Concepts of Parliamentarism in the EU’s Political System

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Introduction

Different understandings of parliamentarism have characterised the formation of the EU’s political system ever since the establishment of the three European communities in the 1950s. The principle of parliamentarism as the parliament’s right to control the executive – encompassing the right to a vote of censure – also formed a part of the initial European Coal and Steel Community. It was incorporated in an identical form in the Treaty on the European Economic Community (1958). Due to political controversies prevailing with respect to the completion of this type of parliamentarism alternative understandings of the concept have gained weight in the Union’s political system. Parliamentarism has been advanced in the EU also in its general meaning, as the power of bodies elected by popular vote. This conception of parliamentarism brings the overall powers of parliamentary bodies to the fore and adds national parliaments – in addition to the European Parliament (EP) – to the instruments of parliamentarism at the EU level. Being a characteristic of separation of power systems, this concept of parliamentarism is, at the level of political systems, rather an alternative to the first notion of parliamentarism revolving around the control of the executive.

The simultaneous presence of the two notions has led to problems of compatibility in the EU’s political system. A third conception of parliamentarism goes back to the classical understanding of parliamentary politics as politics by means of speaking. Various interpretations of this conception have been present in the works of British 19th century political thinking and also in the thinking of Max Weber. Approaching parliamentarism in the EU from this perspective stresses the importance of certain parliamentary practices such as the culture of openness and the EP’s dialogue with the other political institutions of the EU.

This article focuses on the role of different conceptions of parliamentarism in the EU’s political system. First it addresses the ways in which the two concepts of parliamentarism that usually stand as alternatives to each other, parliamentarism as control of the executive and parliamentarism of a separation of powers – type, entered the Union’s political system. How does the simultaneous presence of the two models function and what kinds of challenges and tensions does it create? The article also assesses, which future institutional solutions and choices can be considered decisive with respect to the more long-term consolidation of the EU’s political system as parliamentarism of the first or second type.
Then the third concept of parliamentarism as politics by means of speaking will be studied with respect to its impact and significance in the EU’s system. As this concept is broader than the two first ones, and encompasses a culture of political power rather than relations between political institutions, it does not collide with the first ones. But it can be seen to clash with some other dominant characteristics of the EU’s political culture stemming from the Union’s intergovernmental features, namely those of diplomatic negotiations and secrecy.

Parliamentarism as control of the executive

Accountability of the government to the parliament is the key characteristic of a parliamentary government and the main difference with respect to a presidential one. According to Arend Lijphart (Lijphart 1999, 117) this accountability means that the head of government with his or her cabinet are responsible to the legislature in the sense that they are dependent on the legislature’s confidence and can be dismissed from office by a legislative vote of no confidence or censure. The power to elect the cabinet usually forms a part of the parliament’s role in a parliamentary government.

The right of the European Parliament to censure the Commission has formed a part of the core principles of the EU’s political system ever since the establishment of the European Coal and Steel Community (ECSC). The initial formulation of parliamentary accountability in the ECSC treaty reflected an aspiration to enable the European institutions to adopt a sufficient independence from the Member States (Gerbet 1989, 46). The functions of the High Authority (later the Commission) resembled those of a political executive albeit limited to a narrow field of substance. The High Authority was to be scrutinised by the Parliamentary Assembly through a procedure that was still linked with the approval of the annual report of the former. Whilst the formulation remained as such in the EEC treaty, the Maastricht treaty on the Political Union (1993) broadened

1 L’Assemblée procède, en séance publique, à la discussion du rapport général qui lui est soumis par la Haute Autorité. L’Assemblée, saisie d’une motion de censure sur le rapport, ne peut se prononcer sur ladite motion que trois jours au moins après son dépôt et par un scrutin public. Si la motion est adoptée à une majorité de deux tiers des voix exprimées et à la majorité des membres qui composent l’Assemblée, les membres de la Haute Autorité doivent abandonner collectivement leurs fonctions. Ils continueront à expédier les affaires courantes jusqu’à leurs remplacement conformément à article 10 (Traité instituant la Communauté Européenne du Charbon et de L’Acier, art.24).
the Parliament’s vote of no confidence from the framework of the Commission’s annual report. 2

