EDITORIAL COMMENTS

Back to basics – Why a European Parliament?

From the earliest days of the European Coal and Steel Community and the Rome Treaties (EEC and Euratom), there has been an “Assembly” of representatives of the peoples of the States brought together in the Community. Earnest efforts of the Assembly to develop its limited powers and role through any available means – political, judicial, constitutional... have born fruit in a disordered way: direct elections (decided in 1976, effective for the first time in 1979) preceded any real allocation of parliamentary powers to the European Parliament. After Maastricht and Amsterdam, the European Parliament has acquired powers which in many respects are similar to those of a national parliament; and yet, it is doubtful that this parliament, directly elected for the fifth time, has yet gained a legitimacy equivalent to that founded on national representation. From the point of view of the European citizens, what is the European Parliament made for? Does it have the authority to control and balance other European institutions? Has it become a convincing representative body?

The low turn-out of the elections of June 1999 authorizes serious doubts.

1. More and less than a national parliament

1. The Assembly of the European Communities\(^1\) first established itself by developing its budgetary powers. Throughout constitutional history, a tight link appears between democracy and the assent to taxes; it is well-known that monarchs were forced to accept limitations to their political power in order to obtain agreement on the levy of taxes necessary to finance public expenditure. In the Communities, budgetary powers of the European Parliament are somewhat “baroque”, but still significant.

   A special characteristic of the budget of the Communities – as international organisations and not States – is that expenses do not adjust to the amount

\(^1\) It chose to call itself first “European Parliamentary Assembly” (Resolution of 20 March 1958), and then “European Parliament” (Resolution of 30 March 1962).
of resources, but the reverse: the resources have to adjust to the amount of expenses, within the limits of a ceiling determined by the Member States. The European Parliament has hardly any powers on the resources, except the so-called fourth resource, a percentage of the GNP of each Member State, intended to cover the difference between other income and expenses. In comparison with national parliaments, the role of the European Parliament on the determination of resources is much more limited and indirect: it is only through the determination of the amount of expenditure that it decides on the level of this fourth resource.

If we turn now to expenditure, many national parliaments have an unlimited but often quite theoretical power, due to various rules and practices which tend increasingly to restrict the real ability of Members of Parliaments to take initiatives with financial consequences; in comparison, the role of the European Parliament appears to be limited but effective. The amount of the budget of the Communities is lower than that of the larger Member States, and the power of the European Parliament is shared with that of the Council, but it has clearly increased over time. As a result of the Treaties of 1970 and 1975, the European Parliament has become an equal partner with the Council. As is well known, their respective powers are determined by the distinction between “compulsory expenditure” (dépenses obligatoires: DO) and “non-compulsory expenditure” (DNO). The Council has the last word on DO, which consists largely of expenditure on the Common Agriculture Policy, while the Parliament has the last word on DNO, which includes expenditure on structural funds, on research and on aid to third countries. At first DNO accounted for only a small part of Community expenditure, but the proportion has risen very significantly with the growth of expenditure on the structural funds and increasing financial support from the Community to Central and Eastern European countries. This increase in the amount and the political importance of DNO has reinforced the bargaining power of the European Parliament in financial matters.

Each branch of the budgetary authority – Council and Parliament – may intervene in the domain of the other, but the majority rules provided by Article 272 (ex 203) EC are such that the European Parliament has more powers on DO than the Council on DNO. At the last stage of the procedure, the Parliament may “for important reasons” (Art. 272(8)) decide – by a majority of its members and two-thirds of the votes cast – to reject the budget as a whole and ask for a new draft to be submitted to it. This is a drastic way for the Parliament to express its disagreement on DO; the Council has no equivalent power. It is fair to say that the Parliament has used this tool only on rare occasions, but it is there as a deterrent and a means of influence of

2. 96 billion euro in 1998, compared, e.g., with the 243 billion euro of the French budget.
the Parliament on the whole budget. As for DNO, the Parliament is only limited by the complex mechanism provided by Article 272(9) which prevents DNO from increasing excessively from one year to another. The functioning of that mechanism was the subject of frequent disputes between the Council and the European Parliament. Fortunately peace was restored between the two branches of the budgetary authority by means of an “unclassical” instrument, periodical inter-institutional agreements between the European Parliament, the Council and the Commission. Whatever the legal value of such arrangements, they have a political significance and have helped ensure loyal cooperation between budgetary authorities for the last ten years.

In comparison with some national parliaments, which tend to rubber stamp financial decisions of the executive more than to exert proper financial initiative as regards national budgets, the European Parliament decides on the allocation of a good half of the resources of the Community budget and there are reasons to believe that this trend will continue. In contrast with widespread ideas, the European Parliament is perhaps the only parliament in the world to see its financial powers increase.

2. The participation of the European Parliament in the EC legislative process has long been notoriously limited in comparison with that of national parliaments in national legislative processes. However, from the original consultation procedure to the “co-operation” procedure introduced by the Single European Act, and the “co-decision” procedure which appeared with the Maastricht Treaty, not forgetting the assent procedure extended to the legislative sphere by the Maastricht Treaty, the role of the Parliament has been considerably enhanced.

With the entry into force of the Amsterdam Treaty the legislative role of the European Parliament has undergone new significant changes. In eighty situations, “co-decision” is substituted for “co-operation”, namely in the domain of transport, environmental policy, social policy. Furthermore the co-decision procedure itself has been modified: the so-called “third reading” (allowing the Council to initiate a new examination of the text if the Conciliation Committee failed to reach an agreement) has been suppressed. Therefore the European Parliament has come substantially closer to the role of co-legislator in parity with the Council. An important limitation which remains is that the Member States retain the equivalent of a veto right in the Council on the matters on which the unanimity rule has been maintained: harmonization of taxation,

3. One of them led to proceedings before the ECJ and the annulment by the Court of the act of the President of the Parliament declaring the budget to have been finally adopted: Case 34/86, Council v. European Parliament, [1986] ECR 2155.
5. I.e. Art. 8a(2) on Union citizenship, subsequently modified by the Amsterdam Treaty.
social protection of workers. It is unlikely that this will easily be modified by a new IGC.

3. A really new experience for the European Parliament has been the discovery – in a rather unconventional manner – of its ability to force the Commission to resign. The Committee of “Wise men”, established in January 1999 on no proper legal basis to be found in the treaties, had received a double mandate of the Parliament and of the Commission itself to examine the actual practice of the Commission as regards the conclusion of contracts and their financing. The conclusions of the Committee – although denouncing only a limited number of defective practices – provoked the collective resignation of the Santer Commission on 16 March 1999 once it became clear that the two leading parties in the European Parliament (PSE and PPE) would support a motion of censure. Such a resignation was quite new; no motion of censure had previously ever obtained the required majority (Art. 201 (ex 144) EC). A new context, more favourable to political accountability of the Commission, was bound to prevail once the Maastricht Treaty had introduced the requirement of a vote of approval by the Parliament for an incoming Commission. The Amsterdam Treaty goes further in providing that the European Parliament must approve the choice of the president of the Commission made by the governments of the Member States.

2. New responsibilities for the European Parliament

Undoubtedly, the European Parliament now has wide powers. Will it be able to use these powers effectively, and meet the need of European citizens to be informed (through their representatives) of what happens in the European institutions and where necessary censure this? The European Parliament has proved to be able, in the context of the BSE crisis, to use the powers conferred to it by the Maastricht Treaty to set up a temporary committee of inquiry to investigate alleged contraventions and maladministration in the implementation of Community law. The committee of inquiry met with reluctance from both the Commission and some Member States directly concerned, but its conclusions were useful and helped the Parliament (resolution of 19 February 1997) to exert real pressure on the Commission.


7. The designation of Mr Romano Prodi as future president of the Commission due to replace the Santer Commission for the end of its mandate has been approved by the European Parliament on 5 May 1999 by 392 votes favourable, 72 against and 41 abstentions.

8. Art. 193 (ex 138c) EC.
As for transparency, the European Parliament like the other European institutions, has adopted rules on the access of citizens to written documents. This general evolution in favour of more transparency of Community action should increase the confidence of citizens in European institutions.

