

## **Equality of Parliamentary Chambers in EU Matters under the Treaty of Lisbon**



### **INTRODUCTION**

The development of the European integration has led to the transfer of powers from national to the Community level. National parliaments are included in this process in a particular way since their legislative powers were curtailed by the accession to the EU. The role of national parliaments in a multistage integration received recognition only recently. The involvement of national parliaments, including their second chambers, in the EU/EC affairs was an evolutionary process. This development may be divided into three stages.

In the first period (until 1973) the EC issues were considered to be confined within the competence of national executive power. At that time, only in the German Bundesrat, Italian Senate and Belgian Senate the limitation of their traditional powers in connection with the membership in the EU was considered at all and it was resolved by the establishment of commissions dealing with EC issues. In addition, an important form of engaging members of national parliaments in EC affairs was their participation in the works of the Parliamentary Assembly.

In the second period (1973 to 1992) the situation began to change: parliaments were getting increasingly involved in the affairs of the EC. At that time (immediately after Great Britain and Ireland had joined the Communities) commissions for EC affairs in the British House of Lords and the Irish Oireachtas were established. Also the first direct election to the European Parliament was carried out in 1979.

In the third period (since 1992) – after the establishment of the European Union the role of national parliaments for EU affairs has clearly





strengthened. This was achieved both by greater involvement national parliaments in EU regulatory process and by the strengthening national mechanisms for cooperation of parliaments with their own governments in European matters.

The Treaty of Lisbon introduced to the Treaty establishing the EU (Art. 12 of the TEU) provisions directly referring to the role of national parliaments, including their second chambers. The first provisions relating to the role of national parliaments were contained in Declarations 13 and 14 (the Maastricht Treaty). However, these regulations were of political nature. The Protocol on the role of national parliaments (the Treaty of Amsterdam) was more important. Documents of political importance, which concerned the role of national parliaments, were Declaration 23 (the Treaty of Nice) and the Laeken Declaration (2001). The new form of inclusion of national parliaments in EU affairs, i.e. the Convention which prepared the Charter of Fundamental Rights (2000) and the European Convention (2002–2003), should also be noted. In the course of the works carried out by the European Convention, the participation of national parliaments in EU affairs was reflected by the works of two working groups, and then in the provisions of two Protocols attached to the Treaty establishing a Constitution for Europe (which has not come into force).



## NEGOTIATING THE MANDATE OF THE INTERGOVERNMENTAL CONFERENCE 2007 AND THE COURSE OF THE IGC

The regulatory scope of the Treaty of Lisbon was the subject of intense negotiations in the first half of 2007 (during the German Presidency). The results of these negotiations were confirmed during the summit of the European Council on 21–23 June 2007. They came down to two fundamental issues: the convening of the Intergovernmental Conference and the establishment of its mandate<sup>1</sup>. With respect to the Conference a precise road map was drawn up, which assumed the efficient organization of the

<sup>1</sup> See: Mandate of the Intergovernmental Conference–2007, documents of the Council No. 11218/07, POLGEN 74 of 26 June 2007 and B. Wojna, *Mandat konferencji międzyrządowej – główne uzgodnienia*, Biuletyn PISM 2007, No. 29.



Conference and the signing of the treaty still in 2007. The agreed Conference's mandate was very detailed and – as a rule – it moved the reforms proposed in the Constitutional Treaty into a new reform treaty<sup>2</sup>. It also concerned propositions relating to the role of national parliaments<sup>3</sup>.

The role of national parliaments in the EU affairs was also discussed during the debates at the meeting of the European Council on 21–23 June 2007. The opinion expressed by the prime minister of the Netherlands, Jan Pieter Balkenende during the plenary session in the European Parliament on 23 May 2007 was noteworthy. He emphasized that it was necessary to concentrate on the principle of subsidiarity and the increase of the democratic control exercised by national parliaments. National parliaments should be able to block legislative drafts if the principle of subsidiarity were to be breached. It was much different from the proposal contained in Protocol 2 annexed to the Treaty establishing the Constitution stipulating only that a legislative proposal may be returned for review.

