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**The European Parliament following the 2009 elections
New tasks in light of the Lisbon Treaty**

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List of abbreviations

AFSJ – Area of Freedom, Security and Justice
BBV – 2006 agreement between the Bundestag and the Federal Government in matters of the European Union
CAP – Common Agricultural Policy
CCP – Common Commercial Policy
CDU – Christian Democratic Union
CEE – Central and Eastern Europe
CESDP – Common European Security and Defence Policy
CFSP – Common Foreign and Security Policy
CJ EC – Court of Justice of the European Communities
COSAC – the Conference of Community and European Affairs Committees
CSU – Christian Social Union
EAEC – European Atomic Energy Community (Euratom)
EAEC Treaty – Treaty establishing the European Atomic Energy Community
EC – depending on the context, either European Community or Communities, or European Commission
EC Treaty – Treaty establishing the European Community
ECC – European Central Bank
ECHR – European Convention on Human Rights
ECtHR – European Court of Human Rights
ECSC – European Coal and Steel Community
ECSC Treaty – Treaty establishing the European Coal and Steel Community
EEA – European Economic Area
EEC – European Economic Community
EEC Treaty – Treaty establishing the European Economic Community
EMU – Economic and Monetary Union
ENP – European Neighbourhood Policy
EP – European Parliament
EU – European Union
FDP – Free Democratic Party
GG – German Constitution
IGC – Intergovernmental Conference
LT – Lisbon Treaty
MEP – Member of the European Parliament
MP – Member of Parliament
NGOs – Non-Governmental Organizations
OJ EU – Official Journal of the European Union
PiS – Law and Justice Party
PO – Civic Platform
PSL – Polish Peasants' Party
QMV – Qualified Majority Voting
RT – Reform Treaty (initial name for the Lisbon Treaty)
SEA – Single European Act
SLD – Democratic Left Alliance
SPD – Social Democratic Party
TEU – Treaty on European Union
TFEU – Treaty on the Functioning of the European Union

UKIE – *Urząd Komitetu Integracji Europejskiej*, Poland's Office of the Committee for European Integration

Foreword

This book contains materials from the conference which was organized on June 9, 2009 – just two days after the elections to the European Parliament – by the Friedrich Ebert Foundation (Representation in Poland), the Independent Institute of International and European Law, the Center for European Strategy *demosEuropa*, and the Department of International Law and EU Law, Leon Kozmiński University.

The elections to the European Parliament in 2009 were an important event from at least two points of view:

firstly – with regard to the role the European Parliament plays in the decision-making process in the EU, it should be a guarantor of the European Union's democratic legitimacy ;

secondly – with regard to the meaning for domestic politics in Poland of these elections, the elections entail a certificate of society's investment in European affairs. Moreover, they give a measure of the attitude of political parties to the status of Poland in modern Europe. Even though the voter turn-out rate was still quite low in Poland (ca. 24%, whereas in Europe as a whole it was over 40%), this was in fact 4 percentage points higher than in 2004. This places Poland amongst only eight EU states that, in spite of the overall decline in voter turnout across Europe, registered increased participation in 2009's elections.

An additional important circumstance is the possibility that the Lisbon Treaty will soon enter into force. This treaty will strengthen both the role of the European Parliament in the EU's institutional system and the influence of Member-State parliaments in EU affairs. The first – albeit indirect - effects of this influence are already visible today in the context of the role of the European Parliament in choosing a new head of the European Commission.

We need also bear in mind that the recent elections to the European Parliament were held on the fifth anniversary of Poland's membership in the European Union. Hence, Poland may boast substantial work-experience in the European Union. In this regard it is possible to define the significance of the European Parliament as a forum for cooperation with other Member States and for pursuing shared interests, as well as to define the significance of the Parliament in the context of the approaching Polish Presidency of the EU Council in the second half of 2011. The active participation of Polish Members of the European Parliament (MEPs) during the previous term of office became a catalyst for discussion aimed at defining Poland's place in the EU, as well as her aims and interests within the framework of the Union.

The arrangement of individual chapters in this book closely reflects the course of the conference. In Part One (“the panel of politicians”) our authors took up the political aspects of the elections to the European Parliament and the political challenges concerning both the European Parliament and national parliaments arising from the Lisbon Treaty. Here readers will find the remarks of Mikołaj Dowgielewicz (Secretary of State and the head of the Office of the Committee for European Integration – UKIE), of Michael Roth (Member of the German Bundestag, specializing in EU affairs), of Edmund Wittbrodt (Senator and chairman of the Committee on EU Affairs at the Polish Senate), and of Robert Smoleń (diplomat, former chairman of the Committee on EU Affairs at the Polish Sejm).

In Part Two, in turn, professors Rainer Arnold and Jan Barcz, along with Paweł Świeboda (chairman of a leading research centre dealing with the EU) assessed the influence of the proposals contained in the Lisbon Treaty on the status of the European Parliament and on bolstering the role of the national parliaments of Member States in EU affairs.

The role of the Friedrich Ebert Foundation’s representative office in Poland deserves special note. For it was thanks to the Foundation’s generous financial and technical support that both the organization of our conference and the publication of this book were made possible.

Barbara Janusz-Pawletta, Jan Barcz

Introduction

The choice of the title for our discussion – *The European Parliament following the 2009 elections: New tasks in light of the Lisbon Treaty* – points out the topic's wide-ranging implications. For our book does not only concern this year's elections to the European Parliament, but also the attempt to grasp them in a future context, in light of the changes that ratification of the Lisbon Treaty makes for the European Parliament, for national parliaments, EU citizens, and for civil society in Europe at large.

This year's elections were held in the context of two important phenomena. First, the reforms of the Lisbon Treaty. After all, the elections to the European Parliament were supposed to have taken place following the entry into force of the Lisbon Treaty. However, that proved impossible because of its rejection in the referendum in Ireland – and even earlier by the challenge mounted against the Constitutional Treaty by the citizens of France and the Netherlands. With a bit of luck, by the end of 2009 the Lisbon Treaty will enter into force, first having gained a positive outcome in the new referendum in Ireland, and having been signed by the presidents of Poland and the Czech Republic. Its entry into force will initiate a host of fundamental reforms for the efficient functioning of the EU. For as we all know, in its current form the Union is not ready to face the challenges in the political and economic realm – whether in the region or in the world. The Lisbon Treaty is the first step toward remedying that situation.

The second factor significantly influencing the situation in Europe during elections to the European Parliament was the world's ongoing economic-financial crisis. Today we all see that Europe's currently difficult economic situation is very complex. We can well expect it to last longer still, if Europe fails to take up the proper means for cushioning the course and effects of the crisis.

In analyzing the outcomes of the election to the European Parliament in Poland what perhaps is most surprising is the low voter turnout rate – especially when we recall Polish society's universal approval (virtually unequalled among other Member States) for the country's membership in the European Union. In fact, the turnout rate was somewhat higher than during the elections of 2004, but even so it was one of the lowest in Europe. We may observe a similar occurrence in Slovakia, in spite of that country's entrance into the euro zone this year. The reasons behind this situation are hard to pinpoint. One is probably the lack of high-profile and politically distinct candidates among those who entered this year's elections to the European Parliament. There was a shortage of faces and names that were readily identified with the European Parliament. For as we know, not even in the most developed democracy are political programs the only basis for voters'

decisions. Clearly defined issues were also absent in this year's election campaign. It is of course nothing new to state that elections to the European Parliament remain in close relationship with the political debate underway in every Member State. It is enough to recall the still prevalent incomprehension among the old Member States regarding the extension of the EU to the East, something connected with the unjustified and universal stereotype of the Polish plumber, for instance.

Another factor affecting the course of elections to the European Parliament was that in many states they were conducted together with local elections. Such practice strongly limits the political meaning of elections to the European Parliament, although at the same time it may have a positive effect on turnout rates. For example, during this year's elections to the European Parliament in Germany, seven council elections also took place. Another important problem associated with the election turnout rate is that of the paltry state of societal knowledge of EU issues. Indeed, this situation is so bad that a considerable number of EU citizens do not even know about the existence of the European Parliament, let alone the possibility of participating in general elections to it. Of course, the point here is by no means to accuse citizens of ignorance. Quite the opposite: it is on the part of politicians and the media, as well as the institutions of European Union itself, that we discern a stark failure to communicate with EU citizens. The media have a special duty in this respect as well, for their impact on society – and on voter turnout rates – can hardly be overrated. In raising the level of society's knowledge about the EU, including the European Parliament, MEPs themselves also matter greatly. Indeed, in their daily work MEPs should endeavour to broaden and deepen their contact with voters.

Another observation arising from the results of this year's elections is that, similarly as on the political stage in Germany, Great Britain, and several other Member States, conservative forces gained ground at the expense of left-wing parties. In some cases this even concerns alarmingly radical groups from, for instance, Austria and Hungary

The above observations and remarks may be neatly summed up as the problem of the still yawning gap between the European Union (its MEPS, institutions and policies) and ordinary citizens. The growing sense of uncertainty among citizens, compounded by the effects of the current economic crisis, was the subject of the recent work prepared at the Friedrich Ebert Foundation by professors Golinowska and Żukowski and myself: *Diversity and Commonality in European Social policies: The Forging of a European Social Model*. That work, published in early 2009, showcases how indissoluble is the bond between economic and social policies and how vital is their mutual interplay for fostering the EU's global competitiveness. Similar findings are to be found in the analysis also

published this year by the Friedrich Ebert Foundation in cooperation with the Institute of Public Affairs: *The work of Poland's Members of the European Parliament: Goals, achievements, and conclusions for the future.*

This year's elections open a new period for the work of the European Parliament. At the same time, this will be the second term of office for Polish Members of the European Parliament. Things will not be simpler than before, but there will be additional opportunities for the realization of the shared purposes of our united Europe. Many of the newly chosen MEPs who soon will move for a period of years to Strasbourg are persons of exceptional competence – and exceptional will to seize hold of the new opportunities to advance Europe's grand enterprise. This fact gives strong reason to believe that the next elections in five years will find Europe in much better political and economic condition than today – in no small part thanks to the first effects of the reforms to be introduced by the Lisbon Treaty.

Peter Hengstenberg

Part One

Political aspects of the elections to the European Parliament and the political challenges arising from the Lisbon Treaty concerning the European Parliament and national parliaments

Mikołaj Dowgielewicz

After the elections to the European Parliament, June 9, 2009

1. Voter turnout rate

The turnout rate at Polish elections to the European Parliament amounted to 24.53%. This is not a fully satisfactory outcome from the point of view of building a civil society. We would like Poles to more willingly exercise the rights we won when we joined the EU. However, 24.53% is a higher result than the one Poland obtained in her first elections to the European Parliament. Meanwhile, in the majority of states (15 of 27) the turnout rate was lower than 5 years ago (in Lithuania by as much as 27.5 percentage points). This demonstrates that in Poland, despite the relatively low turnout rate compared to other Member States, the participation of voters in elections to the European Parliament exhibits a growth tendency. This is certainly a positive message, and one worth sharing across Europe.

The comparatively low turnout rate is probably a result of the low value Poles still give to European elections, particularly against the backdrop of national elections. But ironically perhaps, Poland also belongs to the group of countries whose majorities support an increase of the present Parliament's powers and prerogatives.

Another cause of voter apathy may well be the lack of faith in the power to change things by casting a vote. As pre-election surveys demonstrated, voters do not often see an immediate connection between their votes and the division of the power on the EU level. On the other hand, perhaps the rise of Poland's turnout rate at elections to the European Parliament by about 17% (from 20.87% in 2004 to 24.53% in 2009) attest to a gradual and conscious normalizing of EU voting.

2. The outcomes of the elections

The outcomes of the elections indicate a distinct strengthening of right-wing parties, most notably the European People's Party, and a parallel weakening of left-wing parties at the European Parliament. In spite of this tendency, the European People's Party and the Party of European Socialists will perform the role of guarantors of the stability and fitness of the Union's legislative process. These two political families, both active in the European Parliament, have proved that the method of consensus and compromise is the most effective.

In many states extreme right-wing and Eurosceptical parties and groupings have gained in significance (the Netherlands, Denmark, Austria, Hungary). In Poland, extreme and populist groupings captured not a single seat in the European Parliament, which fact bespeaks a greater maturity and sense of responsibility on the part of Polish voters than five years ago. The victorious parties constitute the main political players in Poland.

3. The challenges before the European Parliament during the 2009–2014 term

The coming 2009-2014 term of office will be exceptional for many reasons. For during this term the Lisbon Treaty will in all likelihood come into force. The Treaty will grant the European Parliament new, significant competencies and will alter the balance of power between institutions to the Parliament's benefit. By virtue of the provisions of the Lisbon Treaty the competencies of the European Parliament as the EU's legislative organ will undergo strengthening. Standard legislative procedure (this expression will replace the current procedure of co-decision), in which the Parliament is a co-legislator equal with the Council, will become a general principle and will be broadened to almost all fields of European law, including justice and internal affairs. Similarly, the new budget procedure will be based on the process of co-decision making, all the while retaining the equal entitlements of the European Parliament and Council, which together will also decide on the shape of long-term financial frameworks.

The global crisis truly has affected the expectations of Europeans towards Europe. It has also presented new challenges to the European Parliament. Research findings show that the majority of EU citizens expects the European Parliament to jointly act in the coordination of budgetary, tax, and economic policy (a rise from 26% to 32% over the last months). Moreover, high numbers of Europeans expect the Parliament to be active in the field of consumer protection and public health (36%), security and defence policies (32%), joint energy policies (30%), and the fight against climatic changes (30%).

In this crisis situation Europeans expect the European Union to undertake decisive action. In this sense the crisis constitutes a test for European institutions, which will have to confirm their role and usefulness with regard to solving problems vital for EU citizens. The economic crisis is amongst these postulates, and in light of the latest data flowing in from European states, it is the most urgent issue. Specifically, within the framework of its competencies the European Parliament will be able to deal with such issues as financial supervision, money transfers, and the free flow of capital.

The new competencies of the European Parliament will foster more effective problem-solving. What we must ask is how well the Parliament will serve in this new reality, and whether it

will be able to fully exploit the powerful competencies with which it will be entrusted. This is an enormous opportunity, one worth exploiting.

4. Entry into force of the Lisbon Treaty

The Lisbon Treaty strengthens the prerogatives and powers of the European Parliament not only in the legal realm, but also within the scope of exercising political supervision. The Parliament has been granted the right to select the chairman of the European Commission. The choice made by the European Parliament will increase the democratic legitimacy of the chairman and will strengthen his or her position at all EU institutions.

The choice of the next European Commission will also be of surpassing significance. In accordance with the Lisbon Treaty it should take into account the outcome of the elections to the European Parliament. This decision confirms and formalizes the situation which indeed already took place when the Commission's chairman was appointed in 2004. However, political supervision over the choice of the Commission's chairman and approving the make-up of the very committee cannot be overestimated, for it additionally increases the legitimization of the Commission as well as the degree of the responsibility of her members before the representatives of European citizens.

Also subject to parliamentary political control will be the High Representative for foreign affairs and the security policy, as will the rest of the members of the European Commission, who must be approved by the European Parliament in voting.

The Parliament will also approve a range of decisions made by the European Council, particularly those decisions of the EU Council which will play a significant political role in the functioning of the Union. This includes decisions concerning application of the flexibility mechanism. The approval of the Parliament will be also essential in appealing to the procedure enabling the application of a qualified majority in the Council in place of unanimity or the usual legislative procedure, instead of a special legislative procedure.

Once the Lisbon Treaty is incorporated, Poland, just as many other EU Member States, will gain an additional Member of Parliament at the European Parliament. This is because the total number of representatives will rise from 736 to 751. We should seek rational transitional solutions as quickly as possible once the new Parliament is constituted. For Member States having "an excess" of MEPs, this will mean keeping their mandates until the end of the present Parliament's term. For Member States having "a shortage", this will mean having by-elections, or giving the status of full Members of the European Parliament to those people who were chosen as "observers".

5. Cooperation of the civil service of Member States with the European Parliament

The five years of Poland's membership in the EU show that we have yet to fully exploit the possibilities for cooperation with the European Parliament. Lacking is a trans-national and non-partisan approach to building coalitions and initiating action in the heart of the Parliament. The new term of office creates a new opportunity for the civil service to be proactive in the Parliament. The expansion of competencies under the terms of the Lisbon Treaty justify this all the more.

