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THE ROLE OF NATIONAL PARLIAMENTS IN THE EUROPEAN UNION AFTER TREATY OF LISBON

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Abstract*. After coming into force of the Treaty of Lisbon it is acknowledged that better control and respect of the principle of subsidiarity is one of the most important and innovative goals of the Treaty. To achieve this goal, the Treaty introduces a mechanism which, apart from checking compliance of draft legislative acts with that principle, may eventually lead to a draft act to be deleted from the legislative agenda of the European Union on grounds of violation of subsidiarity. Within this mechanism, crucial role is attributed to the national parliaments of the Member States. In this article, the reasons for overall inclusion of national parliaments in the European Union (hereinafter EU, the Union) activities are analysed. The role of national parliaments in the EU according to the specific provisions of the EU treaties is also discussed and the largest part of the work is devoted to the ex ante subsidiarity principle control mechanism (the Early Warning System), which gives the right for the national parliaments to influence the EU legislative process.*

Keywords*: national parliaments, principle of subsidiarity, legislation, the Lisbon Treaty, Early Warning System.*

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Introduction

There is a fundamental difference between the EU and national legislative processes. The EU legislation is not adopted by national parliaments. It is endorsed by the Council of the EU where Member State positions are represented by the respective governments and by the European Parliament as the representative body of the EU citizens. The right of legislative initiative is the prerogative of another supranational institution, the European Commission. Therefore, the main national legislative body, the national parliament, is involved in the EU legislative process only by exercising the right of transposition of the EU *acquis* to the national legal framework when it is not applied directly. That is why the issue of legitimacy must be addressed when passing EU legal acts. The EU consistently notes the necessity to increase the role of national parliaments in dealing with EU matters, particularly in following the EU legislative procedure. An increasingly important role of national parliaments is a fundamental precondition for reducing the democratic deficit in the EU and strengthening its legitimacy as well as publicity of decision-making. The necessity to increase the role of national parliaments rests on the assumption that national parliaments are closer to citizens – the more national parliaments are engaged in the European politics, the more their voters feel involved in the European project[1].

In this article, we will analyse and try to evaluate the role of national parliaments which they have while participating in EU legislation. To achieve this goal, detailed research will be presented about the preconditions that allowed involving national parliaments in the EU activities, historical background of the rights that national parliaments had before the Lisbon Treaty came into force, and the role of national parliaments after the Treaty of Lisbon. Finally we discuss the procedure as to the way that the Lithuanian parliament (the Seimas) can participate in the EU law-making process.

In order to achieve this objective, historical, logical, analytical and comparative methods are used.

1. Reasons for the Inclusion of National Parliaments in the European Activities

During the European integration process, through the developments of enlarging and deepening the European integration, democracy has become one of the most popular subjects discussed in the Union. Thus, it has been given much more attention and its credentials have been improved day by day in the EU. Then, the Union, which was

1 Parliamentary scrutiny of European Union matters in Lithuania, Committee on European Affairs Seimas of the Republic of Lithuania [interactive]. [accessed 01-02-2012]. <http://www3.lrs.lt/pls/inter/w5_show?p_r=149&p_k=2>.

labelled as a top-down initiative, very further from its citizens, has enforced a tendency towards making the citizens closer to the Union on a step-by-step basis[2].

National parliaments, in particular, have increasingly come to be seen as a possible institutional solution to the problem of consolidating and even enhancing the democratic credentials and legitimacy of the EU. Much of the early debate on the democratic and legitimacy deficits tended to focus on the European level, namely the role and powers of the European Parliament. However, there is now recognition that focusing solely on this institution is insufficient since the increase of powers at the European level has also raised questions about democratic legitimacy, and specifically the legitimating role of parliaments at the level of the Member State[3].

Towards the end of 1970s, in 1977 the term "democratic deficit" was first spelt out, which was related to the inability of the EU to act in the face of a common need by European citizens for European action. The "democracy deficit" came to the fore with the 1992 Maastricht Treaty, when the majority of the Danish electorate objected to the ratification of the Treaty. With this development, for the first time, the citizens increased their voice and demonstrated that they had to be taken into account in the constitutional design of the Union.

The democratic deficit of the EU can be summarised in two main aspects:

1) The constitutional architecture of the EU, which has evolved from a series of Treaties agreed by the Member States and constitutionalised by the European Court of Justice, points out to a system lacking constitutional clarity, since the consent of citizens has not been taken at national level. The electorate (citizens) cannot hold the main decision-maker, that is the Council at the Union level, accountable. Only national governments can be held accountable at national level, which is rather limited due to the nature of decision-making at Union level, characterised by diverse and complex nature, as well as by qualified majority voting in the Council, whereby it becomes unreasonable to hold national governments responsible for positions they did not take.
2) In the institutional design of the EU, which is based on a set of common institutions at the EU level, the decisions evolve from intense bargaining within and across the policy-making institutions, operating within a delicate institutional balance. The European Commission, a technocratic body at the heart of the institutional system, exercises policy initiation and law-making power with no direct democratic mandate. The Council of Ministers, the main law-making body, makes decisions under the 'closed door' principle. In this institutional design, there is no doubt that Europe's citizens have difficulty in identifying 'who governs' in the Union and cannot exercise their own prerogative to dismiss them at elections.