Then, in the conclusions of the Conference of the Speakers of the EU Parliaments (27 May 2007) in Bratislava, the Speakers requested that the incoming Portuguese Presidency in charge of the Intergovernmental Conference summarized the proposals of national parliaments on the future development of the European Union. It was postulated that they should be communicated to the Presidency of the Council, the European Parliament and the European Commission and to be duly taken into account in the future institutional reform. The Speakers called on the European Institutions to take into account the importance of the role of the national parliaments in the EU affairs. They insisted on “their role at least equal to the one foreseen in the Constitutional Treaty”<sup>4</sup>.

The XXXVII COSAC meeting (13–15 May 2007) in Berlin emphasized that the negotiations during the Intergovernmental Conference must take into account the important role national parliaments play in the process of European integration at least to the extent foreseen in the Constitutional Treaty<sup>5</sup>.

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<sup>2</sup> See: J. Barcz, *Poznaj Traktat z Lizbony*, Urząd Komitetu Integracji Europejskiej 2008, p. 20.

<sup>3</sup> More in: J. Barcz, *Traktat reformujący UE – „mapa drogowa”, forma traktatu, propozycje zasadniczych zmian instytucjonalnych*, J. Barcz (ed.), *Traktat reformujący Unię Europejską. Mandat Konferencji Międzyrządowej – analiza prawno-polityczna. Wnioski dla Polski (conference materials)*, Warsaw 2007, pp. 24 et seq.

<sup>4</sup> See: Presidency conclusions after the meeting of 24–27 May 2007: [http://libr.sejm.gov.pl/oide/index.php?topic=international&id=konferencje\\_bratyslawa](http://libr.sejm.gov.pl/oide/index.php?topic=international&id=konferencje_bratyslawa) (19. 01. 2010).

<sup>5</sup> See: Contribution adopted by the XXXVII COSAC of 13-15 May 2007: <http://libr.sejm.gov.pl/oide/index.php?topic=international&id=cosac37> (19. 01. 2010).



Also, the Joint Parliamentary Meetings<sup>6</sup> (8–9 May 2006, 4–5 December 2006, 11–12 June 2007) aimed to emphasize the “importance of the parliamentary dimension of the debate on the future of Europe”<sup>7</sup>.

During the Intergovernmental Conference (23 July–19 October 2007)<sup>8</sup> no position was taken with respect to the role of national parliaments. The discussions at the Conference focused mainly on the role of the European Parliament, the number of advocates-general in the Court of Justice, and division of competences<sup>9</sup>. During the Conference the propositions contained in the Constitutional Treaty were confirmed with respect to the role of national parliaments, and the provisions of the mandate of the Conference agreed in June 2007 were taken into account<sup>10</sup>. The mandate enhanced the role of national parliaments by introducing an article on the role of national parliaments that was not contained in the Constitutional Treaty and by enhancement of the so-called “yellow card” procedure.



### PROVISIONS OF THE TEU AND THE TFEU (IN THE WORDING OF THE TREATY OF LISBON) ON THE EQUAL STATUS OF BOTH CHAMBERS OF NATIONAL PARLIAMENTS

The Treaty of Lisbon<sup>11</sup> was signed on 13 December 2007 at the end of the Portuguese Presidency, and it came into force on 1 December 2009. In principle, it took over the package of reforms proposed in the Constitutional Treaty<sup>12</sup>. The Treaty modified and specified the provisions referring

<sup>6</sup> See: <http://www.futureofeuropa.eu/parl.europa.eu/future/cms/lang/en/pid/161;jsessionid=0BCB9F0BD70E0DBD7B14FDBAE6A79A02> (19. 01. 2010).

<sup>7</sup> See: *Seventh bi-annual report: Developments in European Union Procedures and Practices Relevant to Parliamentary Scrutiny*. Prepared by the COSAC Secretariat and presented to: XXXVII Conference of Community and European Affairs Committees of Parliaments of the European Union, 13–15 May 2007, p. 29.

<sup>8</sup> The last item dealt with at the conference was the execution of the Treaty of Lisbon on 13 December 2007.

<sup>9</sup> More in: A. Kremer, *Przebieg negocjacji podczas Konferencji Międzyrządowej 2007 ze szczególnym uwzględnieniem udziału Polski*, in: J. Barcz (ed.), *Traktat z Lizbony – aspekty prawne i polityczne. Wyzwania dla Polski*, Warsaw 2008; C. Herma, *Konferencja międzyrządowa w sprawie Traktatu z Lizbony*, in: *Traktat z Lizbony – postanowienia, ocena, implikacje*, Biuletyn Analiz Urzędu Komitetu Integracji Europejskiej 2008, No. 20, pp. 73 et seq.

<sup>10</sup> See: C. Herma, *Konferencja międzyrządowa w sprawie Traktatu z Lizbony*, Biuletyn Analiz UKiE 2008, No. 20, p. 57.

<sup>11</sup> See: OJ EU 2009, No. 203, item 1569.

<sup>12</sup> More in: J. Barcz, *Na drodze do Traktatu reformującego UE – główne problemy proceduralne i instytucjonalne*, Europejski Przegląd Sądowy 2007, No. 9; idem, *Poznaj Traktat z Lizbony*, Warsaw 2007; idem, *Przewodnik po Traktacie z Lizbony. Traktaty stanowiące UE. Stan obecny oraz teksty skonsolidowane*, w: *brzmieniu*, Warsaw 2008; J. Barcz (ed.), *Traktat reformujący Unię Europejską. Mandat Konferencji Międzyrządowej – analiza prawno-polityczna. Wnioski dla Polski. Materiały z konferencji ekspertów z dnia 11 lipca 2007 r.*, Warsaw 2007.



to the position of national parliaments<sup>13</sup> in particular in the following articles:

- ☒ Art. 12 of the TEU in the wording of the Treaty of Lisbon;
- ☒ Art. 48 and 49 TEU in the wording of the Treaty of Lisbon;
- ☒ Art. 81 sec. 3 last paragraph, Art. 352 sec. 2, Art. 85, Art. 88 sec. 2, Art. 69, Art. 70 and Art. 71 of the Treaty on the Functioning of the European Union;
- ☒ Protocol on the role of national parliaments in the European Union annexed to the Treaty on the European Union, the Treaty establishing the European Community and the Treaty establishing the European Atomic Energy Community;
- ☒ Protocol on the application of the principles of subsidiarity and proportionality annexed to the Treaty establishing the European Community.

The Treaty of Lisbon introduced to TEU Art. 12, which was not contained in the Constitutional Treaty. The article specifies the role of national parliaments in the EU:

“National Parliaments contribute actively to the good functioning of the Union:

- a) through being informed by the institutions of the Union and having draft legislative acts of the Union forwarded to them in accordance with the Protocol on the role of national Parliaments in the European Union;
- b) by monitoring the principle of subsidiarity and its observance in accordance with the procedures provided for in the Protocol on the application of the principles of subsidiarity and proportionality;
- c) by taking part, within the framework of the area of freedom, security and justice, in the evaluation mechanisms for the implementation of the Union policies in that area, in accordance with Article 70 of the Treaty on the Functioning of the European Union, and through being involved in the political monitoring of Europol and the evaluation of Eurojust’s activities in accordance with Articles 88 and 85 of that Treaty;
- d) by taking part in the revision procedures of the Treaties, in accordance with Article 48 of this Treaty;

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<sup>13</sup> See: J. Barcz, *Poznaj Traktat...*, p. 29; N. Sarkozy, *Un traité pour l'Europe. La réforme des institutions européennes*, Paris 2008; H. Brady, K. Barysch, *The CER guide to the Reform Treaty*, Center for European Reform briefing note, October 2007; E. Poncins: *Le Traité de Lisbonne en 27 clés*, Paris 2008, [www.diploweb.com](http://www.diploweb.com).



- e) by being notified of applications for accession to the Union, in accordance with Article 49 of this Treaty;
- f) by taking part in the inter-parliamentary cooperation between national Parliaments and with the European Parliament, in accordance with the Protocol on the role of national Parliaments in the European Union.

