The participation of the regional parliament of Saxony-Anhalt in the European decision-making process according to the Treaty of Lisbon

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\(^1\) Landtag is the German term used for German regional parliaments. Thus, this term is used in this paper.
Abstract

The coming into effect of the Treaty of Lisbon confirms the dynamic development process of the European integration. However, member states and their regions are acting towards compensation for the transfer of competences.

In 1992 the Federal Republic of Germany introduced the *Europe article* in its Basic Law, to counteract the loss of the competences. This article defines the way the Federal Republic of Germany as well as its member states (die Länder) can compensate the competence-loss by participating in the debate concerning European affairs, therefore making it possible for the national and regional institutions to take up position. Moreover, the Länder have made further progress to take up the European issues and make themselves heard at the European level.

Looking at the adaptation of member-states to the loss of competences brings forward some of the results of the Europeanization. On the one hand, the governments are becoming more powerful. On the other hand, the literature points out the process of de-parliamentarisation. The parliaments are losing competences not only in favour of the European level, but also in favour of their governments.

This paper examines the participation and freedom of action of the German Landtag of Saxony-Anhalt, as part of the multi-level system of the European Union. It examines the activities and the rights of the legislative body of the Land, focusing on the European topics. This way, the paper analysis the participation of the regional parliament in the European decision-making process through its right of being informed and its right to issue advisory opinions. Moreover, it looks into how the Lisbon treaty endorses the participation of regional parliaments, by stating their role and by establishing the frame for their participation in the application and control of the principle of subsidiarity.

1. Introduction

The coming into force of the Treaty of Lisbon confirms the dynamic development process of the European Integration². This development is

² The understanding of European integration adopted in this paper is the emergence and constant development of the European Union and its institutional structure. On the other hand, the meaning of Europeanization refers more strictly to the adaptation process of
based on transfers of competencies from the member state legislators towards the supranational level of the European Union. However, memberstates and their regions are seeking compensation for this transfer of competences from the national to the European level.

In order to counteract the loss of the competences, in 1992 the Federal Republic of Germany introduced the *Europe Article* in its Basic Law. This article defines the way the Federal Republic of Germany as well as its *Länder* compensate the competence-loss. It stipulates their participation in policy-making processes of the EU. Moreover, the *Länder* took additional measures in order to promote their specific interests.

The loss of competences brings results of the Europeanization forward. On the one hand, the governments are becoming more powerful. On the other hand, the literature points out the process of de-parliamentarisation. Accordingly, parliaments are losing competences not only in favour of the European level, but also in favour of their governments.

This paper examines the participation and freedom of action of the German *Landtag* of Saxony-Anhalt. It examines the activities and the rights of this regional legislative body within the multi-level system of the European Union. This way, the paper analyses the participation of the regional parliament in the European decision-making process through its right of being informed and its right to issue advisory opinions. Moreover, it looks into how the Treaty of Lisbon endorses the participation of regional parliaments, by stating their role and by establishing the frame for their participation in the application and control of the principle of subsidiarity.
2. The De-Parliamentarisation process of European integration

2.1 De-parliamentarisation as consequence of European integration

The de-parliamentarisation is an effect of European Integration. Goetz argues that the European Integration empowers the national governments and thus it abets the process of de-parliamentarisation. He explains that the national executive actors gain power while national and regional legislative actors keep on losing competences. The power of the government lies in their direct participation in negotiation and bargaining processes at the supranational level. Therefore, the process of de-parliamentarisation is based on the following elements:

- Large transfer of national competences to the European level;
- Little influence of member state legislative actors on European decision-making processes;
- Little legislative scope for the implementation of European law;
- No proper control of the governments and their bargaining process at European level.

The literature delivers different interpretations of the de-parliamentarisation process. On the one hand, the parliaments have lost considerable scope of their attributions. On the other hand, Benz contests the thesis that parliaments have turned into powerless institutions due to the multi-level governance system within the EU. He argues that this devolvement offers parliaments the chance to carry out reforms in order to ensure their participation in European negotiation:

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4 Ibid., pp. 473.
“Parliaments are well aware of the shift in power due to the executive’s gatekeeper position between the national and the European arena. They have tried to counteract these developments through institutional reforms and adjusted their procedures and strategies to manage the challenges of multi-level policy-making.”