2 Esenturk, N. Democracy in the European Union and the Treaty of Lisbon. *Alternatives: Turkish Journal of International Relations*. 2009, 8(4): 2.

3 Rituzzo, F. National Parliament and the European Union: Part of the Problem or Part of the Solution to the Democratic Deficit in the European Constitutional Settlement. *The Journal of Legislative Studies*. 2003, 9(3): 88.

It is acknowledged that the participation of national parliaments in the EU activities can solve the problem of democratic deficit in the EU. Therefore, some important decisions were made throughout the EU history and national parliaments were gradually involved in the governance of the EU. In the following section of this article, we discuss the historical background of national parliaments in the EU.

2. The Role of National Parliaments in the EU before the Treaty of Lisbon

The role of national parliaments had been a marginal, but persistent, issue on the EU agenda for years and was recognized as part of a move towards building a genuine European polity[4]. Comparative research indicates that the adaptation by national parliaments has been a three-stage process, during which they become more involved in the governance of the European Union[5].

During the first stage, parliaments showed little interest in integration. They were essentially passive if not entirely marginal actors in Community governance. In any event, parliaments were accorded no formal role in the process of Community law-making and they had little inclination to seek such a role. Within national parliaments no significant structural or procedural changes were made. This is mainly explained by the nature of the European Community. Following the so-called Luxembourg compromise in 1966, Council law-making was based on unanimity, and thus each government could veto initiatives. The Community had competence only in commercial and agricultural policies. The Community was thus mainly an intergovernmental organisation and as such a matter for the governments. National legislatures felt that their sovereignty was not under threat[6].

The situation began to change in 1973 with the entry into Community of Denmark and the United Kingdom. Membership was a divisive political issue in those states with public opinion and the political parties were much less enthusiastic than in other Member States. The parliament also occupied a central place in the British and Danish political systems, with parliamentarians jealous of their status within the national law-making process. This may have prompted other legislatures to contemplate change, however the real catalyst for parliamentary change was the internal market project.

The Commission launched its White Paper on the completion of the Singe Market in 1985, and the Single European Act (SEA) was signed a year later. From national parliament's point of view, the SEA brought four profound changes. Each of them strengthened the supranational character of the European Community. First, it resulted in an extension of the policy competence of the European Community into sectors previously preserved for national governments. Second, as a consequence of the

4 Brown, T. National Parliaments in the Convention on the Future of Europe [interactive]. [accessed 25-01-2012]. <http://www.fedtrust.co.uk/uploads/constitution/31_03.pdf>, p. 4.

5 Rituzzo, F., *supra* note 3, p. 103.

6 *Ibid*.

extension of its policy reach and the need to put in place the legal framework for the completion of the single market there was a significant increase in the regulations and directives emanating from the European Community which increased the workload of national parliaments and alerted them to third major change. The third change was that not only had policy-making power flowed upwards to the European level, but that the SEA also affected a shift in the power relationship between the national institutions of the Member States and the institution of the Community, the latter being given much greater power. The extensive use of qualified majority voting in the Council meant that national governments could no longer block Council decisions. Finally, the SEA strengthened the legislative powers of the directly elected European Parliament. This change was yet another signal that national parliaments ran the risk of being increasingly sidelined in the law-making process[7].

The Maastricht Treaty (1992) tipped the balance of power further in the direction of the EU and initiated the third stage of development. Majority voting was increased in the Council. The introduction of the co-decision procedure gave the European Parliament equal status with the Council in certain policy areas and therefore increased power in law-making process. The establishment of a political union with treaty objectives including Economic and Monetary Union and a Common Foreign and Security Policy signalled a change from economic cooperation to deeper political integration[8].

The Maastricht Treaty itself included two declarations on national parliaments – Declaration No 13 and Declaration No 14. Declaration No 13 stated that 'it is important to encourage greater involvement of national parliaments in the EU'. This was to be done through improved access to information. Extended cooperation with the European Parliament was also emphasised, and 'governments of Member States will ensure that national parliaments receive Commission proposals for legislation in good time for information or possible examination'. Declaration No 14 tried to breathe life into the *Assizes* – the joint conference of the European Parliament and national parliaments. They were to meet as necessary and to be consulted on the main features of the EU. Although Declarations are not legally binding, their inclusion in the treaty was something of a political breakthrough, recognising the right of national parliaments to monitor EU legislation.

The Amsterdam Treaty (1997) later adopted more binding language. Articles 1 and 2 of its protocol on national parliaments state: 'All Commission consultation documents shall be promptly forwarded to national parliaments of the Member States <....> Commission proposals for legislation<...> shall be made available in good time so that the government of each Member state may ensure that its own national parliament receives them as appropriate'. Articles 4–6 follow by establishing formal mechanisms for national parliaments to voice their concerns to the European Parliament, the Commission and the Council of Ministers[9]. Despite their important value, the provisions

7 Rituzzo, F., *supra* note 3, p. 103−104.

8 *Ibid*., p. 104.

