Mihaela Codrina LEVAI, Ph.D
Ana Maria MIHĂLCESCU, Ph.D

European Parliament's Competences

Mihaela Codrina LEVAI, Ph.D
Victor Babeş University of Medicine and Pharmacy
Timisoara, Romania
codrinalevai@umft.ro

Ana Maria MIHĂLCESCU, Ph.D
Lawyer, Bucharest Bar, Romania

Abstract: *Over the time, Parliament passed from a consultative assembly status to the authentic co-legislator in a European Union, which itself has evolved considerably beyond the original European Communities, both in the sphere of action and competences [1]. The European Parliament is a novelty in the theory of international relations and in the relations between states, this novelty consisting of: composition (its members are not delegated by national parliaments or governments, but are directly elected by the people of the member states); competence (as it has power to co-decision, cooperation, political control, all of which are difficult to find within traditional international organizations) and the place occupied in the institutional structure (because it does not represent the center of decision-making power of the European Union).*

Key words*: European Parliament; legislation; competence.*

Introduction

Today the European Parliament has three essential functions [2]: 1. along with the European Union Council has legislative powers, which means that it adopts European Union legislation (regulations, directives, decisions). Participation in the legislative process helps to ensure the democratic legitimacy of the adopted texts; 2. shares budgetary authority with the Council of the European Union, therefore can modify budget expenses; ultimately adopts the budget in its entirety and 3. exercises a *democratic control* over the Commission; approves the appointment of members of the Commission and has the right to censure the Commission; also exercises a political control over all the institutions.

1. European Parliament's legislative competence

According to article 35 of the RP, EU legislative programming is done by consensus of the Parliament, Commission and Council and at the same time, the Parliament and the Council cooperate in developing the legislative and work program of the European Commission, based on the calendar and procedures agreed between the two institutions [3]. In unforeseen or urgent situations, an institution may propose, on its own initiative and in accordance with procedures established by the treaties, the introduction of a legislative measure along with those proposed in the legislative program. If one of the institutions is unable to meet the timetable, it shall inform the other institutions of the reasons for the delay and propose a new calendar itself.

From the beginning, it should be noted that the Parliament *has no right of direct initiative*, but can ask the Commission to introduce a draft law to the Council, this prerogative being recognized to Parliament by the *Maastricht Treaty*. Nevertheless, the Commission is not obliged to comply with Parliament's initiative, in practice are very few cases in which the Commission complied with the Parliament's request and thus to adopt a normative act. The consultation takes place by sending the project to the European Parliament, the Economic and Social Committee and the Committee of the Regions, where appropriate, and they issue an opinion, which is not mandatory for the Council. However, not consulting the above bodies is procedural defect that may lead to the cancellation of the normative act adopted.

The Parliament can "stall" in case of urgent decisions by formulating with delay their own opinions, but must act in good faith in terms of time limits. Parliament may also delay the legislative procedure by

sending suggestions for modifying the project to the Commission, following, only after the Commission ruled on them, to release the opinion.

If the Council did not take the opinion delivered by Parliament in its first reading into consideration, the Parliament can reject the proposal to "its second reading". This *cooperation procedure*, introduced by *the Single European Act*, reduces the ability of the Council to reject the amendments proposed by the Parliament and gives the Parliament some power to set the legislative agenda, even if that power was conditioned by supporting the amendments by the Commission and by finding a majority in the Council to support the parliamentary proposals.

The Maastricht Treaty replaces permanently the cooperation procedure with *the co-decision procedure* [4] and thus, if the European Parliament and the Council reached agreement after two readings of the legislative proposal at each institution, a conciliation committee is convoked, consisting of an equal number of representatives of the European Parliament and of the Council. An agreement established in the Conciliation Committee is then subject to ratification, without any amendment after a third reading in the European Parliament and in the Council.