At the European Parliament, similarly as in the case of the EU Council, many discussions concerning the shape of legal acts are conducted in the unofficial framework of meetings, during which sponsors of a given project take on the lead role. Usually this means the representative of the Commission responsible for preparing the proposal of a given act, the person responsible for preparing the report of the leading committee, or the "shadows" – those responsible for coordinating the position of a given faction as part of a committee. These backroom, unofficial arrangements are then reflected in the contents of the amendments proposed in committees

We need make sure that the Polish system for the coordination of European politics with reference to the European Parliament takes the unique nature of this process into account. What may be recommended is the early formulation of demands (ideally, in parallel to the European Commission's work in drawing up a proposal) and then sending them to MEPs who have a real voice in negotiations (e.g., are members of the committee which will have the leading role with reference to a given legal act, or are close to the committee chairman, etc.). In parallel to this, efforts should start on the level of choosing an MEP/rapporteur who has a direct influence on the topic report submitted to a given parliamentary committee. In such undertakings not only a non-partisan approach should be applied, but also a trans-national one, because the building of support blocks for a given project are often subject to random variables. In such cases nationality and political affiliation have secondary meaning.

6. Cooperation of the civil service of the state exercising the presidency with the European Parliament

Cooperation of the national civil services with the European Parliament will also be a big challenge in terms of the presidency (Poland will take over the presidency of the EU Council in the second half of 2011). In this context it is worth establishing long-lasting contacts with representatives of the Parliament. This is essential and useful from the point of view of every Member State, but in

particular while exercising the presidency. It is also necessary to make sure that there is a steady presence in the Parliament of representatives of the presidency on the political rung. It is important, however, that the representative of the presidency is perceived in the Parliament as an exponent of the interests of all Member States, not only of his or her own state.

Another matter to arise from the Lisbon Treaty's entrance into force is that of cooperation between the European Parliament and national parliaments. The exact nature of internal solutions within the scope of the role of the committees for European affairs in the process of coordinating European politics differs among individual Member States. What must be strengthened is the conviction that, in relations with the national parliament, the presidency does not represent the national interests of his or her state and does not need to obtain a mandate for his or her decisions from the national parliament.

Time for a multilevel parliamentary system: for the sake of a citizen-friendly Europe

1. A strong Europe needs a strong democracy

The European Union is not in the best shape today. The rise in expectations in its ability to solve everyday problems goes hand in hand with a decline in the confidence of citizens in the EU's complex political system. However, the question about the future of European integration is an issue of "how" and not "if". Even in the face of today's dire economic crisis (the worst of the post-war era) and despite global climatic and ecological problems, international threats (such as terrorism, organized crime, and cross-border streams of migrants) one can clearly see that only together are EU Member States capable of effective action. However, a necessary condition for the effectiveness of the Union is its democratic legitimacy. European experience shows that without legitimacy, without the manifest trust of citizens, no political system can survive. In the case of the EU this does not however mean applying to its political system models of democratic legitimacy observed in national states. But in spite of the differences appearing among them, one element is without a doubt shared and underway for everyone – parliamentarization. Within the EU the role of the European Parliament and of national parliaments is therefore a factor that determines the EU's structure and, consequently, its credibility.

The parliamentarization of the EU is strengthening, at the same time as it evolves. Therefore the question remains open as to what form it will finally assume – and when. The EU's fundamental element – the European Parliament - this year is celebrating the thirtieth anniversary of its first direct elections. To date the expansion of the competencies of the EU's intergovernmental and executive organs was as a rule accompanied by a strengthening of the participation of the European Parliament, carried out via amendments to the primary law. Already at present the European Parliament, equally with the Council, decides in two-thirds of all legislative processes. Together with the entrance into force of the Lisbon Treaty the number of policy areas in which the European Parliament is a co-legislator will once again be increased. Among these changes the European Parliament's budget competencies and its elective function will undergo reinforcement.

In pursuing an increased role for the European Parliament, the national parliaments of Member States were sometimes treated like step-children by the primary law. They were mentioned for the first time in a declaration to the Maastricht Treaty. The Amsterdam Treaty devoted a separate protocol to them. But it is only the Lisbon Treaty that has taken the unprecedented measure of

placing them within the EU's primary law. Special articles and two protocols for the first time define the role and the function of national parliaments in the EU context. In them for the first time the primary law directly assigns tasks to national parliaments and thereby enhances parliamentarianism in the multilevel system of the EU.

In order to create a citizen-friendly Europe, arousing the enthusiasm of Europe's citizens, the European Parliament and national parliaments must pro-actively and hand-in-hand strive to establish a multilevel parliamentary system. However, this altogether proper goal is not easy to accomplish. For we may never forget that European treaties acquire their binding power only thanks to their ratification by Member States¹. Referenda in France and the Netherlands ended with rejection of the Constitutional Treaty. Later came the Irish "no" to the Lisbon Treaty, as well as the declining participation of EU citizens in elections to the European Parliament. Taken together, this represents danger signals that point to the need to take responsibility for a democratic Europe and to breathe life into the legal foundations arising from the treaties, especially the Lisbon Treaty. Such efforts are the shared duty of all MEPs, as well the MPs in each of the parliaments of the European Union's Member States!

2. The parliamentarization of European politics

2.1 Dialogue between national parliaments and the European Parliament

For a long time the relations between national MPs and Members of the European Parliament have been marked with mutual competitiveness, something that has weakened the ability of national parliaments to deal with European matters. These tensions are gradually being overcome. However, along with the rise in the role of European legislation and the Europeanization of domestic legislation, the question of the role of national parliaments in the European legislative process looms ever more often, as they are organs boasting the democratic legitimacy of their nations. Still, national parliaments are perceived as mere executive organs of European bureaucrats. A European Parliament strengthened in its position needs strong domestic parliaments as partners at its side. For only together with national parliaments can the European Parliament create the Union's democratic capstone and crowning.

¹ Axel Schäfer / Michael Roth / Christoph Thum, *Stärkung der Europatauglichkeit des Bundestages*, in: *Integration*, 1/2007, p. 45

National parliaments and the European Parliament – in exercising their legislative, supervisory and electoral function – co-participate on sundry levels in the work to democratize European politics. National MPs monitor the work of their own governments on European issues. However, the European Parliament, cooperating with other bodies of the EU, performs classic tasks of a Community character. What results from the fact that the Treaty on the European Union in the version from Lisbon allotted new tasks to national parliaments and the European Parliament is the clear necessity of improved cooperation between the European Parliament and national parliaments. This is expressed in the part devoted to the EU's democratic principles².

2.1.1 Complementary operations of the European Parliament and national parliaments

The necessity of cooperation between the European Parliament and national parliaments was expressed in the resolution of the European Parliament from May 7, 2009, which contains proposals concerning the future shape of their mutual relations³. The purpose of this resolution is to improve the parliamentary supervision of executive power via the complementary activity of the European Parliament and national parliaments, something which both national and EU parliamentarians wish for. Apart from current forms, such as joint parliamentary meetings, joint committee sittings and interparliamentary meetings, the Resolution predicts new forms for interparliamentary dialogue, both preceding legislative actions – and following them⁴.

One of these forms is that of creating a lasting network of corresponding committees. This would balance the exchange of views limited at present in relation to individual legislative initiatives of the EU taking place as part of interparliamentary meetings⁵. The experience of the German Bundestag proves that there is a need for stronger participation of specialized national politicians in European debates. A parliamentary committee for European affairs can only perform tasks of a cross-sectional character. In specialist areas it requires the expert knowledge of a special committee.

Nonetheless, the proposal for the European Parliament to be the sole host of interparliamentary meetings in the future is controversial. So far the parliament of the Member State exercising the presidency at a particular moment has always been their co-organizer. The parliament of the Member State appearing in the role of the co-host of the meeting can serve as a communications channel between the European Parliament and the national parliaments of the

² Lisbon Treaty, etc. 2008

³ Resolution of the European Parliament, May 7, 2009, concerning the development of relations between the European Parliament and national parliaments in the context of the Lisbon Treaty (2008/2120(INI)).

⁴ *ibidem*

⁵ *ibid*

remaining Member States. Moreover, formal inclusion of national parliaments in the organization of such meetings has significant meaning for establishing the agenda of interparliamentary meetings.

To date the positions of national parliaments, including the German Bundestag, are handed over to the European Commission. However, MEPs wish to increase their participation in the process of intensifying the dialogue preceding legislative action (the so-called Barroso mechanism)⁶. But the purpose is that they find their way at the same time to the European Parliament in the form of reports serving to initiate exchange at an early stage of the legislative procedure.

However, the suggestion to grant MEPs the right to speak once a year during plenary debates in their national parliaments is dubious. Debates being held once a year serve only as a political show and do not contribute to working out better legislative solutions in individual matters. Much more useful would be a specialist exchange of opinion in parliamentary committees. A number of German MEPs, proportionally to the size of the faction at the European Parliament, are also members of the committee on EU affairs at the German Bundestag. However, this advisory membership functions only with the highest difficulty, since on account of their busy calendar MEPs very rarely can participate in those sittings.

The resolution devotes no attention whatsoever to the possibilities for improving the coordination and the cooperation of national parliaments with the European Parliament available at the working level. Today all national parliaments of Member States, except Malta and Spain, have their own representative office and liaison offices in Brussels. The preliminary exchange of opinion through the agency of these institutions (for example, about the state of monitoring compliance with the principle of subsidiarity in individual parliaments) could greatly contribute to an increase in the effectiveness of coordinating interparliamentary efforts.

2.2 The right of national parliaments to information

Thanks to Title II of the Treaty on the European Union in the version from Lisbon about determinations for the democratic principles of the EU, and article 12 included in it, national parliaments for the first time were clearly recognized in the European Union's primary law⁷. Their special recognition offers the possibility of participation in the policies of EU justice and internal affairs, as well as in the supervision of the Europol and Eurojust. The realms of justice and internal

⁶ *ibidem*

⁷ Cf. Daniela Kietz, *Die nationalen Parlamente*, in: Julia Lieb / Andreas Maurer / Nicolai von Ondarza (ed.), *Der Vertrag von Lissabon. Kurzkommentar*, p. 29.

affairs are a field of politics which over the past years has developed very dynamically, gradually gaining meaning – and financing. So far, however, neither the European Parliament nor national parliaments have had formal influence on them. Article 12 of the Lisbon Treaty also extends the right of national parliaments to information. This Article stipulates that all organs are obliged to pass on to them their normative projects. In the case of the Bundestag this Article in fact does not constitute a step forward, because the passing on of documents already functions through the agency of the Federal Government. However, considering the parliaments of other countries (that do not have such entitlements at their disposal in relation to their government) this Article gives a basis set in the primary law that allows them to demand and exercise their right to information in this form.

2.3 Widening the monitoring of compliance with the principle of subsidiarity

The position of national parliaments in the context of applying the principle of subsidiarity is regulated by two protocols of the Lisbon Treaty. In the event of violating the principle of subsidiarity national parliaments are able to induce the European Commission to revise its legislative proposal. For that to happen, over one-third of member-state parliaments must declare their reservations regarding a project of the Commission within eight weeks. The number of parliaments tabling reservations against a violation of the principle of subsidiarity has legal meaning. We can speak of a “yellow card” for the European Commission if one-third of the parliaments of Member States express opposition. The Commission must then carry out a review of its proposal. If half of the national parliaments report reservations in relation to a violation of the principle of subsidiarity, there is an “orange card”. The European Commission must then present justification for its project. Apart from these forms of opposition, which represent a way to unofficially exert influence on the functioning of the European Commission, there also is the “red card”, which gives national parliaments the possibility of using the mediation of their governments to submit a complaint to the European Court of Justice in connection with violating the principle of subsidiarity, if the process of discussion with the European Commission proceeds in an unsatisfactory way⁸. The faction of the Social Democratic Party of Germany at the Bundestag does not support the “red card” in an unconditional way. This is because applying this instrument creates the impression that national parliaments block, rather than shape European policies. It does not seem to entail constructive participation in the legislative process, because in practice parliamentary inspection of applying the principle of subsidiarity is often applied only in order to block particular initiatives. It often seems that national MPs find it hard to

⁸ Cf. Jo Leinen, *Die Gewinner des neuen Europa-Vertrages*, Friedrich-Ebert-Stiftung, Internationale Politikanalyse, March 2008, p. 2.

stand up when it comes to issues of subsidiarity. In many parliaments there is no discussion on whether the EU should take action in a given matter, but on whether a given project is politically desirable or not. However, the instrument of monitoring compliance with the principle of subsidiarity was not, after all, introduced into the Lisbon Treaty as a blocking mechanism. National Parliaments today must find a harmonious balance between openness to integration and its monitoring. Otherwise the threat exists that monitoring compliance with the principle of subsidiarity will become worthless. Effective monitoring of compliance with the principle of subsidiarity therefore depends on the extent to which national parliaments in the future will responsibly handle this new weapon. On the other hand, the very existence of this mechanism contributes to a real increase of the unofficial influence of national parliaments on their governments and the European Commission. Compared with the Constitutional Treaty, the Lisbon Treaty provides for extending the date of filing reservations by national parliaments from six to eight weeks. However, this still means that national parliaments have at their disposal only a very limited margin of the time for serious coordination of their efforts. Nonetheless, instigating the mechanism of monitoring compliance with the principle of subsidiarity, the final step of which is directing a complaint to the Court of Justice, is not in the interest of the governments of Member States or the European Commission itself.

Recent testing of the monitoring of compliance with the principle of subsidiarity has shown, however, that the mutual exchange among parliaments is insufficient. For such examination of compliance should be undertaken during a stage preceding legislative action, as that will allow an increase in the effectiveness of early warning mechanisms. To this end an intense and far-sighted dialogue is needed between national parliaments. Of course, the parliaments place their positions in the shared database (IPEX) operating under the Directorate for Relations with National Parliaments of the European Parliament, but this information exchange should be put to greater effectiveness. IPEX must become an additional instrument of active and unceasing exchange between national parliaments signaling in a timely fashion where Member States that have not carried out final monitoring see the need to submit reservations in relation to violation of the principle of subsidiarity.

2.4 The Efficiency of the Conference of Community and European Affairs Committees (COSAC)

In pondering the issue of the multilevel nature of the Community parliamentary system we should make critical analysis of COSAC's activity. COSAC – the Conference of Community and European Affairs Committees – is a platform for interparliamentary exchange at the all-European level and it embraces a wide range of issues having meaning for the Community. However it is doubtful whether

COSAC assures an appropriate form for the institutionalization of cooperation between national parliaments and enables lasting and uninterrupted exchange between them. For effective application of monitoring compliance with the principle of subsidiarity the working stage should be involved to a greater degree. The target solution could be enhanced coordination of interparliamentary cooperation through the mediation of the Directorate for Relations with the National Parliaments. The current status of information exchange between national parliaments concerning evaluation of compliance with the principle of subsidiarity clearly shows that things are just limping along, even though IPEX facilitates access to the positions of other parliaments for the MPs of all EU Member States.

2.5 The shape of parliamentary participation: the example of Germany

National-level authority concerning the exercise by national parliaments of control over their governments is appropriately anchored in domestic laws. “They remain exclusively in the hands of the constitutional-legal order and the practice of every Member State”⁹. In Germany, in regard to the general resolution on the European arrest warrant and the service directive, broad debate took place about the participation of the Bundestag in the European legislative process. This was because the German public was of the impression that the Bundestag approves merely rubber-stamps European initiatives. The incidences of neglect observed clearly show that, due to the enormity of information, the German Bundestag had a problem with distinguishing what is important from what is minor. At present in Germany adjudication by the Federal Constitutional Tribunal is tensely awaited regarding complaints of the faction of the Left against the Lisbon Treaty, since in the course of this matter it turned out that the German Bundestag had drawn results from its mistakes. It is now ready to fulfill its duties associated with the Treaty, as result from the increased scope of its laws. Therefore the complaint against the Lisbon Treaty, which denounces the weakening of the Bundestag’s competencies, is absurd.

2.5.1 The legal grounds for participation

In Germany there are several legal grounds for the participation of the German Bundestag in EU matters. The constitutional-legal axis for this is found in art. 23 sec. 2 and 3 of the constitution (GG). This so-called European article of the German constitution stipulates in sec. 2 the obligation of

⁹ Daniela / Kietz, *Die nationalen Parlamente*, in: Jutta Lieb / Andreas Maurer / Nicolasi von Ondarza (ed.), *Der Vertrag von Lissabon. Kurzkomentar*, p. 29

the Federal Government to extensively and swiftly inform the Bundestag and Bundesrat¹⁰. However, sec. 3 of this article states that the Bundestag has a right to take a stance before the Federal Government takes part in establishing Community legislative acts¹¹. Moreover, the Federal Government should take into account this position in its negotiations at the European level. The act on the cooperation of the Federal Government and the German Bundestag in matters of the European Union (EUZBBG), passed in 1993, gives flesh to the recommendations included in Art. 23 of the GG¹². However, because it quotes extensive fragments of the European article in a literal way, it leaves a lot of vagueness in interpreting its provisions¹³. Therefore in 2006 the Federal Government and the Bundestag signed a new agreement on their further cooperation. This agreement reflected the new identity of the Bundestag as an active participant in Germany's European politics. The agreement between the Bundestag and the Federal Government in matters of the European Union (BBV) enhanced the opportunities of Members of Parliament to access information and participate in the Community's legislative process¹⁴. In its first chapter the BBV contains regulations concerning the duty of informing the Bundestag about documents tabled and about the debate of the Council. Chapter two, in turn, deals with the ways for handling the Bundestag's positions. It fleshes out the guidelines of the Constitution, providing the possibility that during negotiations with the Council, if the Bundestag has doubts concerning compliance with the principle of subsidiarity, the government will bring those doubts forward, and then will try to reach agreement with the Bundestag.