The Lisbon treaty clarifies the principle of parliamentarism furthermore by stating that the Commission, as a body, shall be responsible to the European Parliament (TEU Art.17,8). As the fact that the vote of no-confidence shall deal with the entire Commission, and not individual members only, has been seen to form one obstacle to the efficient control of the Commission, this rule has been complemented with mechanisms providing more flexibility in this respect. According to the treaties (TEU, Art.17,6) a member of the Commission must resign if asked by the President of the Commission. An agreement between the Commission and the EP (Framework agreement on relations between the EP and the Commission, 9.2.2010) obligates the President to use this right if a lack of confidence against an individual Commissioner emerges in the EP. 3

Despite all the EP has not utilised its right to censure the Commission efficiently, which at a general level reflects the vacillating support of the emergence of a parliamentary government at the EU level. The lack of proper parliamentary instruments for the more general testing of the Commission’s confidence, such as the interpellation, hampers the efficient scrutiny of the executive (Proksch & Slapin 2010, 3).

Similar shortcomings – from the perspective of parliamentarism as control of the executive – apply to the form taken by the EP’s right to elect the Commission. This parliamentary practice was only introduced by the Maastricht treaty (art. 214) which required the EP to be consulted on the member state governments’ nominee for Commission president and the members of a full Commission to be subordinated to a vote of approval. The EP, however, adopted a stronger interpretation of its role and organised a vote on the nomination for the Commission President of Jacques Santer (Hix 2005, 59) and later on, hearings with the nominees to the Commission members. The Amsterdam treaty amended the consultative role of the EP into a power to veto the nominated Commission President and the body of commissioners, and the Nice treaty finally introduced the qualified majority rule as mechanism for this. The peculiarities following from the

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2 Treaty on the European Union, Art. 144: If a motion of censure on the activities of the Commission is tabled before it, the European Parliament shall not vote thereon until at least three days after the motion has been tabled and only by open vote.

3 If Parliament asks the President of the Commission to withdraw confidence in an individual Member of the Commission, he/she will seriously consider whether to request that Member to resign, in accordance with Article 17(6) of the EU Treaty; the President shall either require the resignation of that Member or explain his/her refusal to do so before Parliament in the following part-session.
hybrid type of system become obvious when it comes to the true meaning of the EP’s power to elect both the Commission and its President.

Here the non-partisan character of the Commission forms the key factor behind the weak materialisation of the parliamentary control both when it comes to the election of the Commission and censuring it.

Concerning its composition the Commission represents a hybrid of a parliamentary government and a presidential one. In the latter case the members of government depend on the trust of the President. This hybrid form characterises the EU’s political system at large and it has been argued that, in fact, instead of a parliamentary democracy a US type of pluralist model of democracy proves itself more applicable to the EU’s supranational context and character (Coultrap 1999; see also Dann 2003 and Proksch & Slapin 2010). At least the current form of the EU level political parties and the working mechanisms of the EP can be seen to have followed this path rather than the one of parliamentary accountability.

Currently the two models of government come together in the job description of the Commission President. The President is the only member of the Commission whose election shall according to the treaties reflect the outcome of European elections. The election of the President by the EP provides a strong element of parliamentarism to the Commission together with the requirement of the EP’s approval that must be achieved for the entire Commission. But on the other hand, the key role played by the President when putting together the Commission along with his right to ask individual Commissioners to resign are rather traits of a Presidential government where the members depend on the trust of the President.

