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**Research Report**

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# Parliamentary Dawn

## The New Self-confidence of the European Parliament

*Daniela Kietz / Nicolai von Ondarza*

The European Parliament is one of the greatest beneficiaries of the Treaty of Lisbon. In the recent series of confrontations it has surprised member states by taking a combative stance and has established itself as a force to be reckoned with. The member states must quickly adjust to the new set of rules and a Parliament that vehemently demands its right to actively participate in all EU policy areas while not refraining from resorting to power politics. Otherwise there is a real danger that the EU's ability to act will be undermined. Likewise, parliamentarians will have to learn to use their new powers carefully and responsibly. If the Parliament, however, wishes to live up to its ambition of being on equal footing with the member states when forming and framing European policy, one of its greatest challenge lies in moving beyond simple legislation and having an active impact on the setting of long-term political agendas. More than ever, these are set by the heads of state and government in the European Council.

The Treaty of Lisbon laid the basis for the EU parliamentarians' increased self-confidence by substantially expanding the Parliament's co-decision, supervisory and budgetary powers. Still, many decision makers in the Commission and from the member states were surprised by the verve with which the parliamentarians laid claim to their new powers.

As a first demonstration of power, the Parliament rejected the SWIFT agreement in February 2010, thereby giving a clear signal for the Council and Commission of the shifts within the EU's institutional power structure. Shortly thereafter, the Parliament assumed a leading role in the negotiations regarding the European

External Action Service. Despite having only marginal decision rights in this regard, it was successful in securing core concessions from the High Representative and the member states.

Looking ahead, the parliamentarians are using their new powers to increase their long-term standing in EU decision-making processes. To this end, they committed Commission President Barroso during the investiture of the new Commission to key aspects of a new "Framework Agreement on relations between the European Parliament and the Commission". For the Parliament, this agreement is a tool to take another step towards its overarching goal of the last decades: to be treated on equal footing with

the Council across all EU decision making procedures. Following numerous rounds of negotiations, by the end of July the parliamentarians succeeded in obtaining the Commission's consent to most of its demands, including the principle of equal treatment as well as granting the Parliament additional supervisory powers.

Legally, however, such an interinstitutional agreement may not change the allocation of rights and duties as laid down by the EU treaties. In the view of many national governments, the new framework agreement threatens to overstep precisely this line by increasing the Parliament's influence in areas in which the EU treaties did not expressly grant it any powers. The member states therefore have reserved the right to approach the European Court of Justice (ECJ) should the agreement be approved by the Parliament's plenary in its current form after the summer recess.

### **Strengthened position in the institutional triangle**

The language and content of the new agreement reflect the Parliament's increased self-confidence. Since 1990, the Parliament and Commission have signed bilateral inter-institutional agreements at the start of each legislature that define the framework of their cooperation. Since the Commission, Council and Parliament have to cooperate closely in the EU's decision-making processes, the agreement also has an impact on the relations between the Parliament and Council. In order to push through the Parliament's institutional self-interests, the largest parliamentary groups often act together vis-à-vis the Council and Commission during such interinstitutional negotiations.

In the new framework agreement, the Commission commits to a "special partnership" with the Parliament, complying with the aim of Parliament to bind the Commission closely to itself. At the core, the Parliament regards the Commission as being entirely accountable to it due to the Parlia-

ment's power to appoint and dismiss the Commission. In order to gain a greater degree of influence on the Commission's political priorities, the Parliament took the unprecedented step of committing Commission President Barroso in September 2009 to present detailed political guidelines for his term of office as a prerequisite to his re-election. The framework agreement establishes this practice as a rule and requires the Commission to justify itself to the Parliament every time it fails to implement specific proposals from its work programme.

Parliament also wants to strengthen its right to request the Commission to submit a formal proposal ("Quasi Right of Initiative", Art. 225 TFEU). While the Council also holds a similar right in Art. 241 TFEU, with the framework agreement parliamentary requests are set to become more politically binding for the Commission. The agreement stipulates that such a request must be fulfilled by submitting a proposal within one year or including it in the following year's work programme. Otherwise, the Commission is charged with giving the Parliament a detailed justification. It also introduces other control mechanisms such as regular coordination meetings between bodies from the Commission and Parliament, question time for commissioners in the respective committees, and parliamentary hearings for candidates to fill Executive Director positions within EU agencies.