First time the representatives of the Parliament and the Council failed to reach agreement within the Conciliation Committee and the Council has used, at an early stage, his right to repropose the version originally established by governments, the Parliament immediately voted against the legislative proposal, amending thus the possibility that Council institution can act unilaterally [5]. This was the first case in which the European Parliament has successfully blocked a legislative act of the European Union establishing, at the same time, a precedent, namely: the co-decision procedure ends, practically when one cannot agree on a joint text within the Conciliation Committee. *The Amsterdam Treaty* reformulates the co-decision procedure, in accordance with already-established practices, stating that the legislation cannot be enacted without the approval of a qualified majority in the Council and a simple majority in Parliament and also extends this procedure to almost all regulations on the EU common market and in some areas of Community policy relating to the free movement of persons, immigration and asylum law. In accordance with Article 55 of the *Rules of Procedure of the European Parliament*, the Parliament examines the legislative proposal based on the report prepared by the competent committee and votes firstly the amendments to the proposal as a basis for the competent committee report, then the proposal, eventually amended, then amendments to draft legislative resolution, and finally, the entire draft legislative resolution that contains only a statement indicating if Parliament approves the Commission's proposal, rejects it or proposes amendments, as well as requests for opening of a procedure. The President transmits to the Council and the Commission, in the form of a notice of the Parliament, the text of the proposal as approved by Parliament, accompanied with its resolution.

Under *the Lisbon Treaty*, the co-decision procedure becomes the ordinary work procedure at European Union level, unprecedented increasing the importance of the European Parliament in decision-making process. This procedure has been extended, being newly introduced in 40 articles, so a total 73 articles of the TFEU provide this procedure, which strengthens the democratic nature of the European Union through participation of the European Parliament in the legislative process [6].

The purpose of *approval procedure*, introduced by the *Single European Act* consists in obtaining parliamentary support for a normative act that cannot be modified. In this manner, the Council introduces a definitive act to the European Parliament, which, either shall approve and so it supports its adoption, or shall reject it and thus prevent its adoption. This was essential in the decision of admission of new Member States, in the case of association agreements with third countries, on international agreements, in the case of uniform electoral procedure for the European Parliament, for establishing the tasks and powers of the European Central Bank, for initiating a cooperation relationship in areas where the decisions are subject to this procedure, etc. Some authors talk about this procedure as an "unprocessed co-decision", because the European Parliament cannot propose amendments to those measures and should give an explicit approval by a simple majority, although in some areas - accession of new states, the electoral system and sanctions imposed on member states - the approval is adopted by a majority vote of the European Parliament members. There are two cases when the approval procedure is reversed, the one who must give approval is the Council, specifically in the areas of the Ombudsman's Statute and the Statute of the MEPs.

In conclusion, in terms of *legislative decision-making procedures*, the European Union has developed four specific types - *consultation, cooperation, conforming approval and co-decision* - and, in general, they reflect the institutional development of the European Union, their development could be seen from the perspective of transfer of legislative power between the Council of the European Union, namely the practical ability of Parliament to counterbalance the power of the Council. The co-decision procedure was introduced

by the Maastricht Treaty as a substantial development of the cooperation procedure: the co-decision introduces a third reading of a proposal and calls for a conciliation committee in order to reach a compromise between the Council and the Parliament. For the first time in the history of the Union, the Parliament has the power to say "no" to the Council, which may determine a permanent abandonment of a legislative proposal [7].

But who wins from the modification of the European decisional process? A common statement in the literature is that Parliament is the big winner of the recent constitutional negotiations. To determine the extent to which an institution has decision-making power, the mere enumeration of legal competence is insufficient and, in this respect, we must refer to two concepts from the field of institutional analysis: *the veto power* and *the power of forming the agenda*.

The debates on the functioning of the cooperation procedure reveals different implications for European institutional actors, depending on the thematic size of the decision, on the configuration of actors' preferences and normative specifications. George Tsebelis [8] argues that the cooperation procedure gives Parliament a conditional power in forming the agenda due to its possibility to adopt amendments at second reading, amendments which are adopted more easily than rejected and, in this case, the Parliament will bring amendments which, once accepted by the Commission, are more easily accepted by a qualified majority of the Council than rejected by a unanimous vote [9]. The critics of this theory claim that the Parliament's power is severely limited by its dependence on the support of the Commission; the Parliament's position has a real impact if and when the Commission accepts those amendments in its revised proposal sent to the Council [10]. The Parliament's power of forming the agenda under the cooperation, is, therefore, conditioned by the extent that: 1) The Parliament can bring amendments, 2) The Commission accepts these amendments and 3) there is a minimum disagreement in the Council that prevents the formation of an opposition in unanimity.