During the verbal dissertation over the Lisbon Treaty before the Tribunal it turned out that the Bundestag was more conscious of its role than even just a few years ago, and is now able better to use the instruments which it has at its disposal. There is still a need, however, to take a greater number of precise positions in the parliamentary process. Their number is still relatively small, and is increasing only slowly. Moreover, this instrument is used rather only to criticize actions of the government, rather than to support its positions in negotiations, for example. Nonetheless, it seems that in relations with its own government the constructive attempt at applying this instrument could increase the meaning of the Bundestag as an essential player in the area of European politics. Only time will tell, however, whether, as in the case of the procedure for monitoring compliance with the

¹⁰ Constitution of the Federal Republic of Germany

¹¹ *ibidem*

¹² Act on the cooperation of the Federal Government and the German Bundestag concerning the European Union from 12.3.1993 ; BGBl.I, amended by art. 2 par. 1 Act on expanding and strengthening the rights of the Bundestag and Bundesrat in matters of the European Union from 17.11.2005, BGBl. I.

¹³ Dr Tilman Hoppe, *Drum prüfe, wer sich niemals bindet – Die Vereinbarung zwischen Bundesregierung und Bundestag in Angelegenheiten der Europäischen Union*, w: DVBl. 2007, p. 1540.

¹⁴ Agreement between the German Bundestag and the Federal Government on cooperation in matters of the European Union, BGBl, 2006

principle of subsidiarity, the unofficial influence of the Bundestag will rise thanks to the very fact that the government will generally try to avoid the use of these instruments.

In May 2009, on the basis of the votes of the Christian Democratic Union (CDU), the Christian Social Union (CSU), the Social Democratic Party (SPD) and the Free Democratic Party (FDP), the Bundestag passed a resolution on the issue of participation¹⁵. This shows far-reaching unanimity and, as far as possible, speaking with one voice by representatives of different factions concerning the competencies of the Bundestag as an institution. In the context of the hearing before the Federal Constitutional Tribunal and the entrance into force of the Lisbon Treaty, the Bundestag, aware of its significance, presented postulates for improving the BBV. In the second report concerning the monitoring of the BBV's implementation it was shown where the need of improvements and explanations exists in the case of problems with cooperation and information exchange between the Bundestag and the Federal Government. It is easy to suppose that during the new term of office of the Bundestag the BBV will be subject to thorough changes, e.g., in relation to pronouncements of the Federal Constitutional Tribunal¹⁶ and the entry into force of the Lisbon Treaty.

The resolution here discussed also expressed the expectations of MPs towards cooperation with the government in European matters. In the field of the Common Foreign and Security Policy an obligation was imposed to inform the Bundestag quarterly on the legal acts of the Council being in the phase of preparation, including joint positions and opinions. Such measures, which already twice have been sent out to MPs, are significant for the Bundestag in the fields of policies requiring close intergovernmental cooperation. For they enable Members of Parliament to exert influence on the development of a given area of politics also in irregular ways. Moreover, the resolution contained expression of the expectation of Members of Parliament in relation to informing the Bundestag on the activity of working groups within the Council, ones that enjoy the participation of representatives from various ministries of individual countries.

2.5.2 An early warning system

¹⁵ Motion of the faction CDU/CSU, SPD i FDP, *The agreement on cooperation in matters of the European Union is the only of its kind in Europe – questions of its interpretation must be clarified, and the existing deficits removed*, Bundestag 16/13169

¹⁶ At the time this paper was finished the decision had not yet been made. However, in the meantime the German Constitutional Tribunal issued its decision on June 30, 2009, declaring the Lisbon Treaty to be constitutional. At the same time the Tribunal found the accompanying Act to be unconstitutional, in that the legislative organs were not given sufficient rights to participation in the European legislative process. An appraisal of the decision is found in the afterword to this paper.

Within the framework of the Bundestag's bylaws an institutional early warning system was established. In it the Bundestag formed its own European department which supports Members of Parliament organizationally and in terms of personnel in their activity in the field of the European politics. Its task is to formulate a proposal of priorities in projects more or less significant from the point of view of consultations underway, to report the objectives of individual special committees concerning European policies, and to ceaselessly provide up-to-date reports on the state of events from Brussels. This support has a value for Members of Parliament that cannot be overrated, with regard to the enormity of EU documents. It also lets Members of Parliament work out which projects from among those currently being carried out or planned are most essential.

Apart from that, the German Bundestag has opened a liaison office in Brussels. Besides the civil servants, representatives of all factions also are present there. Their task is to inform Bundestag MPs of the current situation in the European Parliament. The liaison office is not a representative of the interests of the German Bundestag, but rather just an additional source of information¹⁷. Thanks to its efforts, important debates at the European Parliament are the subject of discussion at the Bundestag. MPs thereby gain the possibility of joining in the discussions into legislative proposals coming in from the EU at an appropriate moment.

Together with the entry into force of the Lisbon Treaty, further amendment of the domestic legal grounds for the participation of the Bundestag in European issues will become necessary. Already on April 28, 2008 the German Bundestag approved the subject-matter of the requisite changes. However, that will come into effect only after the entry into force of the Lisbon Treaty. By the power of these amendments to the Constitution the possibility will be included of filing a complaint in the form of a minority right in relation to violating the principle of subsidiarity. However, the so-called accompanying act, i.e., the act on expanding and strengthening the rights to the Bundestag and Bundesrat in EU matters, regulates the time-frames in the case of expressing an opinion in relation to a violation of the principle of subsidiarity in the situation of the cooperation of all sorts of bodies.

3. Conclusions

¹⁷ Cf. Axel Schäfer / Michael Roth / Christoph Thum, *Stärkung der Europatauglichkeit des Bundestages*, in: *integration* 1/2007, p. 45

Sven Hölscheidt in his article “A formal increase in significance – the small power of influence: the role of national parliaments in the thinking of the Lisbon Treaty” concludes that although the Lisbon Treaty does formally increase the meaning of parliaments, the deparliamentarization of European politics is still underway¹⁸. For there is no doubt that amendments only to the primary law, which the Lisbon Treaty provides in the case of the European Parliament and national parliaments, will not be enough for the formation of a multilevel parliamentary system. The above thesis about depriving the power of parliaments as a result of the process of Europeanization does not withstand confrontation with reality. The German Bundestag is a good example of how a national parliament has steadily increased its influence on European politics. German MPs are better and better in their role of monitoring and co-shaping the Federal Government’s European policies. Limited participation was also recognized in other countries. Now further improvement in the ability of parliaments to contribute to European issues rests with Members of Parliament themselves. Only Members of Parliament can give teeth to the formal regulations improving their position. In the more distant perspective pronouncements of the Federal Constitutional Tribunal will probably more clearly lay out the legal framework for the Bundestag’s participation, thanks to which the Bundestag will be able to invoke yet another basis for its action in the sphere of European politics. The Lisbon Treaty may therefore become “a treaty of parliaments”, as the resolution of the European Parliament stated. The Lisbon Treaty will strengthen the role of national MPs, but it is above all they themselves who must seize the opportunity to make better avail of their rights and to shoulder the responsibilities placed on them. They must take active part in the discussions of special committees. They cannot forego substantive debate. New forms of systematic cooperation are necessary between national parliaments on the one hand, and between national parliaments and the European Parliament on the other. It is necessary to wisely apply such instruments as the complaint in relation to violating the principle of subsidiarity. For if parliaments use them exclusively for opposing aims which they do not like, this will lead to unnecessary bottlenecks - of which there is no shortage in the EU today. We must ever address the question why we are open to European integration and why we want to give a more democratic shape to European politics. The European Union does not mean the end of European national states, but rather the task of caring for the economic and social well-being of the EU’s citizens. In the more distant perspective the national state alone will be able to provide this. We all need Europe, a Europe that is not only strong and able to act, but also democratic. Europe needs the Lisbon Treaty. National parliaments and the European Parliament are two sides of the same coin – the democratization the EU on the road to a participatory community with a multilevel parliamentary system.

¹⁸ Cf. Sven Hölscheidt, *Formale Aufwertung – geringe Schubkraft: die Rolle der nationalen Parlamente gemäß dem Lissabonner Vertrag*, in: *integration*, 3/2008

4. Members of Parliament in relation to the decision of the Federal Constitutional Tribunal on the Lisbon Treaty, from June 30, 2009

4.1 Recommendations for the Bundestag

Among the famous opponents of the Act giving consent to the Lisbon Treaty, of the amendment to the constitution, and the accompanying act is the Left faction as well as CSU MP Peter Gauweiler. The first reaction to the pronouncement of June 30, 2009 there was that of universal relief that both the Act giving consent to the Lisbon Treaty as well as the Act amending the constitution were found to be constitutional. Consequently, the Lisbon Treaty was not questioned. In fact, the Federal Constitutional Tribunal questioned the concept presented by the challengers of the European Union – namely, that it is a militarized, asocial, and bureaucratic behemoth. The demands expressed by the Federal Constitutional Tribunal concerning the accompanying Act (and conditioning its recognition as constitutional) should be treated as an opportunity for further parliamentarization of Germany's European politics. The judges acknowledged this act¹⁹, which in the framework of domestic law regulates the scope of prerogatives and powers of the Bundestag and Bundesrat they are entitled to pursuant to provisions of the Lisbon Treaty, as partially unconstitutional. In this way the judges gave members of the Bundestag homework for their holiday break: to redraft the measures for the participation of the parliament in European politics. We happily witness a cross-party conviction of the need to finish the legislative procedure in this matter during the current 16th legislative period, i.e., before the planned October 2, 2009 referendum in Ireland on acceptance of the Lisbon Treaty. The Bundestag will debate a new bill as part of special sessions.

Because of its populist demands the CSU has removed itself from today's political debate. Under the pretext of attempting to strengthen parliaments the CSU in fact wishes to create new possibilities for obstruction – and in this way to conduct its election campaign. What is relevant today, however, is the need of solutions that truly strengthen parliament – and not only according to guidelines of the Court's pronouncement, but as defined by Bundestag MPs themselves. The Federal Government must remain able to act on the Community level. For the assumption that the prerogatives and powers of the parliament automatically must give greater possibility for blocking is irrational. Similarly as in the case of the instrument for monitoring compliance with the principle of subsidiarity,

¹⁹ Bill of the act on expanding and strengthening the rights of the Bundestag and Bundesrat in matters concerning the European Union, submitted by the faction CDU/CSU, SPD and League 90/Greens, 11. March 2008, Bundestag 16/8489

increasing the competencies of the parliament brings an increase of responsibility to the Bundestag that constructively and appropriately early involves itself in the European political process. After all, national parliaments must contribute to Community policies in the framework of the multilevel parliamentary system, rather than only to flash a red light at government negotiations.

At the centre of the judges' deliberations was the principle of democracy, and together with it the insufficient scope of parliamentary prerogatives and powers to cooperate in European matters. The recommendations included in the pronouncement concerning taking proper action were born in light of the variance of the accompanying Act with the Art. 38 in relation to Art. 23. Sec. 1 GG. For in the future, following the entry into force of the Lisbon Treaty, the parliament is supposed to play a greater role in the procedure of amending treaties, in applying the mechanism of bridge clauses or the mechanism of the emergency brake, and expanding the competencies of the EU in politically determined sensitive areas such as family law or politics in the field of the judiciary or internal affairs.

According to the Court's pronouncement, the principle of entrusted competencies must be closely observed, for the EU still remains a league of sovereign states. Such a decision entails a certain negation of the ability of the European Parliament to legitimize the Community legislative process. Therefore, in accord with the pronouncement of the German Constitutional Tribunal, we need to bolster the participation of national parliaments in the Community's legislative process. The EU suffers precisely from a deficit of democracy, a problem which can be reduced by strengthening the participation of national parliaments.

In its pronouncement the German Constitutional Tribunal questioned the legal nature of the Agreement concluded between the Bundestag and the Federal Government on the issue of cooperation in matters concerning the European Union (BBV). In its view, this Agreement does not give sufficient guarantees of the proper participation of the parliament in these cases, since in the case of the Federal Government's failure to perform its obligations the Bundestag does not possess any legally binding possibilities for presenting its position. The shape of a new or at least appropriately changed legal basis is presently under debate within the factions of the Bundestag. The transposition of individual BBV fragments where it is absolutely needed for the act, is a fundamental request put forward by the SPD parliamentary faction²⁰. However it does not seem possible to put the clause on binding the power of positions of the Bundestag in the Constitution on account of the lack of preparation time for these changes.

²⁰ SPD-Bundestagsfraktion, *Position der SPD-Bundestagsfraktion zur Umsetzung des „Lissabon-Urteils“*, Berlin 2009. Abrufbar unter: http://www.spdfraktion.de/cnt/rs/rs_datei/0,11617,00.pdf

However, all by itself, an amendment to an act does not solve a problem. It seems certain that lawyers will manage to work out a proper execution of the pronouncement. What is really need are politicians working with dedication on European matters and who, together with their European friends and colleagues, will submit constructive legislative initiative. Europeanization must remain our response to globalization.

4.2 The philosophy of the pronouncement

Our anxiety should therefore concern rather more the spirit of the pronouncement than the legislative recommendations included in it. Legally a lot is possible. This is why the sigh of relief of European politicians following the pronouncement was quickly replaced with critical reflection into its meaning. Beside the necessary changes to the accompanying Act on expanding the participation of the parliament in European matters the pronouncement seems to be partly in contradiction with the German national concept expressed in the preamble to the constitution: the integration of Germany with a united Europe.

The pronouncement concentrates on the classical comprehension of the nation state, of sovereignty, and guaranteeing the essence of the constitution. It need be noted that the constitution nowhere employs the concept of sovereignty. After all, sovereignty was already handed over to the European level in the field of overriding political areas in order to increase their effectiveness and raise efficiency. Such proceedings are politically desired, but from the point of view of the Social Democrats they aim in the long-term at creating a federal Europe.

The characterization of the European Parliament in the pronouncement is mistaken. For in the case of the European Parliament what is at issue is not a search for an alibi sanctioning its existence, but the search for a fundamental source of legitimacy for Community law. The negative evaluation of the European Parliament in the pronouncement of the German Constitutional Tribunal is baseless. It also reflects reality in the wrong way. Already today (before the entry into force of the Lisbon Treaty) the European Parliament decides in the case of two-third of all Community legal documents. If only for this reason it is an essential actor. It also performs other non-legislative parliamentary functions, such as its election function, shaping will, and the budget. The German Constitutional Tribunal raised the most reservations regarding election issues. However they did not cast doubt in regard to the legitimacy of other national parliamentary chambers, even though they differ fundamentally one from the other concerning the domestic scope of their powers and prerogatives in European matters.

But in the final analysis what is at issue is the scope in which MPs themselves will wish to consciously join in creating European policies. Legislative regulations alone will not succeed in accelerating the process of parliamentarization. The Bundestag must step up to its responsibility. Demands for a multilevel parliamentary system therefore become all the more pressing.

The new challenges before national parliaments

1. In the wake of the elections to the European Parliament

There is no doubt but that the Left lost out in this year's elections to the European Parliament. The number of seats held by the Party of European Socialists (PES) fell from 27.6% to 21.6% - which is to say by over 6 percentage points. Ironically, the current economic crisis did not prove conducive for the forces of the Left. At the same time, however, the election outcome for the largest political groupings shrank just slightly: the coalition of the European People's Party and the European Democrats (EPP-ED) by 0.4 percentage points, and ALDE (the Alliance of Liberals and Democrats for Europe) by 1.7 percentage points. On the other hand, the GREEN/EFA grouping (made up of the Greens and the European Free Alliance) increased its standing by 1.4 percentage points. Surprisingly, the NI (Non-Inscrits) strengthened their place by 8.5 points. This may aptly be interpreted as reflecting a certain disillusionment with those having "governed" the European Parliament.

We also observed the continuing decline across the European Union of voter turnout rates in elections to the European Parliament. This year the average rate measured at about 43%, which was the lowest of any of the seven elections held to date. In the first four elections to the European Parliament – that is, beginning in 1979 – the turnout rate shaped up at a level of approximately 60%. Later it dropped to 50%, and over the past two elections to 45% and 43%. The difference of two percentage points in all likelihood stems from various factors, including inclement weather. Nonetheless, what this all suggests is that the problems of increasing the democratic legitimacy of the European Union and bringing it closer to Europe's citizens are worsening. For this reason we may regret all the more so that the Lisbon Treaty had not yet come into effect. After all, the Treaty contains a range of solutions designed to enhance the EU's democratic legitimacy.