However, the idea of de-parliamentarisation is strongly sustained by the argument of EU law implementation. The European Commission, the Council of the EU, which gathers representatives of national governments, and the European Parliament are the actors that take part in EU decision-making processes. The lack of influence of the member-states parliaments on European decisions have driven the regions to take action and demand to be heard as well. The German Länders did not take part at the negotiation of the treaties. Thus they tried in retrospect to enhance their voice at the EU level. Their efforts might as well be regarded as adaptation to the de-parliamentarisation process through a wave of re-parliamentarisation. Connected to the multi-level governance system of the European Union, Benz reaffirms multi-level government in Germany. Due to its experience, the German regional level has struggled to impose itself and contribute to the European policy-making.

2.2 Participation of regional parliaments in European Affairs: from The Treaty of Maastricht to the Treaty of Lisbon

Recognition of the sub-national regions and authorities within the national and European levels has been claimed for a long time until some successes have been achieved. Incorporation in the European decision-

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making processes and implementation of the principle of subsidiarity have
been achieved. The Treaty of Lisbon has added value to the role of the
sub-national level in the European institutional framework. The presence
of regions in the European decision-making processes has been
strengthened through the institutional reforms, which ultimately led to the

Although the German national interest and identity remain close to the
European ones, the European Integration has created a mis-fit within
Germany. This is produced by the “imbalances in the allocation of power
among governmental authorities, in particular by reducing the powers of
The negotiations of the Treaty of Maastricht have induced a re-establishment
of the balance of power. They served to the reinforcement of powers for
the German legislative bodies and for the Länder.

The German federalism is a specific version of cooperative federalism. The
German constitution stipulates a vertical dimension of separation of
power, which assigns the powerful regional government to prevent the re-
emergence of the central state.\footnote{Börzel, Tanja A. 2002. States and regions in the European Union. Institutional adaptation in Germany and Spain, Cambridge, UK; New York: Cambridge University Press, p. 45.}
The demand for a body for regional representation at European level was
addressed by member states. This allowed the emergence of the concept
of Europe of the Regions, which was part of the strategy of the Länder.
Moreover, at the beginning of the 1990s, the idea of regions and
regionalisation gained much influence and support from the European
institutions - the Commission and the European Parliament - as well as
from the Assembly of the Regions\footnote{The Assembly of European Regions is the largest independent network of regions in the wider Europe. It was established 1985 and is made up of more than 270 regions from 33} in Europe. The European Council
recognised as well the importance of a Europe of the Regions and of the principle of subsidiarity, which allows the promotion of democracy and transparency within the EU.

The Treaty of Maastricht determined the emergence of a political assembly - the Committee of the Regions - which is an advisory institution, being consulted by the European Commission, the European Parliament and the Council of Ministers whenever legislative proposals affect the regional and local level. At the moment the Committee is composed of 344 members from all 27 member states, from which Germany has 24 full members. Each Land has a representative. Three representatives are guaranteed for the Municipalities and Associations of Municipalities. The other five seats are covered by extra members of the Länder. Their membership is based on a system of rotation.¹³

During the preparation of the Treaty of Lisbon, the German Länder were represented in the works of the European Convention by members of the Bundestag, Bundesrat and federal government. The regions worked together in new forums, such as Regleg and CALRE¹⁴. The Länder developed a regional agenda stressing the strengthening of the regional level. Their wish list entailed the designation of competencies for the Länder.¹⁵ The demand for an explicit reference to the existence and the role of regional authorities within the EU was fulfilled. The Article 4 of the

countries. It also brings together 16 interregional organizations. Its tasks are promoting the principle of subsidiarity and regional democracy, increasing the political influence of the regions within European institutions. It supports the regions in the process of European enlargement and facilitates interregional cooperation. The Assembly of European Regions. Vocation. URL: http://www.aer.eu/about-aer/vocation.html [Stand 2012-05-18].

¹⁴ See section 3.3 The participation of the Landtag at the European level.
Treaty of Lisbon\textsuperscript{16} and the Preamble of the Charter of Fundamental Rights mention them.\textsuperscript{17} The demand of the German \textit{Länder} to have a catalogue of EU competencies has not yet been achieved, but the principle of subsidiarity has been invoked in the Treaty of Lisbon and the procedure of controlling its implementation has been extended to the Committee of the Regions and national parliaments. The regional parliaments are not mentioned in this procedure of early warning mechanism or the control of the implementation of the principle of subsidiarity. However, the \textit{Länder} are taken into consideration. Their participation in this procedure occurs through the \textit{Bundesrat}. Therefore, one can mention an indirect participation of the \textit{Länder} which are represented by members of their executive institutions. The \textit{Landtage} depend on the information they obtain from their parliaments. On the other hand, the Committee of the Regions monitors as well whether the EU legislative acts respect the principle of subsidiarity. Hence, the \textit{Landtage} can consult the recommendations and position papers of the Committee of the Regions and make use of the work carried out by this institution.