9 Duina, F.; Oliver, M. National Parliaments in the European Union: Are There Any Benefits to Integration? *European Law Journal*. 2005, 11(2): 175.

of the protocol failed to achieve the expected results. Compliance with the requirements set out in Article 5 (principle of subsidiarity) of the Treaty was still low, and efficient control mechanisms were lacking[10]. So the question how to involve national parliaments in the EU law-making process and thus bring EU institutions closer to its citizens was the main question in the later Intergovernmental Conferences, especially in the Laeken meeting.

2.1. The Impact of the Laeken Declaration on the Participation of National Parliaments in the EU Legislative Process

The European Council meeting took place in Laeken on 14 and 15 December 2001. The meeting was held to discuss the future of the Union and to provide fresh impetus to increase the momentum of EU integration. The European Council in Laeken adopted a Declaration on the Future of Europe (hereinafter – the Declaration)[11]. This Declaration is in some respects a remarkable document. It was candidly accepted that the Union suffered from problems related to its legitimacy, democratic nature[12]. The Declaration also clearly pointed out that citizens undoubtedly supported the Union's broad aims, but they did not always see a connection between those goals and the Union's everyday action. That is why they feel that deals are all too often cut out of their sight and they want better democratic scrutiny[13]. So the main goal of the Laeken meeting was to find ways to bring the European institutions closer to its citizens. Most importantly, the Declaration identifies national parliaments as one of the main sources from which the Union derives its legitimacy in addition to democratic values it projects, the aims it pursues and the powers and instruments it possesses[14].

The Convention started it work in 2002 and Working Group IV was established which had to examine the existing role of national parliaments in the EU and suggest proposals for involving and strengthening of the right of national parliaments to participate in the EU activities.

According to the Working Group IV discussion paper on the role of national parliaments in the European architecture,[15] national parliaments participated in the activities of the Union in three quite different ways: firstly, in drafting and implementing Union law, secondly, exercising political scrutiny of the positions adopted by their respective governments within the Council and, thirdly, establishing cooperative

10 Tronchetti, F. National parliaments as guardians of subsidiarity: A feasible task or an utopist chimera? *Journal of US – China Public Administration.* 2010, 7(9) (Serial No 59): 18.

11 Laeken Declaration on the future of the European Union, 15 December 2001 [interactive]. [accessed 19-01-2012]. <http://european-convention.eu.int/pdf/lknen.pdf>.

12 Rituzzo, F., *supra* note 3, p. 92.

13 Laeken declaration on the future of the European Union, *op. cit.*

14 Rituzzo, F., *supra* note 3, p. 93.

15 29 May 2002. The European Convention on The role of national parliaments in the European architecture [interactive]. [accessed 22-10-11]. <http://register.consilium.europa.eu/pdf/en/02/cv00/cv00067.en02.pdf>, p. 4.

relations with other parliaments in the Union[16].The Working Group IV proposed some changes on the future role of national parliaments in the Union which have subsequently been incorporated into the emerging draft of the Treaty Establishing a Constitution for Europe (TCE) and two draft protocols which were later incorporated in the Lisbon Treaty with minor changes.

The main achievement of the work of the Working Group IV was the inclusion of two Protocols in the draft, dealing with the relationship between national parliaments and the Union's institutions and decision-making system and with the development of relations between the parliaments themselves. The Protocols represent a considerable advance on the existing provisions of the Amsterdam Treaty and provide national parliaments with a real opportunity to play an important role in the policy development and legislative system of the Union[17].

The first of them – the Protocol on the Role of National Parliaments in the European Union (1) - provides for a structured flow of relevant information to the national parliaments to permit timely reflection and submission of reasoned opinions on legislative proposals, consultative documents and the annual legislative programme, and the outcome of legislative Council meetings, thus permitting effective scrutiny of the activity of the national Governments[18].

The second - Protocol on the Application of the Principles of Subsidiarity and Proportionality (2) - gives the national parliaments a specific role in respect of the implementation of these principles. Any national parliament, or any chamber thereof, may submit a reasoned opinion stating why it considers that a Commission legislative proposal does not comply with the principle of subsidiarity. Where one third of the national parliaments submit such opinions on a proposal the Commission must review it and may maintain, amend or withdraw it, subject to providing the reasons for its decision[19].

An enhanced role for national parliaments offers the prospect of strengthening the democratic legitimacy of the European Union, bringing it closer to its citizens. This will call for openness in parliamentary procedures and for provision of adequate resources to the relevant parliamentary bodies. The central issue is the strengthening of control over the performance of national Ministers in the Council, ensuring that they accept political responsibility for what is done in the name of their Member States in Brussels.

Overall, the Working Group IV has done an important job analysing the involvement of national parliaments in the EU activities and submitting proposals. The drafters of the failed Treaty Establishing a Constitution for Europe that has not come into force and the later drafters of the Lisbon Treaty paid respect to the given proposals.

