamentary controls are negligible. Obviously the successful prosecution of criminal activity requires secrecy and therefore necessarily precludes, often for good operational reasons, immediate openness. That does not mean, however, that all activity should be opaque.

b) Grand initiatives by the European Council in respect of all pillars

[15] **a) Pillar III** is an area where the role of the European Parliament should be expanded in line with co-decision or universalised co-decision, notably in matters of determining the general direction of policy (for example on immigration, judicial co-operation, aspects of criminal activity to be dealt with on a supranational basis, e.g. through an expanded Europol remit, financing pillar III, secrecy and sentencing of criminals, definition of acts as 'crimes').

[16] Pillar III is an area where there are vast discrepancies in the practices of the member states in some areas (such

a immigration, drugs, etc) but where the EU has an interest in advancing convergence towards a common EU standard as quickly as possible.

♣ Pillar III offers areas where discrete issues could legitimately be discussed in terms of national preferences and views on other member states' practices, reforms, approximation towards EU standards.

♣ NPs could voice the kind of options and likely political choices preferred by that member state. They could channel them effectively to the EU setting, possibly via the European Parliament. Among contemporary examples where this could happen are: codes of access to private data, echelon, penalties for hooliganism, policies towards recreational drug use, aspects of policing, sentencing etc.

[17] This is not to prescribe an exclusive role for national parliaments but to suggest a complementary role for them with that of the European Parliament.

b) Grand initiatives by the European Council – a role for a Think-Tank Forum of National Parliaments?

[18] The European Council has, more recently, adopted a role in 'requiring' and 'instructing' the Commission to take specific legislative initiatives and action, notably in response to the need to expedite existing draft proposals to combat terrorism and crime, or to advance EU involvement in these areas. The European Council, thereby, not only assumed a role as part of a crisis response mechanism (which lacks parliamentary oversight at any level) but a direct and immediate role in significantly expanding the scope of European integration.

[19] While it may be argued that in times of emergency and crisis it is entirely proper that national governments respond with leadership, and while the public might be assumed to acquiesce to and expect decisive responses by national governments and 'the EU – widely conceived', there is no good reason why such initiatives should not be complemented by appropriate parliamentary debate.

[20] The European Council's potentially expansive and politically integrative directions should be open to public scrutiny.

♣ The European Council's initiatives could be discussed publicly. This should be conducted both within the domestic national settings, the European Parliament, and through a medium which demonstrates to the public the openness to their views and the opportunity to exchange ideas via a public 'meeting of minds, discourse and dialogue' among the political 'controllers' of national governments and of 'the EU's institutions/ quasi –government' in a Think-Tank-Forum of National Parliaments.

♣ *A Think-Tank Forum of National Parliaments (NPTTF)* might contribute to legitimising European Council instructions to expand integration/EU action into politically sensitive areas; and might help to depict them as just and fair and to engage public understanding of their justness, legality and fairness. EU action (by whichever EU institution) might therefore not seem quite as arbitrary and intimidating to national sovereignty (however outmoded that concept might be).

[21] *National Parliaments under pillar III and in respect of European Council initiatives* therefore should provide a Think-Tank-Forum for the discussion and public dissemination and exchange of ideas and 'special pleading' by interested parties.

[22] Rationale: NPs could aggregate interest on specific issues (possibly on their own initiative or in response to a joint invitation from either the Commission and the European Parliament or a tripartite invitation to formulate a national view.

[23] Procedure: This could then be discussed in a plenary meeting of designated national MPs (the national parliaments' Think-Tank-Forum NPTTF) whose conclusions could then be transmitted to the EU institutions. The latter might be invited to participate in those NP Think-Tank-Forums as an observer *sans parole* or with a right to respond.

♣ This kind of activity might precede the drafting of major pieces of legislation and form part of the Commission's typical pre-decisional consultation.

[24] Function: NPTTF function would be slightly different to typical pre-decisional consultation in that it would be geared towards the transmission of ideas to and from the public realm of citizens.

♣ It would be shown to be a vehicle for gaining public interest in the direction of EU policy. It could help, thereby, to

legitimise it (not through any formal veto right) but by virtue of the fact that it has been seen to be the subject of legitimate public debate across the member states in a NPThink-Tank-Forum to which the EU-level legislators have been invited in order to share views and to defend their ideas.

Another institutional layer?

[25] Would this require a formal new institution? No. The Think-Tank-Forum of National Parliaments (which should be small in size, and which would not duplicate COSAC) could be convened on the premises of the European Parliament.