A clear assignment of EU competencies has been achieved in so far that it can be distinguished between exclusive, respectively shared powers and supporting, coordinating or complementary actions. Further involvement

\begin{itemize}
\item \textsuperscript{16} \textquote{Article 4. 2. The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government. It shall respect their essential State functions, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security. In particular, national security remains the sole responsibility of each Member State.\textquote{, Consolidated Version of the Treaty on European Union. Official Journal of the European Union, 30.3.2010, C 83/13. URL: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0013:0046:EN:PDF [Stand 2012-05-18].}
\item \textsuperscript{17} \textquote{The Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it seeks to promote balanced and sustainable development and ensures free movement of persons, services, goods and capital, and the freedom of establishment.\textquote{, \textit{Preamble}, Charter of fundamental rights of the European Union. Official Journal of the European Union, 30.3.2010, C 83/389. URL: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0389:0403:EN:PDF [Stand 2012-05-18].}
\end{itemize}
of the Länder is taking place through the European actors representing regions of the member states.\textsuperscript{18} The Treaty of Lisbon was examined by the German Federal Constitutional Court before its ratification. The Court ruled that the treaty will be compliant with the German Basic Law if the Bundestag and the Bundesrat would be given sufficient participatory rights in the decision-making of the EU. For this purpose, complementary legislation to the Europe Article of the German Basic Law was adopted.\textsuperscript{19}

2.3 German Basic Law Stipulations

The German Länder have been developing strategies to participate in European decision-making processes since the beginning of the European integration process. Their motivation to participate effectively was driven by the loss of competencies which have been handed over by the Bund and by the possible loss of autonomy as sovereign political entities. In order to avoid a transformation into administrative units, the German Länder have tried to affect the European policy formulation within and outside the borders of the German state, especially since the 1980s. Their behaviour can be classified in two strategies: let us in and leave us alone.\textsuperscript{20} The let us in strategy relates to the direct articulation of interests of the German Länder within the decision-making process. This is realised through the offices in Brussels, which represent the interest of the Länder (Landesvertretung) and through their representation in the Committee of the Regions. The Länder take part as well at the works of Regleg and CALRE, which bring together regions of the member states with legislative powers. The leave us alone strategy has been increasingly adopted since

\textsuperscript{18} Eppler Annegret. Multi-level Governance in Europe - The implication of German Länder in the development of the Lisbon Treaty and the strengthening of the regional level in Europe, p. 7.
\textsuperscript{19} See next section.
\textsuperscript{20} Eppler Annegret. Multi-level Governance in Europe - The implication of German Länder in the development of the Lisbon Treaty and the strengthening of the regional level in Europe, p. 4.
the middle of the 1990s. This strategy targets to improve the autonomy of the regions especially through the implementation of the subsidiarity principle. Moreover, they strive for a clear distinction between the different competencies which actors at different levels have.\textsuperscript{21}

The \textit{Länder} are represented in the \textit{Bundesrat} by members of their governments. These “bargain much more intensively with the government on European issues than the members of the Bundestag.”\textsuperscript{22} The \textit{Bundesrat} can also adopt binding mandates for the governments. But this is only available for policies that affect the legislative powers of the \textit{Länder}. However, the regional parliaments have little influence on the bargaining processes in \textit{Bundesrat}. They can only adopt their resolutions regarding the strategy of their government.

The struggle of the \textit{Länder} has been a step by step success. Since the 1950s, there were attempts to obtain co-decision rights in the European policy-making for the \textit{Länder}.\textsuperscript{23} Until the beginning of 1980s, there were still no formal and binding participatory rights achieved, although the Europeanization had significantly changed the territorial balance of power in favour of the federal government. However, the \textit{Landtage} had no role. The problem of \textit{Länder} participation received again attention during the ratification of the Single European Act. For this treaty reform, the federal government requested the \textit{Bundesrat} to ratify the reforms. The \textit{Länder} responded with an offensive against the federal government, for not having been consulted during the negotiations. The further transfer of competencies decided by the reforms concerning the single European market was considered as a serious threat to the state quality:

“the \textit{Länder} decided to use their veto power as a window of opportunity to push through their demands for “real”, that is formal and binding, participatory rights in European decision-making”\textsuperscript{24}.

\textsuperscript{21} Eppler Annegret. Multi-level Governance in Europe - The implication of German Länder in the development of the Lisbon Treaty and the strengthening of the regional level in Europe, p. 5.