The lack of a party government characterises in the same way the election of the members of the Commission which, according to the treaties, shall be subject as a body to a vote of consent by the European Parliament. This role and the hearings with the nominees of the Commission preceding the vote, have been interpreted as a strengthening of the parliamentary government. The lack of party dimension, however, has led to the hearings being rather constructed along with the model of the US Senate confirmation hearings with the nominees to the President’s cabinet (Hix, Noury & Roland 2007,16). This function forms a part of the hearings through which the US congress exerts oversight of the nominations of the President to executive and judicial positions and differs,
consequently, concerning its logic from parliamentary nomination and approval of government in systems of parliamentary government.

In the EP elections of 2014, the strengthening role of European political parties including the ‘Spitzenkandidat’ system reinforced the parliamen.tarisation of the election of the Commission. The nomination of the Commission President from the Parties’ candidates may increase the pressure to follow this practice concerning several leading positions in the future. In this context, arguments calling for the Commissioners to be chosen from among elected members of the European Parliament have been gaining strength.

Parliamentarism of a separation-of-powers -system

In more general terms, parliamentarism in the EU is understood as the key role taken by the directly elected bodies – both the European Parliament and national parliaments – in the EU’s political system. This concept of parliamentarism comes closer to the way of understanding parliamentary powers in a presidential, or a separation of powers – system. As the name of the system indicates the ‘powers’ of such a system are more independent of each other with implications for the role of elections, political parties and the entire logic of representative democracy. The government doesn’t represent the parties winning the elections and has therefore a different connection to the organised civil society and the citizenry than in a parliamentary system with a government accountable to the parliament. Referring to Max Weber’s initial distinction between Redeparlament and Arbeitsparlament, Philipp Dann calls this kind of a parliament the working parliament and stresses that it is more the strong and specialised committees and less the floor which functions as the main locus in working parliaments (Dann 2003, 556).

Also this concept of parliamentarism is firmly embodied in the EU’s democratic system. Instead of the close political interaction with the government – typical of parliaments in parliamentary systems – the focus of the EP’s functions is on its legislative mandate which it carries out as an actor independent of the other actors involved, the Commission and the Council. This legislative independence, where the EP takes the role of a counterforce to the executive rather than being its
political foundation like parliaments in parliamentary systems of government, revolves around the co-decision mechanism as the key legislative procedure, which came into being in the Maastricht treaty. Unlike the previous mechanisms of assent or cooperation, this mechanism, currently known as the ordinary legislative procedure, defines the EP’s role as an independent and equal actor in the EU’s legislative competence. The same setting takes place in the current budgetary procedure.

The working mechanisms of the EP as well as the evolving bicameral structure of the legislature are elements that support the EP’s development towards a parliament of a separation-of-powers-type rather than a parliament controlling the executive. Along with the EP’s strengthened powers both with respect to the EU’s legislative and budgetary competence, the Union’s legislative procedure follows the model of a bicameral parliament. As mentioned earlier, this in the EU, takes the form of the ordinary legislative procedure, where the consent of both of the two chambers, i.e. the Council and the EP is needed for a legislative act. Even if the Council has still other competences of executive rather than legislative character, it doesn’t challenge the trend towards bicameralism. In this respect the observations concerning the difficult compatibility of bicameralism and parliamentary government are valid with respect to the EU as well (Raunio 2002, 114; Saunders 1996). The difficulties dealing with the efficiency of parliamentary scrutiny in such a system are seen to stem from the biased setting where normally it is only the lower chamber representing the people, which can dismiss the government and not the chamber representing the member states.

The focus of the EP’s work being in its strong committees that prepare the EP’s positions towards initiatives to new legislation is another characteristic of a working parliament which the EP shares (Neuhold 2001). The fact that the responsibilities of the committees correspond to the EU’s main legislative competences, and the particularity in which the parliament’s positions are being prepared on legislative issues, are further signs of it.

