

THE CZECH AND THE SLOVAK PARLIAMENTS AFTER THE LISBON TREATY

David Král, Vladimír Bartovic

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FOREWORD

The publication you are about to open is an output of a project called New role of the national parliaments in the EU decision-making processes: previous experience and new challenges pursuant to the Lisbon Treaty, undertaken by EUROPEUM Institute for European Policy together with the Institute of Public Affairs in Warsaw and Stiftung Wissenschaft und Politik in Berlin with the financial support of Heinrich Böll Foundation.

The aim of the project was to map the standing practice of dealing with the EU agenda in four parliaments of EU member states: the Czech Republic, Slovakia, Poland and Germany, and to analyse to what extent the legislative bodies of these countries are prepared for the changes in their position brought about by the Lisbon Treaty.

The role of national parliaments is enhanced by the last treaty amendment especially by the introduction of the preliminary control of the subsidiarity principle, enabling to a group of parliamentary chambers in the EU to push the European Commission to reconsider its legislative proposals, and opening a possibility of direct access to the Court of Justice of the EU by initiating the annulment procedure. At the same time, however, the Lisbon Treaty introduces a possibility of using a simplified procedure of the founding treaties revision by using the so-called dynamic clauses, which have a potential of limiting the national parliaments' say in this process. Thus part of the project was the examination of how far the parliaments of the respective countries have prepared themselves for these specific changes.

This publication contains papers analysing the situation in two countries under examination – the Czech Republic and Slovakia, which were elaborated by EUROPEUM Institute for European Policy. We believe that these two papers will provide for a very interesting comparison from the point of view of different practice of both parliaments, arising from the different characteristics of monocameral Slovak parliament as opposed to its bicameral Czech counterpart. Both studies also serve as an input into a more extensive comparative study which will be published by the Centre for European Policy Studies in Brussels in 2011.

The authors

THE CZECH PARLIAMENT AND THE EUROPEAN AGENDA: FROM SLEEPING BEAUTY TO CINDERELLA?

David Král

1. Key findings

- The two chambers of the Czech parliament – the Chamber of Deputies and the Senate – have thus far taken a different approach to dealing with EU issues. The Senate has adopted a more proactive approach to the European agenda, including thorough examination of the Lisbon Treaty in the ratification process, regular examination of subsidiarity principle, engagement in the direct communication with the Commission and pushing for legislative changes that would domestically anchor the enhanced role of the national parliaments in the Lisbon Treaty.
 - The Czech parliament is structurally well prepared to assume a proactive role in those aspects where the Lisbon Treaty has the potential of weakening the national parliaments' roles, especially in relations to the so called dynamic clauses. This was achieved mainly through the amendment of the rules of procedure of both chambers. It however remains to be seen to what extent the Parliament will be using these new instruments. It might also turn out that further constitutional changes will be necessary.
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- The Senate initiated the compatibility review of the Lisbon Treaty with the Czech constitution by the Constitutional Court, with another reference by a group of senators. The process reflected concerns that according to the Lisbon Treaty, many provisions of the Czech constitution (including the role of parliament) will be weakened. Despite the negative political repercussions at European level, domestically the process was helpful as it opened a wide debate in the parliament and precipitated active interaction with other actors, especially the government.
 - The Senate, unlike the Chamber of Deputies, has already actively engaged in the political dialogue with the Commission on its legislative proposals in the framework of the Barroso initiative. However, the Senate does not view this as a powerful tool of influencing the Commission's proposals and the communication is viewed mainly as a symbolical gesture; thus the main leverage is likely to remain in the domestic government-parliament relations.
 - The control of the EU agenda of the government is based on relatively well established relations between the legislature and the executive. But better co-ordination is required in terms of parliamentary scrutiny of potentially sensitive European legislative proposals that would eliminate subsequent problems in implementation. Another challenge is shortening the period in which the government's framework positions are communicated to the parliament for parliamentary examination.
 - The Lisbon-inspired amendments of the rules of procedure of both chambers have introduced strong parliamentary scrutiny over the possible use of the dynamic clauses in the Lisbon Treaty (passerelle clauses, simplified Treaty amendments and flexibility clause), obliging the government to seek preliminary assent of the parliament before it can agree with the use of these clauses at the European level.
 - Both the Chamber of Deputies and the Senate participated in all the pilot subsidiarity checks carried through COSAC before the entry into force of the Lisbon Treaty. But the lessons learnt make them rather sceptical towards the possibility of activating yellow or orange cards at the European level. In the view of the Czech parliament, the *ex antes* subsidiarity check remains a rather toothless mechanism, mainly due to the relatively short 8-week period for gathering the necessary quorum of protesting parliaments and due to very different attitudes towards scrutinising subsidiarity in national legislatures across the EU. The maintaining of certain co-ordination through COSAC can thus play an important role in achieving an effective subsidiarity control at the European level.
-

- The rules of procedure of both chambers have domestically regulated the *ex post* control of the subsidiarity principle compliance, giving them the right to pass resolution seeking the action for annulment of a disputed EU legislative act and obliging the government to submit such action to the Court of Justice of the EU. The mode of communication with the government in this process, however, has yet to be operationalized.

2. General introduction to the Czech parliament: its role in European affairs and its constitutional framework

The Czech Republic, after the division of Czechoslovakia in 1993, opted for a model of parliamentary democracy, with a strong scrutiny of the executive power (represented by the government) by the elected representatives. The Czech constitution, adopted in December 1992, envisaged a bicameral parliamentary system following the tradition of the so-called First Republic (1918–1938) of former Czechoslovakia. The lower chamber – the Chamber of Deputies – assumed its legislative power immediately upon the effect of the division of the country by transformation from the Czech National Council, the former legislative body in the Czech part of the federation. However, it was not until 1996 that the upper chamber of the Czech parliament – the Senate – was created. The delays in setting up the Senate were caused by doubts about the usefulness of this body for a mid-sized country with no strong historical or autonomous regions that would justify the existence of such chamber. On the other hand, its proponents claimed firstly that the wording of the Constitution has to be implemented, secondly that the different logic of the composition of the Senate should assure improvement of the legislative process, as well as legislative continuity (Senate, unlike the Chamber of Deputies, is non-dissolvable) and a long-term reflection on policy issues of a strategic nature. The Senate, unlike the Chamber of Deputies, is elected by a different electoral system (two-round majority system), which has assured that the senatorial elections are often more of a race among personalities rather than among political parties. A higher threshold for standing for the senatorial elections (40 years) should assure that this chamber consists of experienced public figures. The weaker role of the Senate (*vis-à-vis* the government – the Senate does not have the right to approve or dismiss it), as well as the lack of budgetary authority, allow the Senate to concentrate more on the exercise of those powers that are conferred to it by the Czech constitution, i.e., especially those of constitutional nature (constitutional

acts) and ratification of international treaties where the Senate has a veto, as well as the overall improvement of the legislative process by either tabling its own proposals (Senate as a whole has the right of legislative initiative), or tabling amendments to the laws already passed in the Chamber. Finally, the different electoral cycle of the Senate assures that it is rather difficult to reach the situation when both chambers of the Parliament would be under the control of the same party (or parties), let alone this party (coalition) holding the so-called constitutional majority (3/5 of votes cast in the Chamber and 3/5 of all senators) necessary for amending the Czech constitution.

	Chamber of Deputies	Senate
Number of mandates	200	81
Electoral system	Proportional	Majority (two-round)
Electoral cycle	Four years	Six years (1/3 re-elected every second year)
Number of committees (2010)	17	9
Number of members of the EU committee	15	9

Table 1: The two chambers of the Czech Parliament: basic comparison

When examining the involvement of the Czech parliament in the European agenda, one has to take into account several factors. The first factor is a material one, meaning that the type of document to a large extent determines the way in which it is being handled and examined. Naturally, the most important in this respect are the founding treaties and their amendments (i.e., the primary law of the EU) which by their nature have to be approved by the parliament. As far as the secondary law instruments are concerned, we can distinguish between legislative and non-legislative ones, especially after the entry to force of the Lisbon Treaty. The legislative acts are likely to merit greater attention, particularly directives which will have to be implemented by an act of parliament subsequently. Although this is not exclusive – both chambers of the Czech parliament often deal with communications and other non-binding documents, often of strategic nature. Another important element is the time factor. From this perspective, several milestones are crucial for the examination of the Czech parliament's control over the EU agenda: for instance the EU accession, the current political composition of each chamber after the elections,

or the topical priorities of the Czech Republic in the EU (which is closely linked to the elections that determines the composition of the government). Last but not least, there are exposed moments in the EU (such as the crisis points), the most important of which in the Czech case so far has been arguably the EU presidency. Thanks to this, both chambers acquired brand new experience in EU-related policymaking and which were reflected *inter alia* in the establishment of the Chamber of Deputies' representative at the European Parliament (the Senate has already had its representative at the European Parliament since November 2004). The third factor is the different character of the two chambers. While in the Chamber the government normally holds the majority, it is more likely that the Chamber will leave more leeway in tackling the European agenda to the executive without scrutinising it thoroughly. On the contrary the Senate to whom the government is not directly accountable is more likely to hold an autonomous (and as the experience shows often also activist) attitude towards the European agenda.

The constitutional definition of the role of the parliament in the EU-related issues is relatively new and was anchored in the Czech constitution by the so-called constitutional Euro-amendment adopted in 2002. Until then, there was no pressing need for having the role of the parliament in EU matters regulated constitutionally. This links to the fact that European issues were viewed as a part of foreign policy, which is the domain of executive power where the parliament scarcely scrutinizes the government, except for very sensitive issues such as the deployment of Czech troops abroad over 60 days, or the missile defence treaty with the USA. However, as the EU accession was approaching, both chambers felt a pressing need for having a constitutional reference to the EU activities, setting the basic framework for government – parliament relations. Article 10a of the Czech constitution provides for the possibility of transferring *some* competences from the Czech Republic to an international organisation or institution (i.e., not necessarily only the EU), while Article 10b regulates the parliament-government relations with respect to the EU, as well as relations between the two chambers. However, these articles are the necessary minimum, and a lot of other provisions are contained in the implementing acts (especially rules of procedure of both chambers) or internal directives of the government. The brevity of constitutional regulation thus opens a potential room for a very strong interpretative role of the Constitutional Court, as we have seen on the rulings in the so-called Lisbon I and II cases (further discussed in the chapter devoted to the assent to founding treaties).

3. Organisation of the European agenda in both chambers

To understand the logic of the parliamentary dealings with EU issues, we have first to analyze how the European agenda is handled inside the parliament, while noting who the relevant actors are and what are the basic lines of communication between the Czech legislature and executive.

Both the Chamber of Deputies and the Senate have set up the relevant committees whose task is to deal with the EU-related issues, reflecting a long-standing practice of other EU parliaments. In the Chamber, this is the so-called Committee for European Affairs, in the Senate it is the Committee for the EU affairs. Both committees have evolved originally from subcommittees within foreign affairs committees in both chambers, which handled the EU agenda as the European Union was still a matter of foreign policy. In the Chamber, the separate Committee for European integration was set up in mid 1998, which reflected the start of the EU accession negotiations and a perceived need for a more intensive scrutiny of European issues. Similarly in the Senate, the Committee for European integration was set up after the by-election in autumn 1998 and building on its predecessor – the subcommittee for European integration which was part of the Foreign, Defence and Security committee of the Senate. After the accession, both committees have been renamed into the committees on the EU, which was both a reflection of the fact that the Czech Republic became a member state and that the nature of the work of the committees changed. Until this time, the committees were mainly controlling the implementation of European legislation, overall state of preparations for membership and monitored the progress of accession negotiations. However, no strong parliamentary scrutiny vis-à-vis the government was established, for instance the committees did not have a mandate to approve the Czech positions documents for the EU accession negotiations but was only regularly informed on their progress. During the Convention on the Future of Europe, we can start to sense an increasing divergence between the activism of the two committees, which prevails until today. The senatorial committee became much more activist: for instance, it took auspices over the National Forum on the future of Europe and organized a variety of public hearings on different aspects that the Convention was debating, especially on the institutional issues, inviting both Czech and foreign experts and different non-governmental actors. In February 2002 on the committee's initiative, a specific sub-committee for Intergovernmental Conference in 2004 was created, consisting of 17 senators, whose aim was to reflect on the questions defined in the Laeken Declaration and to formulate Czech Senate's positions for the upcoming IGC. The subcommittee was meeting

regularly after each session of the Convention and analyzed the report of the Senate's representative (Josef Zieleniec). On the contrary, the EU committee in the Chamber was temporarily weakened with the departure of a few MPs to the European Parliament after the European Parliament elections in June 2004, and their substitutes had to build up expertise in European issues. A substantial period of its weakening was also the second part of 2006–2010 legislature when the committee was missing a chairperson over a relatively long time, which was reflected in its loss of drive and relative inactivity.

The support of the day-to-day work of both committees naturally requires a strong expert and administrative background, as the volume of the EU agenda handled by them is enormous and still increasing. In case of the EU committee in the Chamber, such support is provided by the European Union Department of the Parliamentary Institute. The department is tasked with several main areas of activity: analysis of documents and information relevant for the Committee's deliberation and the rapporteur's activity, processing of a regular monthly overviews of EU documents, analysis of compatibility of government-proposed legislation (in conjunction with the legislative department of the Office of Government) with the *acquis* in the process of preliminary consultations between the government and the parliament, as well as examination of compatibility of other draft bills (particularly those not emerging from the government) with the *acquis*. The latter two points were the core of the Department's agenda in the pre-accession period; after the accession, the scope of its activities has naturally expanded especially to preparing the overviews of the EU legislation in the pipeline and analysis of its possible impact on the Czech Republic. In the Senate, similar expert support for the EU committee is provided by the EU Department, established within the Foreign Affairs Section of the Senate's Chancellery. Its mission is very similar to that of the Parliamentary Institute's EU department – sorting of EU legislation dealt with in the Senate, weekly overview of the EU legislative proposals and communication documents, interaction with the government in exercising parliamentary control of the European legislative process, analysis of the EU draft legislation and governmental positions on them, providing information on EU institutions with a specific importance for the Senate, preparation of conferences, public hearings and/or documents for COSAC¹ meetings, and providing information on the outcomes of preliminary control of the EU legislative process in the Senate². The Senate's EU committee

1) COSAC stands for the conference of the European committees of parliaments in the EU.

2) For the EU scrutiny in the Senate please refer to:

http://www.senat.cz/evropa/zakladni/nasenatu.php?ke_dni=22.11.2010&0=7# (in Czech)

also disposes with a secretariat, consisting of a chief secretary, secretary and a legal expert, the latter dealing with the interfaces between European and national legal order and focusing mainly on subsidiarity check³.

It is important to point out that the Constitution in the quoted Article 10b envisages the possibility of setting up a joint body between the two chambers for the purpose of controlling the EU activities at large. However, until now such joint body was not created, despite the fact that there was a proposal initiated by the Senate in that respect⁴. On the contrary, the tendency is to let both committees exercise their right of governmental scrutiny in European matters separately. This applies for instance to the application of the dynamic clauses of the Lisbon Treaty in the Czech context, or the subsidiarity scrutiny, as will be explained later on. There is a modest interaction between the committees, which strive to have regular informal contacts focused on particular issues of mutual interest, but no permanent structure and co-operation. The huge material span of the European agenda these days means that the members of both committees have an interest to deal with specific topics, which do not have to be identical in both chambers. Therefore, the European legislative proposals that are more likely to attract the attention of the two committees are those where their members believe to have a certain expertise. Another key element in this respect is the personality of the chairperson, which is instrumental in determining the nature and topics of examined dossiers (along with the expert parliamentary staff), as well as frequency of deliberations.

Both chambers reflect not only on particular European legislative proposals (often more sensitive ones, such as service directive, Visa Information System regulation, conflict of laws in matrimonial matters) but also on broader and more strategic issues of the EU development (Lisbon Treaty, enlargement strategy, financial regulation, demographic developments in the EU). For this reason, among their resolutions we often find those that relate to non-binding communication documents of European Commission (such as white and green books), which are of a longer-term strategic character.

3) EU Scrutiny in the Czech Senate: http://www.senat.cz/xqw/xervlet/pssenat/webNahled?id_doc=49602&id_var=42031

4) The Senate proposed the adoption of the so-called Liason Act. The act was not adopted mainly due to the objections on part of the Chamber, as this act contemplated not only their joint deliberations on European issues but also for instance on indirect election of the President (which would reflect the current constitutional procedure); however, there was a strong motion in the Chamber to switch to the direct election, and many deputies were thus reluctant to petrify the current system in yet another piece of legislation.

4. Assent to founding EU Treaties and their amendments: Parliament vs. the Constitutional Court

The parliamentary assent to the changes in primary EU law is thus the strongest competence that parliament has with regard to the EU. Article 39⁵ of the Czech constitution in connection with Article 10a thus requires the Czech parliament to give its approval to any changes of the EU funding treaties (or any new treaties), representing a standard procedure across the EU and highlighting that the national parliaments are still the “masters of the treaties”. This is so unless the Czech parliament itself decides that its assent should be substituted by referendum, which would require its specific constitutional act. Furthermore, Article 39(4) of the Constitution stipulates that such treaty involving competence transfer has to be approved by the constitutional majority, i.e., 3/5 of all the deputies and 3/5 of the votes cast in the Senate. This illustrates the importance of the EU treaties in the Czech legal order and promotes the parliamentary scrutiny to the same level required for amending the Constitution.