The transition from the cooperation procedure to co-decision was regarded as a crucial moment in reshaping legislative powers of the European institutions: Parliament and the Council have quasi-equal legislative powers, given that the Commission plays a secondary role.

The implications of the co-decision adoption by the Maastricht Treaty were interpreted in various ways. For example, Garrett and Tsebelis [11] argue that, in fact, the Parliament has suffered a diminution of its power in forming the agenda, although it gained real power to block the Council's position. The possibility offered to the Council to reaffirm its original position at third reading, according to the first version of the co-decision, gave it an extended power in forming the agenda, power enjoyed by the Commission and Parliament under the cooperation procedure. Thus, the Council had the competence to force Parliament to choose between an unmodified proposal and *status-quo*. By assuming the traditional pro-integrationist orientation of the Parliament, which implies that it would prefer almost any legislation rather than the *status quo*, the Council could have sabotaged the conciliation committee proceedings towards reiterating the common position. Critics have argued that the Garrett-Tsebelis model exaggerates the power of the Parliament in the cooperation procedure, dependent on the support of the Commission, and underestimate its power in co-decision procedure, respectively to cancel the consequences of the Council's resistance at the stage of third reading. In empirical terms, the transition to co-decision signified a considerable increase in the Parliament's amendments accepted by the Council, compared with the previous procedure of cooperation.

In essence, the co-decision is an important step in European Parliament's involvement in the legislative process, contributing to the promotion of pan-European interest and to the development of an inter-institutional culture of cooperation and compromise. The co-decision is an important element in the process of reforming the European Union, an instrument designed to provide a strategic impetus for the development of certain community sectors, by increasing both the efficiency and democratic legitimacy. Although important progress has been made in both directions, the co-decision remains a method used partially, somewhat complicated, less transparent and dependent on the strategic behavior of institutional actors involved.

2. Budgetary competence of the European Parliament

If initially, under Article 203 of the EEC Treaty, the European Parliament had only a consultative expertise in budgetary matters, later, by replacement of financial contributions from Member States with the European Communities' own resources, it has imposed itself an increase of budgetary competence, becoming, thus, the co-owner of attributions in budgetary matters. Thus, the European Parliament holds a series of major prerogatives in budgetary matters, namely: it obtained the right to increase or decrease the expenses of the Union, in certain defined limits, without requiring approval from the Council; it obtained the possibility to redistribute the expenses without increasing or decreasing the amounts allocated to other budgetary sectors,

and it was granted the right to reject the entire annual budget or any other supplementary budget, while having the exclusive right to grant the release from management of the Union, regarding hiring, authorization and payment of expenditure from the budget.

It should be noted that until the *Lisbon Treaty*, the final decision on mandatory spending, such as agricultural and related to international agreements, belonged to the Council, and the final decision on non-compulsory expenditure belonged to Parliament, which decided in close cooperation with Council. The new Treaty has eliminated the distinction between the two categories of expenditure, binding and non-binding, and thus, the Parliament and the Council now have a balanced role in the adoption of the budget.

According to Article 72 (1) and (2) of RP, „Parliament shall proceed to the control of ongoing budget execution. It entrusts this task to committees responsible for the budget and budgetary control and other committees concerned. The Parliament examines each year, before the first reading of the draft budget on next year, issues on ongoing budget implementation, if necessary, on a proposal for a resolution presented by the competent committee". In other words, the budgetary role of the European Parliament does not end with its adoption and is extending to the execution phase. The Commission implements the annual general budget on its own responsibility, the Court of Auditors checks the implementation of the budget for the previous year, and the Council examines the observations of the Court of Auditors and makes a recommendation to Parliament. The Parliament is the one giving the Commission the discharge on a recommendation of its Committee on Budgetary Control. Typically, the discharge contains recommendations for improving the next budget execution.