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16 29 May 2002. The European Convention on The role of national parliaments in the European architecture [interactive]. [accessed 22-10-11]. <http://register.consilium.europa.eu/pdf/en/02/cv00/cv00067.en02.pdf>, p. 4.

17 Brown, T., *supra* note 4, p. 3.

18 *Ibid*.

19 *Ibid*.

3. EU Legislative Process and National Parliaments according to the Provisions of the Lisbon Treaty

Another European treaty is signed, and again the role of national parliaments in the European Union has been enhanced[20]. The Treaty of Lisbon (2007) (hereinafter also referred to as the 'Treaty') can be described as 'the Treaty of National Parliaments'. This Treaty goes a step further by enhancing the mechanism for monitoring compliance of draft legislations with the principle of subsidiarity as well as the role of national parliaments[21]. For the first time in the history of European integration, national parliaments are not only mentioned in the text of a European Treaty[22], but also are provided with wider opportunities to participate in the activities of the European Union and influence the European legislative process[23].

After the Lisbon Treaty, four main spheres can be relatively identified where national parliaments can participate in the EU activities: (1) the role of national parliaments in ratification and revision process of EU primary law; (2) the rights that national parliament has in the area of freedom, security and justice; (3) activities in exercising interparliamentary cooperation; (4) the role of national parliaments in EU legislation.

Considering the role of national parliaments in ratification and revision process of EU primary law it must be said that the Treaty of Lisbon involves national parliaments into Treaty revision procedures. This way, national parliaments get important rights not only in ratifying amendments of the EU founding Treaties and bargaining for new provisions of the Treaties. Article 48 of the Treaty on the European Union distinguishes two kinds of treaty revision procedures: (i) ordinary revision procedure and (ii) simplified revision procedure. According to the first procedure, representatives of national parliaments are not only informed about proposals for the amendment of the Treaties[24], but also together with the Heads of State or Government of the Member States, members of the European Parliament and the Commission participate in the Convention where these proposals are discussed[25].

In the simplified Treaty revision procedure, national parliaments have more binding rights. An individual veto right is stipulated for any one parliament or chamber to veto the application of the simplified Treaty revision procedure[26].

In the area of freedom, security and justice, national parliaments take part in the evaluation mechanisms for the implementation of the Union policies in accordance with Article 70 of the Treaty on the Functioning of the European Union (TFEU), and by

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20 Kiiver, P. The Treaty of Lisbon, the National Parliaments and the Principle of Subsidiarity. *Maastricht Journal of European and Comparative Law*. 2008, 15: 77.

21 Tronchetti, F., *supra* note 10, p. 18.

22 See Art. 12 of Treaty on the European Union (TEU).

23 Tronchetti, F., *supra* note 10, p. 15.

24 Art. 48(2) of the TEU.

25 Art. 48(3) of the TEU.

26 Art. 48(7) of the TEU.

being involved in the political monitoring of Europol and the evaluation of activities of Eurojust in accordance with Articles 88 and 85 of that Treaty.

As mentioned above, national parliaments also participate in interparliamentary cooperation provided in the Treaty of Amsterdam and not changed since. This cooperation takes place in accordance with Article 12 of the TEU and Articles 9 and 10 of the Protocol on the role of national parliaments in the European Union (No 1).

The most important power given to national parliaments is, however, to ensure compliance of draft legislative acts with the principle of subsidiarity (Article 5(3) and Article 12(b) of the TEU). This power, the exercise of which is regulated by the Protocol on the application of the principles of subsidiarity and proportionality (No 2) annexed to the Treaty of Lisbon, gives national parliaments eight weeks to review those draft acts before they are put on the Council agenda and, in case an alleged violation of subsidiarity is identified, to send to the proposing institution a reasoned opinion explaining the grounds of the supposed violation (the so-called early warning system)[27].

The question may arise, why national parliaments are the institutions best placed to control adherence to the principle of subsidiarity? The answer is based on the substance of the subsidiarity principle. The principle of subsidiarity operates as a tool to evaluate the need and effectiveness of a Union action where a certain problem cannot be adequately settled at the level of Member States acting on their own[28]. The principle of subsidiarity is evaluative and political, so it is admitted that the main role to guarantee the control of this principle must be given to political institutions, and firstly – to national parliaments. Differently from the Commission and the European Parliament activities, related to formatting collective European interests, the work specific to national parliaments makes them the best institution that is most interested and able to check properly the compliance of draft legislative acts with that principle.

The Protocol on the application of the principles of subsidiarity and proportionality, annexed to the Treaty of Lisbon (hereinafter referred to as the 'Protocol'), indicates how the principle of subsidiarity must be applied and its compliance scrutinised. According to Article 2, before proposing legislative acts, apart from cases of exceptional urgency, the Commission shall consult widely. Then, the Commission, the European Parliament and the Council shall forward their draft legislative acts and the amended drafts to the national parliaments[29]. Each draft legislative act shall be justified with regard to the principles of subsidiarity and proportionality[30]. In this respect, any draft legislative act shall include a statement making an appraisal of compliance with subsidiarity and proportionality possible. Such statement should also contain an assessment of the proposal's financial impact and shall provide qualitative and, wherever possible, quantitative indicators which indicate that the objective can be better achieved at Union level[31].