The Czech parliament has exercised this competence according to Article 10a only once, and this was in respect to the ratification of the Lisbon Treaty. In case of the EU accession treaty, the parliament has approved a specific constitutional act authorizing a referendum, which in this case replaced the parliamentary assent. The EU accession referendum was conceived as binding and for this reason, the accession treaty was never referred to the parliament. The EU Constitutional Treaty was never referred to the Czech parliament by the government, in the context of uncertainties surrounding its ratification after the rejection by the French and Dutch citizens in May and June 2005.

But the powers of the Czech parliament in respect to the EU founding treaties are not limited to sole assent to ratification. The parliament has the right to ask the Constitutional Court for examining the compatibility of EU-related treaties (as well as other treaties to which the Parliament gives assent) with the Czech constitutional order. The reason for such provision is to avoid possible future clashes between the EU treaties and the Czech constitution; in a way, it represents an *ex ante* control before the ratification is accomplished. The details of this provision are not, however, set forth in the Constitution itself but in a specific Act on Constitutional Court. Also,

5) Article 39 of the Constitution specifies in which cases both chambers decide by simple, absolute or qualified (constitutional) majority.

this is not purely a parliamentary prerogative, as the right to ask for such compatibility check is also conferred to the president. The respective Act stipulates that the parliament can intervene in three phases. Firstly, any of the two chambers can refer an EU treaty to the Constitutional Court after it was submitted for parliamentary approval by the government. Even if both chambers grant the assent to the Treaty, the Act guarantees the right to a group of 41 deputies or 17 senators to initiate such scrutiny after the assent to ratification had been given. This gives the guarantee that even if there is a strong support for the treaty in both chambers, the Constitutional Court can still examine compatibility, should this quorum of parliamentarians have doubts in this respect. Finally, even if the respective EU treaty is to be approved by referendum, the same quorum of deputies or senators can still refer the matter to the Constitutional Court after an affirmative outcome of such referendum.

Despite the relatively fresh history of the Czech membership in the EU, the Czech parliament used this prerogative of reference to the Constitutional Court already twice in respect to the Lisbon Treaty, the procedure in both cases emerging from the upper chamber. In the first case, the matter was referred to the Court by the Senate as a whole, on the initiative of its EU Committee, in April 2008. In this reference, the Senate asked the Constitutional Court to check the compatibility with the Lisbon Treaty on six particular issues where possible clashes between the Czech constitutional order and the EU law were sensed (case being casually referred to as Lisbon I)⁶. In the second case (Lisbon II), the compatibility check was initiated by a group of seventeen senators, coming mainly from Civic Democratic Party (ODS) and represented by Jiří Oberfalzer in September 2009, i.e., relatively late after both chambers of Parliament gave their assent to ratification. Unlike in the first case, the focus of this reference was far broader, alluding to issues such as democratic deficit of the EU, insufficient representative role of the European Parliament as a compensation for the loss of some of the national parliaments' powers or the necessity of having an imperative

6) In this reference, the Senate asked the Constitutional Court to examine the following points: 1) Whether the new classification of competences in the Lisbon Treaty constitutes violation of Article 1(1): state sovereignty, 2) whether the flexibility clause (Article 308 TEC/352 TFEU) can constitute a general authorisation of the EU to appropriate new competencies, 3) Compatibility of the passerelle clauses with Article 15(1) of the Czech constitution (parliamentary sovereignty), 4) Compatibility of extended scope of treaties in EU competence with those provisions of the Czech constitution relating to international treaties (Article 49 and 63(1), 5) Relation of the European and national dimension of the standard of the protection of fundamental rights, especially in relation to the communitarisation of the third pillar and 6) compatibility of a clause enabling suspension of membership rights with the principle of sovereignty of state and people). For full wording, please refer to Senate resolution of 24 April 2008, 13th session.

parliamentary mandate on all EU decisions declared by the Constitutional Court etc. The senators in this reference asked the Court to examine the compatibility of the Treaty as a whole with the Czech constitution, namely with its articles 1(1) and 2(1)⁷, as well as some specific provisions of the founding treaties⁸. Moreover, the initiators of reference demanded the Constitutional Court to declare that the so-called “legal guarantees to Ireland”, approved by the European Council in June 2009, represent an international treaty according to Article 10 of the Czech constitution, and as such are subject to parliamentary approval by constitutional majority. To add to this, the same group of senators had previously (August 2009) initiated another procedure in front of the Constitutional Court related to the Lisbon Treaty, this time linked to the so-called implementing measures, i.e., amendment of the rules of procedure of both chambers of parliament. The aim of this reference was to ask the Court for the annulment of the parts of both acts introducing the imperative mandate for the Czech government on certain decisions taken at the EU level⁹. Although this reference has more to do with the government-parliament relations on EU matters (and as such will be dealt with later on in the paper), the reason for seeking their annulment was also the alleged incompatibility with the Czech constitution, namely articles 1(1), 6 and 39(4).

It is beyond the scope and purpose of this paper to examine in detail the merit of all these senatorial references to the Constitutional Court, nor the Court’s ruling on them. What is important is to reflect on what this case tells us about the role and activism of the Czech parliament, as well as the Constitutional Court, on the changes in the EU founding treaties. The first conclusion would be that the Czech parliament, when the Lisbon Treaty was submitted to its approval, was very well aware of the mechanisms and procedures provided by the Czech legal and constitutional order for intervention. It is difficult to assess what were the real motives behind the three mentioned references; many experts believe that this motion was a sign of political immaturity, squabbling and delaying tactics, rather than an

7) Article 1(1) stipulates that the Czech Republic is a sovereign, unitary and democratic state respecting rule of law and founded on the respect for human and citizens’ rights and freedoms. Article 2(1) stipulates that people are source of all the state power which is executed through the authorities of legislative, executive and judiciary power.

8) For the full wording of this reference to the Constitutional Court, please refer to its website:
http://swwww.usoud.cz/assets/N_vrh_Lisabonsk__smlouva_29-9-2009.pdf (available in Czech only)

9) The imperative mandate as defined in the amended rules of procedure means that the Czech prime minister has to seek an active approval of both chambers of parliament before he/she can take a vote in the European Council on the so-called “passerelle” clause or any Czech representative of the Council takes vote on a legal act based on the so-called flexibility clause. For further reference please refer to the chapter Changes in the Czech parliaments’ role after the Lisbon Treaty.

expression of a deep reflection on the possible consequences of changes in the primary European law brought about by the Lisbon Treaty. One would probably have to distinguish between the first reference which was rather well articulated and reasoned, while the second was far more general, even vague, and referring to many points on which the Constitutional Court already ruled in the first Lisbon judgement.

The Constitutional Court also determined the limits to which the parliamentarians can exercise their right to demand the compatibility check, mainly on the procedural front. In its Lisbon II ruling, the Court stipulated that the compatibility review procedure cannot be misused as a political tool to delay the ratification of the treaty. It also held that the request must be lodged within a reasonable timeframe, i.e., without unnecessary delay, because this is required under international law and would thus put the Czech Republic at risk of failing to meet its international obligations. In the Lisbon II case, the time lapsed between the senatorial approval of the treaty and the reference to the Constitutional Court was thus not reasonable (it represented approximately five months), but as such time lapse was not stipulated explicitly in the Constitutional Court Act, the Court nevertheless accepted the case. The feeling that the complaining senators were using the procedure as a mere obstructionist strategy was even strengthened by the fact that they amended their reference three times in course of the Court's deliberation. On the other hand, on the matters of substance the Constitutional Court confirmed the primary role of the parliament and in fact refused to supplicate its role in defining the limits of the transfer of competences to the EU, claiming that this is a political decision that must be taken by the parliament and not by the Court that can only effectuate the scrutiny once such transfer of competences has been approved. In this respect the ruling was different, for instance, from that of the German Constitutional Court who took a far more activist approach¹⁰.

Another observation is that the ratification was handled in a different way in the Chamber and in the Senate. Although in the Chamber the assent to ratification was not very smooth, the Senate eventually took a much more pro-active position in respect to the Lisbon Treaty, which materialized in the two references to the Constitutional Court but also in the initiative to amend the domestic legislation to enhance the parliaments' role as a condition for the assent to the Treaty (although this was done in a close

10) For details refer to e.g. the publication "The European Inspiration from Karlsruhe", published by the EU communication department of the Office of Government of the Czech Republic (available in Czech only).

co-operation and agreement with the lower chamber and the government). While the lower chamber, quite logically, finally inclined towards supporting the government (despite its fragile support therein), the senators took a much more autonomous views even if it contradicted the governmental position and even if they represented the strongest party in the government (Civic Democratic Party, ODS). To what extent this will indicate a permanent cleavage for the future is difficult to say at the moment. The opposition of the Senate to the Lisbon Treaty is partially explicable by political rather than structural reasons (arising from different character of both chambers), due to the internal fight inside ODS between Euro-doves (at that time represented in the government and having firmer control of the Chamber of Deputies) and Euro-hawks, many of whom were present in the Senate and were often backing a sceptical attitude of President Klaus. It can also be assumed that the changes of primary EU law will not be part of a regular business of the parliament (as they will hopefully not occur often in the future), so it will be rather difficult to build an institutional memory based on Lisbon I and II cases¹¹. One way of eliminating or limiting the problems with parliamentary ratification would be to engage the parliament more intensively in the debates before the treaty is adopted, which would enable to the government to signal its red light in EU-level negotiations and potential ratification problems. However, large bulk of the debates between the Parliament and the Constitutional Court centred around the so-called “dynamic clauses” and the safeguards that the Parliament required to anchor domestically to agree with the Lisbon Treaty ratification. Finally, the attitude of the Constitutional Court played a crucial role too. The incumbent Czech Constitutional Court is extremely activist, willing to take rulings on highly political matters and – unlike, for instance, the German Constitutional Court – composed not only of renowned legal experts, but also of former politicians. Its future shape can also influence the debates and reflection on the changes in primary law in the Czech Parliament.

11) The lower frequency of the future changes in the founding treaties cannot be, however, taken for granted. For instance, the European Council conclusions of 29 October 2010 presume further changes in primary law in a very near future. The character of those changes is not known yet and most probably will be decided only after this study is published (by the European Council in December 2010). See http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/CS/ec/117512.pdf

5. Parliamentary scrutiny of the EU agenda

To recall the constitutional setup of processing the European agenda, the basic parameters of co-operation among domestic stakeholders are defined in the Article 10b of the Czech constitution. The provision is very general, consisting of three paragraphs, the first one dealing with the government-parliament relations, while other two deal with the processing of the European agenda inside the parliament and in between the two chambers.

The Constitution states that the government regularly and in advance informs the parliament about the questions relevant to the Czech membership in the EU, as well as obligations arising thereof. Clearly, the aim of this article is to set up a regular dialogue between the government and the parliament on the EU related matters. However, the constitutional regulation is very broad and thus one has to look much more into the structure of both the government and both chambers of parliament to understand how this works in practice. Moreover, a more specific legal regulation determining how the system is operationalised can be found in three basic documents: the rules of procedure of both chambers of the parliament, as well as in the government directive, regulating the submission procedure of EU-related documents to both chambers¹².

The parliamentary control of the European agenda is centred around several elements. The first is the parliamentary deliberation on the draft legislative acts and other documents of the European Commission. The second is the parliamentary scrutiny of the governmental activities at the EU level, namely its positions for the negotiations in the European Council or the individual sectoral Councils. The third area is the watchdog function in relation to the subsidiarity principle. Finally, there is the parliamentary approval of the changes in the EU primary law where the parliament's assent is required, which was already analyzed. However, this last area will in the future include also the use of the so-called "dynamic" clauses¹³ of the Lisbon Treaty, probably more than the classical process of ratification of amendments of founding treaties. Last but not least, part of the agenda is

12) Senate: Act n. 107/1999 Sb., as amended, on the rules of procedure of the Senate; Chamber: Act n. 90/1995 Sb., as amended, on the rules of procedure of the Chamber of Deputies; Government Directive on the procedure of the submission of the draft legislative acts of the EC/EU and materials of the European Commission to the Chamber of Deputies and the Senate of the Parliament of the Czech Republic (annexed to the Government resolution of the 7 June 2006 n. 680)

13) By dynamic clauses in the Lisbon Treaty we refer particularly to the following: the simplified procedure of amending Part III of the Treaty on Functioning of the European Union (Article 48(6) TEU), the passerelle clauses : general (Article 48(7) TEU) and specific (relating to the harmonisation of family law with cross-border elements), as well as the flexibility clause (Article 352 TFEU).

also examination of the Czech nominations for the key EU posts, such as the Czech commissioners or nominees to the Court of Justice of the EU, although the final decision rests with the government.

The two areas of key importance are the parliament's role in scrutinising the EU legislative process (including the subsequent transposition of European legislation into the Czech national legal system), and the scrutiny of the government's activities in the EU. The two are ultimately interconnected, as the government's representatives in the Council normally act as co-legislators. On the other hand, the parliamentary scrutiny of governmental activities is wider and includes also those areas where the Council acts in a non-legislative capacity (for instance decisions taken in the European Council, in matters relating to Common Foreign and Security Policy, or until recently in many areas relating to the former third pillar).

Scrutiny of the European legislative process: Parliament vs. the Commission

The regulatory framework of how the Chamber of Deputies and the Senate scrutinize the EU legislative process is defined in the respective rules of procedure of both chambers. In both cases, these oblige the government to submit the draft legislative acts without further delay after the government receives such drafts from the respective European institutions. This happens via an automated information system called EU Extranet. The documents are submitted to the relevant committees in both chambers, normally their EU committees, except for CFSP related documents, which the Senate are in submitted directly to the Foreign, Defence and Security Committee (FDSC). This is not the case in the Chamber where all the EU-related documents are always screened by the EU affairs committee, including CFSP matters. Until coming to force of the Lisbon Treaty also the third pillar draft acts were firstly examined by the FDSC in the Senate¹⁴. Both European committees provide weekly overview of current proposals in the European legislative process, which has a form of tables where the support expert apparatus (EU Affairs Department of the Parliamentary Institute in case of the Chamber and the EU Section in case of the Senate) puts annotations, serving as guidance for committee's members for further selection of documents for consideration. There is a slight procedural

14) The abolishment of the pillar structure was reflected only by the Resolution of the Senate of 22 April 2010: see <http://www.senat.cz/xqw/webdav/pssenat/original/55600/47178>

difference between the chambers as to how they process the European dossiers. If the EU committee in a chamber adopts a certain resolution on a piece of European legislation and the plenary does not decide to debate such resolution, such resolution of the EU committee is considered to be the position of the Chamber of Deputies. On the contrary, in case of the Senate, the draft legislation considered by its EU committee has always to be approved by the plenary in order to be considered position of the Senate. This seemingly gives greater leverage but also flexibility to the EU committee of the Chamber, as it is not dependent on the affirmative ruling of the plenary.

The rules of procedure thus give a huge discretion to the committees which pieces of EU legislation will be considered in the Czech parliament. The role of the chairperson in each committee is also crucial, as he/she is instrumental in co-ordination of the selection of dossiers, along with the experts in parliamentary administration, but also as a driver for the work of the committee. The experience in the Chamber illustrates that without a strong chairmanship (such as for the second half of 2006–2010 legislature), the work of the committee suffers substantially. During this period (when for a relatively long time the committee was without chair, only vice-chairpersons being in charge), the members of the committee showed relatively little interest in its work, the committee often did not even reach the quorum to be able to deliberate, let alone pass resolutions. As the former chairwoman of the EU committee in the Chamber mentioned, the membership was considered by the members as “last resort” when they cannot become members of other specialized committees. This fostered the notion (not only by members of the committee itself but also in the Senate and within the government) that the European agenda in general is a non-issue in the Chamber. It yet remains to be seen whether this will evolve into a certain pattern following the 2010 general election. One will probably have to leave some time to the new committee to consolidate – but it seems that with the new chairman (Jan Bauer representing the Civic Democratic Party – ODS who also served on previous EU committee), things might evolve in a different way.

But for sure the enormous amount of the sectoral dossiers that the committee has to handle makes it difficult to attract members with sufficient expertise. Ideally the committees would be composed of members with a special interest in a particular EU policy area for which they could serve as rapporteurs (like in Slovakia), especially in the case of Chamber,

as its committee is more numerous. So far, this has been the case in the Senate, where the EU committee's members have a permanent agenda for which they serve as rapporteurs¹⁵. Although they do not have to be outright experts in all the fields, this system has contributed to their clearer profiling over a longer period.

The lack of expertise within the European committees in both chambers is compensated by the fact that if a very specific legislative proposal is being examined, it is submitted for consideration to another sectoral committee. This is a prevailing practice in the Senate where according to its staff's estimation, more than half of the resolutions proposed by the EU committee are considered in parallel by another specific sectoral committee¹⁶.

When a European legislative proposal is accepted for consideration in the parliament by either chamber, it is a signal to the government impeding its respective minister from taking a vote in the Council on a given legislative proposal, known as the so-called "parliamentary reserve". The period for examination of such a proposal is stipulated in the rules of procedure of the Senate and corresponds – according to the current framework – to eight weeks, which is the time period also set forth in Article 4 of the Protocol on the role of national parliaments in the EU. However, no specific timeframe for examination is stipulated in the rules of procedure of the Chamber and is basically fully within the discretion of the chairperson; presumably this less strict timeframe is because the position of its EU committee can be considered position of the Chamber as mentioned. However, some observers note that the domestic regulation of parliamentary reserve is becoming less important due to the increased scope of majority voting in the Council, thus leaving this mechanism relevant practically only in those areas where unanimity still applies.