According to Art. 12 of the TEU, the following specific regulations of the TEU and the Treaty on the Functioning of the EU (following the Constitutional Treaty) refer to the role of national parliaments:

- ☒ Art. 48 sec. 2 and 3 of the TEU: national parliaments participate in the procedure amending the primary law through the participation in the ordinary procedure of amending the treaties establishing the EU. Under Art. 48 sec. 2 of the TEU national parliaments are notified of the proposition to amend the treaties establishing the EU. This procedure corresponds to the former procedure of treaty revision regulated in Art. 48 of the TEU. In addition, Art. 48 sec. 3 provides for the participation of members of national parliaments in a Convention. The role of national parliaments is in this case limited to the participation in adopting recommendations for an Intergovernmental Conference preparing the amendment to the treaties;
- ☒ Art. 49 of the TEU: national parliaments<sup>14</sup> participate in the procedure of applying for membership in the EU by a new state. Parliaments must be notified of the application but they are not authorized to express their opinion on the application<sup>15</sup>. Provisions of this article also apply to second chambers. However, the procedure of ratification of an accession agreement remains the same and is carried out according to the constitutions of the member states;
- ☒ Art. 48<sup>16</sup> sec. 7 of the TEU: stipulates the enhancement of the monitoring of the so-called passarelle procedure. Pursuant to

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<sup>14</sup> See: House of Lords, Constitution Committee, 6th Report of Session 2007-08, *European Union (Amendment) Bill and the Lisbon Treaty: Implications for the UK Constitution*, pp. 17 et seq.

<sup>15</sup> See: *The Lisbon Treaty, Process, Architecture and Substance*, European Law Review 2008, No. 4, p. 3.

<sup>16</sup> *Where the Treaty on the Functioning of the European Union provides for legislative acts to be adopted by the Council in accordance with a special legislative procedure, the European Council may adopt a decision allowing for the adoption of such acts in accordance with the ordinary legislative procedure. Any initiative taken by the European Council on the basis of the first or the second subparagraph shall be notified to the national Parliaments. If a national Parliament makes known its opposition within six months of the date of such notification, the decision referred to in the first or the second subparagraph shall not be adopted. In the absence of opposition, the European Council may adopt the decision. For the adoption of the decisions referred to in the first and second subparagraphs, the European Council shall act by unanimity after obtaining the consent of the European Parliament, which shall be given by a majority of its component members.*



this article the European Council can change the procedure of taking decisions by the Council from unanimity into qualified majority. Moreover, it is possible to change the special legislative procedure into ordinary legislative procedure. According to this article, national parliaments must be notified of the adoption of such decision by the European Council. If within six months of the date of such notification of the change of the procedure even one national parliament opposes to such intention, the decision cannot be adopted<sup>17</sup>. On the basis of this article both the first and second chamber of a national parliament may autonomously take such decision;

- ☒ Art. 81<sup>18</sup> sec. 3 last paragraph of the TFEU: under the Treaty of Lisbon the control over the application of the passarelle procedure was enhanced (in relation to the provisions in this respect contained in the Constitutional Treaty) in relation to family law. This concerns situations where the Council would take a decision on the change of special legislative procedure into ordinary procedure in some areas of family law that have cross-border implications. The intention to adopt such decision is notified to national parliaments. Then a parliament may make its opposition known within six months of the date of notification. In case of opposition a decision cannot be adopted. The provisions of this article allow both chambers of national parliaments to take autonomous actions and, consequently, to block the adoption of the decision by the Council;
- ☒ Art. 352 sec. 2 of the TFEU: the Treaty of Lisbon also enhances the control over the application of the so-called flexibility clause. Under Art. I-18 of the Constitutional Treaty, the European Commission was only obliged to draw the attention of national parliaments to the proposals of decisions within the flexibility clause;

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<sup>17</sup> Where the Treaty on the Functioning of the European Union or Title V of this Treaty provides for the Council to act by unanimity in a given area or case, the European Council may adopt a decision authorising the Council to act by a qualified majority in that area or in that case. This subparagraph shall not apply to decisions with military implications or those in the area of defence.

Where the Treaty on the Functioning of the European Union provides for legislative acts to be adopted by the Council in accordance with a special legislative procedure, the European Council may adopt a decision allowing for the adoption of such acts in accordance with the ordinary legislative procedure.

Any initiative taken by the European Council on the basis of the first or the second subparagraph shall be notified to the national Parliaments. If a national Parliament makes known its opposition within six months of the date of such notification, the decision referred to in the first or the second subparagraph shall not be adopted. In the absence of opposition, the European Council may adopt the decision".