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27 Art. 48(7) of the TEU.

28 Art. 5 of the TEU.

29 Art. 4 of the Lisbon Treaty Protocol No 2 on the application of the principles of subsidiarity and proportionality.

30 *Ibid*., Art. 5.

31 *Ibid*.

The Protocol describes the role of national parliaments in monitoring the application of the principle of subsidiarity. The so-called early warning system is explained in articles 6, 7(1) and 7(2). Each national parliament has the right to challenge a draft legislative act if it believes that it does not comply with the principle of subsidiarity. In such a case, the parliament can file an objection, called 'reasoned opinion', on grounds of the perceived violation of subsidiarity to the proposing institution[32]. Each parliament is given two votes, both of which are retained by unicameral ones or they are shared between chambers where the parliament is bicameral[33]. Objections formally oblige the initiator of the draft to reconsider the act, though not necessarily to withdraw it, in case the incoming votes amount to one-third of the total votes distributed (18 out of 54 in the EU) or one-quarter (14 out of 54 in the EU) in freedom, security and justice matters. Indeed, the proposing institution can decide to maintain, amend or withdraw the draft but must always provide reasons for its decision.

This mechanism, which is usually referred to as 'yellow card mechanism', was already included in the Constitutional Treaty. In comparison with the Constitutional Treaty, however, the Treaty of Lisbon reforms this mechanism in two important ways. Firstly, it extends the period of time given to national parliaments to examine the draft legislative acts and give reasoned opinions from six to eight weeks. Secondly, an additional mechanism, called 'orange card mechanism', is introduced in Article 7(3) of the Protocol. This mechanism works as follows: where, under the ordinary legislative procedure, reasoned opinions on the non-compliance of a draft with the principle of subsidiarity represent at least a simple majority of the votes distributed to national parliaments, the draft proposal must be reviewed. The Commission may decide to maintain, amend or withdraw the proposal. In case it decides to maintain it, the Commission, by means of a reasoned opinion, has to justify why it considers the proposal compliant with the principle of subsidiarity. Such opinion shall be forwarded to the Council and the European Parliament. Either of these institutions, the Council by a majority of 55% of its members or the Parliament by a majority of the votes cast, may rule out the draft proposal if they consider that subsidiarity has been breached[34].

While the Protocol on the application of the principles of subsidiarity and proportionality undoubtedly contributes to improving the application of and compliance with the principle of subsidiarity, its value and positive impact may be questioned.

The first problem concerns the time given to national parliaments to examine draft legislative acts. Although this time has been extended from six to eight weeks, difficulties related to its application still exist. First of all, for anybody aware of the time which national parliaments usually need to decide on a certain issue, the eight week period appears to be very tight. Compliance with such a deadline would require national parliament to follow a strict schedule and synchronize their consultation and voting procedures[35].

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32 Tronchetti, F., *supra* note 10, p. 19.

33 Art. 7(1) of the Lisbon Treaty Protocol No 2 on the application of the principles of subsidiarity and proportionality.

34 Tronchetti, F., *supra* note 10, p. 19.

35 *Ibid*, p. 20.

Secondly, if we consider that the Commission has affirmed that national parliaments should expect to receive around 400 legislative proposals every year, it is self-evident that there is a risk that such a flux of documents may not be adequately managed and scrutinised by them. Additionally, even assuming that this could work properly, due to the different judicial traditions of each Member State, it is very likely that the scrutiny of a certain draft act could significantly vary from one national parliament to another, leading, thus, to different conclusions over compliance of such a draft with subsidiarity. This fact clearly weakens the yellow card mechanism. Indeed, if every national parliament uses different parameters to evaluate the respect of the principle of subsidiarity by a draft act and no form of coordination is established for the national parliaments, it seems to be very difficult to arrive at a common interpretation of subsidiarity and at a common view on where and how the draft violates subsidiarity. This lack of coordination would make the reasoned opinions a rather weak instrument to put pressure on the Commission.

Attention now is switched to Article 7(3) of the Protocol, containing the 'orange card mechanism'. The first limit that can be identified refers to the fact that, unlike the mechanism laid down in Article 7(2) ('yellow card mechanism'), Article 7(3) only applies when the proposed act is to be adopted under the ordinary legislative procedure.

The first subparagraph of Article 7(3) establishes that in case reasoned opinions on non-compliance of a proposal with the principle of subsidiarity represent at least a simple majority of the votes allocated to the national parliaments, the Commission must review the related proposal[36]. This review requirement cannot be considered to add much, if anything, to the subsidiarity control mechanism laid down in Article 7(2) of the Protocol, which already includes an obligation to review a proposed act. Moreover, in contrast with part 3 of that Article, part 2 activates the obligation to review an act when the reasoned opinions represent a mere one third of the votes allocated to the national parliaments rather than a simple majority. In addition, again in contrast with part 3, part 2 of Article 7 of the Protocol applies to the wide group of actors empowered to produce a legislative act and not only to the Commission.