An important shift in the parliamentary scrutiny of the EU legislative process was brought about since September 2006 by the first Barroso Commission's initiative of direct communication between the Commission and national parliaments. On basis of this initiative, both chambers of the Czech parliament receive all the Commission documents, including legislative proposals, directly. The Commission accepts the feedback on such proposals not only in terms of the compliance with the subsidiarity principle (where co-ordinated tests have been carried out through COSAC

15) See <http://www.senat.cz/xqw/webdav/pssenat/original/48784/41419>

16) For details see http://www.senat.cz/xqw/xervlet/pssenat/web/evropska_agenda?ke_dni=19.11.2010&O=7. For instance in 2009, 60 documents out of 87 examined by the EU Committee were referred to another sectoral committee for examination.

before the coming to force of the Lisbon Treaty, see further), but also on the substance of such proposals, and reacts to such feedback (although according to the Senate staff, the quality of Commission's responses varies greatly)¹⁷. The Senate has made an extensive use of this initiative¹⁸. In 2009, it was – with 27 opinions on Commission's documents – the second most active chamber across the EU in this respect. For the overall 2006–2009 period, it was among the most active chambers, along with the French Sénat, the UK House of Lords and German Bundesrat. This sharply contrasts with the Chamber of Deputies that has made an extremely scarce use of the Barroso's initiative until now.

	Chamber of Deputies	Senate
2006	1	2
2007	0	9
2008	1	11
2009	1	27
Total	3	49

Table 2: Activity of the Czech Parliament in using the Barroso's initiative. The figures under each chamber represent number of opinions on the documents submitted to them by the Commission. (Source: Secretariat General of the European Commission)

It is necessary to highlight that the activity of the Czech Senate in respect to Barroso's initiative was not limited to appreciating various initiatives or to documents of mainly communicative nature (e.g. green books), but many times made quite a few substantive comments on the Commission's proposals¹⁹. For instance on CAP health check, it articulated objections to

17) For more information please refer to http://ec.europa.eu/dgs/secretariat_general/relations/relations_other/npo/czech-republic/2009_en.htm

18) A complete database of all the reactions coming from the national parliaments is published in the inter-parliamentary database IPEX: <http://www.ipex.eu/ipex/cms/home>. The Commission also publishes annual reports on relations between the European Commission and national parliaments: http://ec.europa.eu/dgs/secretariat_general/relations/relations_other/npo/index_en.htm

19) To give some examples, the Senate has submitted opinions on Council regulation as regards jurisdiction and introducing rules concerning applicable law in matrimonial matters, Council regulation on common organization of market in wine, on Commission's communication on the preparation for CAP health check, annual Commission's reports on relations with national parliaments, proposal of directive on patient rights in respect to cross-border healthcare, proposal for a Directive of the European Parliament and of the Council on standards of quality and safety of human organs intended for transplantation, to name but a few.

degressive direct payments and supported the system of gradual modulation, or expressed support of opening the debate on genetically modified organisms for the sake of assuring the agricultural competitiveness. On the wine market regulation, the Senate raised both substantive objections to the proposal (alleged discrimination of northern wine-growing regions) as well as procedural ones (in this case relating to how the Commission drafted the regulation).

The first reflections on the political dialogue between the Commission and the Senate (Chamber is irrelevant in this respect) show that it can potentially be very important, but as it is in a process of making, the Senate does not yet know what to make out of it. Unlike the domestic parliament-government dialogue, which is well established and tested, the Senate has not really carried out any impact assessment of its involvement in the Barroso's initiative, although it regularly deals with this in its resolutions on the Commission's report on relations with national parliaments²⁰. In fact, it holds the opinion that the Commission should elaborate such impact assessment, as COSAC requested in its contributions to Estoril and Brdo²¹. Therefore, the prevailing feeling so far is that this process is more of a political dialogue rather than lawmaking exercise, which can, nevertheless, lead to a greater sense of ownership once the legislation is approved, and especially if it requires subsequent domestic implementation. Moreover, as the inputs from the national parliaments have been coming on very different Commission's proposals as the annual reports suggest, it can be hardly expected that without concerted effort (like in the case of pilot subsidiarity checks – see further) from the national parliaments the impact on the Commission would be substantial. Although it can be expected that the Senate will continue to participate very actively even in the future, in terms of desired impact on the Commission's proposals, it will rather focus on the well-tested dialogue with the Czech government with the aim of influencing its position for Council negotiations.

20) See for instance <http://www.senat.cz/xqw/webdav/pssenat/original/38531/32516>, <http://www.senat.cz/xqw/webdav/pssenat/original/48142/40849>, <http://www.senat.cz/xqw/webdav/pssenat/original/53895/45725>, <http://www.senat.cz/xqw/webdav/pssenat/original/56862/48240>

21) Conclusions adopted by XXXVIII COSAC, Estoril, 14–16 October 2007; Conclusions adopted by XXXIX COSAC, Brdo pri Kranju, 7–8 May 2008

Scrutiny of the government's EU agenda: Parliament vs. government

The framework of the parliamentary scrutiny the Czech government's EU activities is again included in the respective rules of procedure of both chambers, as well as in the Government resolution n. 680 of 7 June, 2006 (in particular its Annex III).

The enumeration of government's obligations is defined more widely in case of the Senate: the government has to report at least once a year on the state of the EU and likely future developments, on the state of transposition of EU legislation, on the agenda of each European Council and its outcomes, on the decision to undertake changes in the founding treaties, all the proposed legislative acts and the government's positions on them (this list not being exhaustive). In case of the Chamber of Deputies, its rules of procedure merely oblige the government to submit all the draft EU acts to the Chamber through its EU affairs committee. Naturally, the bulk of the government-parliament relations concentrates on the control of the government's position on EU draft legislative proposals.

The Czech system does not have the imperative parliamentary mandate over the executive on its decisions in the EU bodies and institutions, as we know it from some of the Scandinavian EU member states, particularly Denmark. This was true only until the last amendment of both rules of procedure which introduced such imperative mandate on very specific issues but not for a regular decision-making within the Council, although some senators tried to ask the Constitutional Court to rule that each government's vote in the Council should be subject to parliamentary approval (see further).

Regarding European Council, the practice is that the Minister for EU affairs (currently the Prime Minister, due to the absence of the former in the current government after the 2010 election) presents the mandate for the European Council in the EU committee in the Chamber and in the Senate plenary, although it is not automatically required by their rules of procedure. The internal governmental regulation states that this happens only if the respective EU committee asks for this (not only in relation to the European Council but to all Council meetings in general). The committees cannot technically refuse or amend the mandate. What is even more interesting is that the communication of the mandate to the parliament normally takes place on the same day it has been approved by the government; this makes it practically impossible for the committees' members to get familiar with

its contents, and thus there hardly ever is a debate over it in the parliament and no formal resolution in this respect passed.

Regarding regular Councils' agenda, the Czech government is obliged to communicate to both chambers (through their respective committees) its framework positions on matters discussed and decided in the Council. The chambers can demand that the relevant member of government (in the Chamber normally minister or deputy minister, in the Senate EU committee director of a respective department within the administration, but in the plenary also minister) present and explain this position and subsequently pass resolutions on such relevant documents and governmental positions relating to them. These positions are made available to the parliament through the ISAP database, maintained by the Compatibility Department at the Office of Government²². If the Chamber of Deputies (or its EU committee) passes such resolution, the government should take into account the Chamber's opinion in its stance for the Council decision. In case of Senate, no government's obligation in respect to such resolution is formulated in its rules of procedure; however, the Government itself obliges to take the Senate's position into account in the relevant internal directive²³. In any case, this means that opinion of either chamber is not binding on the government, although seemingly the opinion of the Chamber is defined more strongly. Here, we are experiencing a certain paradox – while the Chamber of Deputies has more power vis-à-vis the government (also in the framework of general governmental accountability), it does not exercise it so often. This is explicable by the fact that the government usually has a majority in the Chamber, which does not necessarily have to be the case in the Senate which in certain way exercises its function of a brake (this was the case even when it was of the same colour as the government). The role of the Senate, seemingly weaker, also rapidly increases on those issues where subsequent approval of the Senate will be necessary, for instance on directives where future transposition is expected. The Senate naturally has the strongest say on those issues where its approval is required and it cannot be outvoted by the Chamber, for instance changes in the EU primary law or – until recently – some measures in the third pillar, where the conventions approved by the Council required subsequent ratification in the parliament. One case illustrating possible

22) ISAP: the information system for approximation of law, accessible automatically to the Parliament as well: <http://isap.vlada.cz/homepage.nsf>

23) Governmental directive on the procedure of submitting the EC/EU legislative proposals and other materials of the European Commission to the Chamber of Deputies of the Parliament of the Czech Republic and the Senate of the Parliament of the Czech Republic of 7 June 2006 # 680.

problems in implementation was that of the anti-discrimination directive, where the Senate twice rejected the government's implementing bill, as well as when passing implementing act on the REACH directive. This gives a certain lesson to the government in terms of need for a more intensive *ex ante* engagement of parliament on potentially sensitive issues, as it will be the government that will eventually face the problems of possible infringement procedure. Similarly, it poses challenges on both European affairs committees who are primarily responsible for selection of those dossiers that both chambers will examine. They should be therefore capable of detecting potentially sensitive and contentious issues where without sufficient examination on the governmental position, problems might arise in the implementation phase.

The likelihood of government changing its position for the Council negotiations increases if both chambers take a negative stance on such matter. Such was the case of the directive proposal for the conflict of laws for divorce matters. Despite the originally favourable position of the Ministry of Justice on the Commission's proposal but due to negative attitude of both chambers, the government revisited its position and joined the camp of recalcitrant member states, paving the way for enhanced co-operation in this area in which the Czech Republic will not participate. However, this was rather an exception. It is more likely that the government does not receive any feedback from both chambers, as they often chose different dossiers to examine. On the contrary, when the stances of the chambers diverge (such as in the case of the anti-discrimination directive, where the proposal was moreover examined by more committees), it is easier for the government to defend its position.

However, the day-to-day practice shows that the relations between both chambers and the government are in many respects non-problematic with respect to the EU agenda. The EU committee in the Chamber reflected very positively the communicativeness of various EU ministers in the last legislative period (Vondra, Füle, Chmiel), who showed great empathy towards the parliamentarians even in a very hectic and demanding period of the Czech EU presidency. The same applies to the Senate, where the ministers or the governmental officials often participate at events and hearings organized by the Senate, not mentioning a vivid day-to-day communication between the EU section of the Senate's Chancellery, the Office of Government as well as individual line ministries in charge of preparation of framework positions on different dossiers.

One strong observation is that the Czech parliament enjoys the luxury of access to the internal parts of the Czech administration where the EU positions for European negotiations are created, which is not typical in the most progressive and transparent member states (such as Denmark or Sweden). Both chambers (through their expert support apparatus – Parliamentary institute and EU section) have access to the internal communication of the governmental EU Committee, the crucial body charged with preparing the Czech government's positions for the Council meetings, at a working level (including usually high officials such as deputy ministers from the ministries concerned), including all the documents circulated within, both in the framework of ISAP and DAP²⁴ information systems. This gives them the possibility not only to get familiar with the complete framework positions of the government when they are approved, but they can also observe their emergence in the process of inter-departmental bargaining including access to instructions for the negotiations in the Council/COREPER working groups. Despite this very accommodating attitude of the government, the members of both EU committees do not make extensive use of this mechanism, although the parliamentary experts do. This might be due to the fact that EU agenda is still perceived mainly as a technocratic matter. Thus this openness is evaluated positively by both parties, as the parliament does not systematically abuse the access to these internal databases and considers mainly the final framework positions, but as a matter of transparency can be considered best practice and contributes to constructive relations between the chambers and the government.

What is perceived as a problem, which will have to be tackled also legislatively, is the time lapse between the parliament's request for the government's framework position on a given dossier and its submission to the parliament, which is about 18–19 working days at the moment. The quoted Governmental directive # 680 sets a period of 10 working days since the acceptance of the competence over a particular legislative dossier or 14 working days since the opinion on other (particularly communication) documents is requested. There is a strong feeling inside the Office of Government that this is not sustainable for the future, particularly as this time shortens the eight weeks' deadline for activating the yellow card (let alone the time necessary for each chamber itself to deliberate and possibly try to gather support of other parliaments) if a subsidiarity issue is going to be examined. Although the practice at the moment is that the Office of Government pushes individual ministries

24) DAP (European Policies Database) is an inter – departmental database tracking the developments in individual dossiers, used as the main communication channel for the work of (governmental) EU committee and its working level.

to formulate their positions more quickly (and the practice among different bodies varies greatly), it seems that even having the period anchored in the government legislation is not enough. Although the chambers can now deliberate directly on any EU documents as they receive them directly from the Commission, the parliament will need to get familiar with the government's position before examining such documents in detail, due to the two-track approach involving both direct examination of the proposal and scrutiny of the government's position on it; without the governmental position the Parliament simply does not deal with the document. Thus seemingly the most effective way remains the parliament's scrutiny over its own government, rather than reliance on the possible impact on the Commission by communicating its concerns directly – at least for the time being.

Subsidiarity check: Parliament vs. the Commission II.

Although many observers of the Lisbon Treaty highlight the importance of the enhanced mechanisms of subsidiarity check as one of the main achievements of the new treaty, the reality is such that already previous European legal framework expected a more active engagement of the national parliaments in control of the compliance of EU legislative proposals with the subsidiarity principle. This right was vested in the Protocol on the role of national parliaments in the Amsterdam Treaty²⁵. In practice, this subsidiarity check has been tested, in compliance with Article 6 of this protocol, since 2005 through COSAC. The delegates in the national parliaments in COSAC agreed on one or two proposals from the legislative plan of the European Commission for the upcoming year on which the subsidiarity was examined in a coordinated manner in the national parliaments according the Lisbon Treaty provisions, despite them not being in force yet. Since this time, eight tests have been carried out, always with the participation of about three quarters of the EU chambers. Both the Chamber of Deputies and the Senate participated in all of these pilot tests. This is hardly surprising especially for the Senate, as the subsidiarity check was one of the main topics of the Senate since the Convention and IGC, and is a strong topic for the EU committee and its current chairman, senator Sefzig. But the reflection on these tests was rather disappointing, as the quorum that would be required for activating

25) Article 6 of the quoted Protocol stipulates that COSAC can refer any matter deemed appropriate regarding the legislative activity of the Union to the Commission, Council, or European Parliament, especially in matters related to subsidiarity principle, area of freedom, security and justice, or regarding fundamental rights.

the yellow card under the Lisbon Treaty provisions was never reached²⁶. The major problem and the main reason for the Czech parliament's disappointment, however, was the fact that those parliaments that decided to examine the subsidiarity compliance often did not meet the 8-week deadline expected by the Lisbon Treaty and their reasoned opinions arrived later. It is also interesting to observe that in most cases, the parliaments did not identify as the main problem the breach of the subsidiarity principle as such, but rather considered inadequate the justification of the necessity for EU regulation put forward by the Commission²⁷.

The activism of the Czech Senate in the subsidiarity check would also – according to some Senate officials – require a more thorough co-operation with the government. There is no formal mechanism for this, as the framework positions prepared by the administration (namely the individual ministries in charge of preparing such positions) at the moment have no obligation to reflect perceived subsidiarity compliance. It would be probably too burdensome to expect the line ministries in charge to examine subsidiarity compliance on each single draft piece of EU legislation, but it would be desirable to do it in cases when the parliament decides to scrutinise a proposal. The Senate, due to its activism in pilot subsidiarity checks, has already developed a certain mode whereby upon the publication of the annual legislative programme of the European Commission, it selects and indicates on which incoming proposals it would like to exercise the subsidiarity check. This can serve at this very early stage as an indicator for the government and the ministries in charge could prepare their own assessment of the compliance of a given piece of legislation with subsidiarity principle.

6. Changes in the Czech parliament's role after the Lisbon Treaty

The dramatic ratification of the Lisbon Treaty in the Czech Parliament, particularly in its upper chamber, was significant not only politically (as it attracted much attention among the EU stakeholders), but also in terms of the parliament's self-reflection of what the Treaty means for its own posi-

26) The closest quorum to that required for activating the yellow card was reached on the very first subsidiarity pilot test in 2005, in relation to the so-called "Third Railway Package", where 10 protest votes of national parliaments were gathered while 17 would be required under the Lisbon Treaty provisions.

27) For instance, in case of the subsidiarity test on the directive concerning quality and safety norms of human organs intended for transplantation, the breach of subsidiarity principle was identified only by one chamber (Austrian Bundesrat) while 15 chambers considered the Commission's justification inadequate.

tion within the decision-making relating to EU matters. The vivid debate on the text of the Treaty in both chambers, intensive communication with the government and the president, two references of compatibility check from the Senate to the Constitutional Court, as well as intensive debate among different stakeholders in the media all indicate that the changes introduced by the Lisbon Treaty are not unknown to the parliament, especially in case of the Senate. On the other hand, the general election of May 2010 changed substantially the composition of the Chamber, bringing about the most dramatic shift since 1993 not only in terms of the parties represented therein, but also in terms of bringing in many new parliamentarians with no experience in parliamentary work. Similar, albeit less dramatic, change was brought about by Senate by-election in October 2010. The question thus is to what extent this largely renewed parliament will build on the past experience in terms of the way of handling the European agenda.