In terms of relations with the Council, the agreement establishes the general principle of *equality of treatment*, which is not explicitly included in the treaties. The parliamentarians successfully ensured that the Commission will inform them simultaneously with the Council regarding all legislative and budgetary matters as well as during negotiations on international agreements. This also encompasses the pre-legislative phase during the preparation of draft proposals as well as the enactment of delegated legal acts by the Commission (Art. 290 TFEU). Bowing to pressure from the Parliament and incurring the displeas-

ure of many governments, the Commission even agreed to allow parliamentary representatives to participate in committee meetings of national experts who advise the Commission on delegated acts.

While closely associated, the implementation of EU legislation via implementing acts by the Commission (Art. 291 TFEU) is not covered in the framework agreement. The Treaty of Lisbon also changed the legal framework in this case. The Council and Parliament now jointly confer the authority to decree implementing acts to the Commission. The particulars of this procedure are currently being negotiated via co-decision and could provide additional cause for dispute over the coming months. In the view of the Council, the Commission should be monitored by committees of national experts while preparing implementing acts. These committees should make decisions based on the same procedures as the Council and should, for example, be empowered to amend or revoke draft implementing measures of the Commission. In this case, the Parliament sees itself at a disadvantage towards the member states and likewise calls for comparable control powers.

### **Looming conflicts in the legislative agenda**

The Parliament's new self-confidence is no less apparent if one looks at the EU's upcoming legislative agenda. The Treaty of Lisbon rigorously continued along the track of earlier treaty revisions and expanded the co-decision procedure to a multitude of policy areas, having now become the ordinary legislative procedure. Even though there continue to be some isolated exceptions with purely intergovernmental decision-making, these reforms have enormously strengthened the Parliament's hand in the European political process.

The ordinary legislative procedure now governs issues at the very top of the political agenda, some of which were character-

ised by sharp differences in the positions of the Parliament and the Council. This includes the entire domains of justice and home affairs, trade policy as well as the two most cost-intensive EU policy areas, namely cohesion policy and agricultural policy.

Experience has shown that as the co-decision procedure is introduced, power struggles between the Council and Parliament as well as delays in the legislative process can be expected over the short and medium term. Government representatives in the Council have become used to conducting negotiations in these policy areas in closed circles. On the other hand, EU parliamentarians could indulge fundamental opposition as long as they lacked formal rights to participate. Both sides must now overcome habitual lines of thought and adapt to the changed power relations and new procedures.

In order to assert themselves against the Council and Commission, parliamentary groups also act as cooperatively as possible in the ordinary legislative procedure. In the current Parliament, for example, the two largest groups have voted together approximately 70% of the time. When addressing more contentious issues, the current distribution of power allows the liberals to act as kingmaker. They can choose to either vote in a coalition with the Christian Democrats (for example, on economic policy) or with the Social Democrats, Greens and the European Left (e.g. on social and employment policy).

The differences between the majority of the member states and the parliamentary majority are particularly evident on issues of justice and home affairs. In this regard the Parliament is often portrayed as protector of civil rights in contrast to the national governments in the Council, which would first and foremost like to expand the powers of judicial authorities. This oversimplification, however, does not do justice to the complex range of opinions within the institutions. The considerable differences in the positions of the member states on this contentious point are not

unique; parliamentary groups also differ significantly in the level of importance they attach to the protection of fundamental and civil rights. Nevertheless, many parliamentary votes in this policy area are currently being won by a centre-left coalition, which strengthens the position of liberal civil rights elements in EU decisions.

Accordingly, there is an additional potential for conflict in the planned expansion of information exchange between judicial authorities of the member states as well as those of the EU and third-party states to combat organised crime and terrorism. The agenda of the coming months includes the extension of various international agreements regarding the access to flight passenger data and guidelines on data retention. On issues of judicial cooperation, the Parliament is especially dedicated to establishing high minimum standards for the rights of the accused in criminal proceedings. Parliament's involvement could thus end the stalemate that has existed for many years in the Council in this regard by benefiting proponents of high minimum standards.