If the Commission is obliged to review a proposal, it may decide to maintain, amend or withdraw it[37]. The second subparagraph of Article 7(3) indicates that in case the Commission decides to maintain a proposal, it will have to provide a reasoned opinion explaining how that proposal complies with subsidiarity. *Prima facie* this requirement seems to add very little to the subsidiarity control mechanism already existing in the Protocol. According to Article 5 of the protocol, there is a general obligation to justify all draft legislative acts, not only the legislative proposals of the Commission, with regard to the principles of subsidiarity and proportionality[38].

Additionally, the obligation under Article 5 applies to all actors involved in the decision-making mechanism of the Union, not only to the Commission, as in the case of Article 7(3). Moreover, the second subparagraph of Article 7(3) requires the

36 Art. 7(3) of the Lisbon Treaty Protocol No 2 on the application of the principles of subsidiarity and proportionality.

37 *Ibid*., par. 2.

38 Tronchetti, F., *supra* note 10, p. 21−22.

Commission to submit the reasoned opinion justifying the compliance of a proposed act with the principle of subsidiarity to the Union legislator, i.e., the Council and the European Parliament. While the requirement that the Commission submits its reasoned opinion to these bodies is new in the Lisbon Treaty, it has to be pointed out that the Commission is already under the obligation under Article 4 of the Protocol to forward its draft legislative acts to the Union legislator and, as described above, to justify them with regard to subsidiarity. This means that the Union legislator should already be aware of the reasons for the Commission to consider that a certain draft complies with subsidiarity. The only novelty introduced by the Lisbon Treaty in this respect is the fact that, by means of the reasoned opinion, the Commission may restate or better explain its case for having respected the principle of subsidiarity[39].

The key innovation is to be found in Article 7(3)(b), which stipulates that if a majority of 55% of the members of the Council or a majority of the votes cast in the European Parliament consider a legislative proposal to be in contrast with the principle of subsidiarity, then such proposal may be removed from the legislative agenda of the Union. From a procedural point of view, it will not be easy for both institutions to reach the requested numbers to block a legislative proposal on the ground of the violation of subsidiarity. One reason to explain the choice to set out such high numbers is the idea to avoid making it too easy to use subsidiarity to stop legislation and creating the risk to halt the European legislative process. However, if we analyse from another perspective the high number of votes requested to block the proposed legislation, an important consideration can be made. Where such an elevate amount of votes is achievable, approval of a proposal would have been highly improbable in any case, and it would have never made it through the ordinary legislative procedure: it would have been stopped anyway. Seeing it from this angle, the mechanism introduced by Article 7(3)(b) does not seem to have any relevant impact in practical terms and does not appear to innovate that much[40].

In summarising, the early warning system is intended to provide national parliaments with an opportunity to react to EU legislative proposals before they are adopted; however, the parliaments' voice is only consultative, as proposals do not have to be withdrawn if they face opposition from national parliaments. The granted 'right' for parliaments to send angry letters to the Commission is not exactly a momentous constitutional rupture either. The big innovation introduced by Lisbon as compared to the Constitutional Treaty is that if complaints constitute a majority of votes distributed to the national parliaments (two votes per parliament) and the Commission nevertheless sticks to the original text without amendment, the European Parliament or the Council may 'kill' the proposal before the first reading. But again, it is not the national parliaments themselves that are able to stop the proposal, only to provide others with ammunition[41]. So the system is nothing more than a dialogue. It may prompt the Commission to reconsider its proposal

39 Tronchetti, F., *supra* note 10, p. 22.

40 *Ibid*.

41 Kiiver, P., *supra* note 20, p. 78.

or to provide new or better reasons, but at no point can national parliaments in fact veto a European legislative proposal. The Lisbon Treaty slightly upgraded the early warning system, but the fundamentals remain the same: national parliaments may respond to proposals, but the decision what to do with such responses, as mentioned above, remains with the Commission, the European Parliament and the Council[42].

4. Subsidiarity Control in the Republic of Lithuania

By signing the Accession Treaty and undertaking commitments under other founding Treaties of the EU on 1 May 2004, Lithuania and the other Member States agreed sharing the competence of its public authorities with and delegating part of their competence to the EU. All the EU Members have established their own systems of coordinating EU decisions with a view to a more successful representation of their interests in the EU decision-making cycle. The systems that Member States have set for coordinating EU decisions differ because of their size, elements of their political systems, historical experience, political and administrative culture, general approach to EU matters, legal traditions, socio-economic structure, and many other factors. Not every Member's constitutional system provides for a possibility for the national parliament to impact a European decision-making process. Lithuania drew upon the best practices and experiences and now is in one team with the Nordic countries (particularly Finland and Denmark) and the United Kingdom in this area. In developing its mechanism of scrutiny for EU matters, Lithuania chose the model of active participation of its Parliament in EU matters, with the latter's powers and right to unrestricted access to all EU-related information, which is enshrined in the Constitution of the Republic of Lithuania. In its effort to prepare for EU membership the Seimas of the Republic of Lithuania created all the necessary preconditions for its active participation in the EU legislative process. The model of dealing with EU matters, set up by the Seimas, is embedded in the legal basis which consists of the Constitutional Act of 13 July 2004 On the Membership of the Republic of Lithuania in the European Union and the Statute of the Seimas of the Republic of Lithuania (hereinafter – the Statute), amended by supplementing it with the Section on Debate on and Resolution of European Union Matters[43].