Seen from this point-of-view the forms of parliamentary control of the Commission – the right of censure and the right to give its approval to its composition – look awkward. The weak materialisation of the mandate – to exert scrutiny and the vote of no-confidence – however, decrease the significance of the principle. The main institutional deficiency with respect to the

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4 here the logic of ordinary legislative procedure from the point of view of the EP’s policy-formation
conditions of parliamentarism of a separation – of powers – system is in current circumstances in the deficient popular anchoring of the government. A president elected by the people is a key characteristic of the separation – of powers – system and provides proper legitimacy to an executive that is not accountable to the parliament (Lijphart 1999, 17; Siaroff 2003, 288). The question of a direct election of the Commission President has been widely discussed in the EU recently, and shall be perceived against this background. This step would complete the EU’s governance as predominantly a separation-of-powers – system and would thus require a reconsideration of the current mechanisms of parliamentary accountability such as the vote of approval of the Commission and the possibility of a vote of no-confidence.

In its general meaning as power of bodies elected by the people, parliamentarism in the EU has recently encompassed firm efforts to strengthen the role of national parliaments at the EU level. Being outside the blueprints of both of the two models of parliamentarism discussed afore, the strengthened role of national parliaments is rather presented as a sui generis solution which could, as a less controversial model, help to decrease the EU’s lack of democratic legitimacy in the short term.

The EU level empowering of national parliaments has, however, faced difficulties partly due to its weak incompatibility with any of the two leading models of parliamentarism represented by the EU’s political system. First, any type of parliamentary control exerted by national parliaments at the EU level can be argued to mix up relations of power and accountability between the two layers of the EU’s political system. The new role introduced by the Lisbon treaty, where national parliaments are mandated to control compliance with subsidiarity principle, already faced this criticism and made the ‘red-card option’, i.e. the possibility to veto against legislative initiatives incompatible with the principle of subsidiarity, a no go to most Member States.

Ideas concerning a further EU-level institutionalisation of the role of national parliaments have, when emerged, met with corresponding criticism. Recently, the idea has come powerfully afore in the context of the economic and financial crisis as a means of improving the democratic legitimacy of the EU’s strengthened competence in economic and fiscal policy. Various forms of cooperation

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5 The idea has been for many years included eg. in the EU programme of German Christian Democrats (for recent formulation, see Gemeinsam erfolgreich in Europa; Europapolitischer Beschluss des 26. Parteitags der CDU Deutschland) and was raised also in the Report of the Future of Europe Group (17.9.2012) representing foreign ministers of eleven EU countries.

6 Details about the establishment of COSAC here.
between the EP and the national parliaments have been proposed with the most far-reaching suggestions comprising the establishment of a specific chamber to the EP representing national parliaments (Piris 2011, xx). Any steps to this direction would require a careful consideration of the political and institutional differences taking place between national parliaments as collective actors of their own, apart from national governments. The national parliaments form a very heterogeneous group reflecting differences between national political systems and in their roles therein. Most of them have difficulties in adopting such a role outside the national parliamentary framework which a further institutionalisation of their role at the EU level would require.

Parliamentarism as deliberation and debate

The third concept of parliamentarism reflected in the EU’s political system goes back to the historical understanding of the concept as deliberation and debate. This conception of parliamentarism was strongly present in the 19th century thinking of eg. Walter Bagehot and Max Weber (Palonen 2008, 82; Palonen 2011, 42-44). According to Palonen, the parliamentary style of politics operates with the power of deliberation and debate, and it is opposed to politics of sheer force and limits the politics of sheer numbers. Parliamentary speaking means speaking pro et contra in a debate, which provides the key principle of the parliamentary procedure (Palonen 2010, 42). The essence of parliamentarism ensures that the construction of opposing points of view is not subordinated to a higher truth or common good. On the contrary, the countering of any proposition with an alternative is the driving force behind parliamentary politics.