Nevertheless, the main question remains that of the ability of the Parliament to exert control on the Commission and the numerous new agencies, not to mention the European Central Bank. It is interesting to note that on three occasions the European Parliament passed resolutions asking to play a more significant role in the choice of the persons likely to become members of the executive Board of the European Central Bank as it participates in the designation of the members of the Commission. In the absence of express provisions, Mr Alexander Lamfalussy willingly appeared in the European Parliament before becoming president of the European Monetary Institute. Mr Wim Duisenberg followed the same practice before taking the presidency of the ECB. Political accountability of the Central Bank is a major object of concern for the future, a domain where the European Parliament will have to play a role in a context very different from that prevailing at national level.

With the resignation of the Commission in March 1999, a taboo has been lifted; but in the future will the Parliament be able to exert watchfulness on the Commission, individually and collectively, or will the traditional alliance between the Commission and the Parliament reappear? This is more a political than a legal problem. At one time, it was thought that, in order to help solve the type of crisis which appeared with the malfunctioning of the Commission in 1998–99, the next IGC could consider introducing a mechanism of individual liability of Commissioners for their personal behaviour; but this would go against the fundamental principle of collective liability of the Commission, which has characterized the EC institutions from the beginning. At present, as far as the next Treaty revision is concerned, the European Parliament seems to be mostly concerned by its own participation in the process and in the result. The confused way in which the 1996 IGC took place, without proper participation of the Parliament, should give an incentive next time to accept some sort of parliamentary participation. However, it is doubtful that the proposal of Mr Elmar Brok – who was an observer of the European Parliament at the previous IGC together with Mrs Guigou – to have a “convention” of representatives of national parliaments and the European Parliament associated with the work of the IGC, will meet the agreement of all Member States.

Another contentious question is going to be the request of the European Parliament to obtain a right of assent to any new treaty. If the question of

10. Art. 112(b) (ex 109a), provides only for a consultation of the Parliament.
The revision of Article 48 TEU\textsuperscript{11} were added to the agenda of a future IGC – which initially should be limited to issues left over from Amsterdam – the request of the Parliament would undoubtedly meet strong opposition from a number of Member States. It would, anyway, not apply for the next revision.

Theoretically, no one disagrees with the assertion that a European Union with twenty-five members has to be more “parliamentary” than a European Community of six, nine, ten, twelve, fifteen... But there is still a long way ahead. It is not so much that the rules have to be modified again: they have been considerably improved in favour of the Parliament. But habits and practices have to evolve. One may wonder if the recent collective resignation of the Commission under the pressure of the European Parliament is the sign of a change in the nature of relations between the various branches of the European institutional system. In such a system, there is no hierarchy between the authorities and none possesses the absolute power. Democracy is based on highly time-consuming negotiation, and on any specific subject, a majority is susceptible to emerge through negotiations between parties and interest groups. This is one reason, among others, to convince the members of Parliament that their task implies high professionalism and a regular presence in Strasbourg and Brussels. The Euro-Members of Parliament who are so prompt to request that more constitutional powers be assigned to them in the Treaty are now faced with a serious responsibility: to demonstrate that they are worthy of the confidence of the European citizens and able to establish their own legitimacy. The discussions which have taken place since December 1998 on a draft common statute of the European deputy, where each one pleaded for the defence of its “acquired right” casts doubt on their collective ability to make the general interest prevail.\textsuperscript{12}

11. Art. 48 TUE (ex Art. N) states in its second paragraph: “If the Council, after consulting the European Parliament and, where appropriate, the Commission delivers an opinion in favour of calling a conference of representatives of the governments of the Member States, the conference shall be convened by the President of the Council...”. The third paragraph stipulates:” The amendments shall enter into force after being ratified by all the Member States in accordance with their respective constitutional requirements”.

12. It seems that differences of opinions between the European Parliament and the Council on this draft statute should prevent it being adopted within a foreseeable future. See Agence Europe No. 7459, 6 May 1999, 8.