

**Report by Mr. Bernard Accoyer,
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**THE IMPLEMENTATION OF THE PROVISIONS OF THE TREATY OF LISBON
BY NATIONAL PARLIAMENTS**

2008 was a very busy year for Europe as it had to deal with a succession of difficult crises.

During the summer, at a time when the United States was entirely concentrating on its own important political debate, the Georgian crisis placed the European Union in the frontline in the attempt to deescalate the war.

Several weeks later the financial crisis totally disrupted the world economic balance.

Finally, at the turn of the new year, the conflict in Gaza sharply reminded us that Europe should play its full role in the building of a lasting peace in the Near East.

Thankfully this need for Europe was heard. The Union did in fact reply in a unified, speedy and effective manner.

In Georgia, a ceasefire was negotiated from August 12 and this finally led to a withdrawal agreement secured on September 12.

In reaction to the financial crisis, Europe faced up to its responsibilities: in order to manage the emergency, the heads of state and of government agreed on a recovery plan for the banks and this plan was efficiently implemented by each Government. At the same time the European Central Bank ensured the day-to-day consolidation of the financial markets. In order to draw up an exit strategy to the crisis, Europe has, in unison, called for the far-reaching reform of the financial system and for the involvement of emerging countries in the accomplishment of this task. Thus Europe took the initiative of the Washington Summit and has organized the G20 meeting in London on April 2 next.

At the same time, under the impetus of the French presidency, the Union has set out to provide concrete proof of its ability to solve the real problems which its citizens face.

A pragmatic and efficient immigration pact was adopted. The Union for the Mediterranean built a bridge between the two shores of our shared sea.

But in particular Europe has provided itself with the means to remain a guiding force in the fight against climate change thanks to an ambitious series of laws.

2008 was thus, in many ways, the year of ‘taking up challenges’.

This in itself marks significant progress in the decisive question which concerns us all: the reduction of the democratic deficit which too often today separates Europe from its citizens. In recent months Europe has moved away from its image of an obscure, bureaucratic machine and has clearly shown its dynamism and ability to reply urgently but also responsibly as regards the future generations, to the needs of its people.

Such progress should encourage us to move onto a further stage: showing that Europe, whose concrete achievements are today very clear, is also about its peoples and that they should have their say in its policy choices.

Thus 2009 represents an unmissable deadline. The upcoming June elections will see the beginning of a new term of Parliament as teams will be renewed and programmes redrawn in order to set down new guidelines for our communal action. We must not miss this decisive deadline and must prepare ourselves to be ready to act in order to provide a new impetus to the democratization of the Union.

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THE TREATY OF LISBON; THE ‘TREATY OF PARLIAMENTS’

The Treaty of Lisbon plays a major role in this context. Beyond the essential adaptation the treaty brings to the institutional mechanisms of the enlarged Union, it also plays an irreplaceable role in the fine-tuning of European democratic mechanisms which constitutes, in many ways, ‘the Treaty of Parliaments’.

This is very clear as regards the European Parliament which the treaty elevates to a position of co-legislator, a role of total equality with that of the Council.

It is however also true for the national Parliaments which must play a role of ‘intermediary’ between the peoples of Europe and Brussels.

In this respect Parliaments play a double role. Firstly as regards the peoples of Europe, the Parliaments must make them aware of the daily achievements of the Union and so convince them of the utility of Europe or at times encourage them to demand improvements. However Parliaments should also operate in the other direction in order to ensure that European institutions take into account the concerns of their peoples. In so doing Parliaments should have their say in the very content of the decisions taken.

The Treaty of Lisbon provides us with the means to do just this.

The New Prerogatives of National Parliaments in the Treaty of Lisbon

The Treaty of Lisbon, in recognizing in the body of the treaties that national Parliaments ‘contribute actively to the smooth functioning of the Union’, provides them with new prerogatives which may be divided into three categories.

First of all, **rights to information** are recognized.

In fact the treaty provides that European institutions directly transmit to the Chambers of national Parliaments, their draft legislative acts and their programming documents (article 2 of the protocol on the role of national Parliaments in the European Union) while the Council provides them with the agendas and results of its sessions, including the official reports of the sessions during which it examines the drafts of legislative acts (article 5) as well as its positions on the drafts of legislative acts. Similarly the treaty provides that legislative resolutions of the European Parliament be transmitted, upon their passing, to national Parliaments (article 4 of the protocol on the application of the principles of subsidiarity and proportionality). Thus the national Parliaments have the opportunity of being kept fully informed at all the stages of the European decision-making process.