<sup>18</sup> The proposal referred to in the second subparagraph shall be notified to the national Parliaments. If a national Parliament makes known its opposition within six months of the date of such notification, the decision shall not be adopted. In the absence of opposition, the Council may adopt the decision.



whereas the Treaty of Lisbon emphasizes that the European Commission does so “using the procedure for monitoring the subsidiarity principle”. If a proposal falls within the scope of the subsidiarity principle, the monitoring procedure stipulated in Art. 5 sec. 3 of the TEU may be initiated;

- ☒ Articles 85, 88 sec. 2, 69, Art. 70 and 71 of the TFEU cover broad competences of national parliaments in the area of freedom, security and justice. National parliaments must be notified of the evaluation of the implementation by member states of EU policy in this scope and of the works of the Committee whose task is to support and enhance operational cooperation on EU internal security. In this case the procedure for monitoring the subsidiarity principle in relation to legal acts adopted within judicial cooperation in criminal cases and police cooperation applies.

In addition, national parliaments participate in the evaluation of Eurojust’s activities (Art. 85 sec. 1 paragraph 3 of the TFEU) and Europol’s activities (Art. 88 sec. 2 paragraph 2 of the TFEU) on the basis of regulations adopted by the European Parliament and the Council. Thus, both chambers of national parliaments will participate in the implementation with respect to EU regulations.

## 4

### **EQUAL STATUS OF BOTH CHAMBERS OF PARLIAMENTS IN THE PROTOCOL ON THE ROLE OF NATIONAL PARLIAMENTS IN THE EUROPEAN UNION**

The Protocol<sup>19</sup> substantially changed the regulations on the role of national parliaments effective under the Protocol on the role of national parliaments annexed to the Treaty of Amsterdam. The changes cover the following issues:

Firstly, the scope of information forwarded to national parliaments was widened and changed. Art. 2 of the Protocol stipulates that draft legislative acts<sup>20</sup> should be forwarded directly to parliaments (the provisions of the

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<sup>19</sup> OJ 2007 C 306.

<sup>20</sup> According to Art. 2 of the Protocol on the role of national parliaments in the European Union draft European legislative acts mean proposals from the



Protocol annexed to the Treaty of Amsterdam that was in effect before did not provide for such a solution). This article refers directly to Art. 2 of the Protocol 1 annexed to the Constitutional Treaty.

Secondly, according to Art. 1 of the Protocol, consultation documents (green and white papers and communications), annual legislative program as well as “any other instrument of legislative planning” and the Commission’s strategic policy must be forwarded by the Commission directly to national parliaments.

Thirdly, according to Art. 7 of the Protocol, the Court of Auditors must forward its annual report to national parliaments.

Fourthly, according to Art. 5 of the Protocol, the Council must forward directly to national parliaments the agendas for and the outcome of meetings of the Council, including the minutes concerning draft legislative acts.

The above documents in accordance with the provisions of the Protocol are to be forwarded to national parliaments, the European Parliament and the Council at the same time. The regulations in force stipulated that only consultation documents of the Commission and communications were to be forwarded, whereas draft legislative acts were forwarded through the governments of member states. In relation to the provisions of the Protocol annexed to the Constitutional Treaty there is no change: the same scope of documents to be forwarded is repeated in the provisions of the above Protocol.

Furthermore, the time limit with respect to the information distribution has changed. According to Art. 4 of the Protocol, the period that must elapse between the forwarding of a draft legislative act by the Commission to national parliaments and placing it on the Council’s agenda is extended from six to eight weeks.

The mechanism of interparliamentary cooperation plays a special role in the Protocol, and it is mentioned in two articles:

- ☒ according to Art. 9 the European Parliament and national parliaments are responsible for the determination of “effective and regular interparliamentary cooperation within the Union”. The article does not specify the manner and form of the interparliamentary cooperation, leaving it to the European Parliament and national parliaments;

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Commission, initiatives from a group of Member States, initiatives from the European Parliament, requests from the Court of Justice, recommendations from the European Central Bank and requests from the European Investment Bank.



- ☒ according to Art. 10 of the Protocol, the Conference of Community and European Affairs Committees of Parliaments of the European Union may submit any contribution as “it deems appropriate”<sup>21</sup>. These contributions are submitted for the attention of the European Parliament, the Council and the Commission. COSAC is also entrusted with the task of promoting the exchange of information and best practices between national parliaments and the European Parliament, including their special committees. It may also organize interparliamentary conferences on specific topics, in particular common foreign and security policy, including common security and defense policy. Contributions from the conference shall not bind national parliaments and shall not prejudice their positions.

The provisions of the TEU concerning the monitoring of the passarelle procedure appear in Art. 6 of the Protocol. It relates to Art. 48 sec. 7 of the TEU stipulating the adoption by the Council of a decision on the change of the decision-making procedure from a special into ordinary procedure and the change of the manner of taking decisions in a given area from unanimity to qualified majority.

Provisions of Art. 1–7 apply equally to both chambers of national parliaments. On the basis of these provisions both chambers (in particular the second chambers) of national parliaments obtained a better access to EU documents, which will increase their engagement in “EU affairs”, and consequently, they will “contribute to the proper functioning of the Union” (Art. 12 of the TEU).

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<sup>21</sup> So far, under Art. 5 of the Protocol on the role of national parliaments annexed to the Treaty of Amsterdam COSAC could only submit its comments to draft legislative acts concerning the area of freedom, security and justice, which could have direct impact on the rights and freedoms of an individuals or fundamental rights.





## EQUAL STATUS OF BOTH CHAMBERS OF NATIONAL PARLIAMENTS IN THE PROTOCOL ON THE APPLICATION OF THE PRINCIPLES OF SUBSIDIARITY AND PROPORTIONALITY

The role of national parliaments is also the subject of the Protocol on the application of the principles of subsidiarity and proportionality. Here it should be noted that the TEU (in the wording of the Treaty of Lisbon) specifies the principle of subsidiarity in relation to former Art. 5 of the TEC, explicitly referring to the application of this principle to the regional and local authorities of member states<sup>22</sup>.

An important new element introduced by this Protocol is the mechanism for monitoring the principle of subsidiarity by national parliaments. Thus, the Protocol makes national parliaments, including their second chambers, participate in the EU legislative process<sup>23</sup>.

The mechanism for monitoring the principle of subsidiarity established in the Protocol (Art. 4–8 of the Protocol) comprises the following stages:

In the first stage draft legislative acts<sup>24</sup> are forwarded by the Commission to national parliaments at the same time as to the EU legislative body. The obligation to forward drafts to national parliaments also includes the European Parliament, the EU Council, the Court of Justice, the European Central Bank, the European Investment Bank and a group of member states.

This stage also includes the preparation of justifications of drafts from the point of view of their compliance with the principle of subsidiarity and proportionality. According to Art. 5 of the Protocol, justification should consist of the following elements: evaluation of the proposal's financial impact and, in the case of a directive, of its implications for the rules put in

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<sup>22</sup> See: J. Barcz, *Unia Europejska na rozstajach. Traktat z Lizbony. Dynamika i główne kierunki reformy ustrojowej*, Instytut Wydawniczy EuroPrawo, Warsaw 2010, pp. 125 et seq.

<sup>23</sup> Cf.: J. Barcz, *Umocnienie roli parlamentów narodowych na mocy Traktatu z Lizbony. Wyzwanie dla Sejmu i Senatu*, Analizy i Opinie Instytutu Spraw Publicznych, February 2008.

<sup>24</sup> Art. 3 of the Protocol specifies the notion of "draft legislative acts" which include proposals from the Commission, initiatives from a group of Member States, initiatives from the European Parliament, requests from the Court of Justice, recommendations from the European Central Bank and requests from the European Investment Bank for the adoption of a legislative act.





place by member states, qualitative and quantitative indicators (wherever necessary), indicators of minimizing financial and administrative burdens that are imposed by the European Union, state governments, regional or local authorities.

In the second stage national parliaments may prepare a “reasoned opinion” if the draft does not comply with the principle of subsidiarity. According to Art. 6 of the Protocol, each parliament has eight weeks to express its opinion on a draft legislative act. This period starts on the date of transmission of a draft legislative act by a relevant institution to national parliaments. The reasoned opinion is addressed to the Presidents of the European Commission, the Council or the European Parliament.