Parliamentarians have also been acting more confidently in policy areas in which they already enjoyed co-decision powers prior to the Lisbon reforms, for instance financial market regulation. In response to the economic and financial crisis, the Commission submitted a bundle of legislative proposals in 2009. The core elements are a legislative package for reforming European financial supervision and for a directive regulating alternative investment funds. This should implement the regulatory obligations for hedge funds, which the Europeans pushed for in the G20, and that should come into effect at the beginning of 2011. Initially, the negotiations for both dossiers were confined to the Council, where member states agreed to reduce the proposals to more decentralised, national solutions with a lower level of European liability. This compromise was subsequently presented as a *fait accompli* to the Parliament with reference to the tight time

schedule and the G20 obligations. The parliamentarians felt railroaded by this move, and, using their co-decision power, the four largest parliamentary groups rejected the member states' agreement as unacceptable. They are demanding a return to the original version with its more binding regulation. During the summer recess, the member states will have to approach the parliamentarians and negotiate a compromise. Otherwise the Europeans run the risk of failing their G20 partners in implementing their own recommendations for the regulation of the financial markets on time.

### **New budgetary leverage**

The Treaty of Lisbon also increased the Parliament's rights in terms of budgetary policy. For one thing, it removes the distinction between obligatory and non-obligatory expenditure, which previously excluded substantial portions of the overall budget from parliamentary control, such as the agriculture budget. In addition, the Parliament's consent will now be needed for the EU's multiannual financial framework. The EU uses this framework to structure the budget over a seven year period (most recently, 2007–2013), to fix the annual caps on individual expenditure categories, to set the actual overall budget and thereby also the EU's long-term priorities. Thirdly, the annual budgets will now also be determined by the Council and Parliament in a procedure that closely mirrors the ordinary legislative procedure.

Although the treaty 'only' assigns a right of assent for the multiannual financial framework to the Parliament, it uses this to lay claim to a broad right for full participation. During the upcoming negotiations regarding the financial framework for 2014–2020, the member states must therefore be prepared for a Parliament that expects a place at the table from the very start of proceedings. This also holds true for the agricultural policy reforms, which are closely linked with financial planning and

are highly contentious. The Parliament has already positioned itself with its own demands prior to the Commission even presenting its recommendations that are due in the second half of 2010.

There are bound to be conflicts during the budgetary negotiations regarding the allocation of resources as well as the issue of budgetary flexibility. Traditionally, the Parliament has advocated for a flexible re-allocation of resources among budget lines so that the budget can be used to the fullest extent. Many member states, however, insist that the funds remain linked to clearly designated budget lines. If the funds are not fully exhausted, they flow back into the national budgets. In the past, the negotiations over the setting of priorities in the EU budget were characterised by intense conflicts among member states over the allocation of funds. Due to the need for unanimity, they were usually only solved via package deals. With the Parliament now entering the fray, an additional actor has been added with its own set of aspirations, which threatens to further inflame these conflicts.

An issue on which the Parliament will continue to only be consulted is the Union's ceiling on its own resources, that is, the definition of how its budget is funded and its maximum size. Nevertheless, the Parliament also wants to participate in this debate, by way of using its right of assent on the financial framework. In particular, this may fuel the debate on whether the EU should become less dependent on national contributions and introduce taxes that flow directly into the EU budget. This is a red rag for the larger member states and "net-payers" in particular. The Parliament views the negotiation of the Union's own resources and the multi-year financial framework as an overall package. It remains to be seen, however, how confrontational a course the parliamentarians will chart when dealing with the Council. Its threat of refusing to accept the financial framework may not be sustainable due to the danger of an image loss and the poten-

tially grave political consequences. The national delegations would also have to close with their political groups in parliament and act in concert rather than representing the financial interests of "their" member states.

### **Little hand in long-term strategic and policy planning**

Despite increased co-decision powers and budgetary control, the EU's long-term policy planning and setting of priorities is one of the most difficult areas for parliamentary participation. The EU's institutional logic traditionally assigns the right of initiative to the Commission, and therefore legislative planning as well. Its work programme, however, is increasingly predefined in many policy areas such as energy and climate policy or justice and home affairs by long-term, operational programmes and strategy papers of the European Council. More and more, these policy planning tools have become so detailed that they leave little room for manoeuvre in the following legislative procedures. For instance, the European Energy Strategy (2011–2020) and the Stockholm Programme (2010–2014) have set policy objectives and the priorities of European legislation for many years. While the proposals for these programmes also come from the Commission, they are negotiated, amended and approved by the member states in the European Council. In this process, the Parliament is only consulted. In order to really have a comparable impact on the legislation, it would also have to exercise its powers in the definition of long-term strategic priorities to the full extent.