The European Parliament and Council together constitute the European Union's budgetary authority, which sets every year, its expenses and income, and the procedure for examination and approval of the budget occurs from June to the end of December, the two institutions European constantly searching results agreed by both parties. The effect of the financial perspective and of amending the rules and procedures was that of consolidation of carrying out the financial activity, but also the predictability of the budgetary procedure. However, we cannot unsee that, although the European Parliament has increasingly higher competences on the budget, these are still far from those of national parliaments, it is not empowered to approve the rules governing the community resources. In other words, the European Parliament controls the making of Community expenditure, but has no competence over the resources that make it possible [12].

3. Control competence of the European Parliament

The secondary Law allowed the creation of some important rights for information for Parliament, rights that are only partially covered by the Treaties. In this way, the European Parliament exercises a certain political control through the information that it makes thus public about the activities of various community institutions and through parliamentary resolutions adopted on the basis of that information.

Questions, - written or oral, with or without debate - addressed to the Commission or Council are one of the traditional means of political control exercised by Parliament and can cover all the topics that interest the European Union [13]. Since 1973, with the arrival of British parliamentarians in the EP and directly inspired by hour of questions used in the House of Commons, it was introduced in each plenary session two intervals of one hour and half dedicated to addressing questions to the Commission, respectively to the Council.

Discussing the Council and Commission reports, is another competence of the European Parliament. Thus, the annual general report deals exhaustively with the Commission's activities undertaken in the previous year, shall be published at least one month before the opening of Parliament's session, namely in early February. Since 1973, President of the Commission presents, along with Commission's activity report which will be discussed at the hearing, also a keynote speech in which the focus is just on the actions the Commission intends to carry out. Constituent treaties provide the presentation on behalf of the Commission, the Council or other community institutions or bodies of numerous reports and information to the European Parliament [14].

The European Parliament has the right to receive petitions from citizens of the Union, *the right to petition* is recognized by art. 194 and 195 of the TCE, according to which EU citizens can exercise their right to petition and can submit their complaints to the President of the European Parliament on matters within the jurisdiction of the European Union [15]. According to article 191 par. (1) of the RP, any European Union citizen, and any natural or legal person residing or having its registered office in a Member State has the right

to submit individually or in association with other citizens or persons, a petition to the European Parliament on a matter which is part of the European Union's fields of activity and which affects him / her directly.

With reference to the duties related to *nominations in positions and EU institutions*, the European Parliament is involved in the appointment of the Commission, the Members of the Court of Auditors, the Board of Directors of European Central Bank and the European Ombudsman. The Treaties, originally, did not provide the involvement the EP in the formation of the European Commission, although it was responsible to it by the possibility to initiate a motion of censure. Since the '80s and making use of its deliberative duties, EP began to express their point of view, through vote, on the composition of the Commission, a result of the election of the Council. This practice was introduced formally in the *Maastricht Treaty*, the moment in which it was established also the equivalence between the temporal mandate of the Commission and of the EP.

Also as part of the control functions, the European Parliament can create *temporary commissions* on specific topics or *commissions of inquiry*, but it also has the possibility to refer to the Court of Justice of the European Communities if it considers that certain Community bodies or Member States have infringed Community law. However, perhaps the most powerful weapon of control that PE has available include those aimed at sanctioning, namely *censure motion and budgetary discharge*. The motion of censure aims the Commission as a whole and entails a collective resignation, not being possible the appeal to individual responsibility of a Commissioner, and art. 319 *TFEU* (ex Art.276 of *TCE*) provides that the European Parliament should provide to the Commission the discharge for budget implementation on the basis of the Audit Court report.

4. The role of the European Parliament and of the national parliaments, according to the Lisbon Treaty

The significance of conclusion of the *Lisbon Treaty* is huge and incomparable to anything similar, because it cannot be included in a scale of values, given the implications of existence of such a group of states in the European Union and, interesting at the same time, through the unprecedented direction of evolution that this institution has traversed so far [16]. The Lisbon Treaty is certainly a step, perhaps the most important in the evolution of the European Union [17]. After a long period of searches in that the European Union appeared more like a "Europe of reports" than a "Europe of results", the Lisbon Treaty brings some fundamental changes on how the Union will function, aimed at improving the functioning of the European institutions and improving the decision-making mechanism. It also enhances the democratic nature of the EU trough: a clear definition of European citizenship, the granting of legal force to the Charter of Fundamental Rights, a greater role for the European Parliament in the legislative process and the recognition of rights of national parliaments in European decision-making process.

