

VIXATY PHOMPANYA*

Scrutiny of the Principle of Subsidiarity in the V4 National Parliaments

Introduction

Many European Union (EU) Member States believe that the National Parliaments are the primary source of democratic legitimacy and should have a more significant influence in EU decision-making process. To increase its stronger position in EU, National Parliaments have paid considerable attention to the principle of subsidiarity, which was introduced in the Treaty of EU (TEU) in 1993 and modified by the Treaty of Lisbon in 2009. The principle ensures the decisions of the EU are taken as closely as possible to citizens, and the EU may only intervene in certain specific circumstances. The Treaty allows National Parliaments to be actively involved in the monitoring and scrutiny of EU affairs, specifically the legislative procedures, to guarantee legislative action at the appropriate level.

The Treaty of Lisbon has annexed two significant legally binding Protocols to strengthen the Principle of Subsidiarity, to grantee the role of the National Parliament, and to address domestic activities of Member States that relate to the Union matters. The Protocol (No 1) on the Role of National Parliaments in the European Union desires to boost the active involvement of the national Parliaments in the EU affairs and to provide them opportunities to express their views on draft legislative acts of the EU or on the matters, which catch their interests.¹ It places obligations on EU institutions to send all documents to National Parliaments and to wait up to eight weeks before adopting legislation so that they can efficiently scrutinize the documentation and hold their government to account with regard to them.² The Protocol (No 2) on the Application of the Principles of Subsidiarity and Proportionality aims to strengthen the scrutiny and enforcement mechanisms of the principle that laid down in the Article 5 of the TEU. It

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¹ See Protocol No 1. on the Role of National Parliaments in the European Union is available at Official Journal of the European Union. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12016E%2FPRO%2F01> (18. 02. 2018.)

² MILLER, Vaughne – LUNN, Jon: *The European Union: a democratic institution?* House of Commons Library, Research Paper 14/25. 29 April 2014.

allows the National Parliament to bring down every draft legislative acts of the EU that breaches the Principle of Subsidiarity at an early stage.³

The protocol (No 2) has introduced the Early Warning Mechanism (EWM), in which National Parliaments scrutinize the European Union (EU) legislative acts to ensure its compliance with the Principle of Subsidiary. This mechanism provided National Parliaments with direct engagement in EU decision-making process to monitoring whether a draft legislative act by the EU Commission non-infringement with the Principle of Subsidiarity.⁴ Within this context, every National Parliament or chamber will receive all draft of EU legislative acts from the Commission.⁵ It has eight-weeks from the date of transmission to send a ‘reasoned opinion’ to the EU commission, stating why the draft is non-compliant with the subsidiarity principle.⁶

When a Reasoned Opinion is adopted toward EU draft of the legislative act at least one-third of the total votes allocated to the National Parliaments,⁷ the draft must be reviewed by the institution which produced it (the EU Commission is outstanding in this procedure).⁸ This warning is known as ‘yellow card procedure’. However, the draft that relates to the area of justice, freedom, and security, the threshold of the vote is lower.⁹ One quarter is enough to bring down the EU commission proposal. After the re-examination, the EU Commission may decide to maintain, amend, withdraw its proposal and give reasons in the form of a Commission Communication, why the proposal non-infringement with the Principle of Subsidiarity.

In the event that a simple majority votes, 29 out of 56 votes in total, are raised by the National Parliaments, the EU Commission must review, maintain, withdraw, or amend its proposal. This trigger is called ‘Orange Card procedure’. If EU Commission wishes to maintain the proposal, the reasoned opinion shall be submitted to the EU Parliament and the Council to reconsider the draft legislative act. In case a simple majority of the votes cast in the EU Parliament or qualified in Council justify that the legislative proposal does not comply with the principle of subsidiarity, the proposal is dropped or not be given any further consideration.¹⁰ Under Article 8 of Protocol 2, National Parliaments can apply to the Court of Justice of the European Union (CJEU) within two months through their Member State government for a judicial review of EU legislation on the grounds of infringement of the principle of subsidiarity.

³ SCHMITT, Pierre – RUYS, Tom – MARX, Axel: *The Report on the Subsidiarity Early Warning System of the Lisbon Treaty – the role of regional parliaments with legislative powers and other subnational authorities*. European Union, Committee of the Regions, 2013. 4. <https://cor.europa.eu/en/documentation/studies/Documents/subsidiarity-warning-system-lisbon-treaty.pdf> (29. 03. 2018.)

⁴ BRANDSMA et al.: Accountability in the post-Lisbon European Union. *International Review of Administrative Sciences* Vol. 82., 4 (2016) 629. The article is available at <http://journals.sagepub.com/doi/pdf/10.1177/0020852316663312> (12. 04. 2018.)