The general evaluation of the preparedness of the Czech parliament for the new role that the Lisbon Treaty ascribes to it is that it did a relatively good job. In connection with and as a direct consequence of the ratification process, the implementing domestic legislation was passed enabling a more effective subsidiarity check as well as a more effective control of the government on some crucial decisions at the EU level. Although the first indication of the desirability of having such implementing legislation can be found already in the Lisbon I ruling of the Constitutional Court, both the government and the parliament itself took a very pro-active role and negotiated these safeguards as a condition for the parliament's agreement to the Lisbon Treaty²⁸. However, the reflection in the Czech parliament is that its role in the EU processes might be enhanced in some ways, but in other aspects significantly weakened. Firstly, the increased scope of qualified majority voting naturally weakens the parliamentary scrutiny over the executive, because it decreases the Czech government's bargaining power in comparison to situations where it wields a veto. This relates for instance to former third pillar issues which were traditionally under a very strong scrutiny particularly of the upper chamber. Secondly, again in relation to the third pillar, in those areas where the parliamentary approval was necessary – i.e., the conventions – the communitarization of the rest of the third pillar does away with this, and the parliament's role will be reduced to subsequent implementation of directives.

28) The amendments were a result of a very productive co-operation between the Vice-Premier Alexandr Vondra who initiated the whole procedure (with a vested interest of achieving the ratification of the Lisbon Treaty) and both chambers. Also Vondra, who in parallel served as a senator, showed great sensitivity how these issues were perceived in the upper chamber.

Thirdly, the scope of some EU competencies widened materially, and so many treaties that were originally mixed agreements (involving both EU and national competencies, and thus requiring national ratifications) changed to those in the EU exclusive competence (such as for example SWIFT²⁹; and yet not determined in case of PNR) and thus they will not be ratified in the national parliaments. It can be expected that for this reason, particularly EU decisions or legislative acts relating to the former third pillar matters will be under strong examination of the Czech parliament, not only due to their sensitivity in general but also due to this substantially weaker role of the national parliaments compared to pre-Lisbon state. The lesson for the Czech parliament is that in order to compensate this, it has to tighten its grasp of the Czech government's EU agenda.

Imperative mandate on the so-called "dynamic clauses" of the Lisbon Treaty

The so-called dynamic or dynamic clauses in the Lisbon Treaty have the potential of circumventing the national parliaments' role in changing the EU primary law (i.e., the founding treaties) in some areas where their ratification was originally necessary. By these, we are referring to the so-called flexibility clause, now contained in Article 352 of the Treaty on Functioning of the European Union (TFEU), the passerelle clauses (general clause enshrined in Article 48(7) of Treaty on the European Union (TEU) and specific ones, e.g. relating to the measures adopted under Article 81(3) TFEU (family law with cross-border implications), and finally the simplified revision procedure of the founding treaties, enshrined in Article 48(6) TEU. Let us examine these dynamic elements of the Lisbon Treaty one by one and explain how the Czech parliament tackled them.

The flexibility clause, now Article 352 TFEU (originally Article 308 TEC), enables the EU to adopt a certain measure even if the Treaty does not provide explicitly for its competence in this field. The Lisbon Treaty substantively enlarges the application of this clause not only to areas relating to the internal market which was the case until now, but to achieving any of the objectives of the Union defined in the Treaty.

The procedure of the parliamentary control over the government's agreement with using the flexibility clause in the Council was inserted into the

29) SWIFT: agreement between the EU and USA on the bank data transfer, PNR: agreement on the passenger name record transfer

rules of procedure of both chambers by introducing an imperative mandate in this respect. It is conceived as a preliminary assent, meaning that the government has to actively seek parliaments' approval before an act based on flexibility clause is voted on in the Council. What is important is that this veto is given to both chambers separately, i.e., each one can block the use of the clause. On the contrary, the amendment of the rules of procedure reflect the Lisbon Treaty in a sense that this imperative mandate relates only to those competences outside the scope of the internal market, for which it leaves the discretion of decision to the government. This puts the government in a difficult position of distinguishing whether the flexibility clause goes beyond the scope of the internal market or not. Although the government will be able to use the explanatory memorandum of the European Commission to the proposal of such act as a guidance, this will not be binding on the government and in its discretion it can actually come to a different conclusion.

Similar procedure was introduced in relation to the well known and discussed passerelle clauses of the Lisbon Treaty, both general and specific ones. The passerelle clauses enable the European Council to change the decision-making in the Council from unanimity to qualified majority, or from a special legislative procedure (without full involvement of the European parliament) to an ordinary legislative procedure (where the European parliament has a veto), thus eliminating the need for a standard treaty revision and subsequent ratification by the national parliaments. The amended rules of procedure, moreover, give the parliament the right of assent on other specific, slightly hidden passerelle clauses³⁰. Also in these cases, the amendments of legislation enshrined a preliminary imperative mandate for the government while keeping the six-month period defined in Article 48(7) TEU during which it can also block the use of passerelles directly by virtue of the Lisbon Treaty (this procedure is being referred to as the so-called "red card"). Thus, there is a double guarantee for the Czech parliament in this respect – not only can it raise the "red" card by signalling its disapproval of using the passerelle, but it can also do it indirectly by blocking the Czech prime minister's possibility to vote affirmatively in the European Council. Therefore, there was a debate whether the Czech parliament actually needs specific guarantees at a national level, given the fact that each chamber already has a veto defined directly in Article 48 of TEU. There are probably arguments in favour of the passerelle procedure being regulated also domestically. Firstly, there is

30) For example Article 31(3) TEU, Article 153(2) TFEU, Article 192(2) TFEU, Article 312(2) TFEU and Article 333(1,2) TFEU.

a slight procedural difference – while certain number of deputies might not be enough to activate the red card at the European level, the same number would be sufficient to block the assent for the prime minister's vote in the European Council³¹. But more importantly, the government is hereby pushed into pro-active need to seek the parliamentary assent and intensive communication with both chambers, as the government has to deal with the issue extremely quickly (the rules of procedure oblige the government's to communicate its position to the parliament *immediately* after it has been submitted to the national parliaments). Moreover, it would avoid a rather schizophrenic position where the government might take initially a rather positive stance, while the parliament would be opposed and communicate its objections directly to the European institutions. This is especially important in case of the Czech Senate, which – as can be illustrated on many past occasions – can look at the matter through slightly different optics than the government. In any case, the system as it stands now assures an intensive debate between the executive and parliamentarians, which would not have to be the case if there was no implementing domestic legislation.

The last dynamic clause in the Lisbon Treaty relates to the simplified amendment procedure of Part III of the TFEU in its Article 48 (6) TEU, which enables the European Council to adopt changes without the formal inter-governmental conference or the Convention. This article, however, reiterates that such European Council decision has to be approved by member states according to their respective constitutional requirements. Thus, the core of the Czech debate on this article centred around the question whether such amendments will be discussed and ratified as standard international treaty. Here we can observe a slight procedural difference in the rules of procedure of the Chamber and the Senate. While the rules of procedure of the Chamber regard the simplified procedure according to Article 48(6) TEU in the same light as the other dynamic clauses, and therefore consider the preliminary imperative mandate for the government sufficient, the rules of procedure of the Senate explicitly state that such amendments have to be approved in the regime for international treaties. How much difference it will mean in practice remains to be seen, as there is no experience with the imperative mandate in the Czech parliament.

31) For instance, in theoretically fully attended plenary of the Chamber of Deputies, 100 deputies will not be able to activate the red card (as they do not constitute a majority: 101), but will be able to block the mandate for the Prime Minister (where also 101 deputies is required to endorse it).

However, there is another issue that is quite important in regard to the debates of the dynamic clauses in the Czech parliament, which is of purely domestic constitutional nature and was reflected in both references for compatibility check to the Constitutional Court from the Senate, as well as in the related reference in which a group of senators sought annulment of the “Lisbon” amendments of the rules of procedure for their alleged violation of the Czech constitution.

Already in the Lisbon I ruling, the Constitutional Court expressed its opinion on the nature of all the dynamic clauses in relation to the Czech constitution, as both points were raised in the resolution of the Senate.

In relation to the flexibility clause, the Constitutional Court ruled on the objection of the Senate that the new formulation represents a general authorisation of the EU to appropriate *any* competences for the future (which might violate Article 10a of the Constitution, which enables to transfer *some* competences to the EU). In its view, there are natural limits in the Treaty (such as the restriction of the use of flexibility clause to the objectives of the EU as defined in Article 3 TEU, or exclusion of some policy areas from its use, such as common foreign and security policy or Union’s own resources). In this case, the Court has not found that the new, extended wording of flexibility clause would authorise an uncontrolled *pro futuro* transfer of competences that would constitute violation of Article 10a of the Constitution.

On the passerelle clauses, the Court holds the view that this simplified procedure of changing the EU primary law does not represent a transfer of competences *per se* (unlike the case of flexibility clause, where the transfer of competence was admitted), but they only modify the procedure in which these (already transferred or shared competences) are being exercised. In this respect, it adopted a rather restrictive interpretation and asserted that the passerelle clauses do not fall under the regime of Article 10a of the Czech constitution, requiring a constitutional majority for approving them. The same argument was used in case of the simplified amendment procedure in Article 48(6) when the Constitutional Court reiterated that in this case the role of member states is not limited to a mere objection on part of the national parliaments, but they have full discretion how to handle the proposed changes³² (however, this ruling was issued before the imperative mandate was introduced). On the other hand, as the simplified procedure represents a *de facto* amendment of the founding treaties, it would be worth-

32) See point 162 of the Ruling of Constitutional Court PIUS 19/08 published also as. 446/2008 Sb./N 201/51 SbNU 445 of 21 November 2008 (Lisbon I ruling)

while to anchor the procedure that would enable its examination in front of the Constitutional Court. Unlike the case of the parliamentary control, the judicial control over the use of both articles and its compatibility with the Czech constitution has not been adopted yet; although some experts believe that the Constitutional Court might accept possible reference, should a group of parliamentarians have a feeling that the proposed changes (particularly in relation to Article 48(6)) entail some transfer of competence.

In the second reference on the Lisbon Treaty, the group of complaining senators asserted that the imperative mandate introduced by the amended rules of procedure is insufficient, as basically any act of the EU represents a change in the basic legal framework, and thus demanded that the Constitutional Court declares the necessity of having an imperative mandate and approving any EU decision in the regime for international treaties. The Court concluded that this is possible, but not necessary, in other words there is neither Czech constitutional obligation, nor duty arising from the Lisbon Treaty for such a regime and it does not constitute an impediment to its ratification, as the senators asserted.

Finally, the reference of the group of senators seeking the annulment of the Lisbon amendments of the rules of procedure also asked the Constitutional Court explicitly to declare that the imperative mandate should be constituted by constitutional majority (i.e., 3/5 in each chamber), as the rules of procedure do not stipulate this (thus a simple majority is presumed). In this case, the Constitutional Court dismissed the reference altogether, claiming that there is no possibility to give a universally binding ruling on this issue, as the majorities are regulated by the Constitution, not by the rules of procedure, and therefore as such must be examined in each and every case on the issue at stake (i.e., whether the parliamentary agreement falls under the regime of Article 10a). Moreover, it asserted to be contradictory to require provide for a possibility of a negative decision whereby the “red card” is activated, where the simple majority is reachable more easily, thus requirement for a stricter quorum goes against the sense of the proposal.

The last remark worth making on the dynamic clauses is that the whole of the Czech debate was more about procedural issues, rather than on substance. What we could have observed was a ping-pong of sorts between the Senate and the Constitutional Court, with Senate asking the Constitutional Court to determine how far the possible competence transfers can go, while the Court claiming that this is a political decision, refusing to accept such responsibility, but asserting it can examine the constitutional compliance

once such transfer is approved. This represents a certain divergence from the German Constitutional Court, which was undoubtedly a source of inspiration for both the Czech Senate and Constitutional Court. However, most experts claim that the reason is the inadequacy of the constitutional provisions, or “European articles” of the Constitution, which prevents the Czech Court from taking a more courageous interpretational approach. Thus, one might assume that if the parliament is more serious about its involvement on the European agenda, as the references to the Constitutional court suggest, we might expect some constitutional changes in the future that might tackle these issues in more detail.

Subsidiarity check

The subsidiarity check is often considered to be at the core of the enhanced role of national parliaments in the Lisbon Treaty. This process, aimed at involving the national parliaments more closely with European decision – making process has two dimensions – domestic and European. Furthermore, in relation to the logic of the legislative process, we can distinguish between preliminary (*ex ante*) control of subsidiarity principle (also referred to as the watchdog function) and subsequent (*ex post*) control once the legislative act has been adopted. The two categories are also interconnected: *ex ante* control requires effective domestic mechanisms for examining the disputed legislative proposals in time, as well as effective co-operation at European level to be able to gather a critical mass of national parliaments to activate yellow or orange cards. *Ex post* control in relation to the Lisbon Treaty is mainly about whether the national parliaments will have direct access to the Court of Justice of the EU (European dimension) to initiate the annulment procedure of the adopted legislative act for its breach of subsidiarity principle, which is something that has to be regulated at a domestic level.

Examining the exercise of the *ex ante* control of the subsidiarity scrutiny did not require any particular legislative modifications in the Czech case, although the Lisbon amendments of the rules of procedure touched on this issue as well by introducing a specific provision on the process of debating the documents submitted directly by the EU institutions³³. On top of this, as was already explained in part relating to pre-Lisbon state, the Czech parliament already had an extensive experience with the subsidiarity check, as it par-

33) Articles 119i and 119j of the amended rules of procedure of the Senate (Act n. 107/1999 Sb. as amended).

anticipated in all the co-ordinated subsidiarity checks carried through COSAC. The main challenges that arise from the new provisions thus remain the same that were until now. The basic challenge is to ensure that the parliament has sufficient time to analyze in detail those proposals where there is a particular fear that the subsidiarity principle might be breached, and at the same time constitute important topics for national parliament's encroachment (in case of the Czech Senate it is most likely – but not exclusively – going to be many issues of recently communitarized third pillar). As was already mentioned, it will require a more effective pressure on the government to speed up the delivery of framework positions, including the government's assessment of subsidiarity compliance, to the parliament, optimally within ten working days. One way would be to communicate well in advance the topics that the parliament wants to scrutinize based on the annual legislative and work programme of the Commission and discuss this with the government. But this is also where the European dimension steps in: as we already explained, this requires a concerted approach among parliaments across the EU (as they naturally do not have the capacity to examine all the proposals with the same intensity), and speeding up the domestic procedures (the interviews indicated that this is the case in countries with strong parliamentary scrutiny, e.g. Denmark). However, the track record of these concerted subsidiarity checks makes the Czech parliament rather sceptical towards this new mechanism; in fact, it is considered quite toothless. Firstly, it will be very difficult to stick to the 8-week period which is far too short. Secondly, it will probably be difficult that the necessary number of parliaments (chambers) would agree the subsidiarity principle was breached. Thirdly, it depends whether a co-ordinated approach to subsidiarity checks will be maintained. There was a disappointment with the Spanish presidency, which refused to carry on with the co-ordinated subsidiarity checks claiming that it this will be exercised by the national parliaments with all the EU proposals, resulting in *de facto* absence of any control. The experts in both the Czech parliament and administration see it very unrealistic to mobilise 1/3, let alone 1/4 of national parliaments, claiming that in fact there are very few chambers in the EU interested enough in the subsidiarity scrutiny with whom they had a very fruitful co-operation on this front – the Dutch parliament (both chambers), Danish Folketinget, German Bundestag and the Slovak parliament (although in the last years its European committee was not very active). But the Czech reflection on especially southern European parliaments, as well as those of most other newer EU members, is relatively sceptical regarding their activism

on EU level. This of course makes the possible activation of yellow (let alone orange) card practically impossible.

This naturally shifts the attention from the *ex ante* control to the *ex post* control, whereby the Czech parliament might attack the already approved EU legislation before the Court of Justice in Luxembourg (CJEU) without having to worry about mobilisation of other parliaments. However, even the Lisbon Treaty in its Protocol (2) on the application of principles of subsidiarity and proportionality does not guarantee an automatic access to the CJEU. The protocol, however, states that the Court might accept actions of member states submitted on behalf of national parliaments (or chambers) according to their domestic legal provisions³⁴. So clearly the Treaty (Protocol 2 TEU & TFEU) leaves it up to the member states to introduce possible mechanisms to facilitate this, as the national parliaments normally do not represent states according to general international law.

This was also the case of the Czech Republic, which had no domestic mechanism to assure that its parliament can make use of access to the CJEU. This mechanism, however, was introduced by – yet again – the Lisbon amendment of the rules of procedure of both chambers. In both chambers, a new clause was inserted in the respective legal acts introducing the mechanism of a possibility of each chamber to submit an action for the breach of subsidiarity principle. In both cases, the rules of procedure define two entities entitled to initiate a resolution to approve such action in each chamber: one of them being the respective authorized committee, in other case a group of deputies or senators (in case of the Chamber 41 deputies, in case of the Senate 17 senators). But in any case, this is the minimum quorum required for each chamber even considering the action, it does not guarantee the right to submit the action – this will in any case have to be approved by the chamber as any other resolution (i.e., simple majority). The rules of procedure then elaborate the procedure of discussing the text of the action, as well as the co-operation and co-ordination with the government, as it is the government that should submit the action to the CJEU on behalf of the respective chamber. The rules of procedure also stipulate that in the proceedings in front of the CJEU, each chamber will be represented by an appointed representative of the chamber³⁵, not by the government – which is only logical in a sense that government does not

34) Article 8 of Protocol (2) on the application of principles of subsidiarity and proportionality of the Treaty on the Functioning of European Union

35) § 109e of the rules of procedure of the Chamber of Deputies, §109q of the rules of procedure of the Senate

have to share the opinion of the chamber. The government must, however, provide to the respective chamber all the necessary assistance, including the assistance of the governmental plenipotentiary for representing the Czech Republic in front of the CJEU.