When approached from this point of view, parliamentarism requires certain working methods from the parliament in order to allow the policy of debate and deliberation to take place. Here, the temporal dimension of parliamentary proceedings is important as parliaments should be permitted enough time for the deliberation of an issue, since this is the main means of reaching a solution. Another method deals – in the spirit of Max Weber – with the executive’s need to constantly convince the parliament about its actions through argument and debate. According to Weberian thinking, the same control should be extended to the state administration concerning its compliance with the parliament’s political guidelines.
The EP’s development towards a working parliament – and the key role played by its committees – has affected the ways in which parliamentarism as deliberation and debate is expressed. As the main preparation of the EP’s position on legislative issues takes place in the committees – and as this is even the place where the different political standpoints meet through the functions of rapporteurs and shadow-rapporteurs – the plenary is less important as a venue for political deliberation (Mamadouh & Raunio, 2003, 348). The parliament’s regular interaction with the executive – and the duty of the latter to inform and convince the parliament – takes also increasingly place through the committees as these with their chairpersons and rapporteurs are in a key position when the parliament’s position is dovetailed with those of the other two legislative bodies, the Council and the Commission.

Parliamentarism in the Weberian sense of deliberation and rhetorical culture is furthermore reflected in the practices of the European Parliament in at least two broad contexts. First, the EP’s impact on the openness and transparency of the EU’s decision-making goes far beyond its key role in stipulating the bulk of EU legislation, introducing transparency and access to documents and information to the EU’s legal system. The parliamentary mode of decision-making – revolving around the EP and its practices – has formed an important counterforce to the intergovernmental mode, which leans more towards diplomatic practices and lack of openness. Calls for greater openness vis-à-vis the Union’s legislative process, which first bore fruit in the EP’s context, have recently materialised in the framework of the Council’s legislative functions, too. The EP’s own need for information has, along with its enhanced powers, cultivated a culture of openness in the EU to the benefit of the entire civil society.

Another parliamentary practice with a parallel impact is the EP’s custom of open hearings arranged with key representatives of a majority of the Union’s other institutions and bodies. A part of this interaction, which applies to the presidents of the European Council and the European Commission, ministers representing the rotating Council Presidency and the president of the ECB among others, has a treaty basis whereas the remainder has emerged as a political practice. The parliamentary hearings taking place in the plenary or in one of the committees have begun to provide an important forum for political debate in the Union. The practice requires institutions which previously used to operate in a less transparent manner to openly formulate policies and publicly defend them.
Will parliamentarism be perfected?

EU-level parliamentarism is at the crossroads. The hybrid form of parliamentarism combining elements of parliamentarism as control of the executive and parliamentarism of a separation - of powers-type has made the public image of EU level parliament obscure and decreased the democratic legitimacy of the EU’s political system. Due to reasons of political acceptability, even contradictory elements of the two main models of parliamentarism have been incorporated into the Union’s political governance in a situation where the accomplishment of the EU’s democratic governance along with any of them has proved politically difficult. Lack of clarity of the contours of parliamentarism tends to support an underestimated of the role it plays at the EU level.

Currently it seems that the way towards the revision of the Union’s democratic governance along the lines of the separation-of powers-system is much shorter as it has become deeply rooted in the EP’s procedures and functioning. The decisive step required for the perfectioning of this model also seems politically easier than the essential changes required by the completion of the competing system, i.e. parliamentarism as control of the executive. Whereas the latter would require a transfer into a party government at the EU level – i.e. a party-politisation of the Commission – parliamentarism of a separation- of powers –type could be strengthened just by making the President of the Commission to be elected by popular vote. This change, which during the past few years has gained increasingly support from various political circles, would imply a decisive move in the competition between the two key models of parliamentarism.

The third model, parliamentarism as deliberation and debate, functions and can be advanced irrespective of the aforementioned end result. The scope of openness and conditions for a broader civil society engagement in political debate are, however, likely to depend on the role and character of political parties. In this respect the two systems of parliamentarism differ essentially and can thus be seen to provide somewhat different conditions for the culture of deliberation and debate.

References:


