

## EUROPEAN DIMENSION OF NATIONAL PARLIAMENTS IN THE EUROPEAN UNION

Endre-Sandor Erdődi\*

**Abstract.** *The institutions of the member states have been changed in the European integration process through the transfer of a part of their political and economic competences to the European Union. The national parliaments made no exemptions from this rule, even if they did not observed the loss of sovereignty from the very beginning. But in the '80 and in the post-Maastricht era they realised this phenomena and the related consequences. Since then we can observe a mobilisation of the national parliaments to exert an increased influence on the decision making process in the European Council and in the Council of the EU, in order to compensate their loss of competencies in the past. This article presents the main functions of the national parliaments and their role on European level and also tries to show the mechanisms by which they participate in defining european policies. Finally, some recommendations will be made related to the necessary measures to be taken by the Romanian Parliament in order to be an effective participant in the EU decision making process after the accession date.*

### A. Functions and role of national parliaments in the European Union

National parliaments in the European Union fulfil two major categories of functions (13, p. 30): *treaty-based parliamentary functions* (constitutional ratification of treaties, implementation of the *acquis communautaire* in the domestic legislation) and *parliamentary functions outside the treaties*. The first class includes the *ex-post* functions, meaning that national parliaments only become involved after the basic decision has already been made. Functions outside the treaties nevertheless enable parliaments to intervene in the decision-making process. Concretely, what intervene

here are the national functions of parliaments in the area of EU matters.

The role of national parliaments was first officially recognised in the Treaty of Maastricht of 1991, in an annex to the treaty with the headline 'Declaration on the role of national parliaments in the European Union' (14, p. 213) the primary intention of which was to open new prospects for co-operation among the Member State parliaments. The declaration recommended that contacts between the European Parliament and the national parliaments should be stepped up, national governments were asked to ensure that their parliaments receive information on European matters and encouraged regular meetings between members of national parliaments.

\* **Endre-Sandor Erdődi** studied Economics, Specialization International Transactions (degree completed in July 2003) and European Studies and International Relations (Master degree completed in June 2006) at the University of the West in Timisoara. From March until July 2005 he was a scholarship-holder of the German Bundestag (International Parliament Internship Programme -IPP). As part of a two-year EU-Phare programme "Developing a Corps of Professional Public Managers in the Romanian Civil Service – Young Professionals Scheme (YPS)" he is currently studying European Studies (MA) at the Europa-Kolleg Hamburg.

A novelty is brought by the Amsterdam Treaty to which a '*Protocol on the role of national parliaments in the European Union*' was annexed, containing two items:

- Information for national parliaments by the member states by forwarding all Commission consultation documents and proposals for legislation, in good time, with a period of six months elapsing between a legislative proposal is made available by the Commission and the date when it is placed on the Council agenda for decision for the adoption of a common position;
- The Conference of European Affairs Committees establishing the 'COSAC'<sup>1</sup> of national parliaments founded in Paris in 1989. COSAC may address to EU decision-makers any contribution in selected areas of EU competence, noting that COSAC contributions do not bind national Parliaments.

Every year, COSAC brings together six members from every national parliament, from the European Parliament as well as three MPs from every associate or applicant country, with an observer's statute. COSAC regularly meets in the capital city of the country holding the EU rotating presidency at that time.

Substantial developments are subsequent to the Convent on the Future of Europe where the representatives of the national legislatures were in majority concretised in the Treaty establishing a Constitution for Europe adopted in 2004, but currently experiencing a stall back in ratification. Among the protocols

annexed to the Treaty, there are two that refer to:

➤ *The role of national parliaments in the European Union*, stating a clear obligation on behalf of the European Commission and of other EU relevant bodies to forward all European documents to the national Parliaments of the member states;

➤ *The application of the principles of subsidiarity and proportionality*, where national Parliaments are given for the first time the right to raise a reasoned opinion on Commission proposals. By the early warning system regarding the compliance with the principle of subsidiarity, where reasoned opinions on a draft European legislative act's non-compliance with the principle of subsidiarity represent at least one third of all the votes allocated to the national Parliaments, the draft must be reviewed. Another option of control after the adoption of legislative acts is through the European Court of Justice that has jurisdiction in actions on grounds of infringement of the principle of subsidiarity by a European legislative act notified by the member states on behalf of their national parliament. Consistently with the same line of thinking, the Commission must submit each year to the national parliaments of the member states a report on the application of the principle of subsidiarity.

### **B. Mechanisms for the involvement of the national Parliaments in the European decision-making process**

National Parliaments therefore fulfil a variety of functions in Europe. Whilst those functions that are mentioned in the treaties somehow limit the ability of Parliaments to become involved in the

<sup>1</sup> Conférence des Organes spécialisés dans les affaires communautaires et européennes des parlements de l'Union européenne

European decision-making process, those unspecified in the treaties give them broader discretion. However, the exploration of such functions is not a purpose in itself for the legislatures of the member states. The enlargement of the competence of the European Parliament while downsizing democratic deficit in the EU, hence giving European policies legitimacy presents its own limitations, at least under the present social and economic circumstances in Europe. In such a context, it should not come as a surprise that mechanisms for the involvement of national parliaments in the legislation generating process are being developed as a measure of consolidating the EU democratic fundament.

