

EXECUTIVE-LEGISLATIVE RELATIONS IN ITALY AFTER THE LISBON TREATY

FANNI MANDÁK*

1. Introduction

Political actors, institutions and game rules of the Italian politics have been significantly transformed and have moved toward a presidential model during the last twenty years. The most visible parts and driving forces of this tendency are the semi-direct election of the Prime Minister (PM) and the concentration of legislative initiatives, the bills introduced by the government (the extreme use of decree-laws and the delegated legislations).

This paper analyses whether the empowerment of national parliaments (NPs) carried out by the Lisbon Treaty (furthermore referred to as TEU) has had a positive effect on the balance of power between government and parliament in Italy or not. The study deals with the rights of national parliaments ensured by the LT and their implementation in Italy, via examining the approved rules and amendments in this field and analysing the parliamentary statistics regarding the "new" tools and procedures.

2. Executive-Legislative relations in Italy – the Signs of Presidentialization

After the decades-long feebleness of the Italian governments, abandoning the system known as „integral parliamentarism”¹; the revolution of the executive branch began with the reversal of the balance of power between the government and the parliament in the 1980s, in which the previously attained predominance in an increasing number of fields put the parliament and especially the opposition into disadvantage.

This tendency was brought about by the extraordinary increase of the government’s normative activities, the reorganization of the PM’s Office², the strengthening of the PM’s monocratic powers³ which occurred with a more general widening and consolidation of the role of the government, attributing various competencies and directional capacities to it, and finally, by the relations with EU-institutions. There were several changes which affected the electoral system too, like the bipolarization of the party system, the formation of pre-electoral instead of post-electoral coalitions and the indication of the names of leaders

* Institute of State and Social Theory, National University of Public Service, Ménesi út 5, H-1118 Budapest, Hungary. Email: fannimandak@gmail.com.

¹ It was called “integral parliamentarism” because of that the parliamentary assembly had an important role in determining government actions. G. Miglio, G.: *Le contraddizioni interne del sistema parlamentare-integrale. Rivista Italiana di Scienza Politica*, 1984. Vol. 14. No. 2., 209-232.

² The creation of a strong apparatus of administrative support for the PM’s Office, the development of the PM’s staff, and the organization of the departments at the PM’s Office on the basis of the principal functions of policy-making.

³ Pajno, A. – Torchia, L.: *La riforma del governo*. Il Mulino, Bologna, 2000. and Criscitiello, A.: *Il cuore dei governi. Le politiche di riforma degli esecutivi in prospettiva comparata*. Edizioni Scientifiche Italiane, Napoli, 2004.



within the symbols shown in each ballot brought about a kind of informal direct election of the president of the council of ministers.⁴

According to the significant tendency of the last three decades, cabinets and prime ministers have been attaining predominance in an increasing number of fields, putting the parliament and the opposition into disadvantage. This process has created such a hybrid form, which is neither a pure parliamentarianism anymore nor a presidential system yet. The transformations of the Italian political system lead to a more presidentialized form of government.

3. Reforms of the Lisbon Treaty on National Parliaments

The LT is a great milestone for NPs as – for the first time ever – it named the national parliaments in the body of the Treaty and not only mentioned them in annexes or protocols.

The Treaty gives the national parliaments greater scope to participate alongside the EU legislation.⁵ A new clause clearly sets out the rights and duties of the national parliaments within the EU. The Protocol on the role of national parliaments (Protocol 1) establishes a procedure in which the Commission directly informs the national parliaments about its non-legislative and legislative proposals, including the annual legislative programme. Other actors with legislative powers also send their draft legislative proposals to NPs. Then, national parliaments have eight weeks to react to these proposals before the legislative process begins.

The Treaty renders it possible for national parliaments to participate in the mechanisms for policy evaluation in the field of freedom, security and justice. Furthermore, it gives them right to participate in the procedures of the reformation of the treaties unless the European Council (with the consent of the European Parliament) decides that a given change does not necessitate a convention method; national parliaments may also take part in the evaluation of accession applications, and the Treaty also confirms the inter-parliamentary cooperation between national parliaments and with the European Parliament.

One of the greatest innovations of the Treaty is the new power to enforce subsidiarity.⁶ If there is suspicion of a breach of the subsidiary principle, each national parliament or each chamber of a national parliament has eight weeks to communicate the reasons to the presidents of the European Commission, the European Council and the Council why it considers that a given draft does not respect the principle of subsidiarity.⁷

⁴ R. D'Alimonte, R. – Bartolini, S.: *Maggioritario finalmente? La transizione elettorale 1994-2001*. Il Mulino, Bologna, 2002.

⁵ See Article 12 of the Lisbon Treaty.

⁶ Subsidiarity means that – except in the areas where it has exclusive powers – the EU only acts where action will be more effective at EU-level than at national level.

⁷ Regional parliaments with legislative powers can also be consulted. This new power has two stages. If one third of national parliaments consider that the proposal is not in line with subsidiarity, the Commission will have to re-examine it and decide whether to maintain, adjust or withdraw it. Article 7, paragraph 2 of Protocol 2, of the TEU. If a majority of national parliaments agrees with the objection but the Commission decides to maintain its proposal anyway, the Commission will have to explain its reasons, and it will be up to the European Parliament and the Council to decide whether or not to continue the legislative procedure. Article 7, paragraph 3 of Protocol 2, TEU.

The national parliaments also gained the power to veto the application of the *passerelle clause*.⁸ The clause can be used to change the decision-making mechanism from unanimity to majority voting in the Council, or to change the special legislative procedure to an ordinary one (i.e. giving greater oversight of a policy to the European Parliament). Such a decision can only be taken by the European Council unanimously. However, any individual national parliamentary chamber has an individual veto power within six months following the proposal.⁹

However, the Lisbon Treaty reforms are only theoretical opportunities, the implementation of the new privileges attributed to the national parliaments depends on the member states, particularly on national governments' will and national parliaments' determination and activity.

The new rights and means given to the national parliaments by the Treaty may be integrated into the existing legislative-executive control mechanism systems and by doing so, the member states could represent their national interests in a more efficient way, national parliaments may extensively control the governments, but if there is not an adequate government will to implement the new competencies, they will not put any effect into practice.

We can distinguish three main models regarding how national parliaments have participated in the EU's legislative process after the LT:

- ❖ the document based approach,
- ❖ the procedural approach and
- ❖ the *mixed* one.

Regarding the *document based approach*, national parliaments systematically examine the EU legislative proposals or by *ad hoc* selections, eventually adopt policy prescriptions. In some of the countries while conforming to this method, the government can suspend its action within the Council on its own initiative or under parliamentary request about a certain proposal, until parliamentary scrutiny is over. At the *procedural approach*, the national government presents its negotiating position on the main draft proposals of the EU to the parliament before every Council meeting. In this case parliamentary accountability over the government's position is exerted in advance rather than just on draft proposals and it can be politically fixed and in some cases also legally binding acts. It is worth mentioning that Italy has been using the *mixed approach* after the approval of law No. 234/2012.

4. How the Lisbon Reforms Are Put into Practice in Italy?

At the end of 2009, law No. 11/2005 (Law on European affairs) was in force in Italy. That law was a great sign of modernization of the means for the Italian participation in the EU legislation at that time, but it was not appropriate to establish an efficient system for representing Italian interests.¹⁰ In the field of European affairs, there had been a real necessity for a wide reform already before the Lisbon Treaty came into force. Despite of

⁸ Article 48 paragraph 7 TEU.

⁹ The same procedure applies to a specific *passerelle clause*, which can be decided by the Council on legislation concerning family law with cross border implications. Article 81 of the TEU. Here too, any individual national parliamentary chamber can veto the decision within six months.

¹⁰ Although, law No. 11/2005 was amended several times after 2007, it was unable to ensure an adequate system of means and procedures.

this fact and the need for the implementation of the LT, the revision of the existing legal frameworks was very ponderous and remained without any significant results till the end of 2012.

However, the necessity of the reform of law No. 11/2005 was pointed out from the beginning of the XVI Legislation, there were no reforms of the Rules of Procedure neither in House of the Italian Parliament on the new means introduced by the LT, nor any important legal acts had been adopted in this field.

Between 2009 and 2012, there were only two interpretations of the Committee on the Rules of Procedure about the relevant articles of the Standing Orders and amended law No. 11/2005. For three years there was not any ensured appropriate legal framework for the practice of the new competencies.

4.1. Interpretations of the Rules of Procedure and a Letter Written by the President of the Senate

Before the Lisbon Treaty came into force, the Committee on the Rules of Procedure in the Chamber approved an interpretation of the articles on dealing with EU affairs.¹¹ This interpretation introduces an experimental process for the subsidiarity check and declares that the documents sent by the European Commission for consultation to the Italian parliament are passed on to the appropriate Parliamentary Committee for consideration and to the Committee for EU policies for its opinion. The relevant Committees may formulate observations and adopt policy-setting instruments for the government.¹² Furthermore, the interpretation states that general committees may invite not only Members of the European Parliament and of the European Commission, but also representatives from all EU institutions to their hearings.

After that on 14th July 2010, the Committee approved a further interpretation which declares that if the Committee for EU policies recognizes problems concerning whether draft EU legislative instruments conform to the principle of subsidiarity or not, it has to be discussed by the plenary before the eight week deadline ends for the national parliaments' scrutiny.¹³

These two interpretations do not contain any real innovative instruments for the new tasks as they apply the procedures introduced by law No. 11/2005 or their little modified versions. In the Senate, its President published a letter on the day when the Lisbon Treaty came into force, defining his indications on the implementation of the privileges introduced by the Treaty.¹⁴

It is not only the lack of an adequate legal framework but also the lack of cooperation between the two chambers at the elaboration of the procedures concerning the new powers that obstacles the strengthening of the Italian parliament in the European affairs. As a consequence, the Italian parliament lost the advantage offered by the Lisbon Treaty, namely, the opportunity to represent the country's interests in a more effect way at European level in the first years after the Treaty came into force.

¹¹ Article 127, paragraph 1. of the TEU.

¹² <http://www.camera.it> [593?conoscerelacamera=236]

¹³ <http://www.camera.it/> [593?conoscerelacamera=241]

¹⁴ The letter was published in Capuano, D. A.: *Funzioni delle Camere italiane nel procedimento legislativo dell'Unione europea. Rassegna parlamentare*. 2011. No. 3, 519-590.

4.2. *The „EU law 2009”*

A little step forward was the approval of the so-called “EU law 2009” which says that the position represented by Italy in the EU Council of Ministers or in relation to other institutions and organs of the EU shall take the prescriptions defined by the Chambers into account. Furthermore, it introduces the duty of the government to report on the European affairs to the parliament at least twice a year.

4.3. *The Law 96/2010*

The next step of the implementation of the rules of the Lisbon Treaty in national parliaments was the approval of law No. 96/2010. The law confirms that duty of the government to inform the parliament about the actual EU draft legislative acts and the government’s positions about them at least twice a year. Furthermore, the government has to take the parliament’s opinions into account and has to integrate its prescriptions at the official Italian positions presented at the EU Council of Ministers. At the next parliamentary report the government has to inform the parliament how its prescriptions were presented at the EU Council meetings.

However, the law has a great lack; it determines a longer period of time for the government to give the required and compulsory information to the parliament in the subsidiarity exam than the period ensured by the Lisbon Treaty for the national parliamentary exams, making it impossible to make the conclusion of the procedure in time.

4.4. *The Law 234/2012*

The problem of the inadequate legal framework may be resolved by the law 234/2012, approved at the very end of 2012, and before the dissolution of the Italian parliament in the XVI Legislation. The law 234/2012 has four main objectives.

- ❖ It aims at creating new appropriate means of the interactions between parliament and government, parliament and regional councils, regions and local authorities and improving the already existing instruments.
- ❖ It focuses on strengthening the parliamentary interventions in the elaboration of the official Italian national positions.
- ❖ The third objective of the law is to render the realization of duties introduced by the EU to the member states more efficient.
- ❖ Last but not least, the law aims at redefining the concept of the European Union affairs declaring that they are not foreign affairs anymore but dimensions of national policies.

It preserves the rules of law No. 96/2010 regarding the government’s duty of reporting to the parliament at least twice a year and the government’s duty of informing the parliament about the official Italian positions which will be presented at the EU Council meeting. Prior to the meetings, the government has a duty for integrating the parliament’s prescriptions in the official Italian positions, taking these opinions and suggestions into consideration. It determines a short deadline (maximum 15 days) for the government’s reporting duty after the EU Council meetings. If the official Italian position differed from the parliament’s prescriptions in financial and monetary questions, the government has to explain and justify its reasons.

Furthermore, it assures more opportunities to participate in the creation of European policies for the parliament and the local autonomies. It cuts down the deadlines of the

government to inform the parliament. The law confirms and strengthens the duties of the government to inform the parliament and send it not only its opinion on an EU legal act, but also the notes and reports made by the Permanent Representation of Italy to the European Union and a table which explains how the new legal act will modify the actual rules in that field.¹⁵ Obliging the government to provide the parliament more information renders it possible to finish the parliamentary exam during the eight week period.

Concerning the subsidiarity check, it does not create a new form of procedures but declares that the two chambers have to use the procedures determined by the Rules of Procedures to complete this task.

The law 234/2012 has an important innovation as it declares that any of the two chambers may ask the government to declare at the EU Council that the Italian parliament is examining the draft legislative act under discussion and to ask to suspend the procedure at the Council for 30 days.¹⁶

Another important innovation is that the mechanisms foreseen by the law, with particular reference to the role of the parliament and of the coordination in the government, do not only concern normative acts in a strict sense but any type of EU documents.

The law introduces the new notion of European affairs and uses the Ministry of European policies for the Ministry of European affairs.¹⁷

5. Parliamentary Statistics Regarding the EU Legislative Acts

In this paragraph the study introduces the statistics of the Chamber of Deputies in order to see how the parliamentary activity has changed in the field of European affairs. The studied period ends before the approval of law No. 234/2012, so the following tables will not contain any information on the effects and consequences of that reform.

The table 1 contains the XVI and the XV Legislation, monthly values which help the correct comparing can be found between the brackets.

Table 1. Parliamentary activities in the field of European affairs

Legislature	XVI (29/4/2008- 30/11/2012)	XV (28/4/2006- 28/4/2008)
Examined acts and draft legislative acts (art. 127. R.C.)	173 (3,1)	8 (0,33)
- approved final documents	64 (1,16)	5 (0,2)
Subsidiarity exams:		
- examined acts	19 (0,34)	-
- approved documents	17 (0,31)	-
- from which reasoned opinions	3 (0,05)	-
Government's communications on European Council and other institutional activities	20 (0,36)	2 (0,08)
PM's notes on the activities of the EU institutions (plenary)	3 (0,05)	-

¹⁵ Cf. Articles 4 and 6, Law No. 234/2012.

¹⁶ Cf. Article 10, Law No. 234/2012.

¹⁷ The new name of the Ministry of European Policies was introduced by the Monti government in 2011.

Hearings on the activities of the EU:	307 (5,58)	70 (2,92)
- European commissioners	25 (0,45)	10 (0,42)
- MEPs	22 (0,4)	10 (0,42)
- members of the Italian government	35 (0,64)	14 (0,58)
- heads of public administration	29 (0,53)	4 (0,17)
- others	196 (3,56)	32 (1,33)

Source: Interventi della Camera dei Deputati nella formazione delle politiche Ue (29 aprile 2008 – 30 novembre 2012), Interventi della Camera dei Deputati nella formazione delle politiche Ue (28 aprile 2006 – 28 aprile 2008).

As we can see from table 1, the Parliament examined much more EU acts and documents in the XVI Legislation than in the previous one, but the index of the approved final documents was not very high, only in 37 per cent of the examined acts and drafts was the final document approved. A great step forward, a great development which shows the strong interests and commitment of the parliament to participate actively in the EU legislation is the significant increase of the organised hearings. In the XVI Legislation there were four times more hearings than in the previous Legislation.

The Parliament examined 19 acts for subsidiarity check and approved 17 documents about them from which three were reasoned opinions. With this number Italy is one of the most active countries in subsidiarity check exams.

The table 2 presents parliamentary activities divided by policy areas. It shows that the Italian parliament concluded or is conducting exams in all EU policies. The most acts and documents were examined in the field of freedom, security and justice, foreign affairs and security, economy, industry and internal market.

Table 2. Parliamentary activities in the field of European affairs divided by policy areas

Policies	Concluded exams	Ongoing exams	Hearings	Fact-finding inquiries
Institutional and general questions	3	2	8	1
Freedom, security and justice	15	10	4	1
Foreign affairs and security	6	13	3	0
Economy	8	2	14	1
Cohesion	1	1	1	1
Financial services	4	2	1	4
Fiscal affairs	3	0	0	0
Education	3	0	2	1
Sport	1	0	0	0
Energy and environment	4	3	2	0
Transportation	5	1	2	0
Communication	0	0	1	0
Industry and internal market	8	5	2	0
Consumer protection	0	1	1	0

Employment and social affairs	2	0	4	0
Health	1	1	2	0
Agriculture and fisheries	2	3	8	0

Source: Interventi della Camera dei Deputati nella formazione delle politiche Ue (29 aprile 2008 – 30 novembre 2012), Interventi della Camera dei Deputati nella formazione delle politiche Ue (28 aprile 2006 – 28 aprile 2008).

6. Conclusions

The paper has shown the innovations of the Lisbon Treaty regarding how important national parliaments could be in the case of Italy, in a country, where the interactions between the parliament and the government are unbalanced and have great defects in the field of European affairs.

Regarding the steps of the implementation of the new privileges and procedures, unfortunately, significant changes were not taken to render the legal framework appropriate for the Italian participation at EU legislation till the end of 2012. The interpretations of the Rules of Procedure of the Chamber of Deputies, the letter written by the President of the Senate and the amendments of law No. 11/2005 did not seem sufficient enough to realise an efficient control on the executive and an adequate participation of the parliament in European affairs.

However, it may seem that law No. 234/2012 is an important development which contains a number of innovations regarding parliamentary procedures and governmental duties, but the approval of the law could not replace the necessary and already missing reform of the Rules of Procedure in both Chambers.

In conclusion, the study assumes that for having a positive effect of the Lisbon Treaty reforms on the unbalanced relation between the parliament and the government in Italy, the legal framework should be completed by amending the Rules of Procedure. Once the legal framework will be appropriate, both actors; the parliament and the government should use the new means in an adequate manner respecting the rules. Not like for example with the institution of the PM's question time which was created to have a direct dialogue and parliamentary control on the PM, but from the 1980s, when it was introduced, none of the PMs participated in this weekly event, ignoring this duty.

To sum up, the Lisbon Treaty innovations may have a positive effect on Italy only with a complete and appropriate legal framework and with a strong commitment of the government and the parliament.