⁵ Article 4, Protocol No 2.

⁶ Article 6, Protocol No 2.

⁷ Based on the Article 7 of Protocol No. 2. [E]ach National Parliament shall have two votes, shared out on the basis of the National Parliament system. In the case of a bicameral Parliamentary system, each of the two chambers shall have one vote. Recently, there are 56 votes from EU Member States.

⁸ Article 7 (2) of Protocol No 2. on the Application of the Principle of Subsidiarity and Proportionality.

⁹ See PANIZZA, Roberta: *The principle of subsidiarity*. European Parliament, Brussels, 2018. http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuId=FTU_1.2.2.html (16. 02. 2018.)

¹⁰ BILANCIA, Paola: The Role and Power of European and the National Parliaments in the Dynamics of Integration. *Perspectives on Federalism* Vol.1., single issue (2009) 6.; See also PIRIS, Jean-Claude: *The Lisbon Treaty, A legal and Political Analysis*. Cambridge University Press, Cambridge, 2010. 128-130.

The following section provides a general information of the V4 countries. Then it emphasizes each V4 National Parliament, including general information, their participation in EU affairs and legal basis. Remarkably, this section investigates the subsidiarity scrutiny procedures in each National Parliament. It offers the approaches of each chamber monitoring the draft of EU legislative acts through the Early Warning Mechanism. The fourth section compares the number of reasoned opinions that V4 countries have submitted to the EU Commission from 2009 to 2017.

V4 National Parliament in EU Affair

The Visegrad Group was established in 1991, consisting of the Czech Republic, Poland, Hungary, and Slovakia. The creation of V4 was a remarkable political turning point of the four countries as well as in central Europe. Throughout thirteen years of political dialogue and sectorial cooperation, the founding objectives of accession into European Union and NATO of the four countries have been realized in 2004. The accession to the EU allowed the V4 group, as the representatives of Central Europe, to enjoy the liberal democracy and western values.

Recently, the cooperation of the group is very diverse and consisted of mutual contacts at all levels from the highest-level political summits to expert and diplomatic meetings, to activities of the non-governmental associations in the region, research bodies, think-tanks, cultural institutions or several networks of individuals.¹¹ Rotating Presidency, which changes each year in July, is the core of the Visegrad Group's cooperation.

Similar to other EU Member States, the V4 countries have a role to engage in the EU decision-making process and to improve the good EU's institution functions.¹² After the Lisbon Treaty came into force in 2009, the power of National Parliaments (NPs) became considerably increased, their involvement with the EU affairs became more visible than ever before. The Protocol (No 1) annexed to the Treaty, has well described the involvement of the NPs in the activities of the EU.¹³ It provided the privilege and formal role to the NPs in controlling certain aspects of EU legislation more direct without the interference of Member States' Government.

Czech Republic

The Czech Republic has a bicameral parliament composed of two chambers, the Chamber of Deputies (Poslanecká sněmovna) and the Senate. Under the constitution of 1993, the Chambers of Deputies (lower house) shall consist of 200 members¹⁴ (MPs), elected for a four-year term through the proportional representation system. The Senate (upper house)

¹¹ GUBOVÁ, Olga: *Some Aspects Of Political Regionalization of Visegrad Countries*. 2nd International Multidisciplinary Scientific Conference on Social Sciences and Arts SGEM2015. Book 2, Vol. 1 (2015) 341. <https://sgemworld.at/ssgemlib/spip.php?article1558> (18. 02. 2018.)

¹² SOÓS Edit: *New modes of governance*. In: Wiszniowski, Robert – Glinka, Kamil (eds.): *New Public Governance in the Visegrád Group (V4)*. Wydawnictwo Adam Marszałek, Toruń, 2015. 39.

¹³ SMITH, Julie: *National Parliament After the Lisbon Treaty- Westminster in Context*. In: Jančić, Davor: *National Parliaments after the Lisbon Treaty and the Euro Crisis: Resilience or Resignation?* Oxford University Press, Oxford, 2017. 82.

¹⁴ The current elections to the Chamber of Deputies of the Parliament of the Czech Republic was took place on 20-21 October 2017. See LOPATKA, Jan: *Czech election winner Babis warns to minority government*. Reuters, <https://www.reuters.com> (27. 10. 2017.)

shall be composed of eighty-one Senators and are elected, in single-member districts, according to a principle of majority rule.