In this respect it is also interesting to note that the quorum required to refer the action to the plenary of each chamber for deliberation was also attacked by a group of senators in front of the Constitutional Court, with the assertion that it breaches the principle of protection of minorities, as it effectively gives the opportunity to initiate such deliberation only to strongest political parties and as such should be annulled. The Constitutional Court refused to accept this argument, claiming that the minority is in this case not limited *substantially* in its right and the question as raised is therefore not constitutionally relevant (the same quorum is for instance required to initiate the annulment procedure for acts of parliament in front of the Constitutional Court).

From what has been said, it is obvious that the right given to both chambers to initiate the subsidiarity action in front of CJEU is quite a strong mechanism, and the Czech parliament is thus prepared for this innovation in the Lisbon Treaty beyond the general control of the government. However, representatives of both the government and the parliament admit that it remains to be seen how this system will work in practice. For instance, in cases when both the government and the parliament will hold the view that an adopted legislation breaches the subsidiarity principle, will there be any co-ordinated approach between the government and the parliament, or will both entities submit their separate actions to the CJEU, if for instance their justification will follow slightly different arguments? And will the CJEU accept two actions against the same legal act from one member state? Or will they try to entail both in one action including the input from the parliament? One can only assume that it remains to be seen how the new mechanism will work in practice, should such a situation emerge.

7. Conclusion

From what has been said, it seems that the Czech parliament is well prepared for the new role that the national parliaments might exercise according to the Lisbon Treaty. The ratification of the Treaty, although very problematic in the Czech case, had a positive domestic effect, in the sense that it led to a deep reflection of the changes that the treaty can bring to the position of the Czech parliament vis-à-vis the European agenda. Moreover, this reflec-

tion included not only the parliament itself, but other political actors and stakeholders, particularly the Constitutional Court, the government and the president. Due to this, the Czech parliament was among the first legislative bodies across the EU which implemented the changes foreseen in the Lisbon Treaty in the domestic legislation. This concerns all the main areas in which the Treaty changes the position of national parliaments: simplified changes in the European primary law, such as the dynamic clauses, *ex ante* and *ex post* control of the subsidiarity principle, and stronger involvement in the European legislative process through direct communication with the European Commission.

What has been observed, however, is that there is a substantial difference in how the European agenda is being handled by the two chambers. While the Chamber of Deputies can be compared to a Sleeping Beauty as far as European matters are concerned, the Senate would be a Cinderella. This has been illustrated on many examples, ranging from the intensity with which the Lisbon Treaty was debated in both chambers, through a very different level of engagement in the political dialogue with the European Commission and participation of the subsidiarity tests, to an everyday scrutiny of the European legislative proposals. While the Chamber of Deputies, as the key institution in the legislative process of the Czech Republic, focuses on many internal political issues where it plays a greater role than the Senate (for instance budgetary issues, stronger leverage over the executive and public administration), the Senate, who has a weaker position in the Czech constitutional system, thus tends to focus on those competences where it has a strong say, such as constitutional issues (where the EU treaties can have a potential impact), as well as ratification of international treaties, and also the European agenda at large. How much this difference is explicable by different character of both chambers, especially in terms of their relation to the government, and how much it was due to the recent political constellation, remains yet to be seen. But the experience since 2006, when both the Chamber and the Senate had similar political colours and yet handled the European agenda in very different manner illustrates that this, in fact, could be the case. This indeed is confirmed also by the experience of some other member states, where the upper chambers (German Bundesrat, French Sénat, British House of Lords) take similar approach to dealing with the European issues as the Czech Senate.

Another conclusion we can perhaps make in relation to the Lisbon Treaty was a focus on maintaining and even enhancing the parliament's position in

EU agenda. In other words, what the parliament (or rather its upper chamber) was mostly interested in was to have effective mechanisms in place to ensure that its scrutiny of certain important competences (veto over the EU primary law amendments, subsidiarity) is not going to be limited. But when it comes to substantial issues (such as the limits of EU competence transfers), the parliament refrained from its political responsibility and wanted to leave it up to the Constitutional Court to decide through its judicature, instead of initiating respective constitutional changes.

It also remains to be seen to what extent the EU agenda, particularly day-to-day EU legislation, will really be debated in the parliament in the future. However, some problems with the implementation of the key EU directives (such as anti-discrimination directive) really point to a need of a more intensive dialogue between the government and both chambers, which would lead to improving the Czech Republic's record in terms of right implementation of EU norms. But otherwise, the government-parliament relations on the EU issues are perceived quite well by both parts, the main challenge being of a closer communication on sensitive issues already in the EU legislative phase, not only when they are to be implemented domestically (such an approach reduces the parliament's role to rubber-stamping). This requires better co-ordination of the agenda examined and quicker processing of the key European dossiers by the government.

Lastly, in regard to interparliamentary co-operation across the EU, the Senate has already established very close working relations with many parliaments, particularly in Germany, the Netherlands, Denmark and several other countries. It would certainly like to see itself as a chamber with strong scrutiny of European issues, unlike those member states that leave the European agenda solely up to the executive. The position of the Chamber on this issue is not clear yet, as it has not been so active at the European level, which again confirms the trend of a different level of engagement between the two.

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Acknowledgement: Apart from the quoted sources, the author based this study on a number of interviews with relevant stakeholders within both the parliamentary administration and the government, active politicians as well as other experts on the topics covered. These interviews were conducted as anonymous and these persons are thus not quoted anywhere in the text.

NATIONAL COUNCIL OF THE SLOVAK REPUBLIC IN THE EU AGENDA: GIANT IN THEORY, DWARF IN PRACTICE

Vladimír Bartovic

1. Executive summary/key findings

- Role of the Slovak Parliament in the European Union's agenda is defined by the Slovak Constitution, Constitutional Act on the Cooperation of the National Council of the Slovak Republic and the Government of the Slovak Republic in European Union Affairs and by the Rules of Procedure of the National Council of the Slovak Republic (NCSR). These acts provide for an obligation of the Government to inform the Parliament about the current EU agenda and give the Parliament right to endorse, redefine or initiate positions of the Slovak Republic in the EU.
 - After the EU accession, plenary of the Parliament deliberated on the EU affairs mainly in politically sensitive issues, namely on opening of the accession negotiations with Turkey, on Kosovo independence or on harmonization of direct taxes. The Slovak Parliament directly used its powers to change the position of The Slovak Republic only once – in case of opening the accession negotiations with Turkey.
 - Parliament has passed its competencies of scrutinising the EU Agenda to its European Affairs Committee, which incorporates deputies from all parliamentary political parties on the basis of proportionality. Given
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the specific powers of the Committee, each member has its full-fledged substitute, which is not the case in other committees. Each Committee member serves as a rapporteur for a specific EU policy area.

- The work of the Committee is supported by the European Affairs Department of the Office of NCSR, which provides its members with necessary expertise. However, the work of the Committee suffers from lack of staff (currently only 7 permanent employees).
 - The Committee for European Affairs has never officially used its right to change the Government's proposal of the national position for the EU negotiations. Constructive disapproval principle applies in case the Committee does not approve its own position, whereby the proposal of the Government becomes the official position of the country, even if rejected by the Committee, which has never happened.
 - There are two explanations for this: 1. partisan composition of the Committee that copies the governmental majority in the Parliament and 2. very late engagement of the Committee (before the Council meetings) leaving very limited room for manoeuvre.
 - So-called "silent procedure" enables the National Council to give tacit agreement with the governmental proposal of the position. This procedure is activated in case that the National Council does not adopt position on the issue within two weeks from its submission by the Government.
 - The Slovak parliament has never exercised the right of parliamentary reserve that could be raised by the Slovak government in the Council.
 - The domestic Slovak legislation distinguishes between cases when European directives are implemented by virtue of governmental regulations and standard legislative procedure, where involvement of the Parliament is required.
 - The European Affairs Committee of the Parliament has the right to discuss, not to approve nominations for different EU positions. These nominations remain single responsibility of the Government.
 - Due to lack of interest and low capacities, the Slovak parliament has not been engaged in a political dialogue with the European Commission (only one favourable opinion so far).
 - The Slovak parliament has participated in the pilot subsidiarity checks organized within the COSAC. Breach of the subsidiarity principle was never identified.
 - Subsidiarity checks envisaged by the Lisbon treaty are exercised by the European Affairs Department staff, but they have not yet started at politi-
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cal level. Committee for European Affairs is planning to undertake them by the end of this year.

- There are no specific domestic procedures envisaged to scrutinize the government on the use of dynamic clauses, including the flexibility clause and the passerelles. Thus it is likely that the general principle of parliamentary scrutiny over the government will apply. Moreover, the Parliament is not planning to regulate the use of red card until the passerelles are activated.
- The European Affairs Committee proposed an amendment of the Constitutional Act on the Cooperation of NCSR and the Government aimed at enabling the Parliament to oblige the Government to initiate annulment procedure for breaching the subsidiarity principle. According to this proposal, the action will be submitted by the Government but the Parliament will be represented on its own before the European Court of Justice.

2. General introduction and the constitutional framework

The aim of this study is to examine the Slovak parliament involvement in the EU related agenda. It analyses the evolution of this process in the previous years, the current state of play as well as the future perspectives after adoption of the Lisbon Treaty. The study tackles different aspects of parliamentary involvement in the EU issues and includes analysis of legal framework, internal mechanisms and political aspects. The study proceeds in six parts. The first part provides short executive summary and summarizes main conclusions of the research. The second part introduces the constitutional and legal framework of the parliament involvement in the EU agenda, evolution of the parliamentary role in the definition of the EU Agenda during the pre-accession period, ratification of the primary EU legal instruments, and transposition of the *acquis*. Organization of the EU agenda in the parliament and analysis of activities of its European Affairs Committee are part of the third chapter. The fourth part of the study concentrates on the competencies and involvement of the parliament in the scrutiny of the EU legislation process and in the scrutiny of government's activities in the EU agenda. It also provides concrete examples of the parliamentary involvement. The fifth part of the study analyses reaction of the parliament to the changes envisaged by the Lisbon Treaty, such as subsidiarity control and usage of dynamic clauses. The last part of the study brings concluding remarks and recommendations. The study also serves as a basis for comparative study in the framework of broader cross-country project.

This study builds on a variety of sources, including acts of parliament, resolutions and declarations of the Slovak parliament, resolutions and minutes from the European Affairs Committee meetings, internal documents of the government (draft positions) and parliament (draft amendments of the laws), relevant studies of Slovak authors as well as interviews with the relevant stakeholders, including Chairman of the European Affairs Committee and the members of parliament (August, September and October 2010).

The Slovak Republic can be characterized as a standard parliamentary democracy with a strong role of Parliament executing scrutiny over the Government and state administration. According to the Constitution of the Slovak Republic¹, adopted in September 1992, the National Council of the Slovak Republic (hereinafter referred to as NCSR) is the sole constitutional and legislative body of the Slovak Republic. It has only one chamber composed of 150 deputies elected for a four-year period by universal, equal and direct suffrage. Elections to the NCSR are based on proportional election system.

The role of the Parliament in the European Union's agenda is defined by the Slovak Constitution, the Constitutional Act on the Cooperation of the National Council of the Slovak Republic and the Government of the Slovak Republic in European Union Affairs (hereinafter referred to as Constitutional Act)² and by the Rules of Procedure of the National Council of the Slovak Republic (hereinafter referred to as rules of procedure)³.

Accession to the EU and ratification of the EU Treaties

The NCSR involvement in the European agenda has been increasing gradually during the accession process of Slovakia to the EU. Shortly after Slovakia applied for the EU membership in 1995, NCSR adopted resolution⁴ called Main Duties of NCSR in the Process of Approximation of Slovak Legislation with the *Acquis Communautaire* and its Management in the Office of NCSR. Among the commitment of approximation, the resolution for the first time defined the role of NCSR in the integration process with regard to the Government and state administration. NCSR reserved the right to execute scrutiny over the definition of priorities, goals, means and specific steps of

1) Act No. 460/1992 Coll., http://www.vop.gov.sk/en/legal_basis/constitution.html

2) Constitutional Act No. 397/2004 Coll. on the Cooperation of the National Council of the Slovak Republic and the Government of the Slovak Republic in European Union Affairs, www.ncsr.sk/sub/language_free/ustavny-zakon_zalezitosti-eu.doc

3) Act No. 350/1996 Coll. on the Rules of Procedure of the National Council of the Slovak Republic (amended by Act No. 253/2005 Coll.), <http://www.zbierka.sk/zz/predpisy/default.aspx?PredpisID=13816&FileName=96-z350&Rocnik=1996>

4) Resolution of NCSR number 403 from September 11th 1996 – available only in printed version in the Parliamentary library.

the Government and state administration in the process of approximation of Slovak legislation. In the same year the NCSR Committee for European Integration was created. However, due to the autocratic regime of Prime Minister Vladimír Mečiar, Slovak Republic's EU integration process got frozen in 1997. Only the 1998 election, in which the democratic opposition gained constitutional majority in the Parliament, enabled the re-launch of the integration process. Less than two months after the elections, the NCSR adopted a declaration⁵ calling for a fast return of Slovakia to the EU integration process and promising a very active role of the Parliament in adopting all the necessary legislation.

After the decision on the opening of accession negotiations in December 1999, the NCSR intensified activities leading to the preparation of Slovakia for the EU membership. In its resolution from February 2000, the NCSR declared the fulfilment of the Copenhagen criteria and approximation of the legislation its priorities. The NCSR also stressed its competence to monitor and control the implementation of the European *acquis* by the state administration.

The Convention on the Future of Europe that drafted the Constitutional Treaty was also the first occasion the National Council used for shaping the Slovak positions in the EU, although Slovakia was not a member state yet. The National Council adopted Declaration on Sovereignty of Member and Candidate States in Cultural and Ethical Issues⁶ that called for retaining the decision making on the issues related to the protection of life and human dignity as well as to the protection of family and of marriage as fundamentals of the society in exclusive competence of member states. The National Council also obliged the government to promote its own views on the content of the Constitutional Treaty⁷.

The most important step undertaken by the NCSR in the preparation process for the EU membership was a substantial constitutional reform⁸ in 2001 that enabled Slovakia to enter the EU. The change of the Slovak constitution also brought along many reforms that were necessary for meeting

5) Declaration of NCSR on the Integration of Slovak Republic to the European Union from December 1st, 1998, http://www.nrsr.sk/Static/sk-SK/NRSR/Doc/v_k-integracii-do-eu-19981201.htm

6) Declaration number 1853 from January 30, 2002, http://www.nrsr.sk/Static/sk-SK/NRSR/Doc/v_deklaracia-o-zvrchovanosti.rtf

7) Resolution number 503 from September 23, 2003 asked for example for mentioning the Christianity in the Constitutional Treaty preamble, retaining one state one commissioner principle, unanimity decision making in certain issues such as taxes, foreign policy, criminal law, judicial and police cooperation, asylum and migration, culture, and social security, etc. http://www.nrsr.sk/Static/sk-SK/NRSR/Doc/v_deklaracia-o-zvrchovanosti.rtf

8) Constitutional Act No. 90 from February 23rd, 2001, <http://www.zbierka.sk/Default.aspx?sid=15&PredpisID=15667&FileName=01-z090&Rocnik=2001&AspxAutoDetectCookieSupport=1>

the membership requirements, such as the creation of the Ombudsperson institution, strengthening the judges' independence, etc.

Completely renewed Article 7 (2) of the Slovak constitution allowed the Slovak Republic to transfer the exercise of part of its powers to the European Communities and the European Union. Such transfer can happen by virtue / or on the basis of an international treaty that according to the Article 84 (4) has to be approved by three fifths of the deputies – 90 out of 150. This quorum is otherwise required only for the adoption of constitutional acts, for the resolution on plebiscite on the dismissal of the President of the Slovak Republic, for initiating the prosecution of the President and for the declaration of war on another state⁹. According to this provision the Slovak parliament approved the Accession Treaty, Constitutional Treaty and the Lisbon Treaty¹⁰.

There were, however, disputes about the character of the accession to the European Union. The Slovak constitution requires in its Article 7 (1)¹¹ for The Slovak Republic to enter or to abandon a state union with other states a specific constitutional act confirmed by compulsory referendum. Even if the majority of constitutional lawyers asserted that this is not the case and that the Accession Treaty shall be ratified according to Article 7 (2) of the Constitution, the Parliament decided to convene the referendum on the issue¹². The referendum required a turnout higher than 50 per cent to be valid. This was met by a very narrow margin – only 52.15 per cent of eligible voters participated in the referendum with 92.46 % in favour of the accession and 6.2 % against. However, thanks to the fact that the Accession Treaty ratification was considered according to Article 7 (2)¹³ of the Constitution, the Parliament could have ratified the Treaty even in case the referendum was invalid due to low turnout¹⁴.

9) Interestingly, the accession to the organization of collective security only requires the absolute majority of all the deputies according to the Constitution.

10) While the Accession Treaty and the Lisbon Treaty were duly ratified by the President, ratification of the Constitutional Treaty was never completed.

11) Article 7 (1) "The Slovak Republic may, by its own discretion, enter into a state union with other states. A constitutional law, which shall be confirmed by a referendum, shall decide on the entry into a state union, or on the secession from such union."

12) There was a broad political consensus among the parliamentary political parties about the desirability of having a referendum on such an important issue.

13) Article 7 (2) "The Slovak Republic may, by an international treaty, which was ratified and promulgated in the way laid down by a law, or on the basis of such treaty, transfer the exercise of a part of its powers to the European Communities and the European Union. Legally binding acts of the European Communities and of the European Union shall have precedence over laws of the Slovak Republic. The transposition of legally binding acts which require implementation shall be realized through a law or a regulation of the Government according to Article 120 (2)."

14) In case the referendum was valid and the majority of those who participated were against, the Parliament could change the negative decision of citizens only after three years.