A particular challenge for the Parliament is the growing influence of the European Council, the second big beneficiary of the Lisbon reforms. Herman Van Rompuy, the European Council's first full-time president, has determinedly pushed to strengthen the body's position as the forum that sets the general political guidelines and priorities for the Union. The heads of state and

government increasingly negotiate policy objectives and define them in a top-down manner to the Parliament, Commission and Council for implementation. With their political support, the conclusions of the European Council develop a strong binding effect for the Union's agenda. In addition, it has to be kept in mind that unlike the President of the Commission, the European Council's President is not elected by Parliament and therefore not accountable to it. While Van Rompuy reports to the representatives after each meeting of the European Council, he decidedly stresses his independence vis-à-vis the Parliament.

The effects of this development could be observed during the negotiations on "EU 2020", the new growth strategy in which the EU established the core parameters for its economic reform agenda. The proposals for this strategy were jointly submitted by Commission President Barroso and Van Rompuy following consultation with the member states and subsequently approved by the European Council in June. Although the Parliament likewise held political debates and adopted non-binding resolutions on economic reform, these efforts proved pointless due to a lack of effective leverage toward the member states and Commission in this regard.

A similar dynamic was evident in the efforts to overcome the financial and economic crises, which recently dominated the European agenda like no other topic. Crisis management of what soon became the greatest challenge to the economic and political cohesion of the EU and the Euro was concentrated primarily in the European Council. To address these challenges, Van Rompuy called for two additional informal special sessions with heads of state and government. The European Parliament as well as the national parliaments had virtually no influence over the decisions made during these sessions for short-term crisis management or the hastily agreed rescue packages. The chosen legal basis for the package to support Greece (Art. 122[2]

TFEU) only provided for the Parliament to be informed, while the second, larger rescue package for the whole Eurozone was set up intergovernmentally and entirely outside of the EU framework. The long-term reform of the fundamentals of the EU's economic and financial policies is also dominated by the European Council. As part of the crisis management, it decided to establish a task force under Van Rompuy's leadership which is charged with developing policies for the reform and presenting them to the European Council in October. The task force is composed of finance ministers of the member states as well as the Commission and European Central Bank, while Parliament is not represented.

This creates further tensions over the control of the political priorities in the Union: On the one hand, Parliament exercises significant influence in the legislative processes and aims to use the framework agreement to get more control of the Commission's right of initiative. On the other hand, long-term priorities are increasingly being determined by the national executives via the European Council. The biggest loser in this game is the Commission, which is seeing its right of initiative being undermined simultaneously from two different sides. So far, however, parliamentarians also failed in shaping long-term EU policy goals, particularly those of the greatest importance to EU citizens over the past years.

### **Pushing for more influence in external relations**

The Parliament has, however, been impressively successful in enhancing its role in external relations. It used the Treaty of Lisbon to gradually transform from an observer to an active participant with some instruments to shape policy. This is most evident in the Parliament's new powers concerning the conclusion of international agreements. According to the Treaty of Lisbon, parliamentary approval is not only needed for trade and association agree-

ments, but for all agreements in policy areas in which the ordinary legislative or consent procedures are applicable within the EU. This effectively covers the vast majority of all EU policy areas.

Unlike the member states in the Council, the Parliament does not regard this power of consent as an *ex post facto* rubber stamping of already finalised agreements. Instead, it is tying its assent to the right to have a say in the initial definition of the negotiating mandate and in all subsequent steps in the negotiation. With its high-profile rejection of the SWIFT agreement, the Parliament has already demonstrated its readiness to be confrontational when it is not included. These demands made their way into the new framework agreement in which the Commission committed itself to simultaneously presenting drafts of negotiating mandates to the Parliament and Council, keeping the Parliament informed during the entire negotiation process and taking the Parliament's position into account from the earliest stage of defining the mandate all the way through to the signing of the agreement. In one respect, however, the parliamentarians had to yield: they had demanded the right to participate in EU negotiation delegations. In light of pressure from the member states, however, the Commission insisted on allowing parliamentary representatives to only join as observers and then only in individual cases. Many member states nevertheless regard these provisions as overstepping the boundaries of compliance with the EU treaties.