A relevant element in this development is a decision of the Federal Constitutional Court in Germany<sup>2</sup> further to the Maastricht Treaty being challenged by a number of deputies on the Bundestag on grounds of unconstitutionality. The said decision assigns a fundamental role to national parliaments in effecting democratic legitimacy at a Community level: 'Democratic legitimacy (in democratic states) is achieved by the action of the European bodies being connected to the parliaments of the member states' (5., page 40).

In the specialised literature, too, one can notice a trend towards recognising the importance of national parliaments in the European Communities system as well as a number of theoretical models designed to strengthen their role in ensuring a democratic character for the European Union.

Starting from these premises as well as from the experience of the European integration process that has rather deprived them of some of their

components, the EU member state parliaments have developed a range of domestic constitutional mechanisms designed to augment their influence on European policies. The following will be a review of such mechanisms with several references being made to the situation in the Federal Republic of Germany, the Bundestag in this particular case, given the fact that my five-month internship there enabled a close-up view.

Primarily, one must note that the influence of national parliaments is mainly being reflected by how they control the activity of their national governments in the Council of the European Union. There are two baseline systems for such control (5., page 184):

- *The model of the ex-post control over the ministers (a passive-reactive kind of control)*, where the government enjoys discretion in negotiating with the Council while retaining responsibility for its positions and the way it votes before the Parliament after the decision has been made;
- *The model of ex-ante control, by directly influencing the decision-making process (a proactive-anticipative kind of control)* – the 'control by commitment' concept – according to which the parliament is given the legal option to actively influence the content of the position of the government before a decision is made in the Council.

Roughly, almost all parliaments of the member states pursue the model of control by commitment, the difference among them becoming notable when it comes to the effectiveness of the practical employment of the model. An exception to that is the Hellenic

<sup>2</sup> Known by the name of „Maastricht-Entscheidung“ (the Maastricht Decision)

Republic where the rights of the parliament are greatly restricted to the ulterior oversight of the activity of the ministers.

Irrespective of the model pursued, parliaments use the tools set out below.

### **1. Governments informing parliaments**

Apart from traditional control tools (interpellations, hearings, interrogations, etc.) fit for overseeing the activity of the government in the EU Council, in almost all member states legal provisions have been introduced making it mandatory for governments to report to parliaments on the legislative intentions at a EU level, by transmitting to them the proposals for legislation drafted by the European Commission, as well as to produce regular (every semester or year) reports on European affairs before the parliament plenum.

As regards the *legal foundation* of this tool of parliamentary involvement, in Germany, France, Austria and Portugal the obligation of the government to inform the parliament is enshrined in the constitution of those countries. Art. 23, paragraph 2 of the German Constitution (Grundgesetz) reads: ‘...the federal Government is under an obligation to inform the Bundestag and the Bundesrat without delay’ (15., page 23).

In the majority of the member states this obligation of the executive is regulated by ordinary legislation, and by organic legislation in the Scandinavian countries. In Denmark, the legal basis for the right of the Folketinget to be informed is the EU Accession Act, art. 6: ‘the Government reports to the Folketinget on developments in the European Communities’ (13., page 115). In the UK and Ireland, the legal foundation is represented by the regulations of the parliaments and the various conventions they have with the

government. In The Netherlands and Luxembourg there are no legal provisions in that respect, but the government has undertaken it to share EU-relevant information to the legislature. Only The Hellenic Republic is an exception to that, as it has neither provisions nor a unilateral obligation of information taken on by the government. The available control instruments are the annual reports the government writes on the application of treaties, and the interrogations in the parliament.

As far as the *scope of the information* presented by governments is concerned, two modalities can be identified in the EU:

- In certain member states the information is comprehensive and encompasses the totality of the EU activities (Denmark, Germany, Austria, Portugal, Sweden and Great Britain);
- In most of the member states the legal obligation to provide information is restricted to forwarding the official proposals of the European Commission for new directives or norms. The rest of the documents are sent only if requested by the parliaments.

In conclusion, the information of parliaments by the governments consists at least in the forwarding of the legislative initiatives developed by the Commission, with the exception of Greece. In practice, however, parliaments seem to be facing a variety of hurdles in the process of receiving information: documents are often incomplete (Italy, Portugal, Spain) or sent with delays (France, Luxembourg, Belgium, Great Britain).

Many national parliaments solicit, apart from the EU official documents, also extra information from their governments in the form of

substantiation notes, information fiches or standardised memorials putting every European legislative project in a political, economic, social and legislative perspective. In Austria, Denmark, Germany and Great Britain governments have an obligation to forward such information, and in the rest of the member states additional explanations are only given if requested by the parliament or by its specialised committees.

A major importance presents the ongoing reporting on the subsequent developments in the negotiations on the Council of the European Union. The analysis of legislative proposals is only the first step in informing the parliament, since negotiations within COREPER<sup>3</sup> and then in the Council can take an unexpected turn, and the parliaments need detailed information on those processes in order to influence government positions. In several member states such as Austria, Denmark, Finland, Germany and the UK, this information practice is enshrined in the constitution of those countries or in special laws. In the majority of the member states, the parliaments raise information regarding the developments within the Council of the EU via traditional interrogation tools as well as informally, through their European affairs and specialised committees.