During the *TUE* and *TFUE* we find various changes in the functioning of institutions, flexibility clauses to expand the competences of the European Union or clauses for switching from unanimity voting procedure to the qualified majority. But, above all, for the first time in the existence of treaties, is given legal personality to the European Union, this attribute assuring the quality of subject of international law, giving power to the external representation.

Another element of the *Lisbon Treaty* is also the establishment of participatory democracy, Article 11 *TUE* provides in paragraph 4 the right of legislative initiative of citizens, which offers the possibility of collecting at least one million signatures from a significant number of Member States, which may ask the Commission, the owner of the right of legislative initiative, to propose a draft law, details of this procedure are to be established by further elements of secondary law. For the development of this participatory democracy intervene including national parliaments, which are regarded as "guarantors" of the principle of subsidiarity [18]. In this way, we witness a reversal of the direction of approach to the problems: if until now, the approach is in that the Union's action is justified only if no solution can be found at national level, by the Treaty is increased the involvement of national parliaments [19] by priority assessing and solving of the problems at local level, regional, national, and only after that the assessment is made at Union level. Thus, the national parliaments are given the power to influence the making of a legislative proposal still in early stages, when it is at the Commission, before the proposal is submitted for analysis to the Parliament and the Council [20]. The national parliaments acquire, also, the possibility to exercise further control, never known before. Thus, if the Commission's draft legislation is contested by a majority of national parliaments, the Commission shall review the legislative act and decide whether to maintain as such, to modify it or withdraw it.

Among other powers of the national parliaments, we can count: participation in procedures for revision of the Union treaties; information on the applications for accession to the Union; participation in the evaluation mechanisms of the implementation of the Union policies on home affairs (migration, border surveillance, fighting illegal trafficking of people, weapons, narcotics). In other words, the national parliaments will have, for the first time, the possibility to directly express their opinion on future expansions of the Union; it is not only about informing the national parliaments on European decisions, but equally about the transfer of responsibility to these.

Conclusions

From those shown, it is obvious that the most spectacular evolution of the Parliament refers to its legislative powers, it traversing the trail of the status of marginal actor of the European legislative process, in the leading actor, actor co-equal of the EU Council. Nowadays, the European Union's decision-making process is governed by different procedures, having as a constant the increasing involvement of the European Parliament in the decision process. At the same time, less favorable procedures of the PE continue to be applied in certain areas of EU competence, due to the reluctance of some Member States to the European Parliament acquiring of too much influence.