A similar dispute occurred on the occasion of the Constitutional Treaty ratification – the Treaty was ratified again according to Article 7 (2) of the Constitution. Even if the Constitution only allows the President and the Government to initiate the procedure of the examination of conformity of the international treaty with the Constitution by the Constitutional Court, a group of intellectuals gathered around Conservative Institute of Milan Rastislav Stefanik found a way of contesting the Treaty in the Court. On 8 July, 2005, they lodged a complaint that the parliamentary consent with the ratification of the Constitutional Treaty according to the above mentioned Article 7 (2) of the Constitution violated their right of political participation. In their opinion, the Constitutional Treaty represented an entry into a state union with other states and thus the referendum should be convened. In the beginning, the Constitutional Court reacted promptly and on 14 July had forbidden the President to ratify the Treaty by preliminary ruling. However, the final decision of the Constitutional Court that declined the complaint came only in 2008, when the Constitutional Treaty was already off the table.

Transposition of the Acquis

Article 7 (2) of the Constitution clearly states that legally binding acts of the European Communities and of the European Union shall have precedence over the laws of the Slovak Republic and that the transposition of legally binding acts that require implementation can be materialized through an act of Parliament or a regulation of the Government.

Pursuant to Article 120 (2) of the Constitution, the NCSR can authorize the Government to issue such regulations. The above mentioned articles were inserted to the Constitution in 2001 in order to facilitate the approximation of the national legislation with the *acquis* during the accession process. This amendment is considered a substantial change in the Constitution that previously had only allowed the Parliament to impose duties on persons and legal entities.

These articles of the Constitution were implemented by the Act 19/2002¹⁵ from December 2001 that defined the areas where governmental regulations can be issued. Parliament also set forth the conditions for the use of this simplified transposition of European *acquis*.¹⁶

15) Act number 19/2002 Coll. from December 18th, 2001, <http://www.zbierka.sk/zz/predpisy/default.aspx?PredpisID=16206&FileName=02-z019&Rocnik=2002>

16) Governmental regulations issued under this Act cannot govern the basic rights and freedoms and cannot regulate areas where the Constitution requires a law; furthermore, they cannot impose changes in the state budget and cannot create new state institutions.

The act allows the Government to issue regulations in the following areas:

- Custom duties
- Banking legislation
- Corporate accountancy and taxation
- Intellectual property
- Protection of workers in the workplace
- Financial services
- Consumer protection
- Technical regulations and norms
- Use of nuclear power
- Transportation
- Agriculture¹⁷
- Environment¹⁸
- Free movement of labour¹⁹

Although the law was originally created for the transposition of legislation in the pre-accession period (especially technical norms), the Parliament decided to extend its use also to the implementation of the new *acquis*. This happened in October 2004, i.e., less than half a year after the accession the EU²⁰. Moreover, the areas where the Government can issue regulation instead of the acts of parliament extended in 2004 and 2005 to three new areas: agriculture, environment and free movement of labour. Both steps were not perceived very positively in the parliament that considers it to be another step in shifting power from the legislature to the executive. However, the members of parliament do not seem to be critical of this tool that doubtlessly decreased the workload of the Parliament (still around 50 percent of the legislation adopted by the Parliament is labelled as “transposition legislation”).

It is the Government that decides whether to transpose the EU legislation by the regulation or by the act of parliament. If the Government opts for an act, standard legislative procedure applies. The Government is obliged to inform the Parliament twice a year about the adopted approximation regulations.

17) Included by the amendment adopted in April 2002 – Act number 207/2002 Coll. From 4 April, 2002, <http://www.zbierka.sk/zz/predpisy/default.aspx?PredpisID=16405&FileName=02-z207&Rocnik=2002>,

18) Included by the amendment adopted in October 2004 – Act number 607/2004 Coll. From 26 October, 2004 <http://www.zbierka.sk/zz/predpisy/default.aspx?PredpisID=18256&FileName=04-z607&Rocnik=2004>

19) Included by the amendment adopted in November 2005 – Act number 573/2005 Coll. from 9 November, 2005, http://www.radost.sk/zakony/plneverzie/pdf/573_2005.pdf

20) Included by the amendment adopted in October 2004 – Act number 607/2004 Coll. From 26 October, 2004, <http://www.zbierka.sk/zz/predpisy/default.aspx?PredpisID=18256&FileName=04-z607&Rocnik=2004>

Although the Parliament reserved the right to issue acts in all the above mentioned areas and obliged the Government to propose a bill in an issue where a governmental regulation was already adopted, the Parliament never used that right. This is just reflecting the fact that the transposition of the EU legislation is still perceived as a rather technical process. Moreover, it is a confirmation of the general attitude of the political elite towards the EU agenda that is – with a few exceptions – not considered an arena for political competition. The act itself had a serious impact on the role of the Parliament in the EU issues, only highlighting the Government's domination in the EU agenda (Láštic 2006).

Constitutional Act

As the Slovak constitution itself had not regulated the parliamentary scrutiny of the government in the EU agenda and the involvement of the Parliament in the creation of Slovak positions for the EU decision-making process, a special regulation had to be adopted. This happened shortly after Slovakia's accession to the EU on 24 June, 2004, when the Constitutional Act No. 397/2004 Coll. on the Cooperation of the National Council of the Slovak Republic and the Government of the Slovak Republic in European Union Affairs (hereinafter referred to as Constitutional Act) was adopted. The law was proposed by a group of deputies from all political parties represented in the Parliament with the exception of the Slovak Democratic and Christian Union (SDKU) of the then Prime Minister Mikulas Dzurinda. This happened during the term of a government facing serious problems in trust between coalition partners. The opposition parties perceived this law as a tool to weaken the government's position and to enhance their influence by strengthening Parliament's power while some of the coalition parties wanted to ensure control over individual ministers acting in the EU through the parliamentary scrutiny.

The primary objective of the Act is a regulation of the NCSR's role in the EU agenda and the definition of its powers vis-à-vis the government in formulation of the Slovak positions in the EU decision making. The then political situation had a serious impact on the character of the act that followed the example the Danish model of strong parliament with decisive powers, although leaving room for manoeuvre to the government in negotiations at the EU level. The Act creates an obligation of the government to inform the Parliament about the current EU agenda and gives the Parliament the right to endorse the positions of the Slovak Republic or even to change them.

3. Organization of the European Agenda in the Parliament

The main body dealing with the EU agenda in the NCSR is the Committee for European Affairs (with the exception of the transposition of laws that are dealt with by respective sectoral committees). It was created by means of resolution of the NCSR at the end of April 2004, few days before Slovakia's accession to the European Union. The Committee has evolved from the Committee for European Integration that existed in the Parliament since 1996. However, the first bodies of the Parliament dealing with the EU issues were Foreign Committee and Constitutional and Legal Affairs Committee. The latter had created a Subcommittee for Compatibility of the Legislation with the *Acquis Communautaire* as soon as in 1993. The Committee for European Integration was scrutinizing the government and state administration activities in the EU accession process, monitored implementation of the Association Treaty, and acted as a representative of the Slovak parliament towards the EU institutions. Members of the Committee also represented Slovak parliament in the Joint Committee of the European Parliament and the NCSR and in the Convention on Future of Europe. However, the Committee itself has been lacking any decisive competence towards the Government such as endorsement of the positions for the EU accession negotiations.

The transformation of the Committee for European Integration into the European Affairs Committee in 2004 reflected the new position of Slovakia as a full-fledged member of the European Union and also the new competence that the Parliament has acquired in the EU agenda by adopting the previously mentioned Constitutional Act.

The Constitutional Act provided the NCSR with the possibility to authorize its European Affairs Committee to exercise scrutiny over the Government in the EU affairs and assumed adoption of a special act that would concretize its implementation. This act was proposed by the Committee for European Affairs in December 2004, but the Parliament stopped its hearing in the first stage and returned the bill to the Committee. Finally it took almost a year for the Parliament to reach the compromise about the legislation's specifics, thus letting the European Affairs Committee to function on the basis of the provisional informal rules for almost a year. Instead of a specific act, the National Council amended¹²¹ in May 2005 its Rules of Procedure Act that included special provisions aimed at the regulation of the work of its Committee for European Affairs.

121) Act number 253/2005 Coll. from 24 May, 2005, http://www.nrsr.sk/appbin/vez/253_2005_RP.pdf

The Rules of Procedure state that the members of the European Affairs Committee are elected proportionally from all the parliamentary political parties. This principle is applied as the Committee adopts positions of The Slovak Republic in the EU decision-making process, and therefore it is important to ensure that all parliamentary political parties are involved in the decision making. However, there is a very specific formulation that refers only to the political parties that have passed to the Parliament through elections, thus excluding independent deputies that left or were excluded from their political parties and also new political parties or groups that were created by such deputies. These arrangements were adopted at the time when the Government had minority support in the National Council due to the fact that substantial number of coalition deputies left their parties and became independent or created new political parties.

The European Affairs Committee is also the only committee of the NCSR where every elected member has his/her own substitute²² from the same political party. This reflects the specific position of the Committee which requires much more continuous functioning and decision making than other parliamentary committees. This possibility is being regularly used by both coalition and opposition deputies. Due to a very narrow majority of the coalition deputies in this electoral period, it is probable that this mechanism will be used even more extensively.

In the current legislative term that started in July 2010, there are 13 members and 13 substitute members of the Committee for EU Affairs – 7 from the coalition parties and 6 from the opposition parties²³. It only happens very rarely that both a member and his/her substitute are present at the Committee meeting; in such case, however, only a full-fledged member possesses the right to vote. The original idea of the Chairperson representing the opposition had already been abandoned by the previous coalition as this Committee is considered a “little parliament” in the EU agenda (elaborated on in the section 4 devoted to the parliamentary scrutiny of the EU agenda)

22) The substitute member may participate in the session of the Committee on European Affairs on behalf of the regular Committee Member on the basis of the latter's notification to the Chairman or the Deputy Chairman of the Committee. In such a case, the substitute member is counted among the attending Members of the Committee and has the right to vote at the session of the Committee. If the substitute Member is attending the session of the Committee on European Affairs together with the Member for whom he substitutes, or without the regular Member's notification of the substitution, the substitute Member will not be counted among the attending Members of the Committee and does not have the right to vote. A substitute Member for the Chairman or the Deputy Chairman of the Committee attends the session of the Committee on European Affairs as a regular Committee Member. Source: http://www.ncsr.sk/sub/en-US/eu/interrelations_ncsr-and-eu.html

23) In the previous election term, the European Affairs Committee was composed of ten members and ten substitute members (six from coalition parties and four from opposition parties).

and the coalition did not want to leave the control over its management to an opposition politician. In the current term (2010–2014), the newly created coalition took up this argument and thus the Chairperson of the Committee is a member of the Slovak Democratic and Christian Union (SDKU) – the leading coalition party. The role of a chairperson in the Committee's work is crucial as he/she defines the programme of the Committee sessions and the issues to be tackled.

The sessions of the Committee for European Affairs are convened by the Committee Chairman or the Deputy Chairman as necessary. Such an arrangement was adopted with regard to the specific situation resulting from the necessity of permanent deliberation of the Committee²⁴. Each member of the European Affairs Committee serves as a rapporteur for legislation in line with the competencies of individual line ministries. Reporters are obliged to follow a specific area, to inform the Committee about any developments in the given area and also to propose resolutions. The areas for each Committee member are proposed by the Committee Chairperson according to the members' qualifications and preferences. According to the Chairperson, almost all the deputies have previous experience with the given agenda – either they have expertise from the Government or they are members of the respective parliamentary committees. All of the European Affairs Committee members are simultaneously members of other parliamentary committees. Given the fact that the European Affairs Committee is covering a broad range of topics, the individual committee members also serve as liaisons between the European Affairs Committee and other parliamentary committees dealing with specific issues (e.g. the Chairman of the European Affairs Committee is simultaneously a member of the Financial Committee, etc.). However, this double hatting also has a negative side to it, overloading the MPs with agenda and thus lowering their ability to perform their duties properly.

The membership in the European Affairs Committee is very time-consuming as the committee has to function continuously, while other committees are meeting mainly during the plenary sessions of the Parliament. In the past legislative period (2006–2010), the Committee held altogether ninety meetings (only the Constitutional and Legislative Committee had convened more often). Apparently, there is also a substantial difference between the activities of the individual committee members; few of them

24) Source: http://www.nsr.sk/sub/en-US/eu/interrelations_ncsr-and-eu.html In case of other committees – only Chairperson has the right to convene the committee meeting.

are showing a deep interest in the work of the Committee, while others hardly ever participate in the discussion.

The Committee has the right to create commissions that would consult specific topics from the EU agenda and prepare positions of the Slovak Republic for the EU decision making. These commissions may include also external experts apart from the selected Committee members. However, the first such commission is yet to start functioning. The European Affairs Committee has adopted the resolution on the creation of the first commission on 5 October, 2010. The newly created commission will be responsible for debating Strategy 2020 and it will include representatives of different sectors of the economy, professional chambers and broader expert community.

According to the Rules of Procedure, all the members of European Parliament elected for the Slovak Republic also have the right to attend the European Affairs Committee meeting with advisory voice. The original idea to include the Slovak MEPs in the work of the Committee, thus bringing more of the Brussels perspective, proved not realistic as the MEPs are not able and not willing to attend frequent meetings of the Committee and they are present rather occasionally.

The work of the European Affairs Committee is facilitated by the Office of NCSR and especially by its Department for the European Affairs that simultaneously serves as the Committee's secretariat. The Department is, however, very small and currently consists of only seven employees: the director (that also serves as a secretary of the European Affairs Committee), five advisors and an assistant. All of the advisors are responsible for various areas of the EU affairs. One employee can cover such broad and diverging areas as Justice and Home Affairs, Schengen *acquis*, Visa, Asylum and Migration, Company Law, and Competition. Given the load of legislative proposals coming from the European Commission, it is obvious that there is no space for the European Affairs Department to provide an in-depth independent analysis of the draft legislation. *The experts are rather focusing on confrontation of the positions prepared by the ministries with the positions of other member states and with the general conceptual materials reflecting Slovak Republic's interests*²⁵. The European Affairs Committee can also use the expert capacities of the Parliamentary Institute but this option is not being used broadly as the Institute does not focus on the EU agenda.

25) Aneta Vlági, Vladimír Bilčík: *Fungovanie a koordinácia domácich inštitúcií SR v legislatívnom procese Európskej únie: stav, možnosti a odporúčania* [Functioning and Coordination of the National Institutions in the Slovak Republic in the EU Legislative Process: Current State, Options and Recommendations], Research Centre of the Slovak Foreign Policy Association, Bratislava, 2007

Until recently, there was also a Special Permanent Representative of the Slovak parliament to the European Parliament and to other EU Institutions that was acting as a liaison officer of the Slovak parliament in Brussels. The special representative provided information about the agenda of the European Parliament and its committees, analyses and brief comments on the positions of different Brussels stakeholders, facilitated communication with COSAC secretariat and also assisted Slovak MPs during they trips to Brussels. This position was created in November 2005, but unfortunately due to austerity measures it was cancelled as of 1 October, 2010²⁶.

4. Parliamentary scrutiny of the EU agenda

The competence of the NCSR to give consent to all the changes of the EU founding treaties or to other EU related international treaties (such as association treaties) and to adopt transposition acts that are implementing part of the European directives has already been analyzed. New competencies were given to the Parliament by the Constitutional Act that set up the conditions of parliamentary scrutiny of the government's activities in the EU related agenda. In a very simplified way, we can say that the Act defines the obligations of the Government and the prerogatives of the Parliament. More specifically, the Act obliges the government to submit to the National Council drafts of legally binding acts and other EU acts and to inform the National Council about all the issues concerning the membership of the Slovak Republic in the EU. The Government is also obliged to submit to the National Council proposed positions of the Slovak Republic on draft EU legal acts, including the assessment of the draft EU legislation's impact on the Slovak Republic. On the other hand, the Parliament can endorse or even change these positions and it can also adopt positions on other²⁷ EU related issues. Detailed guidelines for the Government on how to handle involvement of the NCSR in the EU decision-making process are provided in the so-called Revised Mechanism of Preparation of Positions on the Acts that will be adopted by the EU Council (Revised Mechanism)²⁸.

26) <http://www.webnoviny.sk/politika/zastupca-v-bruseli-vysiel-skoro-17000-/212376-danok.html>

27) If it is ask to do so by the Government or at least by one fifth (30 out of 150) deputies.

28) Adopted by the resolution of the government No.884 from October 17th, 2007.

<http://www.rokovania.sk/File.aspx/Index/Mater-Dokum-14349>

Apart from the above, the Government is obliged to produce at least once a year a comprehensive report analyzing the issues related to the Slovak Republic's membership in the EU. Based on this report, the Parliament annually deliberates about the EU Affairs and about the position of Slovakia in the EU and adopts recommendations to the Government for the following year. The only area where the Parliament does not have a say are the appointments of the Slovak EU officials (such as Commissioner, judges, auditor, etc.) that remain the sole responsibility of the Government. However, it has become habitual that the governmental candidates for such positions present themselves and their plans to the EU Affairs Committee.