The two chambers are work as the cockpits for the Czech government in dealing with international affairs. The constitution of 1993 specifies, “*The government shall inform the Parliament, regularly and in advance, on issues connected to obligation resulting from the Czech Republic’s membership in an international organization or institution... for instance, European Union.*”¹⁵ Most importantly, the Rules of Procedure of the Chamber of Deputies (RP-COD) and of the Senate (RP-S), which annexed to support the Constitution 1993, have specifically prescribed the Parliaments’ participation in EU affairs. Both sets of rules of procedure provide the two chambers power to scrutinize the position of its government in debates on EU decision-making and legislative activities as well as documents of EU institutions.¹⁶

Subsidiarity Scrutiny procedures

In practice, the legal basis of the parliamentary scrutiny of the Czech Republic in the EU legislative process is based on the Constitutions of the Czech Republic¹⁷ and the Rules of Procedure of both parliament chambers.¹⁸ These two rule of procedures made both parliament chambers exercise the scrutiny of the EU matters separately and independently.

Subsidiarity Scrutiny Procedures in the Senate

The EU Affairs Unit of the Senate receives EU legislative proposals and other documents. It has the role to provide a weekly overview of EU documents which is sent to all senators and relevant recipients. The Head of the EU Affairs Unit, the advisor to the Committee on European Affairs and the Chairman of the CEA examine on those proposals from the weekly overview, and the Chairman recommends to the Committee whether to start scrutinizing the proposal or not. The first meeting of the CEA is held to approve the recommendation of the Chairman with a majority of the members of the Committee.

After the selection for scrutiny, the government or a responsible ministry shall submit its opinion regarding the proposal to the Senate within ten days. The EU Affairs Unit prepare a thorough analysis of the scrutinized proposal. Following this step, The Committee rapporteurs, advisor to the CEA and EUAU draft a resolution on the proposal or a reasoned opinion and stating whether the proposal in compliance with the subsidiarity principle or not. The CEA holds its second meeting to open the floor for debate on the proposal that is believed to breach the subsidiarity principle (the government may invite to give their view). At this meeting, the CEA adopts a recommendation and submit to the Senate’s Plenary within 8 weeks.

Once the recommendation is adopted by the Plenary, it is considered as an official position of the Senate. The President of the Senate transfers a reasoned opinion to the Government and EU institutions respectively.¹⁹

¹⁵ Constitution of Czech Republic as amended in 2013. Article 10b.

¹⁶ GRINC, Jan: Scrutiny of the Principle of Subsidiarity in the Parliament of the Czech Republic. Charles University in Prague, Faculty of Law, *Research Paper* Vol.1., 3 (2014) 2., 4.

¹⁷ Act No. 1/1993 Coll.

¹⁸ Standing Rules of the Senate (Act No. 107/199 Coll.) and Rules of Procedure of the Chamber of Deputies (Act No. 90/1995 Coll.).

¹⁹ SCHMIT et al., 2013. 137.

Subsidiarity Scrutiny Procedures in the Chamber of Deputies

After the accession of the Czech Republic to the EU in 2004, the COD established the Committee on European Affairs (CEA) as a standing committee. As of 2018, the committee composes with is composed 18 members. All EU draft legislation is received by the CEA, and its secretariat has to transmit a list of EU documents to all members of the Committee for their consideration in which proposal shall be further scrutinized. After selection for scrutiny, the Government has ten days to present its position and/or opinion on each legislative proposal to the Committee. Then the expert of EU Unit and Committee rapporteur discuss and draft a resolution on the proposal whether it is compliant with the principle of subsidiarity or not. In case the proposal breaches the principle, a reasoned opinion is drafted and forward to the CEA. During the scrutiny process, the CEA may hold a meeting and call the expert from the relevant ministry to give a report on the proposal. During the discussion, the Committee shall take a resolution to complete the scrutiny process. In some cases, but rarely, the rapporteur may suggest the CEA bringing the proposal to discuss in the plenary session of the COD. After the session of the CEA or the COD, a reasoned opinion is formally transmitted to the Government, the President of the Senate, and the European Commission via the political dialogue channel.²⁰

Poland

Poland is a Parliamentary Republic with the parliamentary-cabinet system based on the tripartite separation of powers. The Republic of Poland has a bicameral Parliament consisting of the Sejm (lower house) and the Senate (upper house). The Sejm is composed of 460 deputies while the Senate is made up of 100 senators. Both Chambers are elected every four years by universal, proportional, equal, direct and secret ballot²¹. Pursuance to the Constitution of 1997, the Sejm and Senate are defined as bodies of legislative power. However, the Sejm is in the stronger position, and it is dominant in the Polish Parliament.²²

The tasks and power of the Sejm and Senate for scrutinizing the matters of EU are currently practising through two elements, namely the Cooperation Act 2010 and the Rules and Regulations of both chambers. The current constitution of the Republic of Poland does not refer to parliamentary control of EU affairs. Alongside with other committees, the Sejm and Senate have specific standing committees, to act on their behalf, to deal with matters relating to the Republic of Poland's membership of European Union: the Sejm European Union Affairs Committee (EUAC) and the Senate EUAC. The Sejm EUAC is composed of at least 15 members, and the Senate EUAC is currently composed of 16 senators. Both EUACs have the right to express their opinions on the position of the government regarding drafts of EU legislation.²³

²⁰ For more information <http://www.ipex.eu/IPEXL-WEB/parliaments/institution/czpos.do> (03. 05. 2018.)