References

[1] Regarding the powers of the European Parliament, see: O. Manolache, *Tratat de drept comunitar*, Ediția 5, Publishing House C.H. Beck, București, 2006, p. 102-110, J. L. Sauron, *Curs de instituţii europene*, Publishing House Polirom, Iaşi, 2010, p. 266-283; A. Profiroiu, M. Profiroiu, I. Popescu, *Instituţii şi politici europene*, Publishing House Economică, Bucureşti, 2008, p. 44-53; I. G. Bărbulescu, *Procesul decizional în Uniunea Europeană*, Publishing House Polirom, Iaşi, 2008, p. 200-224; D. Mazilu, *Integrarea europeană. Drept comunitar şi instituţii europene*, Ediţia a VI-a, Publishing House Lumina Lex, Bucureşti, 2008, p. 106-111 şi A. Fuerea, *Manualul Uniunii Europene*, Ediţia a V-a, Publishing House Universul Juridic, Bucureşti, 2011, p. 99-100;
[2] O. Manolache, *Tratat de drept comunitar*, Publishing House C.H. Beck, Bucureşti, 2007, p. 120;
[3] D. Mazilu, *Integrare europeană. Drept comunitar şi instituţii europene*, Ediţia a VI-a, Publishing House Lumina Lex, Bucureşti, 2008, p. 106-111; G. Isaac, *Droit communautaire général*, 6e édition, Armand Colin, Paris, 1998, p. 68-76 și L. Cartou, *Organisations Européenes*, Précis Dalloz, 1991, p. 45-46;
[4] O. Ținca, *Codecizia – procedura legislativă ordinară stabilită prin Tratatul de la Lisabona*, in Revista română de drept comunitar, nr. 5/2008, p. 29-41;
[5] It is about the case of the *Directive on open network provision to voice telephony*.
[6] Article 14 paragraph 1 and Article 16 paragraph 1 of the TUE provide that the legislative function is exercised jointly by the European Parliament and the Council, and art. 289 TFEU states that the ordinary legislative procedure consist in the joint adoption by the European Parliament and the Council of regulations, directives or decisions, based on the Commission's proposal, accordance with the provisions of art. 294 TCE (now art. 251 TUE - co-decision procedure). Thus, according to TFUE, the co-decision procedure, in which the European Parliament can reject, with absolute majority, a common position of the Council, is devoted to the ordinary legislative procedure for the adoption of legally binding acts at Union level;
[7] M. Shackleton, T. Raunio, *Codecision since Amsterdam: a laboratory for institutional Innovation and change*, in Journal of European Public Policy, vol. 10, nr. 2/2003, p. 171-187;
[8] G. Tsebelis, *The Power of the European Parliament as a Conditional Agenda Setter*, in American Political Science Review, vol. 88, 1994;
[9] George Tsebelis shows that between 1987-1993, out of the 4572 amendments proposed by Parliament, 2974 were accepted by the Commission, and 2219 were included in the Council's position, covering both marginal issues and substantial. G. Tsebelis, *More on the European Parliament as a Conditional Agenda Setter: Rsponse to Moser*, in American Political Science Review, vol. 90, 1996;
[10] M. A. Pollak, *The Engines of European Integration*, Oxford University Press, Oxford, 2003, p. 221;
[11] G. Garrett, G. Tsebelis, *An Institutional Critique of Intergovernmentalism*, in International Organization, vol. 52, 1996, p. 149-176;
[12] I. Gh. Bărbulescu, *Procesul decizional în Uniunea Europeană*, Publishing House Polirom, Iaşi, 2008, p. 219;
[13] Art.197 of *the EC Treaty* provides that PE may address written or oral questions to the Commission. Also, although the Treaties do not provide the opportunity to ask questions to the Council, it has taken the responsibility, since 1962, to answer questions that are addressed to it;

[14] We cite, in this regard, *the Annual Report of the Commission on the application of Community law*, that is the subject of a resolution adopted by the European Parliament in plenary session, which, attached to the European Affairs Committee report, is submitted to the Council, the Commission, the governments and parliaments of the Member States, according to article 112 of the Rules of Parliament. Other reports also may be subject to resolutions adopted in the plenary, according to article 112, para. (2) of the Rules of Parliament. Nevertheless, there are reports or notifications which are subject to special examination of the European Parliament: the declarations of the Court of Auditors (article 105 of the Rules of Parliament and art. 276 TCE), reports of the European Central Bank (art. 106 of the Rules of Parliament and art. 113 TCE) and the recommendation on the broad guidelines of the economic policies (art.107 of the Rules of Parliament and art.99 TCE);

[15] G. L. Ispas, *Parlamentarismul în societatea internațională*, Publishing House Institutul European, Iași, 2011, p. 193;

[16] I. M. Anghel, *Scurte consideraţiuni asupra textului Tratatului de la Lisabona, ratificat de România*, in Revista română de drept comunitar, nr. 3/2008, p. 61 şi urm.;

[17] I. Jinga, *Tratatul de la Lisabona: soluţie sau etapă în reforma instituţională a Uniunii Europene*, in Revista română de drept comunitar, nr. 1/2008, p. 30 şi urm.;

[18] D. Traşcu, M. M. Stoica, *Tratatul de la Lisabona: motorul necesar pentru buna funcţionare a vehiculului UE*, in Revista română de drept comunitar, nr. 2/2008, p.102;

[19] A. Groza, *Parlamentele naționale și procesul decizional European: o acomodare dificilă?*, in Revista română de drept comunitar, nr. 5/2010, p. 80-104; R. D. Popescu, *Problema răspunderii Parlamentului: elemente de drept constituțional, de drept internațional public și de drept european*, in Revista română de drept comunitar, nr. 1/2011, p. 95-106;

[20] According to art. 12 of *TUE*;