[26] Composition and Size:The composition of each national delegation would not have to be representative of the spread of parties within each national parliament since the function of the Think-Tank-Forum of National Parliaments would be to communicate the consensus view of the national parliament and exchange that view other national parliaments.

♣ In theory, therefore, the NPTTF could be composed of an equal number of representatives from each member state. This is unlikely to satisfy the larger member states, so a formula might be found to allow each member state to send one MP per 5,000 population. Two for states with a population up to 15,000. States with a population of over 15,000 could send those two MPs plus one additional MP for every 15,000 over 15k up to a maximum of ten MPs. Alternatively, states with populations under 20000 could have one MP apiece, and those with populations between 21-40k two MPs; 41-60 three MPs; 61+ four MPs.

[27] It would be up to national parliaments to choose their delegates to the NPTTF subject to the requirement that the delegates are representatives of national opinion and have a mandate to articulate the general national view as opposed to party specific opinion. As such, they may have an additional important role (in the domestic setting) vis-à-vis their national ministers when the same issue areas arise on the agenda of the Council of Ministers. However, that discourse (if any) might be developed would be a matter for each member state.

[28] There are areas of EU activity where further development and formally entrenched and codified parliamentary input would be objectively desirable (in terms of enhancing democratic accountability and responsibility).

3. National Parliaments and Environmental Concerns close to the Citizen – Euratom

[29] Euratom largely escapes parliamentary supervision and control at the EU level. Yet, some of Euratom's activities are of particular interest to those concerned with (a) civil emergencies; (b) environmental degradation and desecration; and (c) public health.

[30] Supranational level reforms are desirable. The European Parliament's role vis-à-vis Euratom should be codified, entrenched in the new EU treaty/constitution; and significantly expanded.

♣ The effectiveness of any role it might acquire, including a right to hold public hearings would be appreciably enhanced if the national parliaments were in a position to make an effective, intelligible and respected input.

[31] Along with technical and scientific oversight and intervention by appropriate environmental and public health agencies, there should be political oversight.

[32] National parliaments could play a role in effecting this political insight. They could do so at two levels

(i) the domestic national setting

(ii) the supranational setting

(i) National: It would be appropriate for national parliaments to act as the champion of the people in respect of such a contentious area of activity as that relating to fissile material, its disposal, peaceful use, and transportation; and nuclear energy.

♣ National parliaments might be invited by national governments to form a view on, for example, nuclear energy/environmental issues likely to be the subject of an EU initiative (for example, related to civil emergency preparations/planning).

(ii) Supranational: It would be appropriate for national parliaments to provide information to EU bodies reflecting and distilling the socio-political concerns of the people in respect of issues related to nuclear energy, the environment, related public health issues and ideas on alternative energy and hazardous waste disposal.

♣ Accordingly, national parliaments might be invited by Euratom or by the European Parliament's appropriate committee(s), to submit a report on the domestic view of Euratom related issues. The various reports might then be distilled and be made the subject of a public hearing or European Parliament debate, with the possibility of non-binding recommendations for an action plan being made to the Commission, the European Parliament and member governments.

[33] National parliaments could perform a contributory role to the developing work (and competence) of the European Parliament in these areas.

♣ National parliaments might provide information and be recognised and respected 'voices' of publics in the domestic setting which are articulated in the European setting.

[34] NPs would not have a direct legislative or control function, which might be more appropriately and readily exercised by the European Parliament. They would be an adjunct in informing political choices, identifying strategic possibilities, voicing political aspirations and concerns of the publics of the member states.

♣ NPs' role would, therefore, be novel yet correspond to public concern.

[35] Such a role might also be one that could be readily accommodated as a legitimate, relevant and useful role that NPs might play on behalf of citizens in respect of EU policy development and the identification and prioritisation of policy choices and responses.

[36] Since this area is one where parliamentary input (under Euratom treaty) is negligible, it might be one susceptible to development in this way.

[37] The rationale for developing the European Parliament's role (which is important) is briefly explained below. In some respect, of course, NPs' potential in this area depends on the European Parliament addressing the democratic accountability gap under Euratom and also on the success with which any European Parliament attempt to insert itself into this area in general (and into Euratom reform in particular) is prosecuted.

Why is this potentially an important area?