It is hard to concur with the view that the comparatively low turnout rate in Poland was caused by a poorly run election campaign – although it is true that domestic, not Union issues figured most prominently in them. Similar complaints were to be heard in other EU Member States, as well. Thus we need note a certain general feature of the voter turnout rates across the EU. Besides Latvia, in all the new Member States the turnout rate was below the EU average. In Slovakia it was the very lowest – just 19.6%. Only Estonia (43.2%), Bulgaria (37.5%), and Hungary (36.3%) approached the EU average. The new Member States regained independence 20 year ago, but they have yet to become

adequate stewards of their independence. What does cause pleasure is that exotic parties – for instance, Libertas – won no more than trace support.

The outcomes of the elections to the European Parliament are positive for the European Union itself. They augur well, for the newly elected Parliament will be more pro-Europe, pro-market, and decisive in negotiations with the Russian Federation. It will also better attend to the energy and ecological security of the entire Union. Euro-Atlantic relations will also be positive. This appraisal stems from the action programs and hitherto practice of the EPP-ED grouping.

2. The new challenges for the parliaments of EU Member States

The Lisbon Treaty is altogether necessary for the European Union. I support it not only because I was a member of the European Convent. Although the Treaty is not ideal (you can't please everyone, after all), it does enable many of the defects to be removed in the way the European Union functions. It also increases the chances for meeting the challenges of globalization. Moreover, it responds to all the expectations articulated in December 2001 in the Laeken Declaration.

Together with the entrance of the Lisbon Treaty into effect, national parliaments will gain powers and prerogatives in the following areas²¹:

- obtaining information appraising the policies being pursued by the AFSJ (Area of Freedom, Security and Justice), information on work of the Permanent Commission for Internal Security, on motions concerning treaty amendments, applications for EU membership, on simplified amendments to the Treaty (with a six-month advance notice), and on motions concerning supplements to the Treaty;
- increased participation in the proper functioning of the EU (the protection clause), in the supervision of Europol and Eurojust (together with the European Parliament), and in conventions concerning amendments to the Treaty;
- opposition regarding legal regulations that do not accord with the principle of subsidiarity (thanks to the “yellow card” and “orange card” procedures), regarding amendments to the Treaty in simplified procedure, means for judicial cooperation in civil matters (family law), violation of the principle of subsidiarity via submitting the given matter to the Court of Justice (if national law so allows).

Application of the provisions accepted in the Lisbon Treaty can and should contribute to a deepening of democratic control over the operations of other EU institutions.

In the 30-year history of the European Parliament certain symptomatic phenomena may be observed.

²¹ The resolution of the European Parliament of May 7, 2009 concerning the development of relations between the European Parliament and national parliaments in the context of the provisions of the Lisbon Treaty.

The first direct elections to the European Parliament in 1979 caused a weakening of the role of national parliaments. The entrance into effect of the Single Europe Act in 1987 carried with it the duty of implementing into national law some 300 Community legal acts in the aim of achieving the premises for the internal market. However, this did not involve the transfer of legislative powers and prerogatives from the national forum to the European Parliament. Nonetheless, it did spell a further weakening of the role of national parliaments.

These tendencies were changed by the ratification in 1992, together with the Maastricht Treaty, of the Declaration concerning the role of national parliaments in the European Union. That change was based on the summons to intensify contacts between national parliaments and the European Parliament, and on submitting the legislative proposals of the European Commission to national parliaments for their consultation.

The Amsterdam Treaty (which came into effect in 1999) had fundamental meaning considering change to the role of the national parliaments of the EU's Member States: it contained a special Protocol in which the European Commission was obligated to enable national parliaments to convey their opinions concerning the proposals of Community legal acts and their verification in line with honoring the principle of subsidiarity. That Treaty called into being COSAC, the Conference of Community and European Affairs Committees.

The Nice Treaty, in turn, which came into effect in 2003, contained the Declaration concerning the Future of the Europe, in which again the need was stressed to more precisely define the role of national parliaments in building the European Union. The Declaration of Laeken (December 2001) proposed three realms for the operation of national parliaments:

- the creation of a new institution representing national parliaments (this was rejected by a majority of Member States);
- conferring national parliaments with competencies in the areas of European undertakings remaining outside the competencies of the European Parliament;
- conferring national parliaments with the possibility to participate in the mechanism for monitoring the observance of the principles of participation.

3. The tasks of Europe's national parliaments in light of the Lisbon Treaty

The Lisbon Treaty contains a range of basic propositions to strengthen the role of national parliaments in the business of the European Union:

- it extends from 6 weeks to 8 weeks the period within which national parliaments may submit justified opinions concerning proposals for a legal act in the process of monitoring the observance of the principle of subsidiarity;

- it introduces changes to the procedures of the European Commission, which in the case of making a decision to maintain a legal act, despite the fact that it has been called into question by the requisite number of national parliaments, will have to present an opinion justifying the compliance of the act with the principle of subsidiarity. That opinion, together with the opinions of national parliaments, will be taken into consideration during the legislative process;
- it adopts a mechanism for monitoring the observance of the principle of subsidiarity, in accord with Protocol no. 2 concerning application of the principle of subsidiarity and proportionality;
- it confers to national parliaments the right to indirectly submit to the EU's Court of Justice complaints concerning the invalidity of a legal act with the treaties, in regard to violation of the principle of subsidiarity;
- it introduces to the new Title II (Decisions on democratic principles) the new article 12 TUE, devoted to the role of national parliaments, and in which it normalizes all treaty prerogatives of national parliaments.

The Lisbon Treaty confers significant competencies to national parliaments. But already now, on the basis of training exercises, are some of those provisions being applied in practice. Among the most important is that of monitoring the application of the principle of subsidiarity and proportionality. For it is the national parliaments that will examine whether or not the proposed legislative solutions leave too many competencies with EU institutions.

Justified questions herein arise, ones that need be addressed before the Lisbon Treaty comes into effect:

- Are we well prepared for the new opportunities the Lisbon Treaty offers us? Can we quickly and effectively formulate opinions concerning the most important proposals of the European Commission? After all, we have often noted great rush in formulating opinions – sometimes at the expense of evading the procedures whereby national parliaments are to do so;
- What is the effectiveness to date of the opinions we have sent to the European Commission? Are they at all taken into regard?
- Does Poland possess a sufficient expert cadre in both the Sejm and the Senate? Should we summon a grand joint committee (which requires amending the Constitution)?
- What should more effective cooperation look like between the government, parliament (commissions on EU affairs, etc.), MEPs (today some of them do participate in committee sessions, but only on a restricted basis), the European Commission, and the European Parliament?

Of all the competencies conferred to national parliaments the most important is that of monitoring the observance of the principle of subsidiarity and proportionality.

What is utterly clear from our 5-year experience of working inside the European Union is that our efforts and pursuits can meet with still greater success thanks to the opportunities provided by the Lisbon Treaty.

Robert Smoleń

A few remarks from a political scientist in regard to the outcomes of the elections to the European Parliament in 2009²²

1. On the turnout rate

Seriously thought should be given to the causes of the low turnout rate in elections to the European Parliament - not only in 2009, but also in 2004. The first elections to the European Parliament following Poland's EU membership were held on June 13, 2004 (that is, less than six weeks after Poland's much celebrated and publicized accession to the European Union). However, only 6,258,550 Polish citizens voted, which gave a turnout rate of 20.87%. Five years later there were 7,497,296 votes cast: hence, the turnout rate amounted to 24.53%.

Meanwhile, according to the Eurobarometer survey from the autumn of 2008, 52% of Poles were found to place trust in the European Parliament. Additionally, almost two-thirds of Poles (65%) think that Poland's membership in the EU is something good (7% of those asked hold the opposite view); 73% believe Poland reaps advantages from EU membership (15% of respondents express a different opinion); 55% trust the European Union (inversely - 28%); and 54% have positive associations with the EU (negative - 9%)²³.

Other CBOS surveys from 2008 found that only 39% declare trust in the Polish Sejm and the Senate (2% "strongly", 37% "somewhat"), whereas mistrust towards these institutions was expressed by 44% of respondents. Bogna Wciórka, the author of the communiqué on the surveys, noted that "a distrustful attitude prevails [only – RS] towards three kinds of institutions taken into account by the survey: the Sejm and the Senate; non-Catholic Churches (although many persons have no clear opinions about them); and political parties, which Poles are most mistrustful of"²⁴.

So we are faced with a pronounced dissonance between the high confidence in the European Union and her institutions, consistently shown in public opinion surveys, and the very low level of participation in the real choice concerning the most democratic organ of the EU. Moreover, the turnout rate in elections to the European Parliament is much lower than the turnout rate in the

²² The article contains the author's private views.

²³ "Eurobarometer 70. Public opinion in the European Union. Autumn 2008. Country report - Poland"

²⁴ "Zaufanie społeczne w latach 2002–2008" [Societal trust, 2002-2008], CBOS, Research "Aktualne problemy i wydarzenia" [Current problems and events] (212), 4–7 January 2008, a random, representative sampling of adult residents of Poland (N=890), ed. B. Wciórka

elections of national authorities, even though they are poorly judged (in surveys) by citizens. Theoretically one should expect the opposite tendency – that of higher participation in elections to the body that is more favourably perceived.

The correlation of trust in the European Parliament and voter turnout rates may be clearly observed in the societies of the western part of the Europe Union. This concerns both the countries where appraisals are highest, as well as those where they are lowest. Thus, the highest degree of participation in elections goes hand in hand with the positive attitude toward the European Parliament in Denmark (confidence rate of 63%, voter turnout rate of 59.5%) and Malta (appropriately: 64%, 78.8%). The same is true where trust is low, for instance, in Great Britain (27%, 34.3%), Austria (47%, 42.2%), and Germany (47%, 43.3%). The greatest trust in the European Parliament is shown by voters in Belgium (65%) and Luxembourg (64%)²⁵. However on account of the compulsory character of voting in those countries, it is not possible to compare the level of trust with participations in elections.

In the eastern part of the Europe Union the situation is different. The greatest trust in the European Parliament is expressed by the citizens of Slovakia (70%), where, however, the turnout rate was the lowest in all of Europe (19.6%). Things are similar in Romania (63% declare trust, but the turnout rate is 27.4%), Slovenia (62%, 28.2%), and Estonia (61%, 43.2%)²⁶.

It seems that explanation of this inconsistency lies in the lack of a feeling in Central Europe of pan-European civic identity, or differently - of membership in the community of citizens of the Union. Despite what is often repeated, this is not a purely technical issue of, for example, the insufficient circulation of information about the competencies of the European Parliament. Solving any such “technical problem” would be relatively straightforward. Producing a feeling of civic belonging is definitely more complex. That requires a broad and intense dialogue of the public authorities with citizens, in the course of which citizens will be able to formulate their expectations towards the democratic procedures in the EU and the institutions created in their result. Nota bene, the need of such a dialogue is not only Polish, or even Central-European. Debate about the current “mission” of the EU should take place in all Member States, as well as at the EU level.²⁷

On the margin let us notice that trust in the European Parliament was the highest in Poland out of all the institutions of the EU (European Commission 47%, EU Council 43%, the European

²⁵ “Eurobarometer 70”, op.cit.

²⁶ Ibidem

²⁷ For more information on the topic of the needs and premises of this debate see: R. Smoleń, J. Leinen: “L'avenir de l'Union Européenne”, *Dernières Nouvelles d'Alsace*, 9.12.2005

Central Bank 40%)²⁸. If not for the above remarks, one might think that Poles accurately identify the European Parliament as the most democratic institution of the Union.

2. Elections to the European Parliament and Polish domestic politics

Poland's elections to the European Parliament in June 2009 were treated by their participants as an extension of domestic policy. This remark applies both to voters and political parties. The latter concentrated in the campaign on dilemmas of internal policy and rather avoided addressing the substantial matters the European Parliament will deal with during its 2009-2014 term. Among those issues are: what long-term budgetary decisions for 2014-2020 will the new Parliament draw up as concerns the size and the breakdown of goals, undertakings, priorities and national targets? What politics will the Parliament promote for curbing the effects of the global crisis? What type of European social model will emerge following the crisis, owing to the decisions of the Parliament? How will the EP cooperate with the Polish Presidency of the EU in 2011? Voters were not able to refer to these dilemmas, because they were not presented in the debates leading up to the elections.

What's more, it seems that voters themselves were not interested in making their decisions based on proposals, experience, and competence associated with European issues. For instance, a debate between the five most important electoral committees (PO, PiS, SLD, PSL and CentroLewica) was symptomatic. It was held June 2, 2009 by the North Economic Chamber in Szczecin. During that debate candidates indeed focused their words on EU matters. But when the floor was opened up to the audience for questions they were forced to take positions on purely local issues (on the regional loan fund, diversified requirements of district employment offices in employing unemployed persons, on the company administering the infrastructure of the Szczecin Port, and the like).²⁹

In consequence of treating elections to the European Parliament as an extension of national affairs, the real choice before voters was limited to the four political parties well-known for their participation in domestic policy (having their own parliamentary groupings). The two cases analyzed below are evidence of this.

The first case is the result of the Libertas party. As we see from the above-cited Eurobarometer survey, about 7% of Polish voters think that Poland's membership in the EU is something bad, have negative associations with the EU, and do not trust it. In the elections of 2004 this group voted for the League of Polish Families (which received 15.92%), and perhaps in part also for the Law and Justice party (12.67%, but we need clarify that in 2004 PiS's Euroscepticism was less

²⁸ "Eurobarometr 70", op.cit.

²⁹ The course of the debate can be found at: wSzczecinie.pl (under "Biznes Szczecin: fakty, opinie, wywiady")

distinct than after the period this party governed, since which time it has shifted significantly to the right). Libertas was explicitly identified with the demand of rejecting the Lisbon Treaty. On the pan-European stage the party was formed thanks to the effectiveness of Declan Ganley in rejecting the Treaty in the referendum in Ireland. During the election campaign Libertas's demand of rejecting the Treaty, also of course in Poland, was forcefully presented. As Libertas's electoral program forewarned, "the Lisbon Treaty is a bad solution for the citizens of the European Union"; "it would make those who at present run the European Union even less responsible before EU citizens than they are now"; "both on account of the Treaty's content, as well as the plan of forcing it upon Europe created by its authors, in its current form the Treaty will not bring about a European Union more in touch with her citizens"³⁰. In order to meet the requirement of reliability, let us add that Libertas's real program – which called for a strengthening of the Union (albeit on principles differing from those arising from the Lisbon Treaty), for greater democratization, and an increased role for both the European Parliament and national parliaments, along with legislative transparency – significantly diverged from the party's perception in Poland, something that was also created through the media addresses of Libertas's politicians and candidates. In popular opinion in Poland, it was a party thoroughly hostile toward European integration.

The Law and Justice party, in turn, occupied an equivocal position with reference to the Lisbon Treaty. Directly after the President of Poland, Lech Kaczyński, co-devised the Treaty (with the indirect participation of the Prime Minister at the time, Jarosław Kaczyński – who was also the chairman of PiS), it was judged positively – indeed, it was regarded as the best possible compromise. During the ratification procedure at the Sejm the PiS parliamentary club leaned toward refusal to support it. As a result of the efforts of President Kaczyński and Prime Minister Donald Tusk to persuade as many MPs as possible to support the Treaty, the PiS club split: 89 MPs voted in favour of ratification, 56 - against, and 12 abstained from voting³¹. There was a similar outcome at the Senate: 15 PiS senators voted in favour, 17 – against, and 5 refrained from voting³². In the PiS program entitled "A modern, staunch, and secure Poland" accepted on February 1, 2009 in Kraków it was announced that "the President's ratification of the Lisbon Treaty should be accompanied by the entry into force of an act of competence, in line with the compromise from Jurata"³³. "Law and Justice calls for maintaining the present state of affairs, wherein the functioning of the EU rests on the voluntary handing over by Member States of portions of their sovereign competencies to the Union as an

³⁰ Quotation taken from the official site of Libertas's Election Committee in Poland (<http://kwlibertas.pl>, under "Dokumenty") and from the Libertas site <http://www.libertas.eu>.

³¹ Voting no. 4 at the 12. Sitting, April 1, 2008

³² "Sprawozdanie stenograficzne z 8. posiedzenia Senatu Rzeczypospolitej Polskiej, April 2, 2008", p. 26, results of voting.

³³ "Nowoczesna, solidarna, bezpieczna Polska. Program Prawa i Sprawiedliwości", Kraków 2009, p. 214

international organization, also called – although imprecisely and in discord with its essence – ‘supranational’. Handing competencies over to the Union is justified only insofar as the joint carrying out of certain tasks gives greater benefits to everyone”³⁴. These opinions are not contrary to the letter and spirit of the Lisbon Treaty. PiS’s program also stated that among the most important objectives of Poland’s foreign policy belonged: “[...] a proper standing and good political position [of Poland] in the European Union and vis-a-vis other states”; “the accomplishment of national interest requires rejection of clientelism”; but “the membership of Poland in the European Union cannot mean resignation from the sovereignty of our state or violation of the supremacy of the Constitution of Poland regarding the law in effect in the Republic”. PiS also called for “opposition against federalist tendencies and the excesses of bureaucratic regulations in the Union”. Moreover, PiS stressed that “the institutions [of the EU] cannot be used for ideological campaigns, or to interfere in matters of morals and customs, or limit the freedom of propagating views in accordance with a Christian value-system”³⁵. In these statements desire to satisfy Eurosceptical voters is distinct, but neither is the legitimacy of the Lisbon Treaty rejected – one, after all, that reproduced institutional solutions found in the Constitutional Treaty, recognized by Eurosceptics as inadmissible.

Thus it seemed likely that a larger group of voters than the 83,754 persons (who constituted 1.14% of the validly cast votes) having Eurosceptical and pro-national views would decide to vote for the grouping openly and unambiguously articulating opposition to the Lisbon Treaty and closer European integration – and not for the Law and Justice party, whose campaign materials gave these issues comparatively little expression. But that’s not how things happened.

The second case is that of the result of the coalitional electoral committee CentroLewica – ‘CenterLeft’. It may be assumed that a certain portion of voters with centre-left and social-liberal views has supported Civic Platform (PO) since 2007 as a party which admittedly does not fully suit their beliefs, but which gives the greatest guarantee that there will be no return to power in Poland of groupings supporting the centralization of the state, the strengthening of its monitoring functions and activity in such areas of social life that – in PO’s opinion – can be well enough organized by citizens themselves. The voters we here have in mind have pro-European attitudes.

CentroLewica went into the elections with “a modern program of harnessing European integration for the development of Poland and Europe”, to face “the challenges of the 21st century”³⁶. In the electoral program of this coalition pro-integration elements were very distinct: “Building the strength and prosperity of Poland depends to a large extent on what direction the

³⁴ Ibidem, p. 176

³⁵ Ibid., p. 214

³⁶ “Europa to ludzie. Tezy Europejskie CentroLewicy” [Europe means people. CentroLewica’s European positions], s. 1.

further development of European integration takes”; “we seek a Europe that is not only a structure for the shared market and common currency, but one that constitutes a realm of shared standards and values, a realm of security and of balanced, sustainable development”; “we are in favour of deepening European integration [i.e. expanding it into new areas]”; “the national interest and aspirations [of Poland...] require efficient and democratic supranational structures”; “in the interest of Poland is participation in a European Union that is cohesive, staunch and integrated. Understanding this relation is the proper measure of Polish patriotism today”.³⁷

Generally speaking, Civic Platform did not present a “power point” electoral program for elections to the European Parliament. We cannot help but notice, however, that the slogan “Postaw na Polskę” (Place your bets on Poland) emphasized not elements of the party’s European vision, but rather the benefit to be attained by Poland through participation in the European Union. This approach was even more evident still in the addresses of PO politicians. For example, during the formal inauguration of the campaign on May 6, 2009 Member of the European Parliament Jacek Saryusz-Wolski said: “we want Poland to be in the first league of the European Union [...] [increasing the participation of PO in the EPP political grouping in the European Parliament] will allow [...] for even more effective presentation of Polish interests. The largest faction enjoys considerable influence as regards personnel, foreign policy, energy matters, and the budget”³⁸. Voters with pro-integration beliefs certainly did not forget the slogan “Nice or death!”, formulated by PO politicians, nor the retreat from the Polish-British protocol no. 7 to the Lisbon Treaty declared in the 2007 election campaign on applying the Charter of Basic Rights in Poland.

So it could be assumed that voters of the type above, including those of pro-European views, would search for a program more precisely matching their expectations in the elections to the European Parliament. In those elections there was no risk of a return to power of PiS, and the wish to never let that happen is important motivation for the described group. CentroLewica certainly had a more pro-integration program than PO did. For centre-left and left-wing voters (however, those who for various reasons are not prone to support SLD) the offer proposed by CentroLewica could seem like the optimal combination of social conscience, modernity and “understanding the European idea” (i.e., being in favour of developing the Union and deepening EU integration). However in the majority they voted for PO – a large party, and one that is well-known concerning Polish politics thanks to the media. Merely 179,602 voters – that is, 2.44% - supported CentroLewica.

³⁷ Ibidem.

³⁸ Quotation from PO’s internet service, <http://www.platforma.org/pl/aktualnosci/newsy/art1187,ruszyla-kampania-wyborcza-platformy-obywatelskiej.html>

3. The new role for cooperation between the European Parliament and the parliaments of EU Member States

Worth considering is the issue of the influence of the result of June's elections on the future relations between Poland's Sejm and the Senate on the one hand, and the European Parliament on the other. Owing to the Lisbon Treaty, both the European Parliament and national parliaments will have strengthened positions in the system of EU institutions and in the procedures for constituting EU law.

The European Parliament will acquire new prerogatives and powers after the Treaty enters into force in the field of legislation, budget procedures and international agreements. The scope of applying the procedures for co-determination will be widened to new areas: migration, judicial cooperation in penal cases (Eurojust, crime prevention, moving the provisions of criminal law closer, police cooperation - Europol), and as concerns some provisions from the scope of the Common Commercial Policy and the Common Agricultural Policy. The number of fields in which the European Parliament will share in shaping legislative acts will increase from about 2/3 to embrace almost all. With reference to the budget procedure, the Lisbon Treaty implements legal grounds for long-term financial frameworks, the passing of which requires the agreement of the Parliament. The Parliament and the EU Council together will establish all expenses, eliminating the current distinguishing terms "compulsory" and "optional". Finally, the Lisbon Treaty stipulates that the European Parliament must give its consent for international agreements to be concluded³⁹.

The national parliaments in turn were recognized as an integral part of the democratic structure of the Union and obtained significant practical influence on the process of constituting EU law. According to the Protocol on applying the principle of subsidiarity and proportionality, every draft legal document will be handed over from either the Commission, the European Parliament or the EU Council directly to the national parliaments – and what is more, along with a detailed analysis enabling evaluation of the compliance of the act with the principle of subsidiarity and proportionality. Such analysis will have to contain data on qualitative and quantitative indicators enabling evaluation of the financial effects of the project and – for directives – of effects for the regulation implemented by Member States (Art. 5 of Protocol). Within eight weeks of the date of submitting a project each chamber of the national parliaments will be able to send to the chair of the

³⁹ For further discussion see: J. Barcz: "Przewodnik po Traktacie z Lizbony. Traktaty stanowiące Unię Europejską. Stan obecny oraz teksty skonsolidowane w brzemieniu Traktatu z Lizbony" [A guide to the Lisbon Treaty. The treaties making the European Union. The present state, and texts collated in the reading of the Lisbon Treaty], Warszawa 2008; J. Barcz: and commentary of the website of the EC. http://ec.europa.eu/polska/news/opinie/090318_parlament_w_traktacie_lizbonskim_pl.htm; P. Świeboda: "System instytucjonalny Unii Europejskiej w Traktacie z Lizbony – konsekwencje i wyzwania" [The institutional system of the European Union in the Lisbon Treaty – consequences and challenges], pp. 8-10; commentary at the EU website - http://europa.eu/lisbon_treaty/glance/democracy/index_pl.htm

European Parliament, the Council and the Commission a reasoned opinion on the variance of the project with the principle of subsidiarity (Art. 6), whereas in the event that at least 1/3 of the chambers (single-chamber parliaments will have two votes) presents such an opinion, or 1/4 with reference to the area of the freedom, security and the justice, or if in the framework of the usual legislative procedure justified opinions on the variance of the project with the principle of subsidiarity will constitute at least an ordinary majority of the votes granted to parliaments - the project will have to be subjected to another analysis (Art. 7). It is highly probable that in such a situation the Commission (or other subject having a legislative initiative) will either correct or withdraw the project. Even if that were not to happen in the framework of the usual legislative procedure, the Commission would be obliged to make a restatement of its opinion, justifying the compliance of the project with the principle of subsidiarity. All these opinions next will be analyzed in the course of the procedure by the European Parliament and the Council, and if the Council with a majority of 55% of votes, or the European Parliament with a majority of cast votes, will state the nonconformity of the project with the principle of subsidiarity, it will not be pushed further.

Both of the above-described roles in the legislative process - that of the European Parliament and the national parliaments - can be perceived as antagonistic, as acting as brakes. The European Parliament should be guided at the final passing of acts by the legal interest of the Union as such and by the interests of EU citizens. Thus, the competence of national parliaments to monitor the compliance with the principle of subsidiarity of every legislative initiative could be used to block projects disadvantageous from the point of view of the national interests of groups of states. However, this is only a hypothetical possibility.

Indeed, it is possible to predict that relations between the European Parliament and national parliaments will develop not in the direction of rivalry, but of cooperation. Members of national parliaments, having steady and direct contact with voters and sensing the expectations of their societies, usually find it more easy than do governments and administration to demonstrate approval for the European idea. Additionally, in the case of MEPs chosen in Poland in 2009, it is worth noting that in the majority this group is comprised – in equal proportion – of MEPs from the previous term of office and experienced Members of the Sejm. This composition should guarantee the solid cooperation of both institutions. Testifying to the greater probability for a cooperative, rather than competitive nature of relations between the European Parliament and national parliaments is also the practice to date of COSAC – the Conference of Community and European Affairs Committees.

Part Two

The Legal and Political Strengthening of the Status of the European Parliament in light of Lisbon Treaty provisions

National Parliaments in the Lisbon Treaty

I. The duty to inform national parliaments

1. Article 12 of the Treaty on the European Union includes the primary law norm concerning the position of national parliaments in their relations with the EU. The national parliaments are rightly referred to as "actors" which "contribute [...] to the good functioning of the Union". The "good functioning", in this case, refers to the legitimate/correct and effective functioning of institutions which serve the execution of tasks conferred thereupon.

2. The active role of parliaments in the EU is conditioned upon their receipt of information which must be (1) comprehensive, (2) immediate and (3) direct. The right to information is focused on draft legislative acts, as they constitute the most important political instruments.

- a) According to Protocol No 1 on the Role of National Parliaments in the European Union⁴⁰ (hereafter referred to as "the Protocol"), the information must be *comprehensive*.

This means that national parliaments are forwarded all significant documents of the Commission, which is primarily vested with the initiative with regard to legislative acts.

These are, firstly, *strategic* documents which formulate political ideas as to shaping reality (green and white papers, 'political strategies', communications); in addition to that, specific legislative plans, the annual legislative program and – as a general rule – all remaining documents aiming at creating programs of legislative work (Article 1 of the Protocol).

Secondly, parliaments are also to be forwarded *specific acts* - draft legislative acts: the most important category is comprised of draft legislative acts of the Commission (Article 289(1) in conjunction with Article 294(2) of the Treaty on the Functioning of the European Union – TFEU), initiatives of a group of the Member States are also taken into account (Article 289(4) TFEU in conjunction with Article 294(15) TFEU), as well as the European Parliament initiatives (Article 289(4) TFEU), requests of the Court of Justice (Article 289(4) together with Article 294(15) TFEU), recommendations of the European Central Bank and requests of the European Investment Bank (in both cases Article 289 together with Article 294(15) TFEU).

⁴⁰ Translator KP's footnote: Protocol No 1 on the role of national parliaments in the European Union annexed to the Treaty on European Union, to the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community.

The third category of information forwarded to national parliaments encompasses agendas for the meetings of the Council, as well as minutes of meetings together with their results.

A particular case is constituted by the duty to inform in accordance with Article 6 of the Protocol: if the European Council initiates the procedure of granting consent to the Council for abandoning the principle of unanimity in favour of a qualified majority in the framework of a simplified procedure of treaty revision (as specified in the TFEU and/or in the Title V of the TEU), this initiative needs to be notified to national parliaments at least 6 months before such decision is taken.

The annual report of the Court of Auditors is to be, in accordance with Article 7 of the Protocol, forwarded to the EP, the Council and national parliaments.

b) Informing of national parliaments should take place *promptly (immediately)*. The Protocol determines the timelines in detail. The green and white books are forwarded to national parliaments directly upon publication. The Commission forwards to national parliaments legislative programs and other instruments of legislative planning at the same time as to the Council and the EP (Article 1 of the Protocol). The same applies to forwarding of legislative acts of the Commission (Article 2 of the Protocol). The EP forwards its drafts directly to national parliaments, and thus immediately after they have been compiled and officially delivered. The remaining drafts (of groups of the Member States, the Court of Justice, the European Central Bank and the European Investment Bank) are forwarded by the Council to national parliaments. This must be done immediately after the official publication and forwarding of the documents to the Council, even though the Protocol itself does not specify it. This is to be inferred from the general context of the Protocol's provisions, which is to take place in the shortest possible time-span.

We can see thus the following: the Union should inform national parliaments as soon as possible in order to guarantee their effective participation as 'actors' in the Community's lawmaking procedure.

c) As can also be inferred from the above analysis, national parliaments are informed by the Union in a *direct* manner, usually by those Union institutions which are at the same time authors of respective documents. In some cases (see: Article 2(5) of the Protocol) the "intermediary bodies" (Council) are responsible for fulfilling the duty of information, in order to coordinate procedures of information and to place responsibility on one of the Union institutions.

We may, therefore, state that national parliaments, as "addressees of the communication", have the same rights as the Union's institutions and Member States which are involved in the lawmaking procedure.

3. The effectiveness of the information procedure is ensured in such a manner that between forwarding the information and making the final decision by respective Union institutions there is sufficient time which allows for indispensable reaction of national parliaments. Thus, in line with Article 4 of the Protocol, at least eight weeks must elapse from the receipt of information by national parliaments before adoption of a given act or issuing a position on a matter is included in the (provisional) agenda of the Council. In the course of those eight weeks no agreement can be reached on the draft legislative act. Adoption of the position on a draft legislative act may take place only ten days after placing the act on the (provisional) agenda. The Protocol allows exceptions in urgent cases which need to be justified in a Council position or in a given legislative act.

4. The Protocol adopts a wide understanding of the notion "parliament": if, as is the case in the majority of countries, there exist two chambers of parliament, the duty of information encompasses the two chambers independently. Such an approach accommodates the different functions and structures of the two chambers and therefore their different institutional life (this applies also to two institutions cooperating in a national legislative procedure, even if one of them – as in the case of the German Bundesrat – does not share the characteristics of a chamber). The two chambers may have divergent reactions to a Union act depending on the tasks and political perspective of those chambers or institutions. This demands two separate acts of providing information to each of the two institutions participating in a national legislative procedure, as long as they constitute "parliament". The notion of a "parliament" is therefore to be understood in functional terms, as an institution (which from the point of view of its organization constitutes a unity and may be perceived as a "chamber" in the broad understanding of the term) which performs a significant function in the legislative process.

5. The parliaments of the Member States are considered, as may be inferred from the hitherto drawn conclusions, as "actors" in the legislative procedure of the Union; actors which though not directly contributing, in line with the procedure, to decision making, fulfill the control and respect for

law function which is significant from the point of view of "the good functioning of the Union" (see: Article 12 TEU).

II. Inter-parliamentary Cooperation

In this area, Title II of the Protocol performs the sole function of an impulse. Article 9 allows the EP and national parliaments to determine the details of their cooperation. The Protocol states that such cooperation is necessary – the consequent task of an "effective" and "regular" cooperation follows. This task encompasses vertical cooperation between national parliaments and the EP and horizontal cooperation between national parliaments. Both forms of cooperation should be integrated and not separated from one another. Details of such cooperation should be determined by the involved institutions.

The Protocol refers separately to national parliamentary committees for Union affairs. If they convene a conference (which, given provisions of the Protocol, seems to be desirable, seemingly in a institutionalized manner), the conference may submit for the attention to the Union institutions – the EP, the Council and the Commission – "any contributions it deems appropriate". This implies that, in accordance with the principle of "the good functioning" of the Union, those contributions need to be taken into account and discussed.

It seems to be the aim of the Protocol to institutionalize this Conference which would perform advisory and supportive functions (with reference to all areas, including external policy and security and defence policy). The Protocol unambiguously states that possible contributions of the Conference do not bind national parliaments. As a result, an additional institution, intermediary between the Union and the Member States, is created which is equivalent to widening the existing cooperation in the framework of the Conference of Community and European Affairs Committees of Parliaments of the European Union (COSAC).

III. National Parliaments as Guardians of the Principle of Subsidiarity

1. The principle of subsidiarity has been unambiguously guaranteed in the Community law for more than 15 years. This principle, in both its political and legal dimension, refers to the rule of execution of non-exclusive competences of the Union (and, therefore, mainly of the common,

“shared“ competences). According to this principle, in the field of shared competences, the Member States are the primary actors, provided that they have sufficient possibilities to act.

This principle is complemented by the principle of proportionality, which can be also found in Polish and German law. It allows for actions of an obligatory character (legal norms of obligatory character included) only if they are taken in order to achieve a justified goal, if the goal cannot be achieved by means less invasive and the relation between the means and the end is appropriate (thus for achievement of a goal which is lower in the hierarchy a less burdensome means can be applied, whilst for achievement of a more important goal, more radical means can be employed).

The Protocol (No 2) on the application of the principles of subsidiarity and proportionality⁴¹, (below referred to as "the Protocol on the Principles of Subsidiarity and Proportionality") aims, above all, to improve the existing instrumentarium and – with the participation of national parliaments whose legislative competences may be protected by means of the two principles – to implement an "early warning" system which would prevent beforehand the infringement of those principles.

In order to put it into practice, the early and comprehensive information to national parliaments is essential, which is to a large extent envisaged by the Protocol analyzed above, with reference to which particular rules are determined by the Protocol on subsidiarity (in its Article 4). Already in the course of preparation of a legislative act, the Commission is to "consult widely"; already at this stage regional and local dimension of a proposed act need to be considered. The way the proposed legislative act influences them is supposed to be also included in the analysis. This envisages a certain form of an "early subsidiarity" as thus particular interests of Member States are emphasized even in their internal, decentralized sphere.

2. The Protocol on the Principles of Subsidiarity and Proportionality adopts and perfects traditional measures of the formal guarantee of the execution of the principles of subsidiarity: the duty of providing reasons for draft legislative acts of the Union, the statement why the principle of subsidiarity has not been observed, detailed annotations which will allow for discussion and subsequent judicial control. The financial consequences of a legislative act must also be included, as well as qualitative and quantitative criteria which support the claim for adopting the act on the Union level. The superior principle provides for diminishing the financial and administrative burden both for the Union and the Member States.

⁴¹ Translator KP's footnote: Protocol No 1 on the application of the principles of subsidiarity and proportionality annexed to the Treaty on European Union, to the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community.

3. Of key importance is the "early warning system"⁴²: "opinion on the noncompliance with the principle of subsidiarity" – the opinion that the draft legislative act does not comply with the principle of subsidiarity. It can be sent by one or more national parliaments (or by any chamber of in the course of eight weeks from the transmission of the draft. It is to be directed to the Presidents of the EP, the Council and the Commission (for other details of the procedure see: Article 6(2) and Article 6(3) of the Protocol on the Principles of Subsidiarity and Proportionality).

What follows is the obligation on the part of all the bodies to take the "early warning system" into account – this means that they need to consider those opinions, though in the end they are not bound by them. If the opinion is convincing for them, they have to refuse to participate in adoption of the legislative act. If not, they may still support the draft.

Regardless of the above, the independent official procedure is initiated, if opinions on infringement of the principle of subsidiarity is presented by a specified number of national parliaments. Each of the parliaments has two votes at its disposal (in the two-chamber system – each of the chambers has one vote). If the number of opinions reaches the level of one-third of the total of votes attributed to parliaments, the procedure is initiated (the threshold amounts to a quarter of the total of votes if a draft legislative act concerns the Area of Freedom, Security and Justice – see: Article 76 TFEU).

The procedure is terminated by the decision of respective bodies and/or institutions as to upholding, withdrawing or altering the draft.

In the ordinary lawmaking procedure, that is, one which is based on co-decision, an additional principle takes effect: if the usual majority of votes of national parliaments submits an opinion that the proposal from the Commission is incompliant with the principle of subsidiarity, the duty exists of conducting a second analysis. If the Commission upholds its proposal, its opinion will be forwarded to the lawmaker of the Union. Before the end of the first reading the EP and the Council analyze the received opinions on the infringement of the principle of subsidiarity. Subsequently, the EP and the Council hold voting: if a majority of votes of the European Parliamentarians and a 55% majority of the Council deems opinions on the infringement of the principle of subsidiarity to be justified, the legislative proposal is no longer analyzed.

In this respect there exists a more strongly formalized procedure, as the most important type of the decision-making procedure is at stake – the ordinary lawmaking procedure.

42 See also: Annette Elisabeth Töller, *Die Rolle der nationalen Parlamente im europäischen Rechtsetzungsprozess. Probleme und Potentiale des Ländervergleichs*, in: Stefan Kadelbach (ed.), "Europäische Integration und parlamentarische Demokratie", 2009, pp. 75 and following, pp. 106 and following.

4. If the preventive procedure of submitting an opinion on the incompatibility with the subsidiarity principle is not effective, action for annulment of an adopted act can be filed before the ECJ in line with Article 263 TFEU. The active legitimation is vested in the Member States, which, depending on internal regulation, may act on behalf of their parliaments or one of the chambers of those parliaments.

The Committee of Regions, whenever it needs to be consulted according to provisions of the TFEU, is also vested with such power to file actions for annulling legislative acts because of the infringement of the principle of subsidiarity.

Provisions included in Article 8 of the Protocol are novel only in relation to the Committee of Regions. This has, however, given incentive for the creation in some countries, such as Germany, of a kind of automatic filing of claims. Thus, in Germany, the *Grundgesetz* is supposed to be revised in the following manner: Article 23(1) of the *Grundgesetz* which allows for transmission of sovereign rights is to be complemented by section 1a, which allows for filing a claim before the ECJ on grounds of infringement of the principle of subsidiarity. The Bundestag will be forced to file such claim, if a quarter of its members so demands. The Bundestag may also entitle the Committee on European Affairs to execute those rights on behalf of the plenum⁴³.

An accompanying act which revises the *Grundgesetz* is to come into force alongside the Lisbon Treaty. It provides that⁴⁴ the Federal government immediately forward to the ECJ any claim made on the behalf of an organ (Bundestag or Bundesrat) which made the decision concerning its filing (this is provided for by §3(4) of the planned accompanying act). A competent organ takes over the participation and coordination of the proceedings in front of the ECJ (§ 4(5)).

It needs to be emphasized that in line with the TFEU the action for annulment is filed by Member States (*inter alia* those which are actively legitimized to do so) (Article 263(2) TFEU). National constitutions and their concretization in the form of accompanying acts determine who is internally responsible for the decision-making process and whether the claim is to be filed or not. Formally, however, the claim must be filed by a Member State.

In sensitive areas, apart from the cases mentioned above, the Union law provides for participation of national parliaments in the ordinary procedure of the Treaty amendment (Article 48(7), third paragraph TEU) in which the veto of a national parliament prevents the European Council from taking the decision over the period of six months as of the moment in which such opposition of a

43 See: German Bundestag, 16th term, paper 16/8488.

44 German Bundestag, Paper 16/9489.

national parliament was made known (in accordance with paragraphs one and/or two of Article 48(7) TEU).

The bridging clause was treated in a particularly detailed way in the German bridging act (See: § 4 of the act). The decision of the Federal Constitutional Tribunal of June 30, 2009⁴⁵ recommended the amendment of the accompanying act in this area before the ratification of the Lisbon Treaty.⁴⁶

The participation of national parliaments is also provided for in the Area of Freedom, Security and Justice: under Article 69 TFEU they are regarded as guardians of the principle of subsidiarity; they are also included to the evaluation mechanism in accordance with Article 70 TFEU. In addition, they are attributed with controlling tasks with reference to Europol and Eurojust (Articles 88 and 85 TFEU).

Apart from that national parliaments are informed about all applications to become the member of the Union which have been filed (Article 49 TEU).

IV. Evaluation

National parliaments are perceived in multiple ways as the Union's 'actors'. The Reform Lisbon Treaty provides for their more extensive participation⁴⁷. Of particular importance is their controlling function, which refers to the principle of subsidiarity. They thus become guardians of their own function. Because of this, they play a key role in the framework of integration: they contribute to sustaining and enforcing the democratic legitimacy (the source of which can be found in the EP and national parliaments) of the Union's power. On the other hand, their position serves to sustain the statehood of the Member States thanks to the appropriate application of the principle of subsidiarity. Both of these factors are of primary importance for stable integration based on balance between the central power and the power of the Member States.

45 Judgement of the Second Senate: 2BvE 2/08; 5/08; 2 BvR 1010/08; 1022/08; 1259/08; 182/09.

46 See: paras. 300 and following of the judgement.

47 See also: Philipp Kiiver, *Die einzelstaatlichen Parlamente in den europäischen Verträgen: Ein neuer Ansatz zur Würdigung parlamentsfreundlicher Vertragsklauseln*, in: "Kadlbach (FN.1)", pp. 115 and following.

The European Parliament in light of the provisions of the Lisbon Treaty

1. Preliminary Remarks

The position of the European Parliament has been significantly reinforced in the course of the constitutional reform of the Union, reform which was initiated by the Treaty of Nice. It is true that the Agenda of the 2000 Intergovernmental Conference was limited and in the framework of the 'Nice compromise' focus was placed on such an adjustment of the institutions that the 'big' enlargement of 2004/2007 (which encompassed 12 states) could take place. Nevertheless, the agreements reached in the Treaty of Nice influenced primarily the constitutional reform of the Union as well as the role of the European Parliament⁴⁸.

The scope of reforms conducted on the basis of the Treaty of Nice was not modest. Regardless of the main points of the basic agenda – i.e., the problem of the composition of the Commission, the formula of taking decision by qualified majority in the Council of the EU and increase in the number of areas in which this formula was to be applied and indispensable because of the Union's enlargement and institutional adjustments – a number of important reforms have been conducted (within the scope of "other issues"). The deep reform of the Community courts moved to the foreground (and subsequently was taken into consideration by the Constitutional Treaty and the Lisbon Treaty). A significant reform of the European Commission was conducted (in addition to the alteration of the composition of this institution). By virtue of the Treaty of Nice a number of detailed, yet significant institutional issues were regulated: *inter alia* new organs were created (in the II pillar – the Political and Security Committee, within the frameworks of the TEC – the Social Protection Committee) within the framework of the III pillar the status of the Eurojust and the European Judicial Network was reinforced, and a new, important Title has been introduced to the TEC – Title XXI "Economic, financial and technical cooperation with third countries".

Some of the reforms affecting the European Parliament – apart from that concerning allocation of seats (see below) – have been conducted by virtue of the Treaty of Nice: the status of political parties on the European level has been clarified, as well as some aspect of the status of the

⁴⁸ See: J. Barcz. "The Treaty of Nice. Zagadnienia prawne i instytucjonalne", Warszawa, 2005 (2nd edition).

deputies, competences of the European Parliament have been extended in respect to making by the Community of international agreements and filing the action for annulment of a Community act. Finally, the status of the European Parliament has been strengthened overall by extending the scope of the co-decision procedure (Article 251 TEC).

In addition to the above, the very compromise included in the Treaty of Nice allowed identification of the most pressing problems of institutional reform, and at the same time determined the way in which open issues were to be solved in the future. All of the more serious issues which subsequently arose in the course of negotiations of the Constitutional Treaty and the Lisbon Treaty are rooted in the Nice package. Thus, neglect of the intertwined dependencies which appeared and were identified at that time leads to a situation in which negotiators encounter barriers they cannot overcome.

The position of the European Parliament has been, somewhat automatically, gaining in significance via extension of the scope of areas in which the co-decision procedure was to be applied (Article 251 TEC). For under this procedure the Parliament becomes a co-legislator in real terms (alongside with the Council of the EU). From the point of view of institutional interactions, allocation of seats in the Parliament among the Member States has become a significant issue, the more contagious as affected by striving for prestige by some states. Yet one cannot ignore particular negotiating co-dependencies with other important areas of the Union's systemic reform. The 'big' Member States which have given up the second commissar wanted somehow to compensate their loss by means of allocation of seats in the European Parliament. The division of seats additionally gained in importance in connection with the increase of the role of the Parliament in the decision-making process: the amendment of the formulae for decision making by qualified majority and increase in the number of fields in which the co-decision procedure is applied has led to a situation in which the role of the Parliament has increased in parallel with that of the actual co-legislator.

2. Strengthening of the position of the European Parliament

The basic 'institutional' issue in the process of preparation of the European Parliament for the EU's enlargement rested in the new allocation of seats among the Member States. However, irrespective of the seat allocation issue, as has been mentioned, by virtue of the Treaty of Nice a number of other reforms have been conducted which strengthened the position of the Parliament

against other institutions and grounded the democratic legitimacy of the Union:⁴⁹ the status of 'political parties on the European level' was clarified and, in particular, the principles concerning their financing (Article 191(2) TEC and Declaration No 11 adopted by the 2000 Intergovernmental Conference), the status and general conditions of performing the function of Members of the Parliament (Article 190(5) TEC) were defined in detail, the competence of the Parliament in the procedure of the Community international treaty making (the competence of the Parliament has been widened in that it is supposed to receive information concerning significant stages in which the Community binds itself by international agreements – Article 300(2) subparagraphs 2 and 3 TEC and competences of the Parliament with reference to requesting from the Court of Justice of the EC of the, so-called, preventive control of the compatibility of an international agreement with Treaty provisions – Article 300(6) TEC), the Parliament was granted the right to file actions for annulment of a Community act (Article 230 sec. 2 TEC). Of the biggest importance is, however, the reinforcement of the role of the European Parliament as a consequence of the increased number of fields subject to the co-decision procedure (Article 251 TEC) in the framework of which the Council of the EU decides by the qualified majority; the Parliament, on the other hand, becomes the co-legislator in real terms.

The Lisbon Treaty strengthens the position of the European Parliament to a still higher degree. This is a consequence, above all, of extending the application of the ordinary legislative procedure (which corresponds to the hitherto existing co-decision procedure – Article 251 TEC) to a big number of new areas (Article 294 TFEU). Of significance is the transformation of the Union into a uniform international organization and introduction of the ordinary legislative procedure for the Area of Freedom, Security and Justice, including the area of the current III pillar. Widening of the scope of the ordinary legislative procedure affects also the position of the Parliament in the field of the Union's entering into international agreements. In the areas in which this procedure is applied, the Council may decide to enter into an international agreement with a third country only upon the consent of the Parliament (the same applies to the special legislative procedure, as long as in a given case it requires the Parliament's consent) – Article 188n (new Article 218(6)) TFEU. In addition to the foregoing – in parallel to the Lisbon Treaty – by virtue of the decision of the Council 2006/512/EC⁵⁰ a significant reinforcement of the position of the European Parliament in the framework of the Comitology procedure takes place and – on the basis of Articles 268 TEC (new Article 310 TFEU) and 179b TEC (new Article 324 TFEU) – because of the abolition of the difference amongst obligatory and other expenses and subsequent inclusion of all the budget by the co-decision procedure, the

⁴⁹ For more detail see: J. Barcz, "Treaty of Nice...", pp. 128 and following; K.H. Fischer, "Der Vertrag von Nizza. Text und Kommentar", Baden-Baden, 2001, pp. 129 and following.

⁵⁰ Council Decision of July 17, 2006 amending Decision 1999/468/EC laying down the procedures for the exercise of implementing powers conferred on the Commission (OJ 1999 L 184), OJ 2006 L 200, pp. 11–13..

Parliament gains a very serious status in this area.

Nevertheless, what is of highest importance in the field of inter-institutional relations in the Union is the strengthening of the European Parliament's role in the process of nomination of a new composition of the European Commission, and especially, making nomination of the President of the Commission dependant on the results of the elections to the Parliament and granting the final word to the Parliament with reference to the nomination of the President of the Commission.

The Treaty of Nice has initiated the process of strengthening the role of the European Parliament in the nomination of the President of the European Commission and the Commission's composition. Until the entry into force of the Treaty of Nice, the governments of the Member States first nominated 'by common accord' the person they intended to appoint as the President of the Commission (this person needed to be approved by the European Parliament) subsequently, by common accord with this nominee, they nominated other persons who were to become Members of the Commission. The Commission composed in such a manner — including the President — needed the approval of the Parliament. Only after completion of this procedure, the governments of the Member States 'by common accord' finally appointed the President and the Members of the Commission (then Article 214(2) TEC).

The Treaty of Nice retained the multi-layered procedure, but it altered its significant elements (Article 214(2) TEC):

- at the first stage, the candidate for the function of the President of the Commission is nominated; such nomination – by qualified majority – is conducted by "the Council, meeting in the composition of Heads of State or Government", the thus made decision needs to be approved by the European Parliament;
- at the second stage, the Council, acting by qualified majority, and by common accord with the nominated President adopts "the list of the other persons whom it intends to appoint as Members of the Commission", yet the list is "drawn up in accordance with the proposals made by each Member State";
- at the third stage, the thus composed college— the President and the Members of the Commission — is to be approved by the Parliament;

- the last stage involves nominating the President and the remaining Members of the Commission by the Council by qualified majority.

The above discussed provisions, introduced by virtue of the Treaty of Nice, have been evaluated from two contradicting points of view⁵¹. On one hand, some saw in them a strengthening of the role of the Commission: no doubt, the role of the President of the Commission was significantly strengthened (this is, after all, the person who determines the division of tasks amongst the Commissioners, capable of substituting them in the course of the term or making a Commissioner resign). In addition to the above, the nomination of the President and the remaining Members of the Commission by the Council, acting by qualified majority, limits to a big extent situations (as in the case of Jaques Santer) in which the nomination of the President is fully conducted despite his weak political position. On the other hand, however, voices were heard that the 'big' Member States consciously allowed for a situation in which the Members of the Commission are nominated by the Council acting by qualified majority, as their ultimate goal is to reinforce the position of the Council at the expense of the Commission⁵². It had to be taken into consideration that they will lose one Commissar each and that, given egalitarian rotation, they may not be represented in the Commission.

Therefore, the subsequent reforms introduced by the Lisbon Treaty (following proposals included in the Constitutional Treaty) need to be considered in the view of relations between the Union's institutions. From this point of view, as the most important modification in relation to the *status quo*, though grounded somehow in practice, one should view the connection made between nomination of the President of the European Commission with the results of elections to the European Parliament. The European Council acting by qualified majority introduces to the European Parliament a candidate for the position with regard given to the result of the elections to the Parliament – Article 9d(7) (new Article 17) TEU. Another important modification lies in entrusting the choice of the President of the Commission to the European Parliament (currently the Parliament approves nomination of the Council, meeting in the composition of heads of states or governments – Article 214(2) TEC), and therefore a significant strengthening of the position of the European Parliament in the institutional system of the Union.

3. Allocation of seats in the European Parliament

⁵¹ C. Giering, *Die institutionellen Reformen von Nizza – Anforderungen, Ergebnisse, Konsequenzen*, in: "Nizza in der Analyse...", p. 69.

⁵² W. Weidenfeld, *Zwischen Anspruch und Wirklichkeit – die europäische Integration nach Nizza*, in: "Nizza in der Analyse...", pp. 19 and following.

The new allocation of seats in the European Parliaments was one of the most important issues having to be solved before finalization of the enlargement 2004/2007. The principle of degressive proportionality applied in the course of allocation of seats in the European Parliament resulted in huge discrepancies between "big" and "small" Member States⁵³. For the sake of comparison – one deputy to the European Parliament from Germany was elected by means of votes cast by ca. 830 000 of citizens; a deputy from Luxembourg, on the other hand, by votes cast by ca. 71 500 citizens⁵⁴. As a result of the linear transfer of the then system (pre-Nice) to the allocation of seats in the European Parliament after the accession of "new" states (amongst which "small" and "medium-small" states dominated), those discrepancies would have deepened and the overall number of the Members of Parliament would have risen to 874 (with 27 Member States). In addition to the above, there were other factors, especially the need for political compensation of the "big" Member States which have given up their second commissars and a general tendency of "boosting the ego" of the status of "big" states.

The requirement of efficiency of the European Parliament needs to be taken into consideration as well: the Treaty of Amsterdam determined in its Article 189(2) TEC the maximum limit of deputies of the European Parliament of 700, and with fifteen Member States the number of the Members of Parliament amounted to 626. In the course of the first months of the 2000 Intergovernmental Conference the opinion of maintaining of the maximum number of the Members of Parliament on the level of 700 prevailed⁵⁵. Amongst the arguments put forward, many referred to the necessity of balancing and strengthening the democratic legitimacy of the EU, and the steady improvement of the efficiency of the work of the European Parliament and reinforcing its position in the framework of the Union. However, in the case of linear transfer of the allocation of seats in the Parliament from "before" the Treaty of Nice and, given the sustention of seats attributed to the "old" fifteen Member States, Poland in acceding to the Union (along with two other candidate states) at the time would have exhausted the difference between the limit of 700 and the then number of 626 Members of the European Parliament. In the view of the above, by virtue of the Treaty of Nice, on the one hand, the borderline determined in the Lisbon Treaty of 732 Members has been increased (Article 189 sec. two of the TEC), on the other hand, a new allocation has been conducted for the

⁵³ See: K. Michałowska-Gorywoda, "Podejmowanie decyzji w Unii Europejskiej" [Decision making in the EU], Warszawa, 2002, pp. 190 and following.

⁵⁴ J. Janning, C. Giering, *Strategien gegen die institutionelle Erosion*, in: "Demokratie und Interessenausgleich in der Europäischen Union", Gütersloh, 1999, pp. 59 and following.

⁵⁵ Presidency Report to the Feira European Council. Brussels, June 14, 2000, CONFER 4750/00, pp. 33 and following.

new Member States⁵⁶.

With reference to this other significant issue, the discussion in the course of the 2000 Intergovernmental Conference circulated around two primary options, though there existed a clear connection with other ways of resolving problems, in particular, with arrangements of voting in the Council⁵⁷. In the framework of the first option a simple extrapolation of the hitherto existing allocation of seats was indicated (based on the so-called principle of degressive proportionality and – as has already been indicated - favouring "small" Member States). In the frames of the second option what was analyzed was guaranteeing to all the Member States a determined number of minimum seats (in this areas different possibilities were taken into consideration – yet, at least six seats per state) and allocation of the remaining seats proportionally in relation to the number of inhabitants of Member States (this option reinforced the position of "big" Member States).

Determined on the basis of the Treaty of Nice, a new allocation of 732 seats amongst the Member States is of a particular nature. The allocation has been conducted *a priori* amongst 27 Member States (the 2004/2007 enlargements has been taken thus into consideration)⁵⁸. In the period of the 2004-2009 legislature, intermediary procedures were applied which led to trespassing the limit of 732 seats (for seats allocated to Bulgaria and Romania have initially been attributed to the Member States as they stood at the point of enlargement of the May 1, 2004 and after Bulgaria's and Romania's accession on January 1, 2007 they also received a specific number of seats)⁵⁹. The Nice package does not take into consideration a possible further enlargement of the Union (see below).

If we analyze the system of allocation determined on the basis of the Treaty of Nice by comparing it with the one in force beforehand,⁶⁰ we will notice that amongst the "old" Member States only the biggest in demographic terms countries (Germany) and the smallest one (Luxembourg) retained their state of possession. All of the remaining "old" Member States lost a number of deputies, yet the percentage distribution of the lost seats varied: Spain being the biggest loser (21.9%). The smallest losses were those of medium states - Belgium, Greece and Portugal.

⁵⁶ Article 1 sec. 1 of the Protocol on the enlargement of the European Union, annexed to the Treaty of Nice and point 1 of the Declaration No 20 on Enlargement of the European Union included in the Final Act of the 2000 Intergovernmental Conference.

⁵⁷ Presidency Report to the Feira European Council, Brussels, 14 June 2000, CONFER 4750/00, p. 34.

⁵⁸ See: Point 1 of the Declaration No 20 on Enlargement of the European Union (included in the Final Act of 2000 Intergovernmental Conference) and Article 190(2) TEC as formulated by the Accession Treaty with Bulgaria and Romania.

⁵⁹ See: Article 11 and Article 25 Act on the Conditions of Accession to the EU – The Accession Treaty of 2004.

⁶⁰ The relevant table – Eurostart 1999. See also: J. Barcz, "Treaty of Nice...", p. 84.

If one analyzes the situation of the "new" Member States, it will be obvious that they were treated in a less favourable manner than the "old" Member States. Poland lost therefore the biggest percentage of seats, in relation to other candidate states (21.9%), yet this was justified by the analogous treatment received by Spain. In this case (as opposed to the allocation of the weighted votes in the Council of the EU) the connection made with the status of Spain was not beneficial. Hungary and the Czech Republic received the most discriminatory treatment, which despite similarity to such states as Belgium, Greece and Portugal (22 seats each), were allocated 20 seats each. Estonia was granted the same number of seats as Luxembourg (6), despite its bigger demographic potential, whilst Malta – comparable in demographic terms with Luxembourg – received a smaller number of seats (5).

The solutions of the Nice package have been evaluated as potentially generating conflicts⁶¹. On the one hand, because the "new" Member States have been treated in a discriminatory manner. They will be looking for compensation as soon as the occasion appears – in the case of rejection of the Lisbon Treaty – another enlargement. On the other hand – the Treaty of Nice provided for a "closed" institutional package created for 27 Member States. It does not provide for any solutions in the case of accession of a 28th state and subsequent ones. The whole package has been clearly "sealed" and will need to be negotiated. In the long term, one needs to remember that in the view of relative calculation of the allocation on the basis of the Nice package Turkey alone would need to be given 99 seats in the European Parliament.

One needs to take the above mentioned conditions into consideration when evaluating the status of Poland in light of the provisions of the Nice Treaty. The attachment to the Treaty of Nice present in Poland in the course of negotiating of the Constitutional Treaty and the Lisbon Treaty shows that not all factors have been taken into consideration. One cannot resist the temptation that the number of 27 weighted votes granted to Poland by virtue of the Treaty of Nice has covered up significant dangers inherent in the package, in particular for the strategy of enlargement of the Union. Yet overlooking the connection between the formulae for making decisions in the Council of the EU by qualified majority and allocation of seats in the European Parliament (and relatively weak position of Poland with reference to allocation of seats in the Parliament on the basis of the Nice package), leads to a situation in which in the course of negotiations of the mandate of the 2007 Intergovernmental Conference and the very negotiations in the course of 2007 Intergovernmental

⁶¹ See: J.A. Emmanouilidis, *Nizza aus der Beitrittsperspektive*, in: "Nizza in der Analyse...", pp. 289 and following.

Conference the chance for Poland to strengthen its status in this area has not been noticed.

In the case of allocation of seats in the European Parliament, on the basis of the Lisbon Treaty, solutions proposed in the Constitutional Treaty have been adopted (Article I-20), which can be summarized as (Article 9a /new Article 14/(2) TEU)⁶² determining the maximum limit of deputies (not more than 750), minimal (6) and maximal (96) number of deputies which could be attributed to, respectively, the smallest and the biggest in demographical terms state and to the statement that allocation of seats is to be “degressively proportional”. One should consider that it was the first time when this principle was invoked in the Treaty provisions – that of the TEU⁶³ without, however, making the definition more precise. The allocation of seats amongst the Member States – as determined by the TEU frames – is conducted by the European Council in a decision adopted unanimously, “following the initiative of the European Parliament”. The Parliament while making such initiative on October 3, 2007⁶⁴ has at least made the notion of the "degressive proportionality" more clear by emphasizing that this principle includes the notion of the "European solidarity", "justified flexibility" and "national representation".

The final allocation of seats in the European Parliament has been conducted within the above described borders by virtue of the Lisbon Treaty in the course of the meeting of the European Council of October 18-19, 2007⁶⁵ – according to the procedure based on the proposal of the European Parliament⁶⁶. Some modifications followed from the fact that under the pressure of Italy, a seat has been added without the change made to the suggested allocation and determined thresholds. In this manner, such result has been achieved that in the maximum number of 750, the President of the European Parliament is not going to be taken into consideration (thus the *de facto* number of the Members of Parliament will amount to 751). The Article 9a(2) (new Article 14), first sentence TEU states: "The European Parliament shall be composed of representatives of the Union's citizens. They shall not exceed seven hundred and fifty in number, plus the President. Representation of citizens

⁶² One needs to take into consideration that provisions of the article have been formulated in the final manner as late as in the course of the meeting of the European Council of October 18-19, 2007 (see: document DS. 869/07, Lisbon, October 19, 2007).

⁶³ See: *The European Parliament: Reassessing the Institutional Balance*, "The Lisbon Treaty. Implementing the Institutional Innovations. Joint Study CEPS - EGMONT – EPC". November 2007, pp. 5 and following.

⁶⁴ Report on the Composition of the European Parliament (2007/2169(INI)), European Parliament, Committee on Constitutional Affairs, October 3, 2007, Final A6-0351/2007. Rapporteurs: Alain Lamassoure and Adrian Severin.

⁶⁵ In the point 13 of the Presidency Conclusions adopted by the European Council during the meeting of June 21-23, 2007 it was solely indicated – with reference to the procedure of determination of allocation of seats - that "by October 2007" the European Parliament is to put forward a "draft of the initiative" in order to "pave the way for settling the issue of the future composition of the European Parliament".

⁶⁶ See: Declarations Nos. 4 and 5 included in the Final Act of the Conference.

shall be degressively proportional, with a minimum threshold of six members per Member State. No Member State shall be allocated more than ninety-six seats".

Evaluation of the solutions suggested is varied. It may be readily noticed that the weaknesses of the Nice package have not been overcome and that no clear and transparent criteria with reference to allocation of seats in the European Parliament have been adopted. This means that the thus made allocation of seats must be updated depending on demographic changes which take place. The European Parliament, when suggesting the allocation in autumn 2007, suggested they be verified before the legislature of 2014-2019⁶⁷. The allocation of seats in the Parliament will need to be redefined in the course of subsequent enlargement, which will not be easy if one takes into consideration that the maintenance of the top limit of seats will require a lowering of the number of the Members of the Parliament allocated to the "old" Member States.

In the context of discussions conducted in Poland which concern the role of Germany in the decision-making process of the Union, it is worth noticing that delimitation of the upper limit of the number of the deputies for one state may concern only one Member State - Germany. For it was Germany that managed to keep the same number of deputies (99) on the basis of the Treaty of Nice as it had beforehand⁶⁸. At that time it was the compensation in favour of Germany for the concession made and consent for the equal level of weighted votes of the "big" Member States, especially France and Germany (each 29)⁶⁹. When, on the basis of the Constitutional Treaty, a new formulae of decision making in the Council of the EU by qualified majority (the so-called double majority) was introduced which would have placed Germany in the first position amongst other states according to its demographic structure, its decision-making power has been diminished in the course of allocation of seats in the European Parliament (that is, the number of seats allocated to them decreased to 96).

The above inter-dependency points to the direct connection between the formulae in which decisions are made in the Council by qualified majority and allocation of seats in the European Parliament (a significant circumstance in the course of discussion concerning the shape of this formulae). Such dependency is clearly visible in the framework of the co-decision procedure (current Article 251 TEC) and the corresponding ordinary legislative procedure (Article 251 /new Article 294/

⁶⁷ "The European Parliament: Reassessing the Institutional Balance" (in:) *The Lisbon Treaty. Implementing the Institutional Innovations...*, s. 15.

⁶⁸ See Article 11 of the Act concerning Conditions of Enlargement and amendments in Treaties which are the basis of the European Union. This Act is the part of the Accession Treaty which entered into force on 1 May 2004 and the indicated provisions constitute a part of an institutional package determined in the Treaty of Nice.

⁶⁹ See: J. Barcz. "Treaty of Nice...", pp. 77 and following.

TFEU), where the Council decides by qualified majority and the European Parliament becomes an actual (co)legislator. This connection went unnoticed by the Polish negotiators in the course of the discussion of the decision-making formulae in the Council by qualified majority. One of the more serious allegations directed against the equal influence method (or the square-root method) which was suggested by the Polish negotiators was the lack of taking into consideration the side issue – that is, the allocation of seats in the European Parliament when measuring decision-making power of a Member State.⁷⁰

4. The Polish Allocation of Seats in the European Parliament

The issue of the new allocation of seats on the European Parliament remained in the background of negotiations during the 2007 Intergovernmental Conference. Works were continued in parallel in the European Parliament with reference to formulation of a relevant proposal: according to Article 9a (new Article 14) TEU the European Council adopts unanimously decisions with regard to this issue following the initiative of the European Parliament. In the course of those works, it turned out that Poland would have received 51 seats, and therefore one more than it was provided for by the Treaty of Nice (ultimately 50 seats since 2009)⁷¹, yet three seats less than it is provided for by intermediary regulations for the period 2004-2009 (in the course of this period Poland received four seats from the pool of those allocated subsequently to Bulgaria and Romania)⁷².

The then Polish government to a small degree got involved in those efforts, most probably aware of having neglected this issue during the meeting of the European Council –June 21-22, 2007.⁷³ The then Minister for Foreign Affairs, A. Fotyga, even devalued the meaning of allocation of seats in the European Parliament when explaining that "for the decision-making process in the EU the influence of the number of deputies is of relatively smaller importance". At the same time – Polish striving for increase in the number of deputies could have weakened Polish postulates in other important areas such as those concerning the number of advocates general in the European Court of

⁷⁰ See: J. Barcz, P. Swieboda, "Opinia w sprawie formuły podejmowania decyzji w Radzie większością kwalifikowaną", Warszawa, June 15, 2007, accessible at: www.nipmie.pl

⁷¹ Point 1 of the Declaration No 10 on the Enlargement of the European Union, included in the Final Act annexed to the Treaty of Nice.