This right to information becomes an obligation of **notification** of the national Parliaments when it concerns requests for membership of the European Union (article 49 of the Treaty on European Union in its wording subsequent to the Treaty of Lisbon), draft revisions of the treaties (article 48 of the Treaty on European Union) as well as mechanisms and the results of assessments of the policies of the Union in the field of the freedom, security and justice area.

In parallel, national Parliaments have also been granted **rights to objection**.

Article 48 of the Treaty on European Union in its wording subsequent to the Treaty of Lisbon, thus provides each national Parliament with the right to a veto on **the drafts for simplified revision of the treaties** which allow the Council to extend the scope of the qualified majority and that of co-decision to unanimity. Notice of this opposition must be given in the six months following the transmission of the draft.

Within the same time limit, article 81 of the treaty allows each national Parliament to oppose unanimous decisions of the Council concerning aspects of **family law** with a cross-border impact liable to be the object of acts passed following the ordinary legislative procedure.

Above all, the protocol on the application of the principles of subsidiarity and proportionality grants national Parliaments the task of monitoring that the Union only intervenes if and insofar as, the objectives of the action envisaged cannot be sufficiently attained by the member states at either a central or a regional level and can be better reached, on account of the dimension or the effect of the action envisaged, at a Union level.

This **monitoring of subsidiarity** is to be implemented both before and after the European decision-making process.

To attain this, the aforementioned protocol obliges the institutions of the Union to directly transmit to each Chamber of the national Parliaments their draft legislative acts. Each Chamber may then, in the eight weeks following the transmission of the draft act in the last translated language of the Union, address a reasoned opinion to the presidents of the European Parliament, the Council and the Commission, setting out the reasons for which it considers that the draft in question is not in conformity with the principle of subsidiarity.

The decisive innovation concerns the legal scope which the reasoned opinions may have.

In cases where the reasoned opinions represent at least one third of all the votes attributed to the national Parliaments (each Chamber of a bicameral Parliament having one vote whilst monocameral Parliaments have two votes), the Commission or if need be the group of member states in the Council or the European Parliament, reexamine their draft and must provide reasons if they so do, why the draft is to be maintained. This threshold is however lowered to one quarter of the votes in the case of acts dealing with the freedom, security and justice area. This is referred to as the 'yellow card'.

When a majority of Parliaments so return a draft act, the European Parliament and the Council, before it has completed its first reading, examine its conformity with the principle of subsidiarity and may reject it respectively with a simple majority or with a 55% majority of the members of the Council. This is referred to as the 'orange card'.

After the process, each Chamber of the national Parliaments may bring an appeal to the Court of Justice of the European Union requesting the repeal of an act contrary to the principle of subsidiarity. This is referred to as the 'red card'.

Such new prerogatives are evidence of the desire to have **national Parliaments participate** in European decision-making.

Article 48 of the Treaty on European Union in its wording subsequent to the Treaty of Lisbon thus provides for the **participation of the representatives of national Parliaments in the Conventions** in charge of examining the drafts of ordinary revisions of treaties and of adopting, by consensus, a recommendation to the Conference of the Representatives of the Governments of Member States convened to reach a common agreement on the modifications to the treaties.

Similarly, article 12 of the treaty sets down the principle of the **participation of national Parliaments in the assessment mechanisms of the implementation of the policies of the Union in the freedom, security and justice area** and their involvement in the political monitoring of Europol and the assessment of the activities of Eurojust. Following on from this, Article 71 of the Treaty on the Functioning of the European Union in its wording subsequent to the Treaty of Lisbon provides that national Parliaments be kept informed of the work of the standing committee set up within the Council to ensure within the Union the promotion and the strengthening of operational cooperation in internal security matters.

A New Role in European Decision-making

This package of prerogatives sets down an unusual role for national Parliaments: **making sure, on a daily basis, that Europe proves its worth to its citizens** and participating in the essential scrutiny of the real efficacy of the actions undertaken by the Union.

These prerogatives should indeed encourage us to make genuine progress in the ways in which we become involved in European affairs.

Thanks to the monitoring of subsidiarity, European drafts may be referred very early on to national Parliaments which will have the means to influence them and to throw off their former reduced role of pure rubber-stamp Chambers which ratified, after the event, European laws which apply to all.

Thanks to their prerogatives concerning the revision of treaties which are a legitimate addition to their sovereign power of ratification, they will carry much more weight in the drawing-up of the main principles in the construction of Europe.