[38] The strategic options open to the European Parliament and National Parliaments to insert themselves more effectively into EU policymaking are many and varied. Those likely to have the best chance of success would seem to be those that engage with the EU's short to medium agenda, as exemplified by the Lisbon and Stockholm decisions, notably on (a) adding an environmental dimension to economic sustainability, (b) programmes to foster greater social cohesion and (c) sustain economic growth. Added to these are the Stockholm concerns with realising a common European market in gas, electricity, telecoms and transport; and with programmes to foster e-Europe and develop clean technologies.

[39] What is the purpose of European Parliament and National Parliament interest in measures taken under the Euratom treaty and associated measures agreed and implemented under the other treaties.?

[40] Both sets of parliaments share an interest in demonstrating their relevance to the public, both as a vehicle for articulating in a respected and appropriate manner public concerns, and as the voice and champion of the people in holding executives democratically, openly and transparently to account for the political options and priorities they make as well as for measures to be adopted both now and in view of prospective enlargement to countries whose nuclear energy and environmental standards may be of public concern.

European Parliament and National Parliament role conceptions in an enlarging EU

[41] The *leitmotifs* of enlargement and inter-institutional debate are democracy, openness, effectiveness, and efficiency. They do not necessarily mean the same thing to people in different countries. Nor do people across the EU necessarily attach equal (or any) importance to their realisation. However, enlargement requires institutional change.

♣ So far, little consideration has been afforded to Euratom and related issues and the way in which inter-institutional interaction may be improved to the common good.

♣ It is no longer acceptable to assume that Euratom's concerns are fundamentally so technical as to dispense with the need for effective political oversight and public scrutiny.

[42] Technical desiderata are vital but in a democracy they cannot be allowed to be seen to be implemented without open scrutiny.

♣ National Parliaments might help the European Parliament influence the development of appropriate codes of conduct, good practice, proposals for technical aid and training programmes etc.

[43] Moreover, public concern about many of the matters covered by Euratom and nuclear energy means that ideally appropriate mechanisms of accountability should be in place *to which the public can relate*.

[44] Citizens' charters, public 'discussions with the Commissioner over the Internet' do not (or do not yet) meet the requirement for entrenched, visible, political responsive and responsible accountability. This is a role, which properly falls to elect representatives of the people – hence, the European Parliament and, in the domestic setting, the National Parliaments which can relate to national members in the Committee of the Regions.

[45] It would be in the interest of the European Parliament to work with National Parliaments (possibly using the NPThink-Tank Forum) because MEPs' wish to expand their legislative clout: either juridical via treaty change and entrenched expansion of their authority (universalisation of co-decision); or de facto via intervention as permitted by existing treaties (questions, budget, investigations, public hearings, legislative tactics to delay implementation pending modification of specific clauses, etc.).

♣ Showing their readiness to listen to national MPs might assist MEPs in indirectly legitimising their role in the eyes of the people.

♣ At the very least, it should help citizens to become more comfortable with EU institutions and the idea that EU institutions are appropriate for legislating on controversial and new areas which imply a deepening of integration.

[46] MPs and MEPs wish to be seen by the public to be pursuing politically (electorally relevant) salient issues of concern to the general public (*i.e.* showing themselves to be responsive to citizens' interests, and able to mobilise and present them in a politically relevant way which may be translated into politically ideological and relevant legislative outputs – something the Commission is ill-equipped to do even if it does use e-interactive citizens' forums and 'ask the Commissioner X' Internet pages). Both may also have an interest in showing themselves to be the guardian of moral values associated with the idea of an engaged participatory democracy, and the 'voice of the people'.

♣ To expand and develop a role in the EU's inter-institutional set up, the European Parliament and National Parliaments especially need to develop, sustain and preserve a modicum of public belief in their effectiveness.

[47] They cannot afford to condone (even by default) any implicit curtailing of their entrenched powers by the growth of 'soft law' or inter-institutional practices which limit their ability to influence the content of decisions across the range of issues (from funding discreet and related/overlapping research programmes, to policy on the transport/import/re-export of hazardous low level waste, and de-commissioning of old/dangerous nuclear waste sites and storage facilities whether in the existing EU, or in the enlarged EU).

♣ *Enlargement* alone requires EU level public scrutiny of the range of issues associated with the matters falling under Euratom.

[48] As in the past, one of the most useful political weapons available to the European Parliament remains the one, which is not a legally entrenched right but a tool of political operators: the instrument of embarrassment. If necessary, MEPs must be in a position to mobilise themselves effectively in pursuit of issues in order to safeguard the public interest, as they see it. Access to relevant, timely and full information is an important element in this. Any denial of access by officials, the Commission, or the Council must therefore be challenged publicly; and equally publicly followed up.