⁷² See: Article 11 together with Article 25 of the Act concerning the conditions of accession which is an integral part of the Accession Treaty on the basis of which Poland became the Member of the European Union on 1 May 2004.

⁷³ In the course of discussion before the meeting of the European Council of June 21-22, 2007 in the work of experts it was emphasized that instead of holding on to the unrealistic "radical" proposal, it would have been much better to strive for strengthening the decision-making status of Poland *inter alia* by trying to increase the number of Members of the European Parliament.

Justice or strengthening of the position of Poland in the procedure of decision making by qualified majority⁷⁴.

In the course of the meeting of the European Council of October 18-19, 2007, the issue of allocation of seats in the European Parliament became the subject of discussion thanks to Italy which, as has been stated already, managed to win an additional seat in relation to the number suggested in the proposal made by the European Parliament. President L. Kaczyński emphasized, on the other hand, that this problem had not been ultimately closed and that it would be possible to continue discussion on it in the course of the meeting of the European Council in December 2007⁷⁵. Yet, this would have been extremely difficult: according to documents adopted in the course of the meeting of the European Council of October 18-19, 2007⁷⁶ Italy was allocated an additional seat in the European Parliament and at the same time Article 9a(2) (new Article 14(2)) 2 TEU was amended. Provisions of this article determine a maximal number of the Members of Parliament (in line with earlier arrangements) at 750, the change resulting in giving an additional deputy to Italy refers to the fact that the President of the European Parliament is not included in the maximum number of deputies. Regardless of the above, Article 9a(2) (new Article 14(2)) last section TEU, when granting to the European Council power to make decision as to allocation of seats in the European Parliament (by unanimity), specifies that Council must act "on initiative" of the European Parliament and "with its consent". What is more important, in the course of the meeting of the Council of October 18-19, 2007 a separate declaration was adopted in which the European Council confirmed the intention of making the relevant decision "based on the proposal of the European Parliament"⁷⁷. This means that the Council will accept the proposal from the Parliament without reservations. Yet, subsequent increase in the number of deputies to the higher level than 750 (following "Italian solution"), would have required amendment of Article 9a(2) (new Article 14(2)) first section TEU, which is most probably not to be taken into consideration. The Lisbon Treaty has been signed in the wording as it was determined earlier, and the issue of allocation of seats in the European Parliament before its signing was not touched upon any more.

5. Summary

⁷⁴ *Fewer Poles in the European Parliament*, "Rzeczpospolita" of October 12, 2007.

⁷⁵ See: "Gazeta Wyborcza" of October 20, 2007.

⁷⁶ "Composition of the European Parliament" – Document DS 869/07.

⁷⁷ *Ibidem*.

1) Not without a reason, it is emphasized that the European Parliament is the institution of the Union that will significantly gain in importance in the case of entry into force of the Lisbon Treaty⁷⁸. Similarly will the national parliaments of Member States gain in importance, as their role in EU matters would be radically strengthened⁷⁹. This is by all means a positive aspect of the European Union's reform as it strengthens its democratic legitimacy without increasing the complexity of the EU decision-making process.

2) On the other hand, something is still lacking in the thus proposed reform. What comes to the foreground of criticism is the "open character" of the proposed solutions – and therefore the non-fulfillment of the postulate of reaching such final arrangements which would have not required further reform, especially in the course of the Union's enlargement. The solutions of the Nice package are of a "closed" character – they take into consideration solely the situation in which 27 states are members of the EU. In the event the Lisbon Treaty does not enter into force, a prerequisite of each subsequent accession would be that of "untying" the Nice package and the necessity of negotiating – in the case of the European Parliament – a new allocation of seats, (most probably) the upper limit of the number of Members of the Parliament and border limits referring to the minimal and maximal number of Members of the Parliament attributed to one Member State.

3) The entrance into force of the Lisbon Treaty will incidentally introduce the essential flexibility of decision making with reference to the composition of the European Commission and with reference to decision making in the Council by qualified majority. It does not, however, introduce many changes with reference to the allocation of seats in the European Parliament. The haggling which took place over the "seat for Italy" shows the sensitivity of the issue for particular Member States.

4) From the point of view of inter-institutional relations, of prime importance is reinforcement of the role of the European Parliament in the process of nominating the President of the European Commission. In this case, what also matters is ensuring the specified sequence of the nomination process so as to guarantee the delicate political balance: the result of elections to the European Parliament has a direct influence on the political profile of a future President of the European Commission; this, on the other hand, should be taken into consideration when choosing the President of the European Council and the High Representative for Common Foreign and Security Policy.

⁷⁸ P. Swieboda, *System instytucjonalny Unii Europejskiej w Traktacie z Lizbony – konsekwencje i wyzwania*, in: "Lisbon Treaty. Postanowienia, ocena, implikacje", UKIE-Warszawa, 2008, p. 107.

⁷⁹ See: J. Barcz, "Unia Europejska na rozstajach. Dynamika i główne kierunki rozwoju reformy ustrojowej", Warszawa, 2008, pp. 116 and following.

5) In the event the Lisbon Treaty comes into force, the following will prove of the highest importance
- the so-called implementing activities, rational balancing out of interests amongst institutions and the Member States and, last but not least, the political culture.

In lieu of conclusion

Paweł Świeboda

Elections 2009 – where is the European Parliament headed?

It is an irony that the world's greatest innovation in the area of supranational representative democracy – namely, the European Parliament – is suffering from disappearing public interest, and this on a continent which regards democracy as one of the most important manifestations of its political identity. From 62% in 1979, to 59% in 1984, 58% in 1989, 56.5% in 1994, 49.5 % in 1999, 45.5% in 2004, and 43% in 2009, voting in elections to the European Parliament has become a ritual for an ever more narrow circle of Europeans. Of course, it is always possible to argue that voter abstention is a conscious choice, just as valuable as active participation in the act of the voting. However, every democrat feels greater comfort when there is a clear societal mandate and strong identification on the part of voters with representative institutions. On the other hand, it cannot be ruled out that the turnout rates at elections to the European Parliament are approaching their natural level, one inevitably below national levels, but one that nonetheless does provide a decent scope for legitimacy. On the other hand, it is now harder to call the European Union a democracy in the making. Not so very long ago it was thought that European democracy itself would become the measure of and driving force behind the process of integration, and that the European Union had a chance of becoming a stateless democracy. Today we know such a scenario to be altogether distant.

It is hard to be indifferent about this situation. True, democracy was not the main aim of European integration from the very beginning of that process, but it relentlessly advanced up the political agenda. “Shock tactics are the reason why the Schuman Plan was not strangled at the moment of its birth”, quipped a British ambassador, describing the debates on the founding document of European integration. The matter was mentioned by Robert Schuman at the sitting of the French Council of Ministers on May 3, 1950 – then presented for discussion on May 8. And yet only the Prime Minister and two ministers spoke, because nobody else grasped the nature of the political act taking place before their very eyes. That same evening Schuman announced the birth of the plan in the salon d'Horloge on Quai d'Orsay. For long years French industrialists could not believe that they had not found out sufficiently early what the matter was all about.

The outcome of the elections to the European Parliament in June 2009 did not spell a political turning-point on the continent. Victorious were the right-wing parties, which generally became the beneficiary of the economic crisis underway. Extreme parties achieved notable results in just a few countries. On the very day Barack Obama delivered a historical speech in Cairo about the relations of the West with Islam, in voting to the European Parliament in the Netherlands great success was being enjoyed by an anti-Islamic political trend, whose leader regards the Koran as a “fascist” book. Geert Wilders, the head of the Freedom Party (PVV), got second place in elections. During the campaign he had threatened that he would not allow Turkish membership in the European Union for the next million years. He also wants to take back Dutch money from Brussels. In France, in turn, the “Bulgarian lorry driver” replaced the “Polish plumber” in the rhetoric of the extreme right-wing Philipp de Villiers. Protection against the rest of world became an easy temptation in these times of crisis. Twelve extreme right-wing and nationalist parties from twelve Member States sent in all thirty-six deputies to the European Parliament. This is still a small minority, but the problem should not be underestimated, for it will continue to make its presence known and gradually extend the damage already done.

The European Parliament has defense mechanisms, among them conciliation, as way for making decisions. Extremist groups will not be able to meaningfully influence the shape of legislation. They will, of course, remain audible, attempting to build political capital on the recognizability of their views. Nevertheless, the phenomenon of political extremism will become an ever stronger force at the European Parliament, filling the public sphere and absorbing the attention of main-stream parties.

The recent campaign to the European Parliament confirmed that on a European scale the meaning of the division into right-wing and left-wing parties has vanished. For instance, the right-wing Irish government demands a declaration about workers' rights in order to induce society to back the Lisbon Treaty, while in Scandinavian the Left is traditionally more open to globalization and improving the competitiveness than the Right from southern Europe. That exquisite expression “unity in diversity” on the one hand hampers efforts to find a common denominator, but on the other hand it can facilitate building a truly pan-European party that could concentrate on a uniform program shaped from the bottom up.

Poland's election result this year is fundamentally different from the result in 2004, which was the first time ever that Poles voted in elections to the European Parliament. Above all it indicates stability, strengthens the political landscape, and promotes the governing party Civic Platform. Polish deputies to the European Parliament will have a strong showing in the European People's Party,

which both Civic Platform and PSL belong to. The result in Poland stands out in comparison with the results of elections in the majority of European states, where due to the economic crisis governing coalitions received a “yellow card” from voters. Moreover, Polish voters rejected all extremes, including those we sent to the European Parliament in 2004. Absent will now be the Eurosceptical League of Polish Families, which 5 years ago won second position and was (partly, at least) our face at the European Parliament. Nor will the notorious party Self-Defence be found in Strasbourg and Brussels. The voter turnout rate in Poland also improved notably, which may have been helped by the fact that scarcely three days earlier Poles celebrated the 20th anniversary of their country’s breakthrough democratic elections in 1989.

Nominally, elections to the European Parliament have a European character, but in practice that is the case only to a small extent. It is possible to compare them to virtual domestic elections. This problem has its origins in the flawed genetic code of the European Parliament, being a result of the great political compromise which the European Union rests upon. After all, we have in the EU both supranational processes, as well as carefully cultivated national political identities.

The European Parliament is an attempt to prove that the democratic system does not have to function on the basis of the national state and the existing demos. If that were true, then the European Union would be sentenced to functioning in conditions of a deficit of democracy. Meanwhile, the European Union is a democracy without a demos, with a demos in the creation phase, perhaps more aptly dubbed “an aspiring demos”. No matter how perceived, it is part of a neglected European agenda. Although it was probably Monnet’s most important utterance, “we do not form a coalition of states, we join people”, this has always been a taboo subject – and it sheds light on why so little has been done in order to strengthen European identity. The competencies of the European Union in the area of culture and education are but slight, and yet without them there is no way to influence the way citizens perceive phenomena, let alone the scope of their interaction.

For the consolidation of the European Parliament within the institutional system of the European Union, the creation of appropriate systemic conditions is crucial, by which I above all have in mind truly European political parties that would conduct their campaigns and other activities across the entire European Union. Also important would be standardizing electoral laws as much as possible, something that has repeatedly been promised on the political stage. These two modifications taken together would emphasize the European character of elections, the strongest feature of which at present is the mere fact that they are held at the same time in twenty seven countries. Paradoxically, the first effort to establish a pan-European political party was that of Declan

Ganley, founder of "Libertas". Improving the organization of main-stream parties should be a basic task in the first phase of the institutional cycle, rather than the last.

The manner of legitimization determines the possible margin for increasing the competencies of the European Parliament, which co-shapes legislation, but does not choose the EU government and does not have a decisive voice concerning the division of means from EU budget. It is no wonder that the flagship successes the EP could boast before elections were that of reducing rates on international roaming for cell phones and creating a black list of airlines with dubious safety standards. This is not a suitable list of achievements for an institution of great self-esteem. Once the Lisbon Treaty has entered into force the Parliament will strengthen its position, but it will not experience a revolution of its competencies. Real qualitative change would take place only if the Parliament started appointing and dismissing the European Commission and forming "government" coalitions, and carried on aggressive political disputes with the parliamentary opposition. That kind of script would mean the formation of an institution that would interest more voters, but that would also change the nature of the European Parliament, which is a quasi-parliament, practising quasi-political debate, and which makes almost all its decisions with a simple majority of votes, like governments of a large coalition.

The question about the role of the European Parliament is a question about the model for European integration. It boils down to the decision of whether legitimacy should stem from Community institutions, or rather from Member States. There is no doubt that a deficit of democracy appears in its pure form where an intergovernmental regime for making decisions rules in the EU. On the other hand, legitimacy in today's European Union exists not only through representative institutions, both national and EU, but also via adapting political agendas to social expectations. Back in 1996 when he announced the Irish presidency of the Union, John Bruton said his purpose would be work places and safe streets. The British presidency in 1998 put matters of the environment, employment, and the fight against organized crime on the agenda. In the Amsterdam Treaty the chapters called "the Union and the citizen" above all concern employment and workers' rights, rather than democratic mechanisms. This approach changed the nature of the process of integration, for which the question about the significance of action taken on behalf of the citizen is more and more often a basic aim in itself.

The European Parliament will undoubtedly keep its unique character, one incomparable with any other representative institution. Chris Patten in his book "Not Quite the Diplomat" writes that as a commissioner he was subject to more stringent supervision from the European Parliament than from Westminster when he was as a member of the British government. The struggle over the

budget in the area of external relations was equally as difficult as in the US Congress. Notwithstanding this, Patten calls the European Parliament a virtual parliament, representing a virtual electorate, organized into virtual political groups, and cut off from the real political world. He emphasizes his conviction that politics is restricted to national cultures, stereotypes, histories and institutions. The rules of the game have changed, somewhere else are the most important matters decided, nonetheless societies still miss what they knew from time immemorial. The former Chairman of the European Parliament Josep Borrell during a speech in Madrid in November 2006 purportedly stated, “the chairman of the European Parliament is neither a Prime Minister nor the leader of a parliamentary majority. He is an organizer of ideas, a promoter of initiatives, a person who searches for consensus, a spokesman of the Parliament. He is not chosen on the basis of his political program”.

The European Parliament is undeniably growing in significance and becoming more and more efficient and active. It played a key part in forming the final version of the service directive and REACH directives on chemical substances. In many issues the Parliament contributed to “citizen-friendly” decisions, as in the case of the protection of personal details of airline passengers, when ETS issued a verdict in accordance with the Parliament’s position in the case against the Committee and the Council. Other examples include: the period of storing personal details by communications companies (the Council demanded 10 years, what was accepted was from 6 months to 2 years); the legislation about working hours for truck drivers; the ban on toxic substances in toys; and the quality of water at bathing beaches. The Parliament also rejected proposals of the European Commission that it regarded as inappropriate, including the port directive, the directive on train goods transport, and animal traps. It also played a vital role in shaping the EU’s energy-climate package. The European Parliament has also dealt with less essential things. For example, it prepared a report on the caste system in India

The *raison d’être* of the European Parliament naturally depends on the volume and the quality of legislative proposals from the European Commission. Hence the anxiety repeatedly expressed on the part of the Parliament, that the European Commission, in pursuing its program of improving legislation, will reduce the stream of legislation directed to the Council and the Parliament. On the other hand, the initiative serving the improvement of legislation is aimed not only at eliminating outdated legal documents, but also at improving the quality of new proposals through better consultation and analysis of the influence of legislation. Thus, the European Commission has a chance to prove the words of Montesquieu, according to whom unnecessary laws can only weaken necessary ones.

A new phenomenon in recent years is that of the Parliament's power to suggest legal solutions. For example, in 2006 the Party of European Socialists presented a draft on the directive about public utility services. In the future we will no doubt more often witness the innovativeness of the European Parliament, which does not have the right to propose legislation, but will wish to influence the European Commission more actively.

Meanwhile, the context in which yet another round of institutional jockeying will take place in the European Union will bring an end to both Euroenthusiasm and Euroscepticism. The former did not survive the demise of the European Constitution. Its absence is proved by the miserable voter turnout rate in the recent elections, which – involving as they do twenty seven Member States – are the world's largest democratic experiment. The European Union is headed toward becoming a bureaucratic government, within the framework of which apolitical institutions such as the European Central Bank do best. Euroscepticism has also lost meaning, because in the face of the present economic crisis no reasonable person can call for the disintegration of the EU. What emerges, therefore, is at best Europragmatism – a bland but viable attitude with which to push forward matters that can have measureable effect.