The Constitutional Act authorises the Government to inform the Seimas about proposals to adopt EU legal acts. Besides that, the Government must consult the Seimas concerning proposals in the competence areas of the Seimas, which in its turn has the right to make recommendations to the Government on Lithuania's national position[44].

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42 Kiiver, P. Legal Accountability to a Political Forum? The European Commission, the Dutch Parliament and the Early Warning System for the Principle of Subsidiarity. *Maastricht Journal of European and Comparative Law*. 2008-9: 5 [interactive]. [accessed 02-02-2012]. <http://ssrn.com/abstract=1420609>.

43 Parliamentary scrutiny of European Union matters in Lithuania, Committee on European Affairs of the Seimas of the Republic of Lithuania [interactive]. [accessed 10-02-2012]. <http://www3.lrs.lt/pls/inter/w5_show?p_r=149&p_k=2>.

44 13 July 2004. The Constitutional Act on Membership of the Republic of Lithuania in the European Union, No IX-2343.

According to the new provisions of the Lisbon Treaty, some changes were made in the Statute,[45] especially related to subsidiarity control. The procedure of the principle of subsidiarity control mechanism is regulated in Article 180^6 of the Statute.

That Article states that specialised committees[46] are responsible for proper and timely control of the principle of subsidiarity. The specialised committees must submit conclusions concerning possible non-conformity with the principle of subsidiarity of proposals to adopt legal acts of the European Union within 5 weeks of the receipt of the proposal to adopt a legal act of the European Union or within 10 days of the Government's opinion[47] about possible non-conformity with the principle of subsidiarity of a proposal to adopt a legal act of the European Union[48]. Afterwards, according to competition, such prepared conclusions are forwarded to the Committee on European Affairs or the Committee on Foreign Affairs. The Committees have a term of 1 week to consider that issue[49]. Upon deciding that the proposal to adopt a legal act of the European Union may not be in conformity with the principle of subsidiarity, the conclusions of the Committee on European Affairs or the Committee on Foreign Affairs are referred for debate in the Seimas plenary sitting[50].

The conclusions of the Committee on European Affairs or the Committee on Foreign Affairs concerning possible non-conformity with the principle of subsidiarity of the proposal to adopt a legal act of the European Union must be submitted for debate in the Seimas plenary sitting within one week after its registration at the Secretariat of Seimas sittings, but, if possible, not later than one week prior to the expiry of the eight-week time limit, calculated from the date of transmission of a draft legislative act in the official languages of the Union[51]. The conclusions of the Committee on European Affairs or the Committee on Foreign Affairs concerning possible non-conformity with the principle of subsidiarity of the proposal to adopt a legal act of the European Union are debated in the Seimas plenary sitting in accordance with the special urgency procedure[52]. After the conclusions of the Committee on European Affairs or the Committee on Foreign Affairs are approved by a statement at the Seimas plenary sitting, they must be communicated to the Government[53]. And finally, the Committee on European Affairs is responsible for the communication of such a statement of the Seimas to the parliaments of other Member States as well as appropriate institutions of the EU as soon as possible, but not later than within one week after passing the said statement[54].

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45 Last amended on 16 November 2010, No XI-1131.

46 'Specialized committee' means any Seimas committee, except the Committee on European Affairs and the Committee on Foreign Affairs.

47 Presented in accordance with the procedure laid down in $180^7(3)$.

48 Art. $180^6(2)$ of The Statute of the Seimas of the Republic of Lithuania.

49 *Ibid*., Art. $180^6(3)$.

50 *Ibid*., Art. $180^6(5)$.

51 *Ibid*., Art. $180^6(6)$.

52 *Ibid*., Art. $180^6(7)$.

53 *Ibid*., Art. $180^6(8)$.

54 *Ibid*., Art. $180^6(9)$.

Although Lithuania's national parliament – the Seimas, exercises active role by participating in the EU matters and detailed rules exist as to how to influence the EU law-making process by means of the subsidiarity control mechanism, but according to the provisions of the Constitutional Act on Membership of the Republic of Lithuania in the European Union, the statement of the Seimas is only of recommendatory nature and is not binding on the Government. Therefore, the Government can depart from the opinion of the Seimas.