Negotiations slated for the coming months and years with third-party states regarding justice and home affairs are seen as particularly conflict-prone, as they touch on sensitive civil rights issues, for example the processing of flight passenger data for anti-terrorism measures. If the Commission and the member states properly involve the Parliament from the outset, however, it should prove to be much more cooperative. This should make the confrontational rejection of agreements the exception rather than the rule, as was shown in the majority

approval of the SWIFT agreement the second time around. The Council and Commission will also have to fully integrate the Parliament into discussions over trade agreements such as the WTO Doha Round, bilateral trade agreements with India, Canada and the Mercosur, and the full range of so-called "economic partnership agreements" (EPA) with the African, Caribbean and Pacific States. Some of these trade agreements can have very serious economic and social implications. In the ongoing consent procedure on the free-trade agreement with South Korea, for instance, parts of the European textiles, shipping, and car industry brought their concerns over rising Korean competition to the Parliament's Trade Committee and lobbied for making it easier to evoke the bilateral safeguard mechanism that could protect EU industry if Korean exports into the EU were to rise dramatically.

In the area of classical foreign policy, which continues to be purely inter-governmental, the Parliament lacks the necessary leverage to impose its participation, e.g. in decisions concerning the EU's civilian and military operations. Nevertheless, during the negotiations regarding the European External Action Service (EEAS) it succeeded in using its budgetary powers to push through considerable changes to the Service's structure. Above all, the Parliament's chief negotiators ensured that the Parliament has full control over the EEAS budget and therefore its activities as well. In addition, they managed to get Catherine Ashton to agree that the new framework agreement be applied *mutatis mutandis* to the relations between the High Representative and the Parliament. Although this only applies to areas in which the Parliament has rights of consent, it includes holding regular question time and consultations prior to strategies and mandates being approved. In contrast to trade policy and international agreements, the Parliament's involvement in foreign and security policy therefore remains consultative for the time being. This nevertheless signals a perceptible



increase in participatory functions for the Parliament in what has thus far been a purely intergovernmental realm of politics.

### **Limits of the parliamentary ascent**

The growth in the Parliament's power brought on by the Treaty of Lisbon has been enormous. Within the first months of the Treaty taking effect, the parliamentarians have demonstrated that they are fully prepared to exercise their newfound powers, pushing right to the limits of compatibility with the EU treaties. The Parliament has not shied away from substantiating its claims on co-decision, even resorting to the use of obstructionary mechanisms. The national governments, who have thus far seemed remarkably unprepared for the Parliament's demanding behaviour, must finally adjust to the new rules of the game. Otherwise they can expect new deadlocks and stalemates in many areas, compounding the already difficult negotiation processes in the EU 27. The Parliament can be expected to demand a high degree of active participation across the board: from justice and home affairs to financial market regulation and the reforming of agricultural policy all the way to policy areas that were once almost entirely inter-governmental such as budgetary negotiations and external relations. In its eagerness to gain the same degree of power as the member states in the Council, in some cases the Parliament has even forced its way deeply into executive functional areas. The best examples of this are the Parliament's requests to participate in the negotiating of international agreements and in the committees that negotiate delegated acts.

The new framework agreement with the Commission is a visible sign of the Parliament's "co-leadership" aspirations. Due to its many new spheres of influence, the member states will have to recognise the Parliament's increased strength, even if they happen to succeed in an ECJ suit against parts of the agreement. Likewise, parliamentarians will have to leave the

comfortable zone of fundamental opposition and wishful political demands in some policy areas and realize that their new powers also come with new responsibilities.

Yet, the greatest damper on the Parliament's new self-confidence may come from the EU citizens themselves. While its claim for a leading role in EU decision-making rests on its democratic legitimacy as the only directly elected EU body, it continues to be widely regarded as a powerless talking shop. Voter turnout for the most recent European elections fell below 50 percent.

The fact that the Parliament has not yet established itself in the public awareness is due not least to the exemptions in the Parliament's participation rights that continue to exist even today. While the Parliament's powers were considerably expanded by the Treaty, core areas of national sovereignty, which for many citizens are the expression of real parliamentary power, remain beyond its sphere of influence. This is true not only for the determination of national financial contributions to the EU, but also for tax policy and military deployments.

And while the Parliament has gained power by the extension of the ordinary legislative procedure, it continues to have essentially no say over the setting of long-term policy objectives and priorities. The European Council, on the other hand, succeeded in upgrading its role as the central arena for negotiating political conflicts within the EU.

In this way, two trends have been amplified in parallel to one another: the parliamentarisation of EU legislation and the intergovernmental determination of EU policy by national heads of state and government via the European Council. One of the main challenges facing the Parliament after the entry into force of the Lisbon treaty is therefore to overcome this limitation and become a deciding actor not only in EU legislation, but also in co-framing the Union's basic agenda.

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