It should be emphasized that Art. 6 of the Protocol expressly mentions the second chamber which is “individually” entitled to formulate and submit an opinion on the compliance of a draft legislative act with the principle of subsidiarity.

In the third stage the European Parliament, the European Commission, the Council and the group of Member States, the Court of Justice, the European Central Bank or the European Investment Bank, if a draft originates from any of them, are obligated to take into account the reasoned opinions issued by national parliaments or just a single chamber.

According to Art. 7 sec. 1 paragraph two, each national parliament has two votes to be distributed according to the national constitutional law. In a bicameral system, each of the two chambers shall have one vote.

Art. 7 of the Protocol describes two procedures, called “yellow” and “orange cards”.

The yellow card procedure is provided for in Art. 7 sec. 2 of the Protocol. Where reasoned opinions represent at least one third of all votes allocated to the national parliaments, the draft must be reviewed, and consequently, it may be maintained, amended or withdrawn. This threshold shall be lowered to a quarter of votes for drafts concerning freedom, security and justice.

The orange card procedure (not foreseen in the Constitutional Treaty) is provided in Art. 7 sec. 3 of the Protocol and refers to a situation where, under the ordinary legislative procedure, reasoned opinions represent at least a simple majority of the votes allocated to the national parliaments. Then, after another review, the Commission may decide to maintain, amend or withdraw the proposal. If the Commission chooses to maintain the proposal, it will in a reasoned opinion justify why it considers that the proposal



complies with the principle of subsidiarity. This reasoned opinion of the European Commission, as well as the opinions of the national parliaments, are submitted to the European Parliament and the Council for consideration in the course of the ordinary legislative procedure (Art. 7 sec. 3 paragraph two). In this stage the following are taken:

- ☒ before concluding the first reading the European Parliament and the Council consider whether the legislative proposal is compatible with the principle of subsidiarity (Art. 7 sec. 3(a)) taking account of the reasons expressed and shared by the majority of national parliaments as well as a reasoned opinion of the European Commission;
- ☒ if the Council (by a majority of 55% of its members) or the European Parliament (by a regular majority of the votes) is of the opinion that the proposal is not compatible with the principle of subsidiarity, the legislative proposal is not given further consideration. (Art. 7 sec. 3 (b)).

Each chamber of a national parliament may block further works in the stage of the first reading a draft if the majority of opinions declares non-compliance of the draft with the principle of subsidiarity.

Finally, according to Art. 8 of the Protocol a complaint may be lodged with the European Court of Justice which has “jurisdiction in actions on grounds of infringement of the principle of subsidiarity by a legislative act”. Although in accordance with the rules laid down in Article 263 of the Treaty on the Functioning of the European Union the entity entitled to bring an action is a member state, the Protocol expressly authorizes national parliaments to bring such an action in the areas concerning the compliance with the subsidiarity principle. In such a case the member state is obliged to bring an action to the Court of Justice. Each chamber is autonomous in this respect.

## 6

The provisions of the Treaty of Lisbon referring to the role of national parliaments in EU affairs clearly strengthen the position of both parliamentary chambers. The Treaty of Lisbon, for the first time, unambiguously emphasizes the equal position of both chambers of national parliaments with respect to EU affairs. This is particularly noticeable in relation to the second chamber of a national parliament. For this reason the traditionally



weaker status of second chambers in performing parliamentary (legislative and supervisory) functions is not placing them in a secondary position as far as the new tasks specified in the Treaty of Lisbon are concerned<sup>25</sup>. The Treaty provides for equal participation of both chambers of national parliaments in the following areas: interparliamentary cooperation of EU members states in EU affairs, monitoring compliance with the principle of subsidiarity, monitoring the passarelle procedure, monitoring the flexibility clause, monitoring the activities in the area of freedom, security and justice and bringing actions to the Court of Justice. It should be stressed that the provisions of the Treaty of Lisbon significantly contribute to elevation of both chambers of national parliaments (in particular the second chambers) in many areas, and thus to the strengthening of their direct impact on the decision-making process in the European Union.

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<sup>25</sup> See: J. Szymanek, *Parlamente narodowe w procesie integracji europejskiej*, „Ruch Prawniczy, Ekonomiczny i Socjologiczny” 2008, No. 1, p. 51.