Thanks to their rights of objection, they will possess the means to make sure that a healthy division of powers exists thus ensuring that the Union can concentrate its expertise and its ambition on the fields in which it can bring real progress and does not get lost in vain obsession with nit-picking regulations.

The monitoring mission of the construction of the common freedom, security and justice area will mean that in such important matters for the everyday lives of our citizens, efficacy and justice will be the incentives for action.

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BECOMING OPERATIONAL FROM THE BEGINNING OF THE NEW TERM OF PARLIAMENT

The progress brought by the Treaty of Lisbon provides essential answers to the need for democracy. In such a context it would be unfortunate not to take advantage of the impetus for democratic mobilization provided by the elections of 2009 and of the new phase in legislative activity, to implement the new provisions which themselves represent pledges to the European peoples of our unshakable desire to strengthen European democracy.

It was thus guided by this idea and mindful of the urgency of responding to the concerns which the Irish people had recently expressed that, during the Conference of Speakers of Parliaments of the European Union in Lisbon on June 20 and 21 last, I proposed **the early implementation, for those countries which so wished, of the provisions of the Treaty of Lisbon dealing with the new powers given to national Parliaments.**

This step does not in any way prejudge the result of the ratifications of the treaty which remain solely within the sovereign remit of each member state.

Its objective is much more moderate. If within the Treaty of Lisbon there are items which can strengthen the very link which unites Europe and its peoples and if certain of these provisions may be applied as of now on a voluntary basis, then why should we wait?

We know today that after twenty-five national Parliaments had ratified the treaty, the European Council reached agreement on a way out of the crisis which includes the passing of legal guarantees answering the concerns of the Irish people and the maintaining of a European Commission with one commissioner from each member state. At the same time the Parliament of the Czech Republic began the consideration of the ratification bill. This situation allows us to imagine the possibility of the new treaty coming into force although this would nonetheless not be prior to autumn 2009.

However the democratic deadline of the European elections will occur in the summer of 2009. **We must be ready to take on our new responsibilities from the beginning of the next term of the European Parliament.**

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The Precedent of the Direct Transmission to National Parliaments of the Drafts of the European Commission

How can we do this? The European Commission has already shown us the way.

President Jose Manuel Barroso proposed, from the end of 2005, **testing the monitoring of subsidiarity** by national Parliaments on an informal basis, although the treaties made no mention of it. The European Council of June 15-16, 2006 took note of the initiative of the Commission and set down its guidelines by:

– approving the commitment of the Commission to make all its new drafts and consultation documents ‘directly accessible for Parliaments’;

– setting out a particularly broad range for monitoring so that Parliaments could formulate observations ‘in particular as regards (thus not exclusively) the principles of subsidiarity and proportionality’;

– inviting the Commission to examine ‘with all the attention required’ parliamentary opinions.

On this basis, the Commission undertook to transmit directly to national Parliaments, as of September 1, 2006, all of its draft directives and regulations, its consultation documents (white papers and green papers) and its annual work programme. Since this date, it has gathered their opinions and answered them.

This procedure has been truly successful. National Parliaments have provided more than 200 opinions on around one hundred drafts.

The French National Assembly has thus examined the draft regulation on the competences and rules concerning the law on matrimonial matters (September 26, 2006), the draft directive on the full accomplishment of the internal market of Community postal services, the draft framework decision of the Council on combating terrorism (December 19, 2007), the draft directive concerning the implementation of the principle of equal treatment between persons irrespective of religion, belief, disability, age, or sexual orientation (July 22, 2008), the draft directive concerning the protection of animals used for scientific purposes and the draft directive on the standards of quality and safety of human organs intended for transplantation (January 28, 2009). In this context it has raised two opinions contesting the conformity with the principle of proportionality of the draft directive on the full accomplishment of the internal market of Community postal services (opinion of December 19, 2006) and the draft directive concerning the protection of animals used for scientific purposes (opinion of January 7, 2009).

Clearly the opinions thus issued do not contain today the legal effects with which they are provided by the Treaty of Lisbon. They nonetheless possess a certain political weight. They are, in particular, a testimony to the **desire of national Parliaments to embrace their new monitoring mission with vigour.**

The procedure thus initiated by the European Commission has, in addition, encouraged national Parliaments to set up methods for collective work and to thus develop dynamic parliamentary cooperation which increases the effectiveness of monitoring.

The Conference of the Speakers of the Parliaments of the European Union thus approved the modernization of the working of the IPEX project which is a database gathering and making available to its users, all the documents published by the European Commission since 2006 to which must be added the various monitoring documents coming from the national Parliaments.