²¹ See more detail regarding the Electoral system HEFFTLER, Claudia et al.: *The Palgrave handbook of National Parliaments and the European Union*. Palgrave Macmillan, 2015. 596.

²² BARACZ, Jan – PUDLO, Anna: *The Polish Parliament and EU Affairs*. OPAL Country Report, 2012.; See also Constitution of Republic of Poland 1997. Article 95. (2) constituteproject.org (17. 01. 2018.)

²³ FUKSIEWICZ, Aleksander: *The Polish Parliament under the Lisbon Treaty, Adapt to the Institutional Reform*. The Institution of Public Affairs, Warsaw, 2011. 5-6.

The Subsidiarity Scrutiny procedures

Based on the examination of related documents, it could be noted that the role of the Polish parliamentary in EU affairs has not yet granted by the Constitution of the Republic of Poland. The power of the Lower House and the Senate and their committees to scrutinize EU matters is governed by the Cooperation Act 2010²⁴ and the Rules of Procedure of both chambers.²⁵

When carefully study on the Rules and Regulations of the Sejm, it demonstrates that the EUAC of both Chambers are considered as the competence body to act on behalf for scrutinizing the EU documents, while other sectoral committees do not have a crucial role to involve in EU scrutiny.²⁶ However, EU documents that received from the European Commission are regularly spread to all Sejm committees for acknowledgement. The practice in Senate EUAC is slightly different from the Sejm EUAC because it provides an opportunity to relevant sectoral committees to adopt their opinion on documents regarding Poland's membership of the EU.²⁷ The EUAC of the Sejm and Senate regularly hold a joint meeting with sectoral committees.

Subsidiarity Scrutiny Procedures in the Senate

Upon receiving the EU draft legislative act, Marshal of the Senate refers the EU proposal to the EUAC. Within one week, the EU Affairs Unit prepare a preliminary opinion on the proposal. The government also has to submit its position on the EU proposal within 14 days. The Presidium of the EUAC composed of the Chairman and two deputies take a decision whether the EUAC or the sectoral committee will review the EU proposal. If the EUAC or the sectoral committee decided the EU proposal does not compliant with the principle of subsidiarity, it issues an opinion and establishes a draft Senate resolution. The EU affairs and the relevant sectoral committee may call upon by the Marshal of the Senate to present a joint report. This reasoned opinion is subsequently put to vote in the plenary. If the report adopted by the Senate plenary, the Marshal of the Senate send the reasoned opinion to the European Commission, the European Parliament, and the Council.²⁸

Subsidiarity Scrutiny Procedures in the Sejm

After receiving drafts of legal acts and other EU documents by the Sejm, The Bureau of Research of the Sejm examines the document and divides them into two categories (usually once a week).²⁹ List (A) covers EU documents on which Presidium table's motion not to submit any comments; and list (B) covers documents that should be further discuss at the EUAC meeting. These lists are sent to all members of EUAC with a request to express

²⁴ The Act of 8 October (The Cooperation Act) is one of the significant mechanism which adopted in order to enhance the cooperation between the Government and the two Chambers of Parliamentary in EU matters. This act came into force 13 February 2011.

http://www.sejm.gov.pl/prawo/ustawa_kooperacyjna_eng/kooperacyjna.htm (06. 05. 2018.)

²⁵ BARACZ, Jan – PUDLO, Anna: *The Palgrave Handbook of National Parliaments and the European Union. The Polish Parliament and EU Affairs*. Palgrave Macmillan, New York, 2015. 598.

²⁶ See the Sejm and the European Union. <http://oide.sejm.gov.pl/oide/en/> (30. 03. 2018.)

²⁷ BARACZ–PUDLO, 2015. 598.

²⁸ The information available at IPEX (The platform for EU Interparliamentary Exchange) <http://www.ipex.eu/IPEXL-WEB/parliaments/institution/plsen.do> (30. 03. 2018.)

²⁹ Subsidiarity Scrutiny in Sejm. http://oide.sejm.gov.pl/oide/en/images/files/badanie_pomocniczosci/subsidiarity_sejm_table_en.pdf. (07. 04. 2018.)

their comments. Following this session, the government sends its draft positions to the Council of Ministers no later than 14 days of the receipt of EU draft. Upon receiving both lists with the relevant comments and suggestions from EUAC members and staffs of the EU Affairs Department, these documents are transmitted to members of the Presidium of the EUAC, which compose of the chairperson and six deputy chairpersons of the Committee.³⁰ The session of the Presidium of the EUAC usually held on Friday morning to agree on the final content of list A and B for the given week. In the first meeting of EUAC, the Committee may decide whether the EU proposal infringes the subsidiarity principle. The Committee adopted its opinion and draft resolution on the EU proposal that non-compliance with the subsidiarity principle. The EUAC adopts a report on the draft resolution of the Sejm as the first reading. Then the second reading is held at the plenary session of the Sejm to adopt a resolution which containing a reasoned opinion. After the reasoned opinion adopted, it is transmitted to Presidents of the European Commission, the European Parliament, and the EU Council.

Slovakia

The Slovak Republic has been established since the Velvet Divorce³¹ in 1993. It is a Parliamentary Democracy with a multi-party system, governed by the rule of law. The constitution of the Slovak Republic which came into force in 1993 prescribes that the sole constitutional and legislative body of the Slovak Republic is vested in a unicameral parliament called the National Council of Slovakia Republic (Národná Rada Slovenskej Republiky).³² It could be said that their primary tasks are to develop legislation and monitor the government. The Parliament consists of 150 members who are elected for a four-year term.³³ Members of the National Council of Slovakia Republic (NCSR) are directly elected by secret ballot in general, equal, and direct elections.³⁴ Recently, the NCSR has 19 committees, they have a role to scrutinize the draft legislation handled by the Parliament, and each member of National Council has a seat on one or two committees.³⁵

After becoming a full member of the EU, the Republic of Slovakia has amended Constitutional Law No. 397/2004 Coll, which grants the power to the National Council to oversight over the Government activities in EU affairs.³⁶ The Act also describes that the Government or an authorized member shall in advance submit to the National Council a draft of the position of the Slovak Republic on legally binding acts and other acts of the European Union, together with an assessment of their impact on the Slovak Republic.³⁷

Following the Constitutional Act, the National Council has the right to authorize a committee to, on its behalf, to exercise scrutiny within the EU affairs. The Committee that

³⁰ BARACZ—PUDLO, 2015. 599.

³¹ Velvet Divorce was the event that split the Czech and Slovak Federated Republic (CSFR) separated into the Czech Republic and Slovakia on 1 January 1993. See SIMON, Jeffrey: *Czechoslovakia's "Velvet Divorce," Visegrad Cohesion, and European Fault lines*. National Defense University, Washington D.C, 1993. 1.

³² Article 72 of the Constitution of the Republic of Slovakia, as amended through 2014. https://www.constituteproject.org/constitution/Slovakia_2014.pdf (31. 03. 2018.)

³³ Constitution of the Republic of Slovakia. Article 73. (1)

³⁴ See IPEX. <http://www.ipex.eu/IPEXL-WEB/parliaments/institution/skrad.do> (01. 04. 2018.)

³⁵ See Country Report III (CORE-series): *Slovakia and the European Union, A Single-Country Study of Slovakia's Position in the EU*. University of Amsterdam, Amsterdam, 2010. 59.

³⁶ Article 1(1) of the Constitutional Act No. 397/2004 Coll.

³⁷ Article 1(2) of the Constitutional Act No. 397/2004 Coll.

usually takes action on scrutiny EU matters is the Committee for European Affairs (Slovak: Výbor Pre Európske Záležitosti). The Committee for European Affairs (CEA) was created by a parliamentary resolution in April 2004.³⁸ The CEA also exercise its powers under the provisions of the Rules of Procedure which amended by the National Council in May 2015.³⁹ CEA members are composed of 15 members, as of 2004, elected from all parliamentary political parties by proportional representation system.

Subsidiarity Scrutiny Procedures in National Council

The Permanent Representation of the Slovak Republic to the EU send the EU draft legislation acts to the NCSR within one week after the publication of the EU Commission. In the period of three weeks the availability of the proposal in the Slovak language, the respective ministry shall submit its preliminary position⁴⁰ concerning the proposal to the Committee on European Affairs.⁴¹ Following this process, the advisor of the European Affairs Department or specialized committee, who responsible for the specific area of the acquis, shall analyze each proposal and preliminary position, and determines which proposals require the subsidiarity principle scrutiny.⁴² The specialized committee shall provide a general opinion or recommendation on the proposal to the members of the European Affairs Committee. The CEA may decide to adopt a reasoned opinion on its own initiative or by following the recommendation of the specialized committee.⁴³

Hungary

The Fundamental Law of Hungary, which came into force on 1 July 2012, describes that Hungary is an independent, democratic, and constitutional state and the political regime is a parliamentary system, evolved since the 1989 constitutional amendment. The Hungarian legislative power is vested in a unicameral parliament called the National Assembly (Országgyűlés).⁴⁴ The National Assembly (NA) is composed of 199 deputies (386, 1990-2014), who are elected to four year-terms by the most complicated electoral system in the world (Mixed-System: a combination of single-member district, party lists, and a national compensation list).⁴⁵ The latest parliamentary election was held on 8 April 2018; Prime Minister Viktor Orbán has successfully secured his throne for the third time with the gaining vote of 66.8%. It led his party, Fidesz-KDNP, aggressively won 133 seats out of 199 in the Parliament.⁴⁶

³⁸ FIGULOVÁ, Andrea: *The Palgrave Handbook of National Parliaments and the European Union. The Slovak Parliament and EU Affairs: In Need of a Wake-Up Call*. Palgrave Macmillan, New York, 2015. 634

³⁹ BARTOVIC, Vladimír: *The Czech and the Slovak Parliaments after the Lisbon Treaty*. EUROPEUM Institute for European Policy, Prague 1, Czech Republic, 2010. 56.

⁴⁰ The position contains information on the content and objectives of the proposal, timeline, type of the decision-making process, and the compliant information of the subsidiarity and proportionality principle... BARTOVIC, 2010. 63.

⁴¹ BARTOVIC, 2010. 63.

⁴² Ibid. 64.

⁴³ SCHMIT et al., 2013. 184.

⁴⁴ SCHMIT et al., 2013. 153.

⁴⁵ BENOIT, Kenneth: *Hungary: Holding Back the Tiers*. In: Gallagher, Michael – Mitchell, Paul: *The politics of electoral systems*. Oxford University Press, Oxford, 2005. 235.

⁴⁶ See 2018 National Assembly Election. <https://theorangefiles.hu/2018-national-assembly-election/> (23. 04. 2018.); See also <http://abouthungary.hu/blog/election-results-are-now-official-so-what-happens-next/> (23. 04. 2018.)

Since Hungary's accession to the EU in 2004, the role of the National Assembly has been always strengthened. Its partial of legislative activities have been transferred to the EU Institutions. However, this event does not mean that the National Assembly lost its powers in the domestic affairs. After becoming a full member of the European Union, the Hungarian's EU scrutiny tools were defined by the Constitution, the Act on cooperation between the Parliament and the government in EU affairs and the Standing Order of the Parliament.⁴⁷

To adjust itself to the new provisions of the new Treaty, the parliament has passed the Act XXXVI/2012, on the National Assembly to replace the Cooperation Act 2004. This act provides concrete procedures in implementing the Lisbon Treaty's provision regarding National Parliaments in EU affairs. The Act on Parliament has taken several provisions from the Cooperation Act 2004, including the regulation on EU scrutiny and EU affairs.⁴⁸

Hungary has a diversity of parliamentary EU scrutiny mechanisms providing for the participation of all parliamentary bodies: the plenary and the standing committees. The parliamentary instruments for scrutinizing or influencing EU affairs can be divided into two groups: formal and informal mechanism. The scrutiny procedure which is regulated by the Acts, laws and resolutions are considered as the formal instruments. While the Informal instruments are comprised of the veto on Passerelle clauses, the hearings before and after the European Council meetings, hearings of government's delegates appointed to EU institutions, regular reports on the government's work with EU, and Political Dialogue with EU Commission. It also includes the traditional parliamentary instruments that already existed before the EU accession (e.g. interpellation, questions, parliamentary debates, committee hearings).⁴⁹

On the matters relating to the European Union affairs, the EAC is permanently established to exercise the power of the National Assembly and supervise over the government's activities within the EU (Act XXXVI/2012, section 62).⁵⁰ The EAC is not just about handling EU affairs, it has also the functions to scrutinize the budget, and the different bills sent to it.⁵¹ The EAC has a responsibility to manage the scrutiny procedure, the subsidiarity control, the political dialogue with the EU Commission and the objection on the application of Passerelle clause. It has the role to scrutinize the document that receives from the EU institution, including EU legislative drafts, and organize hearings on EU matters.⁵²

⁴⁷ JUHÁSZ-TÓTH Angéla: *The Europeanization of the Hungarian National Assembly*. University of Debrecen, Debrecen, 2014. 9.

⁴⁸ Resolution 46/1994 (IX.30.) OGY on the Standing Orders of the Parliament of the Republic of Hungary. <http://www-archiv.parlament.hu/hazszabaly/resolution.htm> (24. 04. 2018.)

⁴⁹ The official website of Hungarian National Assembly. <http://www.parlament.hu/web/house-of-the-national-assembly/scrutiny> (28. 03. 2018)

⁵⁰ Act XXXVI of 2012 on the National Assembly. Available at official website of the National Assembly of Hungary. <http://www.parlament.hu/web/house-of-the-national-assembly> (30. 03. 2018.)

⁵¹ ILONSZKI, Gabriella: *The Hungarian Parliament and EU Affairs: A Modest Actor Dominated by the Executive*. In: Heffler, Claudia – Neuhold Christien – et al. (eds.): *The Palgrave Handbook of National Parliaments and the European Union*. Palgrave Macmillan, New York, 2015. 535.

⁵² JUHÁSZ-TÓTH, 2014. 11.

National Assembly's Scrutiny of the Principle of Subsidiarity in Practice

The role of the National Assembly of Hungary in the Subsidiarity Monitoring Procedure is recently regulated by Parliamentary Resolution 10/2014. (II.24.) OGY on Certain Provisions of the Rules of Procedure and Act XXXVI of 2012 on the National Assembly.⁵³ The scrutiny of subsidiarity in the Hungarian National Assembly is prescribed in Section (1) of the Act XXXVI 2012. The act states, "*The National Assembly may take a position on whether a draft legal act complies with the principles of subsidiarity and proportionality.*" In practice, the EAC is the main player to consider the EU legislative acts. The role of the EAC in this matter is described in Part VIII, Section 142-143 of the resolution 10/2014. Hungarian National Assembly has been implementing two mechanisms for scrutinizing the application of subsidiarity principle namely the Ex-ante control of subsidiarity and the ex-post control of subsidiarity.

The Ex-ante control of subsidiarity

The EAC may examine the draft legislative acts that receive from the EU institution whether those proposals respect the subsidiarity principle, as laid down in Protocol No 2. If the EAC considers that a draft is failed to comply with the principle of subsidiarity, it has to submit a report to the plenary for the adoption of a reasoned opinion within the eight-week set in Protocol No 2. The plenary has 15 days to decide on the adoption of the report. Following the adoption of the report, the Speaker shall immediately send the reasoned opinion to the President of the European Commission, the European Parliament and the European Council, and shall simultaneously transmit to the Government of Hungary for their acknowledgement.⁵⁴

The ex-post control of subsidiarity

The EAC is entitled to examine the adopted legislative act of the European institutions. If it considers that the adopted legislative act of the EU is infringed the principle of subsidiarity, it shall propose to the Government within one month after the date of the publication to bring an action before the CJEU in accordance with Article 263 of the Treaty on the Functioning of the EU. Simultaneously, the EAC shall inform the Speaker its initiative act. The Government may decide to follow the EAC's initiative or rejects the submission of the action. In case of the rejections, the government shall provide the committee with a detailed justification. Before submitting the initiative act proposed by the EAC, the government may initiate a consultation according to the initiative of the National Assembly; the consultation takes place between the government and EAC.⁵⁵

Reasoned Opinion Submitted by V4 Countries since 2009

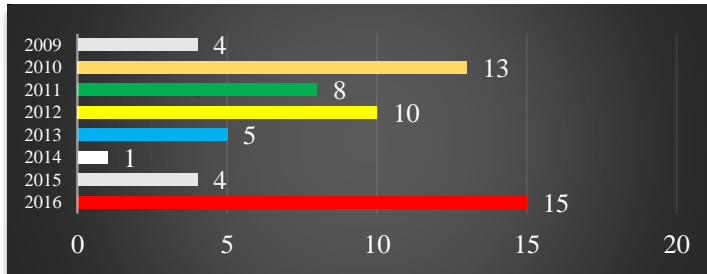
The Following figures indicate the reasoned opinions that the EU commission received from the V4 National Parliaments since 2009.

⁵³ See Hungarian National Assembly, the Scrutiny Procedure. <http://www.parlament.hu/web/house-of-the-national-assembly/scrutiny> (30. 03. 2018.)

⁵⁴ See more Resolution 10/2014. (II. 24.) OGY on certain provisions of the Rules of Procedure. Translation last modified on 31.07.2015. <http://www.parlament.hu/web/house-of-the-national-assembly> (09. 04. 2018.)

⁵⁵ Official Website of the Hungarian National Assembly <http://www.parlament.hu/web/house-of-the-national-assembly/control-of-the-eu-decision-making-process> (24. 04. 2018.)