\textsuperscript{24} Ibid., p. 65.
The law ratifying the Single European Act introduced the *Bundesratsverfahren*. It was a formal procedure allowing intra-state participation of the *Länder* in European decision-making, organized exclusively through the Bundesrat. It included the obligation of the federal government to inform the Bundesrat and its right to express formal recommendation for exclusive jurisdiction or essential concerns of the *Länder*. A *EC Chamber* was established within the Bundesrat. This had to deal only with European issues and could “convene within one week and is allowed to take decisions for the *Bundesrat* plenum”\(^\text{25}\).

The German *Länder* achieved their constitutional participation during the negotiation process for the Maastricht treaty. The rights to appeal the European Court of Justice and the direct access of regional representatives to the Council of Ministers, demanded by the German *Länder*, were seen as specific German claims and have not been approved. The *Länder* demanded further constitutional co-determination rights in the formulation and representation of the German bargaining position in the European decision-making process.

In 1992 the German Basic Law was amended. This amendment introduced the *Europe Article* which allows regularly indirect participation and a restricted direct participation of the *Länder* in the decision-making processes of the European Union.\(^\text{26}\) This article stipulates that the federal government informs the *Bundesrat* “in an exhaustive and timely way about all draft Union acts in which the *Länder* may have an interest”\(^\text{27}\).

The *Länder* are granted a say in the transfer of competencies because the transfer requires the consent of the *Bundesrat*. Changes of the treaties must be adopted by a majority of two-thirds, both in the Bundestag and *Bundesrat*. The federal government is obliged to inform and take into consideration recommendations of the *Bundesrat* with respect to both European issues which fall under the competencies of the *Länder* and European issues which fall under the exclusive federal competencies but


\(^{26}\) See Art. 23, paragraph 2.

affect the interests of the Länder as well. Especially when former administrative or legislative competencies of the Länder are involved, the Bundesrat has the final decision on the German bargaining position in the Council of Ministers. Moreover, a Landesminister can act as head of the German delegation and represent Germany in the Council negotiations, when exclusive competencies of the Länder are at stake. Although the Länder did not achieve to anchor the right of the regions to appeal to the ECJ in the treaties, the German law on the cooperation between the Bund and the Länder concerning the European affairs, grants the Bundesrat the right to request the federal government to appeal to the ECJ on behalf of the Länder, if European institutions change the Länder competencies. The law provides also the legal basis for direct contact of the Länder with European institutions. The Länder are permitted to establish official representations in Brussels, which can not have diplomatic status. They also have the right to participate in the working groups and committees of the Council and the Commission. The new article of the German constitution has redressed the territorial balance of power and compensated the Länder for the Europeanization of their competencies. Moreover, the role of the Bundestag has also increased, because Bundestag and Bundesrat have gained co-determination rights in European policy-making through the Europe Article. According to Benz, members of parliaments use their rights of participation in European affairs strategically. They generally respect the broad room for manoeuvre in European negotiations. This is why they draft their resolutions in close cooperation with the government in order to strengthen the position of their government in negotiation at European level. In the same time, the committees for European affairs comprise members from different fractions including the opposition. These work together with members from other committees. Therefore, the opposition is not excluded from the drafting of resolutions which contribute to the

28 EUZBLG, Gesetz über die Zusammenarbeit von Bund und Ländern in Angelegenheiten der Europäischen Union.
strengthening of the government.\textsuperscript{30} The same procedures find place at the regional level in Germany. Resolutions of the \textit{Landtage} usually confirm the strategies of the regional government.

But the new Article does not specify the \textit{Landtage} in particular. These try to gain influence on the co-decision rights of the \textit{Länder}, through the \textit{Länder} executives in the \textit{Bundesrat}. But the achievements of the regional parliaments are the right to be informed with regard to European issues and initiatives.\textsuperscript{31} The Parliaments of the German \textit{Länder} have established special committees for European affairs likewise the Bundestag and the \textit{Bundesrat}. These are confronted with the rivalry with other specialized committees which deal with EU-related matters falling in their portfolio. Moreover the sub-national executives are obliged to submit an annual report “on how EU politics affect the \textit{Land} and what the government has done”\textsuperscript{32}. These reports give the opportunity to the parliaments to control what the governments are doing, because the government is the only source of information for the parliaments.\textsuperscript{33}

Therefore, the adoption of the \textit{Europe Article} can be called the process of “Europeaniz(ing) the German Basic Law”\textsuperscript{34}. In September 2009 four laws accompanying the ratification of the Treaty of Lisbon were adopted. These laws provide Bundestag and \textit{Bundesrat} with extended rights in European affairs and contain the law on the responsibility of the Bundestag and the \textit{Bundesrat} for the European Integration. The latter law establishes that the approval of European proposed measures or the extension of European competencies require a law passed in accordance with the Article 23 of the Basic Law. Without such as law, the German representative in the Council must vote against the measure or the extension. The rationale of

\textsuperscript{31} Börzel, Tanja A. 2002. States and regions in the European Union. Institutional adaptation in Germany and Spain, p. 72.
\textsuperscript{33} Ibid.
the amendments is the expansion of the involvement of the Länder and of the Bundestag.35

“The Lisbon ruling clarified that a transfer of sovereign powers from the national level to the European Union could be compliant with the BL [Basic Law] only if the democratically representative bodies are involved in the decision.”36

3. The participation and freedom of action of the Landtag of Saxony-Anhalt

3.1 Legal stipulations for the Landtag of Saxony-Anhalt

The Landtag of Saxony-Anhalt was re-established in October 1990. At the same time began the “modern history of Saxon-Anhalt”37 as part of the Federal Republic of Germany and as a region within the European Union. The first assignment of this parliament was to elaborate a new constitution. The constitution was adopted on the 16th July 1992. The Landtag is considered to be the highest constitutional body of the Land that performs in the centre of everyday politics.38

As a legislative body, the Landtag practises the legislative process, the regulation of budget, the election of the prime-minister and the control of the government. The plenum of the Landtag is considered to be the place of communication, where decisions are being made. However, these decisions are firstly prepared in the experts committees. The consultation and decision-making process is managed by the fractions within the Landtag.39 The plenum is also responsible for the election of the prime-minister. This election is crucial because the regional government – likewise the federal government – has a major scope in dealing with European affairs and with European institutions. The exclusive decision-

36 Ibid., p. 139.
39 Ibid.
making competences of the Landtag are: schooling and universities, public security and order, and culture.\textsuperscript{40} Other decisions of the Landtag are justified by the competitive competences the Bund and the Länder share.\textsuperscript{41} The bills are discussed within the experts committees. The work of these committees is being carried out by members of each fraction, officers of the government and the legal service for legislation and advisory of the Landtag. There is a development of modern division of labour within the Landtag. Thus, it bounds to a specialisation of the actors who are involved in the decision-making process.\textsuperscript{42}

However, the thesis of de-parliamentarisation is closely connected with the idea of the losers of European Integration, namely parliaments. The regional parliaments in Germany have paid the biggest price. These bodies are left with a thin scope of decision power. The coordination of the Länder through their governments has led to the situation where regional parliaments are faced mostly with packets of solutions. A thorough analysis and amendment of these packets would endanger the outcome of a common political regulation.\textsuperscript{43}

The legal stipulations for the participation of the Landtag Saxony-Anhalt in European affairs are defined in:

- The constitution of the Land Saxony-Anhalt;
- The law on the informing of the parliament by the government from 30\textsuperscript{th} November 2004;
- The agreement between the Landtag and the government of the Land on the informing of the parliament by the government according to the Article 62 of the constitution of the Land Saxony-Anhalt.\textsuperscript{44}

\textsuperscript{40} Der Landtag Sachsen-Anhalt. Das Plenum. URL: http://www.landtag.sachsen-anhalt.de/index.php?id=43 [Stand 2012-05-18].
\textsuperscript{41} See Art. 74 of the German Basic Law.
The constitution of the Land affirms the affiliation of the region to the Federal Republic of Germany and to the European Community. The Article 62 of the constitution regulates the obligation of the government to inform the parliament. The law on the informing of the parliament by the government stipulates that the information should take place in sufficient time\(^45\), so that the parliament can prepare its position papers.

The Rule of internal procedure of the Landtag contains specific procedures for European affairs. According to these, the regional government is obliged to inform the Landtag of the intentions of the government as well as of the legislative documents which are prepared by the European Union.\(^46\)

The Landtag is composed of eleven committees. One of them is the committee for federal and European affairs and for media. The committees prepare the advisement of decisions of the Landtag and report on the proceedings.\(^47\) Through the medium of internet, the informing obligation occurs very quickly. The agreement between the Landtag and the government of the Land on the informing of the parliament by the government regulates the proceedings and also defines the European affairs. Accordingly, following documents rank among these:

- Consultation proceedings within the Bundesrat regarding the Article 23 of the German Basic Law;
- Consultation proceedings within the Bundesrat regarding the early warning mechanism;
- Observations of the Bundesrat concerning violations of the principle of subsidiarity;
- Cooperation between Bund and Länder in European affairs;
- Works of the prime-minister conferences;
- Briefings about key aspects of the work of the Council of the EU;

\(45\) Rechtzeitig.


\(47\) Ibid., §14.
• Briefings about key aspects of the policies concerning the EU of the regional government.  

The contribution of the Landtag is to elaborate position papers. The government takes the resolutions of the Landtag into consideration. However, the resolutions and the position papers are not binding for the government. Though, the government might need to explain the reasons of its action. The Landtag is also allowed to check whether the legislative initiatives of the Commission are not infringing upon the subsidiarity principle.  

The Landtag can issue resolutions and opinions concerning European affairs, especially those which are of special interest for the region. The committee for federal and European affairs and media is allowed to take decisions for these resolutions in name of the plenum. This committee is also the one being informed on European affairs. It has the right to forward the drafts to other committees within the Landtag.  

The Landtag has also saluted the idea of more participation of the regional parliaments, as the Federal constitutional court presents the concept of responsibility for integration. For this purpose, the Landtag of Saxony-Anhalt has released opinions concerning European affairs. However, the number of opinions is low. The committee for federal and European affairs and media only meets once a month which makes the process of elaboration of opinions difficult. Moreover, all fractions are represented in this committee. This means that they need to achieve a consensus based on political bargaining in order to pass these resolutions. On the other hand, the control of the government has become one of the main tasks of the parliament. The parliament supervises the position represented by the

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49 See Protocol nr. 2 of the Treaty of Lisbon.  
51 Some resolutions of the Landtag of Saxony-Anhalt concern the energy policy for Europe, the common agricultural policy, the citizens initiative.  
government in the Bundesrat. Moreover, the members of the committee for federal and European affairs and media are responsible for the communication with members of the European Parliament or with the representation office in Brussels.\textsuperscript{53}

3.2 The participation of the Landtag within the Federal Republic of Germany

The German cooperative federalism is based on a functional division of labour between central state and the regions. The legislation is concentrated at the federal level and the execution and administration are being carried out by the Länder, whereas the political weight of the Länder lies in their participation in the federal decision-making process through the Bundesrat. The German Länder have adopted a cooperative strategy of cost-sharing, after being faced with the centralization of their autonomous competencies. Their demands of compensation for the loss of competences contributed to a “flexible redressing of the territorial balance of power.”\textsuperscript{54}

“‘This compensation-through-participation’ gave rise to an extensive system of interlocking politics and joint decision-making (Politikverpflichtung), where Bund and Länder share and jointly exercise policy competencies.”\textsuperscript{55}

According to this participation, there are three levels of intergovernmental cooperation:

- regular conferences between the heads of the Bund and the Länder,
- the interrelationships between Bund and Länder at the federal level,
- the horizontal coordination between the Länder through the Länderministerkonferenzen\textsuperscript{56},


\textsuperscript{54} Börzel, Tanja A. 2002. States and regions in the European Union. Institutional adaptation in Germany and Spain, p. 45.

\textsuperscript{55} Ibid., p. 46.

\textsuperscript{56} Conferences of the ministers of each Land, responsible for different domains, for example culture, health.
conferences of the presidents of the regional parliaments. Börzel draws the attention to the restricted political power of the \textit{Länder} parliaments, which can only approve or disapprove the outcomes of the intergovernmental negotiations. The cooperative federalism of Germany has a double negative result for the \textit{Länder} parliaments, namely loss of competencies through the transfer and restricted contribution due to the logic of joint decision-making, which is based on the intergovernmental negotiations. Moreover, the executive federalism constrains party competition. If the majority of the \textit{Länder} in \textit{Bundesrat} is controlled by the opposition, there is the trend of consensus-seeking rather than competition and confrontation among political parties. Furthermore, the \textit{Länder} try to find a common position and avoid to ally with the \textit{Bund}.

3.3 The participation scope of the \textit{Landtag} at the European level

Representation Offices of the \textit{Länder} in Brussels

The right to establish own representation offices in Brussels is an important form of \textit{Länder} participation in European affairs. However, these offices have no diplomatic status, because it would be incompatible with the monopoly of foreign policy of the Bund. Although the \textit{Europe Article} of the German Basic Law permits these official representations in Brussels, the \textit{Länder} had been organising unofficial contacts with the European institutions since the 1970s. The \textit{Länder} had to inform and still have to inform the federal Foreign Ministry about their activities and to adjust their own interests to the position of the federal government. The offices and contacts in Brussels facilitate a mutual information exchange. Some of the representatives of the \textit{Länder} have also been lobbying and channelling regional interests through the European Parliament into the European decision-making. The tasks of the offices are to analyse the events from the European scene and to inform the \textit{Länder} governments. This allows


\textsuperscript{58} Panara, Carlo 2011. \textit{Germany: A Cooperative Solution to the Challenge of the European integration}, p. 147.
the Länder to react to changes or to prepare implementation steps in advance. However, the Landtag is being informed by its government. It has no direct contact to the representation office in Brussels and it enjoys the right to adopt resolutions concerning the European affairs. On the other hand, the work of the office in Brussels is based on the strategy of the government. This is presented to the Landtag as well. Hence, the Landtag is being kept up to date about the activities of the Europe policy of the government.