The relevance of NPs

[49] The values which the EU member governments and the EU treaties seek to uphold underpin the constitutional arrangements established in the EU in respect of inter-institutional relations. They represent principles and guides to institutional behaviour both within the EU institutions and vis-à-vis the EU's public. They have been reiterated at the highest possible political level of the IGCs as values to which the EC subscribes.

[50] They are not merely rhetorical or cosmetic. Concepts of Transparency, Openness, Democracy and Accountability have behavioural implications for the actual conduct of policymaking, its presentation and implementation. Accordingly, when not honoured they may (and should) be challenged both by National Parliaments and by the European Parliament.

♣ Especially at a point of enlargement and impending further enlargement to nascent democracies, it would be very difficult for governments in practice to object to MPs and MEPs seeking to sustain democratic values, norms and *behaviour* themselves by virtue as their position as the elected representatives of the people; as collectively members of European political parties committed to upholding democratic, open, accountable and transparent political practices both internally within the parties; internally within the European Parliament – in terms of intra-party and inter-party relations; and externally in terms of their relations with both other EU institutions (Commission, Council, Committee of the Regions, Ecosoc) and national parliaments.

[51] *The constitutional expression* of these values has been developed by (a) successive revisions of the treaties establishing the EU; (b) reform of inter-institutional relations whether through inter-institutional declarations, dialogue agreements, codes of conduct or through formal amendment to specific articles of the relevant treaties.

[52] An unspoken but guiding principle for the European Parliament, notably since the period from the time of the first direct elections to after the adoption of its Draft Treaty establishing the European Union in 1984, has been that of anything that is not expressly prohibited by the treaties is implicitly permitted until the governments decide otherwise.

[53] It remains the basis for a continuing pragmatic testing of the boundaries and limits to (a) what member governments will tolerate themselves individually and (b) collectively as the European Council and Council of Ministers and (c) the Commission will accede to in terms of the role that the European Parliament's members seek for the European Parliament.

♣ The practical implications of attachment to these norms is reflected in the often innovative and teleological way in which MEPs have sought to give effect to them in respect of a whole range of policy matters regardless of the official legal base under which an item falls.

♣ Of particular interest are items subject to 'soft law' developments, and those, which potentially might be dealt with under different articles of either different pillars of the EU treaty, or under another EC treaty. It has not been unknown for items to be tabled under treaty articles, which permit the minimum involvement of the European Parliament.

[54] MEPs' vigilance has meant that the legal base of proposals could be challenged with a view to insisting on the European Parliament having a rightful say in the process. Equally, even where it has not been possible to change the legal basis for a proposal, MEPs have been adept at exploiting inter-institutional understandings, codes of conduct, and developing new procedures, to either gain an opportunity to express a view or to open up a channel as a precedent for future European Parliament inputs. In short, national parliaments could be a natural ally for the European Parliament .

Political Reality

[55] Political realities mean that national parliaments need to be pragmatic when seeking to augment their role in and relevance to EU policy making. They need to find a role for themselves which complements, strengthens, sustains and adds value to existing democratic practices.

[56] An additional layer of institution-building and associated bureaucracy would not be useful. Capitalising on and refining existing legislative arrangements, procedures, practices without and through treaty reform where essential would be useful and serve the interests of EU citizens. Making a highly focused input would help to concentrate attention on where NPs are engaged, avoid dissipating, scattering and dissolving MPs energies, and help to contribute genuinely to re-engaging public interest and channelling political opinion through democratically legitimate vehicles.

[57] NPs need to insert themselves into EU policy processes in order to show their relevance but also in order to sustain the democratic foundations of their own member states and to promote, develop and perpetuate the values and institutions on which peaceful conflict resolution, respect for the rule of law, justness and fairness are based.

Editorial Note: For more information on the EU Commission's White Paper on Governance see http://europa.eu.int/comm/governance/white_paper/index_en.htm

For comments and reactions to the White Paper, collected by Christian Joerges, Yves Meny and Joseph Weiler, please go to [D:\Temp\Temporary Internet Files\RSC \(EU\) White Paper on Governance.htm](D:\Temp\Temporary Internet Files\RSC (EU) White Paper on Governance.htm) or to <http://www.jeanmonnetprogram.org/papers/01/010601.html>