Conclusions

1. For the first time in the EU history, the Treaty of Lisbon, according to the main task raised in the Laeken Declaration – to bring the EU closer to the citizens, provides for wider opportunities of the national parliaments to participate in and influence the European legislative process. This novelty, which is based on increasing democracy in the EU, should be considered positively, because thereby citizens of the EU are indirectly involved in EU governance.

2. Before the Treaty of Lisbon has come into force, the role of national parliaments in the activities of the EU was marginal. National parliaments participated in the EU activities by exercising control over members of the government where the level of control depended on a different political system of the Member State.

3. The Treaty of Lisbon provided for a new provision related to strengthening the role of national parliaments in EU activities, but the most important power given to national parliaments is participating in the EU legislative process, by ensuring compliance of draft legislative acts with the principle of subsidiarity and proportionality. Certainly, to a certain extent, national parliaments now have a stronger role, as they may initiate a procedure which may prevent a certain act from being adopted. However, the final decision on whether or not a Commission proposal violates the principle of subsidiarity is taken by the European Parliament and the Council, and not by the national parliaments.

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NACIONALINIŲ PARLAMENTŲ VAIDMENS POKYČIAI EUROPOS SĄJUNGOJE ĮSIGALIOJUS LISABONOS SUTARČIAI

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Santrauka. *ES tyrinėtojai pripažįsta, jog Europos integracija yra tiesioginė grėsmė nacionaliniams parlamentams. Nuo pat 1986 metų, kai buvo priimtas Vieningas Europos Aktas, Europos integracijos procesas sparčiai išaugo, dėl ko ES įgijo sudėtingus daugiafunkcės politikos požymius. Todėl nenuostabu, jog šis procesas paskatino debatus dėl institucinės formos, demokratijos kokybės ir konstitucinės santvarkos teisėtumo. Iki šiol pagrindinis šių diskusijų dėmesys buvo skiriamas europinio lygmens valdymui. Mažiau dėmesio susilaukė svarstymai, jog sukurtas konstitucinis valdymas gali reikalauti ir atitinkamų pakeitimų pačiose valstybėse narėse. Visi debatų dalyviai sutinka su tuo, kad norint naują konstitucinę santvarką laikyti demokratine, nacionaliniai parlamentai, kaip reprezentatyvi institucija, turi būti įtraukta į jos veiklą. Dauguma ankstyvų diskusijų apie ES demokratijos ir teisėtumo deficitą buvo susiję su Europos Parlamento galiomis. Tačiau dabar yra pripažįstama, kad susikoncentravimas*

išimtinai ties šia viena ES institucija yra nepakankamas, ir nuo tada, kai, ES įgavus daugiau galių, kilo demokratijos teisėtumo problema, vis daugiau dėmesio yra skiriama valstybių narių nacionaliniams parlamentams.

2009 m. gruodžio 1 d. įsigaliojus naujai Lisabonos sutarčiai, nacionaliniai parlamentai pirmą kartą per visą Europos integracijos istoriją nėra vien tik paminimi sutarties tekste, bet jiems suteikiamos realios galimybės dalyvauti ES veikloje. Atskiras Europos Sąjungos sutarties 12 straipsnis numato, kad nacionaliniai parlamentai aktyviai dalyvauja užtikrinant gerą Sąjungos veikimą. Tam tikslui parlamentams suteiktos galimybės iš ES institucijų gauti informaciją, suteikiama teisė dalyvauti laisvės, saugumo ir teisingumo erdvės srityse, numatyta galimybė dalyvauti įprastinėje ir specialioje Sutarties peržiūros procedūrose, tačiau viena iš svarbiausių ir pažangiausių Lisabonos sutarties naujovių – mechanizmas, kuris leidžia, patikrinus ES įstatymo galią turinčio projekto atitikimą subsidiarumo principui ir nustačius galimus pažeidimus, tokį teisės akto projektą išbraukti iš ES teisėkūros darbotvarkės. Pažymėtina, kad svarbus vaidmuo vykdant šią patikrą yra suteikiamas valstybių narių nacionaliniams parlamentams. Pagal Lisabonos sutarties Protokolą dėl subsidiarumo ir proporcingumo principų taikymo nacionaliniai parlamentai pasinaudodami teisės aktų projektų vertinimo procedūra – „geltona ar oranžine kortelėmis" – gali aktyviau dalyvauti ES veikloje, padėti užtikrinti, kad teisės aktai ES būtų priimami skaidriai.

Šiame straipsnyje yra analizuojamos priežastys, lėmusios nacionalinių parlamentų įtraukimą į ES veiklą, pateikiama nacionalinių parlamentų vaidmens ES genezė, o didžiausias dėmesys yra skiriamas nacionalinių parlamentų vaidmens pokyčiams po Lisabonos sutarties. Šiuo aspektu yra analizuojamas nacionalinių parlamentų vaidmuo ES teisėkūroje, kurį jie vykdo per subsidiarumo ir proporcingumo principų kontrolę.

Reikšminiai žodžiai: *nacionaliniai parlamentai, subsidiarumo principas, teisėkūra, Lisabonos sutartis.*

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