The Committee of the Regions

The demand of the German regions to have an actor representing the regions at the European level has been achieved with the creation of the Committee of the Regions. This solution was “remedying the treaty’s blindness to the regions”.59 The Committee of the Regions has been struggling to enforce its demands for more consideration during its existence. It is promoting the role of the regional and local authorities. In its White Paper on multi-level governance, the Committee of the Regions highlights the importance of the Treaty of Lisbon, because it represents the institutional recognition of the multi-level governance of the EU. It also stresses the indisputable democratic legitimacy of the local and regional authorities.60 The role of the Committee of the Regions at the European Level is strengthened by the legitimacy of the authorities, which are comprised by it. Making use of the principle of partnership, the Committee of the Regions calls on the Member States to invite its contribution and systematic participation and allow access to documentation, so that its recommendations can meet the interests expressed by the local and regional authorities. The White Paper also expresses the wish to strengthen the political and institutional

cooperation with the European Parliament with regard to concerns of the citizens.\textsuperscript{61}

The Committee of the Regions advocates the collaboration with relevant networks at local and regional level in order to promote the interconnection and interaction within the European society between political, economic, associative and cultural domains. Furthermore, it proposes methods and tools aimed at bridging the communication gap. It also

“encourage(s) increased coverage by local and regional media of the impact of EU policies on the daily life of citizens and (undertakes) to boost their potential for communication, information and mediation on Europe by using new communication tools”\textsuperscript{62}.

The Treaty of Lisbon did not change the status of the Committee of the Regions into an organ of the European Union. But the European Commission is obliged to consult local and regional authorities as early as possible during the pre-legislative phase, involving the Committee of the Regions from early stages of the decision-making process. This has to be consulted by the decision-making bodies, if proposals affect directly local and regional authorities in the cases designated by the treaties or whenever the Committee of the Regions considers it appropriate. The Committee of the Regions has the right to question the Commission, the Parliament and the Council should they fail to take into consideration its point of view. Moreover, it can call for a second consultation if substantially changes are adopted. It can also appeal the European Court of Justice, if it believes that the consultation procedure was not carried out correctly. The work of the CoR is based on the principles of subsidiarity, partnership and closeness to the citizens in order to make the voice of local and regional authorities be heard.\textsuperscript{63}

According to the Treaty of Lisbon, the Committee of the Regions is vested with more responsibilities regarding the subsidiarity. It now has the right

\textsuperscript{62} Ibid, p. 17.
to bring an action before the EU Court of Justice if it suspects infringement of the subsidiarity principle, which underlines the necessity to respect the competences of local and regional authorities. Moreover, it has adapted its procedures to this particular prerogative.\textsuperscript{64}

The Subsidiarity Monitoring Network is the instrument of the Committee of the Regions for the control of subsidiarity. This network was launched in April 2007. Its members are members of Parliaments and Government of regions with legislative powers, local and regional authorities without legislative powers and local government associations in the EU. The network facilitates the exchange of information between the sub-national authorities and the European level. This way the authorities can participate in monitoring the implementation of the subsidiarity principle.\textsuperscript{65}

The Conference of European Regional Legislative Assemblies – CALRE

The attempts of regional parliaments to strengthen their involvement in decision-making processes on EU matter have addressed extra-state channels. The presidents of the regional parliaments with legislative powers within the EU agreed in 2007 on the establishment of a political network of presidents of the regional parliaments with legislative powers of the member states of the EU – CALRE. This network comprises 73 members which represent 73 regions from eight EU member states.\textsuperscript{66} The goal of this actor is to gain influence for the regional parliaments in EU matters. It tries to establish closer links with the European institutions – EP, European Commission, Committee of the Regions – and the national parliaments. This network deals with political, constitutional and democratic issues and its value lies in the communication among its members.\textsuperscript{67}

\textsuperscript{64} Committee of the Regions. Subsidiarity Monitoring Network-Homepage. URL: http://extranet.cor.europa.eu/subsidiarity/Pages/default.aspx [Stand 2012-05-18].

\textsuperscript{65} Committee of the Regions. The Subsidiarity Monitoring Network. URL: http://extranet.cor.europa.eu/subsidiarity/thesmn/Pages/default.aspx [Stand 2012-05-18].

\textsuperscript{66} Belgium, Germany, Spain, Italy, Austria, Portugal, UK, Finland. Conference of European Regions Legislative Assemblies. History. URL: http://www.calrenet.eu/index.php/what-iscalre/history [Stand 2012-05-18].

\textsuperscript{67} Hrbek Rudolf 2010. Parliaments in EU Multi-Level Governance. p. 149.
The goal of CALRE is to participate actively in the European decision-making and thus legitimate European actions. The means used by this network are inter-parliamentary contacts with national parliaments and with the European Parliament and shared data bases which ensure a better information process. Some of the procedures existing in Germany and Austria, like the obligation of regional governments to inform the regional assemblies and the right of the regional parliaments to issue statements offer examples for the functioning of this network.\(^{68}\) The conference meets annually and releases declarations which state its demands and recommendations for a stronger involvement of the regional level in European decision-making processes. The stipulated demands comprise consideration of the subsidiarity principle, a clear assignment of competencies, strengthening the Committee of the Regions, establishment of Europe-committees in the regional parliaments, cooperation with the European Parliament. Moreover, CALRE is a network which cooperates with the Committee of the Regions, the Regleg and other actors, who promote the involvement of the regions in the European integration.\(^{69}\) Therefore, the existing participation rights of the German Landtage in European affairs serve as a prime example for other regional parliaments. The work of this network stresses the importance of the principles of democracy and subsidiarity. It exercises pressure on the European and national institutions to take the role of regional parliaments into consideration. However, the actual possibility of regional parliaments to influence European decision-making processes is severely restricted by the complexity of the decision-making processes. The Landtage have to prevail their point within the regional government, the Bundesrat, the federal government and in the Council. Thus, one cannot guarantee that the positions of the Landtag will be taken into consideration.


\(^{69}\) Ibid.
The Conference of European Regions with legislative powers – REGLEG

Regleg is another political network for EU regions with legislative power. In comparison with CALRE, whose members are presidents of regional parliaments, Regleg comprises representatives of regional governments who work together on issues of common concern. It is open to the same regions, which are represented in CALRE as well. The purpose of Regleg is to raise the level of democratic participation from legislative regions in EU affairs. Its members participate in policy formation in accordance with the principles of subsidiarity and it promotes the improvement of rights of legislative regions in respect of subsidiarity. Moreover, Regleg wishes to raise the visibility, awareness and understanding within the EU-institutions of the specific features of regions with legislative power. The annual conference aims to stimulate the political dialogue between regional government representatives and it provides opportunities to interact with other European actors. However, the role of the regional parliaments remains in the background because this network gathers members of the regional executive institutions.

4. Conclusion

As a result of European Integration, the regional parliaments have been left with a thin scope of legislative performance. The German Landtage depend on their governments which inform them about new EU legislative initiatives and about their own strategies to deal with the EU development. The participation of the Länder in decision-making processes of the EU is a complex procedure which involves many actors from various levels and with different interests. Due to its complexity this procedure may come across as rigid. The Landtage have the right to adopt resolutions stating their opinions on European matters. However, these opinions are not binding and the enforcement of their content depends on the capacity and successful assertiveness of the regional governments. According to the

German Basic Law, the participation rights of the Länder are indirect and collective. These are exercised through the Bundesrat.

“One must be aware that there is not only a need to safeguard the rights of the Länder but also a need to prevent their rights of participation from becoming an excessive constraint on the Federal Government, capable of precluding it from conducting negotiations in the Council in an effective way.”\textsuperscript{71}

On the other hand, the European actors have recognized the value of the participation of regional legislative assemblies for the democratic legitimacy of the EU. Thus, the regional parliaments have the right to control whether the EU laws correspond to the subsidiarity principle. However, there are many actors involved in this control procedure. In Germany there are sixteen Landtage, which can perform this control. Hence, a smaller Landtag such as the one of Saxony-Anhalt might not even have to perform this control. It can rely on the works of the Committee of the Regions. Moreover, the committee for federal and European affairs and media of the Landtag of Saxony-Anhalt has managed to adopt few resolutions which mostly enforce the position of the regional government. This happened due to the need of reaching consensus and the limited occasions for the committee to operate.

“The single Land must be subject to the decision of the majority of the Länder. [...] this is the only possible form of participation, as only states and not sub-national entities are and can ever be members of the EU.”\textsuperscript{72}

\textsuperscript{72} Ibid., p. 153.
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