The Conference of Community and European Affairs Committees has, in its turn, greatly encouraged the use of the monitoring of subsidiarity and proportionality. It carries out, in particular, pilot exercises which urge national Parliaments to examine drafts of the Commission which have been pre-selected on account of their specific importance or of the possible difficulties they pose concerning the respect of the principle of subsidiarity.

More recently, the working group of permanent representatives of national Parliaments to the European Union, presented to the XLth COSAC, which was held in Paris on November 3-4 last, proposals to improve cooperation concerning the application of the principles of subsidiarity and proportionality, particularly encouraging regular, early and informal exchanges of information on the examinations carried out by the various Chambers using the network of permanent representatives.

The national Parliaments have thus become used to their new mission, pinpointing the possible difficulties which could be created by the system of the Treaty of Lisbon (raising for example the question of the inclusion of weeks of parliamentary recess in the calculation of the eight-week limit set down for reasoned opinions) and thus finding themselves today in a position to carry out with efficiency their monitoring remit and the parliamentary cooperation which increases its impact (and which, if and when the Treaty of Lisbon comes into force, leads to its legal consequences).

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Four Proposals to Go Further

Dans un esprit comparable, une nouvelle étape dans la mise en place des prérogatives parlementaires pourrait être franchie dès le début de la prochaine législature du Parlement européen.

In a similar way, a new stage in the implementation of parliamentary prerogatives could be reached as of the beginning of the next parliamentary term of the European Parliament.

Proposal no. 1

It would thus be possible to **request the Council of the European Union to directly transmit to the national Parliaments its draft legislative acts** (regulations, directives, framework decisions and decisions) so that the national Parliaments could be in a position to express their opinion, on an informal and voluntary basis which could take the form of a letter addressed by the Speaker of the Chamber concerned to the President of the Council, on all draft acts examined from the beginning of the new term of the European Parliament. This is traditionally a time when drafts representing the new political impetus linked to the elections are concentrated.

It is important to remember that article 31 of the Treaty on European Union, in its current wording, provides each member state with the initiative to submit to the Council of the Union draft framework decisions and decisions dealing with the area of police and judicial cooperation in criminal matters.

These decisions often have a **particular importance as they deal with matters at the very heart of the daily lives of our fellow citizens**. They therefore call for very specific attention on the part of national Parliaments so as to oversee the respect of the principle of subsidiarity. Such transmission would, of course, have no legal consequences for European institutions.

Proposal no. 2

When it comes to the effect of parliamentary opinions, it would appear feasible today to invite the national Parliaments which wish to do so, **to take a step together when a significant number of Chambers or Parliaments, for example ten or so, are in agreement** on the fact that a draft European act goes against the principle of subsidiarity.

Thus, for example, having been alerted by means of the network of their permanent representatives in Brussels, the volunteer national Parliaments could take the initiative of addressing a common letter to the President of the European institution concerned. Such a step would lend a certain formality to the observations on which several Parliaments agree and would, without any doubt, strengthen the impact of the monitoring so-carried out.

Proposal no. 3

The current European situation also provides the opportunity of **immediately increasing the participation of national Parliaments in the assessment mechanisms of the implementation of Union policies in the freedom, security and justice area.**

In 2010 the Union is due to draw up a new multi-annual programme which will set out the priorities for joint action in the area of freedom, security and justice and will replace the programme of The Hague. The European Commission showed its commitment to launching a broad preparatory debate by opening up a public consultation on September 25 last.

In this context, it would be possible to set up **a broad parliamentary forum which would meet ideally in Stockholm several weeks before the European Council announces its decision on the future programme.** In the meantime, 'correspondents' could be specially appointed in the volunteer national Parliaments so that the proposals of their parliamentary colleagues could be relayed to Brussels and that an impetus could be given to the debates within their own assemblies.

Proposal no. 4

As was mentioned above, the Treaty of Lisbon recognizes that national Parliaments have a decisive role to play in deciding the main principles of European construction thanks, on the one hand, to their participation, as of right, in the future Conventions responsible for debating in advance any significant modification in the treaties and, on the other hand, their right to veto any simplified revisions of the treaties.

In following this logic, it would appear useful that **national Parliaments be involved in the work of the reflection group on the future of Europe for the year 2030** chaired by Mr. Felipe Gonzalez, for example through the setting-up of an *ad hoc* inter-parliamentary meeting immediately preceding the presentation of the reflection group's report to the European Council in June 2010.

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