The above mentioned legal act gives to the Parliament formally very strong competencies that are not limited to the control of the Government; on the contrary, they give the Parliament the decision-making power. However, in practice the role of the Parliament in defining the EU agenda remains very limited and mainly formal, due to several factors:

- lack of interest of the political parties in the European agenda (except for those highly politicized, such as Turkish accession or Kosovo independence²⁹, or those of a high strategic importance, such as energy security and tax harmonisation³⁰)
- EU agenda is very consensual – around 90 percent of the decisions of the European Affairs Committee are approved by consensus
- low administrative and expert capacity of the Parliament office to handle the huge volume of the EU related agenda
- late involvement of the Parliament in the creation of Slovak positions
- double hatting of the European Affairs Committee members; they are simultaneously members of other parliamentary committees, and therefore they cannot fully dedicate their capacity to the EU agenda

The National Council of the Slovak Republic decided by its amendment of the Rules of Procedure (Act No. 253/2005 Coll.) to authorize its Committee for European Affairs to exercise its mandate in the deliberation of the EU affairs and granting of the mandate to the representatives of the government for their negotiations in the EU bodies. According to the Rules of procedure, the Committee for European Affairs:

29) These issues became politicised due to the different opinions of the political parties. More details in the section "Scrutiny of the Government EU agenda".

30) More details in the section "Scrutiny of the Government EU agenda".

- deliberates on bills of legally binding acts and other acts of the European Communities and the European Union, which will be discussed by the representatives of the governments of the European Union Member States,
- approves positions of the Slovak Republic on bills of legally binding acts and other acts of the European Communities and the European Union, which will be discussed by the representatives of the governments of the European Union Member States,
- discusses reports and information submitted to the National Council by the Government and Members of the Government,
- may request other committees of the National Council to submit proposals of opinions to bills under sub-paragraphs a) and b),
- submits to the National Council reports on its activities under sub-paragraphs a) to d).³¹

Nevertheless, the Parliament reserved the right to act as stated in the paragraph a) and b) in the plenary, thus preserving the possibility, in cases of specific importance, to decide on the matters otherwise delegated to the Committee on European Affairs. This right was invoked only three times – in politically very sensitive issues, such as Kosovo status (2007), tax harmonization on the EU level (2006) and loan to Greece (May 2010)³².

Scrutiny of the EU legislative process

Draft legal acts of the European institutions are delivered to the NCSR by the Permanent Representation of the Slovak Republic to the European Union within a period of one week from their availability in Slovak language. All the legislative proposals shall be accompanied by the so-called annotation that provides basic information about the proposal such as: content, legal basis, decision-making procedure, importance, method and deadline for implementation and impact on the budget (both EU and Slovak). In the period of three weeks from the availability of the proposal in Slovak language, the Parliament shall also receive from the respective ministry the preliminary

31) Source: http://www.nrsr.sk/sub/en-US/eu/interrelations_ncsr-and-eu.html

32) Only in case of Kosovo status the Parliament adopted a specific Declaration No.309 from March 28, 2007, http://www.nrsr.sk/Static/sk-SK/NRSR/Doc/v_ku-kosovu309-20070328.rtf.

In case of tax harmonization the resolution was not passed and in case of loan to Greece, the quorum necessary for deliberation on the issue was not reached due to the boycott of the coalition deputies. The issue of opening of the accession negotiations with Turkey was also debated on the plenary session; however this was before the adoption of the amendment of the Rules of Procedure that delegated the competence to debate these issues to the European Affairs Committee. .

position containing information on the content and aims of the proposal, about the type and timeline of the decision-making process, subsidiarity and proportionality principle compliance information and assessment of the impact of the proposal on the Slovak Republic as regards political, legislative, economic, social and environmental aspects. Since September 2006, the Parliament also receives (in the framework of Barroso initiative – see later) all the legislative proposals of the European Commission directly.

Each proposal and preliminary position received by the Parliament shall be analyzed by the advisor of the European Affairs Department that is responsible for the specific area of the *acquis*. This analysis shall also provide recommendation to the members of the European Affairs Committee. It is, however, impossible to analyse thoroughly all the dossiers due to:

- extremely low personal capacity of the European Affairs Department – currently only 5 advisors who are not able to handle properly several hundreds of draft acts per year
- the fact that the Permanent Representation and ministries are regularly failing to comply with their duties and to deliver annotations and preliminary positions to the Parliament in time.

The advisors are trying to cope with this situation by focusing mainly on the priority proposals. The priority proposals are determined by the Government and adopted by the NCSR every year on the basis of the European Commission's Legislative and Work Programme and on the basis of its impact assessment on the interests of Slovakia. The advisors also count with the possibility of regular attending at the meetings of the Departmental Coordination Groups³³ where they can gather all the necessary information and also provide the ministries with their comments on the proposed positions. Access to the Departmental Coordination Groups meetings is also granted to the European Affairs Committee members, but they do not participate.

The European Affairs Committee deliberates on the new legislative proposals usually between once in three to eight weeks, depending on the number of incoming proposals during a certain period of time. In practice, the European Affairs department is waiting for at least 12 drafts to be delivered to the Committee at one time for deliberation. The department prepares a table that includes the proposal, annotation and preliminary position prepared by the ministry (which is not always available, despite the obligation) as well as

33) Groups created in every ministry that are responsible for the preparation of Slovak positions for the EU decision making process.

basic information on each proposal and their recommendation as to how to proceed for the Committee members. Since December 2009, the table has also contained information on the compatibility of the proposal with the subsidiarity principle (see later).

The proposals are presented at the Committee meetings by their reporters³⁴ who are also giving final recommendation to the Committee as to whether to discuss the issue or not. In case of non-priority proposals (absolute majority of all the proposals), the Committee almost exclusively decides to “take note of the proposal”, proceeding without further deliberation³⁵. In case of priority proposals, the standard procedure is to refer the issue to the respective specialized parliamentary committees in order to obtain their positions. These positions usually serve as a basis for later adoption of the final position of Slovakia for the EU negotiations.

The analysis and the interviews conducted in preparation of this study showed that the scrutiny of the legislative proposals does not belong to the priority areas of the European Affairs Committee deliberations. Non-priority proposals are not discussed at all and priority proposals are referred to specialized parliamentary committees. This is also reflected in the Slovak parliament’s participation in the direct political dialogue with the national parliaments launched by the European Commission in 2006. The so-called Barroso initiative provides the EU national parliaments with the opportunity to comment not only on the subsidiarity and proportionality principle compliance of the proposed legislation but also on the content of the proposals. The National Council of the Slovak Republic has used this opportunity only once when it sent a favourable opinion to the European Commission in 2006³⁶. The involvement of the Parliament in the political dialogue was also never discussed in the European Affairs Committee meetings. Interviews confirmed that the European Affairs Committee tends to focus on the next stage of the legislative process when the final positions of the Slovak Republic are presented by ministers and Prime Minister before each Council meeting. This is, however, a very disputable attitude as the final position comes during

34) Each Committee member is reporter for certain area of the *acquis* – see the Chapter Organization of the European Agenda in the Parliament

35) There are few exceptions when the issue is interesting for the reporters or other members of the Committee – recently, for example, the Proposal of the EC for the introduction of the so-called EU School Fruit Scheme (scheme to provide fruit and vegetables to school children)

36) Annual Report 2007 on Relations between the European Commission and National parliaments
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0237:FIN:EN:PDF> and Annual Report 2008 on Relations between the European Commission and National parliaments
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the legislative process in the EU (ministerial level) when usually few things can be changed and negotiated. The new leadership of the Committee is, however, planning to change this approach and to involve the Parliament into the position shaping already in the phase when the proposals are negotiated at the working groups' level. Moreover, in case of the proposals with high importance for the country, the Parliament also plans to involve civic society representatives (NGOs, academia, chambers, etc.), either by inviting them to present their opinions during the Committee meetings or by including them into the work of specialized commissions (elaborated in the section "Organization of the European Agenda in the Parliament").

Scrutiny of the Government's EU agenda

As mentioned before, the Constitutional Act gives the Slovak Parliament power to endorse or even change positions of the Slovak Republic for the negotiations in the EU that take place on the level of the government representatives. This formulation covers both the European Council and the Council levels of decision making. In practice, each member of the Government including Prime Minister³⁷ has to attend the meeting of the European Affairs Committee to present the position proposal and to seek its approval. According to the Rules of Procedure, the members of the Committee should receive the governmental proposal for the position well in advance. Interviews with European Affairs Department staff, however, confirmed that there is usually very little time to analyze the final proposal. This is not always a fault of the Government but also of the EU Council presidencies that communicate the programme of the Council meetings at the very last moment. If the proposal is delivered on time, advisors of the European Affairs Committee prepare analyses of the proposal, focusing on the recent developments in the text of the draft act, current state of negotiations, positions of other member states; they also draft recommendations for the members of the Committee.

During the negotiations in the Council, each member of the Government is bound by the position approved by the Parliament and may depart from it only if it is essential with regard to the interests of the Slovak Republic. In such case, he/she is obliged to notify immediately the National Council and provide justification for such action. If necessary, the Government member may also request the National Council to change an already approved posi-

37) Ministers occasionally send their deputies; Prime Minister is always present personally.

tion. So-called “silent procedure” enables the National Council to give tacit agreement with the governmental proposal of the position. This procedure is activated if the National Council does not adopt position on the issue within two weeks from its submission by the Government. Also the constructive disapproval principle applies – when the Parliament rejects governmental position proposal and at the same time does not adopt its own position, the proposal of the Government becomes the official position of the country. However, the Parliament has never rejected any governmental proposal. All the above mentioned competencies are executed on the basis of the National Council’s Rules of Procedures by its European Affairs Committee. The governmental positions were referred to the plenary only four times.

First, it was in the case of opening of the accession negotiations with Turkey when the European Affairs Committee demanded the change of the Slovak position before the European Council meeting in the following way: “The Slovak Republic supports the opening of the accession negotiations with Turkey with an open-ended character, depending on the fulfilment of the set criteria by Turkey”³⁸ (the original proposal did not mention the open-ended character of the accession negotiations). As this happened in October 2004 when the Rules of Procedure still did not contain the authorization of the European Affairs Committee to oblige government to change the position of Slovak Republic, the case was referred to the plenary. This was also the only case when the plenary officially approved the position of the Slovak Republic and after a heated discussion obliged the Government to “promote such way of opening of accession negotiations with Turkey that will respect the essentiality of the criteria fulfilment and that will not imply an obligation of the EU to accept Turkey as a member of the European Union”³⁹. Subsequently, the Parliament approved also declaration recognizing Armenian genocide committed by Ottoman Empire and condemning it as a crime against humanity⁴⁰. Both issues were initiated by the conservative part of the Christian Democratic Movement – a party that was part of the ruling coalition at that time⁴¹.

The second case was Kosovo final status issue when the governmental position for the GAERC meeting in February 2007 was supportive of the

38) internal analysis of the European Affairs Committee

39) Resolution 1340 from November 30, 2004 http://www.nsr.sk/Static/sk-SK/NRSR/Doc/v_uznesenie1340-20041130.rtf

40) Resolution 1341 from November 30, 2004 http://www.nsr.sk/Static/sk-SK/NRSR/Doc/v_uznesenie1341-20041131.rtf

41) More details in: Aneta Vláci, Vladimír Bilčík: *Fungovanie a koordinácia domácich inštitúcií SR v legislatívnom procese Európskej únie: stav, možnosti a odporúčania* [Functioning and Coordination of the National Institutions in the Slovak Republic in the EU Legislative Process: Current State, Options and Recommendations], Research Centre of the Slovak Foreign Policy Association, Bratislava, 2007 (pages.19-20)

Ahtisaari plan (that anticipated independence of Kosovo). The members of the European Affairs Committee approved unanimously the proposed position, most probably without realizing that it de facto means supporting the Kosovo independence. The issue, however, became extremely politicized when the journalists published this information⁴² and it was referred to the plenary that adopted declaration denying the full and unconditional independence of Kosovo.⁴³ Even if the declaration was adopted in the form that was not binding on the government, it later became the basis for the official position of the Slovak Republic that did not recognize Kosovo independence.

In the third case, the harmonization of taxes was discussed in 2006. The then opposition parties that were strictly against the tax harmonization were alerted after interviews of the Prime Minister Fico who indicated that the Slovak veto was not to last for eternity. Even though Prime Minister Fico's remarks could not be considered as an official governmental position, the opposition referred the issue to the plenary and proposed a Declaration on the Tax Sovereignty in Direct Taxes that was, however, not adopted⁴⁴.

The last case happened recently (May–June 2010), with regard to the Eurozone loan to Greece when the then opposition⁴⁵ used obstructions to block the approval of the governmental position that endorsed the participation of Slovakia in the Eurozone loan to Greece in the European Affairs Committee and tried to refer the issue to the plenary. The ruling coalition, however, boycotted the plenary meeting and the issue was not discussed. These steps resulted in the unique situation when the governmental proposal was not approved by the Committee (nor by the plenary), but according to the Constitutional Act had become the official position of the Slovak Republic.

Other mechanisms set by the Constitutional Act, such as the possibility of a Member of the Government to ask the National Council to change the position of The Slovak Republic or the possibility to diverge from the

42) Pravda daily: "O Kosove je rozhodnuté, myslí si Kubiš" [Kosovo issue is decided, thinks Kubiš], 6 February, 2007 http://spravy.pravda.sk/o-kosove-je-rozhodnute-mysli-si-kubis-d83-/sk_domace.asp?c=A070206_113905_sk_domace_p12

43) Declaration No. 309 from 29 March, 2007 http://www.nrsr.sk/Static/sk-SK/NRSR/Doc/v_ku-kosovu309-20070328.rtf

44) See also: Aneta Vlági, Vladimír Bilčík: *Fungovanie a koordinácia domácich inštitúcií SR v legislatívnom procese Európskej únie: stav, možnosti a odporúčania* [Functioning and Coordination of the National Institutions in the Slovak Republic in the EU Legislative Process: Current State, Options and Recommendations], Research Centre of the Slovak Foreign Policy Association, Bratislava, 2007 (pages.19-20)

45) This situation happened in the previous election term when the coalition government led by Prime Minister Fico agreed with participation of Slovakia in the Eurozone loan to Greece, but refused to ratify it in the Parliament – due to upcoming general elections. Newly elected parliament (where the coalition and opposition swapped) refused the loan, thus Slovakia is not participating in this Eurozone mechanism.

approved positions⁴⁶, were never used. Besides the fact that the first option is not feasible at all (it would be logistically extremely difficult to approve the change of position during the Council meeting by the European Affairs Committee), the positions of the Slovak Republic are usually formulated in a less strict way that leaves room for manoeuvre and bargaining.

According to the Parliament, the procedure of silent approval was never used and positions (with exception of the above mentioned “Greek” case) were always approved. However, in some cases of General Affairs and Foreign Affairs Council decisions, where Slovakia is represented by the Minister of Foreign Affairs and the Council meetings are rather frequent, the positions were approved only *ex post*. In these cases, there was no involvement of the Parliament in the decision making and the *ex post* approval of positions could be considered pointless – as *de facto* the silent approval automatically applied. This shows that silent approval of positions also possibly concentrates huge power in the hands of the Committee chairperson. According to the Rules of Procedure, the chairperson convenes Committee meetings “when necessary”. Should the chairperson decide not to convene the meeting, the governmental positions are approved by silent procedure. This leaves room for approval of a position for which it would be difficult to gain majority support in the Committee. On the other hand, this room is quite limited as the Rules of Procedure oblige the European Affairs Committee Chairperson to convene the meeting of the Committee in case he/she is requested to do so by the plenary decision, Speaker of the Parliament, or by at least one third of the Committee members (paragraph 49 (2) Rules of Procedure). The Parliament never used the option to gain more time for deliberation by demanding the Government to recall the parliamentary scrutiny reservation during the Council meeting.

The above mentioned facts allow us to draw several conclusions:

- Broad competencies of the Parliament in respect to the Government are not being used (with few exemptions of sensitive, strategically important, or highly politicized issues), thus leaving the EU agenda primarily and almost exclusively the responsibility of the Government
- The parliamentarians are clearly still not aware of the fact that the Government acts in the EU decision making as co-legislator and subsequently

46) However, former Minister of Social Affairs has been suspected of promoting other than approved positions during the Council meeting. In press interviews, she had provided information that gave rise to those suspicions. She was asked to explain the issue on the EU Affairs Committee meeting where she denied differing from the approved position.

many directives are implemented by the governmental regulations while the Parliament is losing control of the legislative process in Slovakia

- The late stage in the EU legislative process when the Committee for European Affairs enters into the position shaping usually does not allow for substantial changes in the draft acts
- The European affairs are – with the exception of few highly politicized issues – either part of a broader consensus on the EU agenda⁴⁷ or not considered to be important enough to be tackled by the parliamentarians

5. Changes envisaged by the Lisbon Treaty

The amendments of the Constitutional Act and the Rules of Procedure that would regulate the use of the new competencies given to the national parliaments by the Lisbon treaty was already tabled in the previous legislative term but they were withdrawn from the legislative process with an argumentation that they have not been approved by the Coalition Council⁴⁸. In this term, the proposal has not been tabled yet, but the European Affairs department expects that this could happen in November 2010. If the legislative procedure is smooth, the new procedures could come into force in February or March 2011. However, as the new regulation includes the amendment of the Constitutional Act, consent of the biggest opposition party (SMER – Social Democracy) is required and thus the issue can become a political bargaining chip.

The draft amendments, however, only deal with the subsidiarity check and omit other issues such as:

- passerelle clauses: general (Article 48(7) TEU) and specific passerelles clauses (relating for example to the harmonisation of family law with cross-border elements)
- flexibility clause (Article 352 TFEU)
- simplified procedure of amending Part III of the Treaty on Functioning of the European Union (Article 48(6) TEU)

47) There has been only one Eurosceptical party present in the NCSR since 2006 – Slovak National Party (SNS). However, as a part of the ruling coalition supported the pro-EU track of all the Slovak governments after 1998.

In the previous electoral period (2006–2010) there were few conservative deputies elected for the Christian Democratic Movement, who left the party and diverged from pro-European mainstream. However, the new party they set up did not succeed in the 2010 elections. There was also rather marginal Communist Party represented in the parliament in 2002–2006 period.