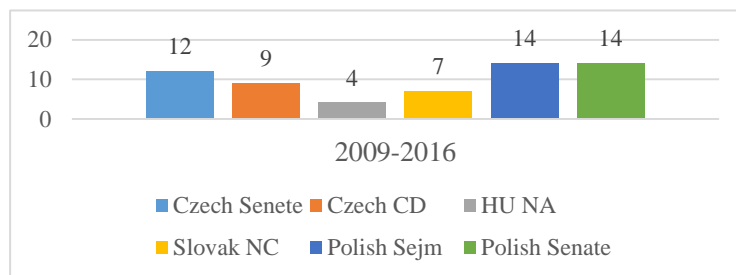
Figure 1: Reasoned Opinions Submitted to EU Commission by year between 2009-2016



Source: EU Commission Annual Report on the Subsidiarity and Proportionality from 2009 to 2017.

Based on the EU Commission’s Annual Report COM/2017/600, the Commission received 65 reasoned opinions from NPs in 2016 (713% increased, compared with eight in 2015). It should be noted that the V4 countries have contributed 15 reasoned opinions, which recorded as the highest contribution since the EWM introduced in 2009. This was 26% more than the four reasoned opinion submitted in 2015. Six out of 15 reasoned opinions were issued to against the EU Commission Proposal on the Posted Workers Directive.⁵⁶ The contribution of all V4-NPs, eight votes, allowed the National Parliaments to generate 14 reasoned opinions (22 votes), thereby triggering the third yellow card.

Figure 2: Reasoned Opinions Submitted to EU commission by Chambers between 2009 and 2016



Source: EU Commission Annual Report on the Subsidiarity and Proportionality from 2009 to 2017

⁵⁶ Proposal for a Directive of the European Parliament and the Council amending Directive 96/71/EC of The European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services COM(2016)128.

The figure shows the reasoned opinions that V4 NPs have been submitted to the EU Commission from 2009 to 2017. This data is collected from Annual Report on Subsidiarity and Proportionality of the EU commission which is available on its official website. According to the reports, it shows that Poland has submitted 28 reasoned opinions. While the Czech Republic sent 21 reasoned opinions to the EU Commission. Regarding Slovakia, seven reasoned opinions have been delivered so far, and Hungary is still left behind other countries, with only four reasoned opinions.⁵⁷

VIXATY PHOMPANYA

Scrutiny of the Principle of Subsidiarity in the V4 National Parliaments

(Summary)

The provisions of the Treaty of Lisbon, which deliver to the National Parliaments through the Protocol No 1 and 2, have brought the NPs closer to the EU institutions. It grants more power for NPs to directly access to the EU Legislative procedures. The cooperation between the EU institutions and National Parliaments became more active and visible than in the past. Regarding the V4-NPs, it should be remarked they have different approaches and procedures to scrutinize the EU legislative process. The cooperation and information exchange among the group on the matters of the EU affairs are still absent from their agenda. It demonstrates that some Chambers are not active enough to take account of the EU matters. It may be due to its domestic issues or lacking motivation on the EU commission proposals. It is very outstanding in the case of Hungary because the Hungarian government's attention in EU is more visible than National Assembly. It is hard for the National Assembly to control the government's position in EU affairs, especially when the government is supreme. As a result, it creates a gap in the reasoned opinion submitting to the EU commission. This gap does not entirely depend on the mentioned matters, but it may relate to the number of the proposals from the EU Commission, the capacities of each V4-NP in examining the proposals, and time management. In another dimension, it should be noted that the EU Commission has paid more attention in producing its proposal or legislative acts in order to avoid the infringement with the principle of subsidiarity. Nonetheless, the V4-NPs should pay attention to the quality and detail of its reasoned opinions, the improvement of the procedures, time management, and capacity building. Significantly, they should frequently exchange information regarding the EU proposals that may affect the group as a whole in order to increase the number of the reasoned opinion, thus reducing the gap within the group.

The Lisbon Treaty, which came into force in 2009, has introduced the "Early Warning Mechanism," in which National Parliaments scrutinize the EU legislative acts regarding their compliance with the Principle of Subsidiarity. There is no exception for the V4 countries to implement this mechanism in order to involve in EU matters. The purpose of

⁵⁷ Subsidiarity and proportionality. Annual reports on Better lawmaking. http://ec.europa.eu/dgs/secretariat_general/relations/relations_other/npo/subsidiarity_reports_en.htm (14. 02. 2018.)

this paper is to examine the relationship between the EU and V4 countries in monitoring the Principle of Subsidiarity after the Treaty of Lisbon entered into force in 2009. The main portion of this article attempts to identify the procedures, legal basis, and participants of V4 National Parliaments in the subsidiarity scrutiny. This article, therefore, reveals the different approaches of each national Parliament in tracking the EU legislative acts to ensure its subsidiarity compliance. Moreover, it summarizes the reasoned opinions of V4 National Parliaments that have been submitted to the EU institutions since 2009. With this empirical study, the study found that the most active countries are Poland and the Czech Republic, while Hungary and Slovakia are still left behind.