48) This is a non formal organ of the coalition parties' leaders that decides among others about all the laws to be approved by the Parliament.

According to the Chairman of the European Affairs Committee, the standard procedure of adopting the mandate for the Government will apply. In his opinion, this is a sufficient measure as the decisions on the use of all of these clauses are subject to unanimous agreement in the Council. However, the standard procedure of granting the mandate to the Government has a hidden pitfall in avoiding the necessity to agree on the transfer of powers to the EU by the constitutional majority of deputies.

The draft amendment also does not tackle the way in which the National Council would raise the so-called “red card” – a tool that gives to every national parliament the right of veto with the use of the passerelle clause within the period of six months (Article 48 (7) TEU). According to the Chairman, in case of this very unlikely scenario, the National Council would react in a proper manner – for example by amending its Rules of Procedure – in order to use the veto. As the Lisbon Treaty does not exactly define the way in which the national parliaments use the red card, probably the regular resolution of the National Council or even the resolution of its European Affairs Committee would be sufficient. If the simplified procedure of amending Part III (Union Policies and Internal Actions) of the Treaty on Functioning of the European Union that cannot increase competencies of the European Union is used for changes of the EU primary law, it shall be considered as a ratification of international political treaty according to Article 7 (4) of the Slovak constitution by qualified majority of all the deputies (at least 76 out of 150).

Subsidiarity check

According to the annual activity reports of the European Affairs Committee, the National Council participated in seven out of eight rounds of the subsidiarity tests organized by COSAC. The analysis of the questionnaires delivered to the COSAC secretariat and analysis of the COSAC reports on subsidiarity tests revealed several interesting facts. The National Council never identified breach of the principle of subsidiarity. However, it is doubtful how seriously it has tried to provide its own analysis of the issue – especially in the last tests. During the discussion about the Parliament’s participation in the pilot round of the subsidiarity test – on 3rd railway package, the European Affairs Committee deliberated three scenarios: 1. decide on the subsidiarity principle breach in its own capacity; 2. involve other parliamentary committees; and 3. involve plenary. The Committee opted for the second option and involved the Committee on Economy, Privatization and Undertaking

and also the Legislative Department of the Parliament's Office. Similarly, in case of the Proposal for regulation concerning applicable law in matrimonial matters (2nd subsidiarity check) the Constitutional and Legal Affairs Committee, the Committee for Social Affairs and Housing, and the Committee for Human Rights, Minorities and Status of Women were consulted and in case of the proposal for the Council Framework Decision on combating terrorism (4th subsidiarity test) the Constitutional and Legal Affairs Committee was consulted. In case of the remaining tests, the European Affairs Committee endorsed the opinions of the Government that were reflected in the preliminary positions of the Slovak Republic and supported by the opinion of the Committee's advisors. The tests were, therefore, never referred to the plenary and the Committee for European Affairs was taking the final decision over the issue.

The Parliament has not found it necessary to issue a reasoned opinion on any of the proposals as it did not identify breach of the subsidiarity principle. Neither the European Affairs Committee, nor the Department of European Affairs officially⁴⁹ consulted their counterparts from other EU member states. However, the staff of the Committee confirmed that IPEX database⁵⁰ was regularly checked for the position of other parliaments. On the other hand, the use of IPEX has been passive as the Parliament did not upload any document related to the legislative process, except for the resolutions of the European Affairs Committee that have taken into account the legislative proposals of the European Union. There is also a discrepancy between the information from the European Affairs Committee Activity Report (2006/2007) that claims participation in the third round of the tests (Community Postal Services) while COSAC report denies the National Council's participation. It is also paradoxical that the National Council usually complained about the difficulties with meeting the eight-week period for the test, but it did not do so in case of the fourth round (Anti-discrimination directive) when the Slovak position was delivered late. It is obvious that the first tests of the subsidiarity principle were taken much more seriously (involvement of other parliamentary committees, hearing of respective ministers, analyses provided by the legislative department) than the later rounds that appear to have been conducted mainly formally.

49) In several cases "informal contacts" were used

50) IPEX is an Inter-parliamentary information exchange system that allows the EU member states parliaments to exchange information about the legislative process of the EU.

According to the European Affairs Department, the real checks of subsidiarity started in the National Council immediately after Lisbon Treaty entered into force. This, however, does not correspond with the information from the Committee Chairman who signalized the start of subsidiarity checks in the autumn of 2010. The discrepancy in these positions shows different perceptions of the subsidiarity checks character between the MPs and staff of the European Affairs Committee. As of December 2009, the European Affairs Department is providing information on the subsidiarity principle compliance on all draft acts coming from the EU institutions that are tabled to the European Affairs Committee. As mentioned above, the first assessment of the subsidiarity principle compliance is already made by the respective ministry in a preliminary position of the Slovak Republic. The interviews with the advisors of the European Affairs Committee showed diverging practice among the staff preparing recommendations for the MPs. Some of the advisors are trying to prepare assessment on the subsidiarity principle compliance independently from the one provided by the ministry on all the draft acts in their portfolio, while others only comment on the priority acts (see chapter *Scrutiny of the EU Legislative Process*). Subsequently, the Committee takes note of the proposals or asks other parliamentary committees for their position, but so far the subsidiarity principle was not discussed – most probably due to the fact that so far⁵¹ the advisors have not pointed out any problem with the subsidiarity principle compliance. It is, moreover, legally questionable whether the Committee has the competence to run subsidiarity checks and issue decisions recalling breach of subsidiarity principle as the amendment of the Rule of Procedure that would enable this was still not approved.

However, the Chairman of the Committee considers subsidiarity checks to be an important tool of the national parliaments that can prevent excessive centralisation and “out of control” comunitarisation. He acknowledges the necessity to select the proposals to be tested more thoroughly as it is not in the capacity of the Parliament to test all the proposals. The proposals to be tested shall be identified by the Committee members and then decided by the Committee. These proposals shall be then consulted with the parliaments of the Visegrad countries that are considered to be “natural partners” of the Slovak parliament. The subsidiarity checks could be carried out also on proposals selected in COSAC in advance on the basis of the Commission’s Legislative and Work Programme where a possible non-compliance is

51) As of beginning of October 2010

signalized by any of the parliaments. These checks could be coordinated by the Parliament of the country holding the EU Presidency and facilitated by the COSAC Secretariat. This could help the national parliaments to raise the yellow or orange cards during the set period of 8 weeks.

The prepared amendment of the Constitutional Act gives the National Council the right to oblige the Government to bring an action for annulment based on the subsidiarity principle breach to European Court of Justice. The draft amendment of the Rules of Procedure further specifies the details of such action. According to the proposal, the action can be proposed by the European Affairs Committee or by at least one fifth of all deputies (30). The proposal allows the National Council to appoint the Member of Parliament or any other person/s to represent the National Council in front of the Court while the Government and state administration are obliged to facilitate and assist the Parliament's representative in his duty. The draft amendment of the Rules of Procedure also explicitly mentions the competence of the European Affairs Committee to run subsidiarity checks.

6. Conclusions

The title of this study: "National Council of the Slovak Republic in the EU Agenda: Giant in Theory, Dwarf in Practice" was chosen to reflect the Slovak parliament's role in the EU agenda. The Slovak constitution, the Constitutional Act on the Cooperation of the NCSR and the Government in the EU Affairs and the Rules of Procedure give the Parliament broad competencies in the definition of Slovak Republic's EU agenda, in the scrutiny of the Government in the EU decision making, and in the implementation of the European *acquis*. However, in practise the role of National Council remains very limited. The implementation of the European *acquis* usually happens through the governmental regulation and the parliament is only notified. Also the scrutiny of the Government's acting in the EU decision making remains rather formal and the Parliament has used its power to define Slovak positions in the EU only twice so far – in politically sensitive issues such as the opening of the accession negotiations with Turkey and the independence of Kosovo. We have mentioned a number of reasons for such passivity of the National Council in the EU Agenda. Among others, it is the low capacity to tackle the huge amount of legislative and executive acts coming from the EU and the partisan composition of the Parliament that is ruled by the government coalition.

It would be interesting to analyse the Parliament work – especially when there is a minority or care-taking expert government that would not be able to count on the almost automatic acceptance of its proposals⁵². In such case, we could probably observe a much higher involvement of the Parliament in the decision making. Also, when we compare the Slovak practise with countries such as Germany, Poland and the Czech Republic (where this study also took place), we can observe that Slovakia is lacking the second – “less political” and “more expert” chamber that could select the issues to tackle and analyse them in more detail.

The Parliament has passed the execution of its powers to a special Committee for European Affairs that is composed of representatives of all political parties present in the Parliament on the proportional basis. The analysis proved the crucial role of the Chairperson of the Committee that convenes its meetings, proposes the programme of the meetings and defines the priorities for the Committee’s work. The chairperson has to act as a leader and if he/she fails to do so, the Committee tends to act as an automatic policy taker of the governmental positions without attempting to provide some added value to the definition of the Slovak EU positions (as we could observe in the previous election term 2006–2010). If the Chairperson of the Committee was elected from among the opposition deputies, it would most probably lead to its higher engagement in the government’s scrutiny.

It is still too soon to evaluate the work of the Committee and its new leadership in the current election term (since July 2010) but we can already see an attempt at a more pro-active approach to some of its activities (creation of the Commission for Europe 2020 Agenda, intensified cooperation with other parliaments in the region and start of the subsidiarity checks). However, especially in the area of implementation of the new competencies arising from the Lisbon Treaty, the preparedness of the National Council is very low. In almost a year, the Parliament has not been able to adopt necessary amendments that would implement the control of subsidiarity principle both *ex ante* (subsidiarity check) and *ex post* (action to the European Court of Justice). What is even more surprising is the lack of will to implement the stronger mechanism of control of the use so-called dynamic clauses (*passerelles*, flexibility clause and simplified revision of treaties) whose use can possibly limit the sovereignty of Slovakia and consequently the competences

52) Although such situation already occurred in the period of 2005–2006 (second government of Prime Minister Dzurinda), this cannot be considered as an illustrative example to make this assessment as Dzurinda was *inter alia* a very skilful negotiator – able to secure stable support for almost all the governmental proposals among independent deputies.

of the Parliament. Currently, the standard scrutiny of the government still provides a possibility of the Parliament being excluded (silent procedure), thus it would be desirable to implement a specific procedure of approving governmental positions in those questions. The reason behind the reluctance to adopt special (stronger) procedures for the control of the use of dynamic clauses can also be an insufficient acquaintance of parliamentarians with these new instruments.

It seems that the capacity of the European Affairs Committee to handle the load of draft legislation and governmental positions is quite low. Despite the fact that the Committee is quite busy, its members have to work in other parliamentary committees in parallel. Moreover, the expert capacity of the European Affairs Department remains very low and does not allow for an independent in-depth analysis of all the draft acts and governmental positions. It also seems that the exchange of information based on e-mail communication has its deficiencies and a standardized mechanism of document circulation inside the Parliament and between the Parliament and the Government should be introduced.

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INSTITUT PRO EVROPSKOU POLITIKU
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Mission

EUROPEUM Institute for European Policy is a non-profit, non-partisan, and independent think-tank focusing on European integration. EUROPEUM contributes to democracy, security, stability, freedom, and solidarity across Europe as well as to active engagement of the Czech Republic in the European Union. EUROPEUM undertakes research, publishing, and educational activities and formulates new ideas and opinions on the EU and Czech policy making.

Core activities

Research programmes

■ **The Future EU Programme** focuses on the analysis and recommendations for Czech positions towards EU's future functioning, as well as towards its key policies. The main areas of research include EU institutional reform, implementation of the Lisbon Treaty, EU enlargement (focusing on Western Balkans and Turkey) and European Neighbourhood Policy with special emphasis on Eastern Partnership.

■ **The Foreign Policy and Transatlantic Relations Programme** covers the future development of the Common Foreign and Security Policy (CFSP) and the Common Security and Defence Policy (CSDP), plus analyses and recommendations for the EU and the Czech Republic in this respect. Special attention is paid to the relationship between the EU and the USA as key transatlantic partners.

■ **The Economic and Social Programme** analyses economic and social issues mostly connected with the membership of the Czech Republic in the EU, such as the adoption of the Euro, Europe 2020 strategy, and the future of the EU regional and cohesion policies. Special emphasis is put on the future of the EU budget and the next financial perspective.

■ **The Freedom, Security, and Justice Programme** covers this dynamically developing EU policy. It focuses on issues such as new European initiatives in the field of the fight against terrorism, co-operation of intelligence services within the EU, immigration and asylum policies, issues of visa policies towards third countries, or the consular co-operation among EU member states.

Recent research projects include:

■ **The EU New Member States as Agenda Setters in the Enlarged European Union**

The objective of the project has been to map the positions and level of activity of the ten new EU Member States on a number of issues on the EU agenda; identifying the factors and drives behind these positions; looking at the level of political and public consensus and the influence of major stakeholders; outlining coalition patterns within the EU and, finally, trying to provide an outlook on possible change of these positions. The countries have been classified on each of the policy issues as “Policy Takers”, “Policy Killers” or “Policy Drivers”, depending on their particular position and level of activity.

■ **Transatlantic Policy Forum (TAPF)**

The project was focused on enhancing the transatlantic debate concerning the key areas of interest to transatlantic policy community by bringing together scholars and experts from both the US and the EU and delivering specific, policy-oriented recommendations on these issues to policy makers on both sides of the Atlantic. The experts participating in the project formed the Transatlantic Task Force, which was sub-divided in four different working groups created around the following topics: 1. Energy security and climate change, 2. Transatlantic market and WTO issues, including trade in agricultural products, 3. Democracy assistance and promotion worldwide and 4. EU–US co-operation in the EU neighborhood (Western Balkans, Eastern Europe, Caucasus).

■ **Regulation of Lobbying as the Right Direction to More Transparent and Corruption-Free Legislative Process**

The aim of this project is to promote regulation of lobbying at the parliamentary level through the public debate and with the assistance of experts working in this field. One of the main outputs will be a proposal for an act (or other by-laws) regulating this area.

■ **Contributing to the Debate on the Intelligence Services Reform in the Czech Republic: Working Panel on of the Reform Agenda**

The project aimed at generating ideas how to re-conceptualize the intelligence services in the Czech Republic and at contributing to the debate by providing a platform for such a discussion within a floating structure of the working panel of the experts.

■ **The Evaluation of Visegrad Countries' Democracy Assistance**

This research project was led by PASOS and the aim of the project was the evaluation of each V4 government's policies in the area of democracy assistance; it also included a series of case studies in four target countries (Bosnia and Herzegovina, Ukraine, Belarus and Cuba). The project assessed the record and efforts of V4 governments, resulting in a comparative analysis of their policies and impact. Recommendations were made to strengthen the impact and co-ordination of V4 democracy assistance efforts, and to share V4 'democratic transition' know-how in the neighbouring regions.

Democracy Assistance / Transfer of knowledge

The aim of this programme is to transfer the know-how of the Czech transition and EU accession processes to the countries in the EU neighbourhood. So far Europeum has implemented such projects in Belarus (targeting leaders of the democratic opposition and independent civic society groups), Ukraine, Bosnia and Herzegovina, Kosovo and Macedonia (targeting journalists, NGO leaders and local government representatives). The ongoing project in Kosovo "How to engage together in a policy dialogue?" aims at strengthening the role of civil society, specifically NGOs, in the development and implementation of public policies and their ability to conduct a structured political dialogue with the government authorities through the use of long-term experience of selected NGOs and experts from the Czech Republic. In 2010, Europeum has launched a cross-border project between Bosnia and Herzegovina and Serbia.

Education

One of EUROPEUM's target groups is secondary school students for whom EUROPEUM organized 4 years of *EuropaNostra* – a contest on the European Union. In September 2007, a new contest called *EuropaSecura* was launched, focusing on security issues, the EU, and NATO. In the summer of 2010, EUROPEUM organized its 8th year of the international *European Summer School*, attended by almost 50 students from more than 20 different countries. EUROPEUM also organises both general and specialised courses on the EU for different organisations – public administration, the Czech National Bank, the Government Office, NGOs, and companies.

Policy advice and advocacy

The experts of EUROPEUM participated in briefings and various advisory bodies of the Prime Minister, Vice-Premier for EU affairs, Czech Ministry of Foreign Affairs or the Governing Board of the Czech National Bank on issues such as the Convention on the Future of Europe, EU Constitutional Treaty or the Czech EU presidency, as well as in parliamentary hearings.

Roundtables, conferences, and seminars

EUROPEUM organizes a number of seminars, conferences, workshops, and other public events. The major conferences that we have organized in the past include: *“Kosovo: Europe's youngest state. Challenges and opportunities.”*, *“Euro in Central Europe: experience and perspectives”*, *“The First Year of the Lisbon Treaty – New Rules for the European Chessboard”* and others.

Membership in networks

EUROPEUM is a member of the *European Policy Institutes Network (EPIN)*, an informal network coordinated by the Centre for European Policy Studies (CEPS) in Brussels, which includes prominent European think-tanks such as the Royal Institute Elcano in Madrid, the Swedish Institute for European Policy Studies (SIEPS) in Stockholm, the Centre for European Reform in London, or Notre Europe in Paris. More information: www.epin.org

EUROPEUM is also a member of the *Policy Association for an Open Society (PASOS)*, whose secretariat is based in Prague and which gathers public policy centres together from Central and Eastern Europe, the Balkans and Central Asia. More information: www.pasos.org

EUROPEUM is also a co-founder of *Association for Democracy and Human Rights (DEMÁS)*, an association of Czech NGOs working on democratization, civil society and promoting human rights worldwide. More information: www.demas.cz

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