Governments of all member states are supposed to present detailed reports on the state of play of the European integration and of the European Union, as well as on expected developments every six months or annually. The Hellenic Parliament attaches special attention to such government reports.

## **2. Parliament committees on European affairs**

The first parliament committee dealing with European affairs was the 'committee for the single market and for the free trade area' of the German Bundesrat, created in 1957 acting to ensure that the positions of the governments of the German lands in the area of European integration would be considered to a greater extent by the federal government. Following the example of the Bundesrat, other parliaments of the six member states at the time also established similar committees in the years to come.

The lower chambers of the German Federal Parliament, the Bundestag, took the first step towards a committee on European affairs by establishing a Council for Integration in 1963, with a task to take over information from the government and disseminate it to the specialised committees. Nonetheless, the Council only met a few times in five years. A substantive change occurred as from 1979, pursuant to the first direct elections organised for the European Parliament, abrogating the double mandate of the deputies, and guaranteeing a direct flow of information. The Europe Committee of the Bundestag was established in 1983, including 11 federal and European deputies. The primordial role of the committee was to make European policy or decision recommendations as well as to liaise with the European parliament, therefore not having the statute of a proper parliament committee (11., page 70). Given the rather ineffective performance of the committee, it was replaced, in 1987, by a sub-committee for the EC of the foreign affairs committee, where the members of the European parliament

<sup>3</sup> Committee of the Permanent Representatives of the Council of the European Union

were only observers. It unclear statute and authority-related issues, the committee was dissolved in 1991, when it was replaced by a Commission for the European Communities with a role of studying European documents, improve relations with the national parliaments and with the EP. That formula did not prove to be any more satisfying than the ones before, being undermined by the competition of the specialised committees. In general, before the early 1990s, political forums in the Bundestag had failed to deliver and live up to the expectations when created, focussing on issues and themes of principle in connection with the European Communities rather than actually analysing European legislative initiative which would remain in the competence of the specialised committees. A large-scale change occurred after the entry into effect of the Treaty of Maastricht, when the Committee for European Union Affairs was established by constitutional provision<sup>4</sup>, with 50 members 11 of whom were MEPs with the statute of observers. The main functions of this committee are the following<sup>5</sup>:

- Process EU documents received from the Government, select them and co-ordinate the subsequent analyses procedure;
- Can turn any EU theme that may affect the interest of Germany into its own item of debate, meaning that the committee can address any European subject irrespective of expertise-associated competences and follow-up on any EU policy development;

- The Bundestag, under article 45 in the Constitution, can empower the committee to represent its plenum before the government, which gives it a privileged position among the specialised committees that cannot commit the plenum of the parliament in any area.

The first direct elections for the European Parliament were a good opportunity to institute a delegation to the European Communities in France, too; those delegations had been designed primarily as information providing bodies to the two houses of the French parliament. (5., page 102).

With the accession of the new members in 1972, 1986 and 1995, European affairs committees were also established within those national parliaments, and, in a majority of the countries that joined the EU in 2004 relevant parliament committees were already in place on the date of accession, with a role to oversee the integration processes undergoing by those countries.

Currently, there are 34 committees on European affairs in the parliaments of the 25 EU member states. Twelve member states have a bicameral parliamentary system which means that each house has its own committee, but there are also legislatures that opted for merged committees on European affairs, such as in Belgium, Ireland and Spain<sup>6</sup>.

In many member states there are provisions according to which members of the EP also have a commitment in the national parliament as well. In parliaments in Belgium and The

<sup>4</sup> Art. 45 in the Constitution of the Federal Republic of Germany (*Grundgesetz fuer die Bundesrepublik Deutschland*, Bundeszentrale fuer Politische Bildung, Bonn, 2001)

<sup>5</sup> [www.bundestag.de](http://www.bundestag.de)

<sup>6</sup> [www.cosac.org](http://www.cosac.org)

Hellenic Republic, national members of the EP are fully-fledged members of the European affairs committees as well. In a majority of member states the MEPs can attend the sessions of the committees as observers. In the Scandinavian countries, the United Kingdom and the Netherlands they cannot attend the sessions of the European affairs committees, but can be consulted as experts in specific fields.

### **3. Procedure of the involvement of parliaments in the European legislative process**

In principle, *two kinds of procedures* can be identified in what concerns the examination of the initiatives of the European Commission and influencing decision-making by the Council of the European Union:

➤ *Centrally organised systems (mandating systems)* where the political control is concentrated with the parliament committees on European affairs (Austria, Belgium in the Senate, Denmark, Estonia, Finland, the Hellenic Republic, Ireland, Latvia, Lithuania, Poland, Slovakia, Slovenia., Sweden, Spain and Hungary). The system was sourced by the Danish parliament in the 1970s, where the 'Market Committee' of the Folketinget was placed at the heart of the process that enabled it to act on behalf of the parliament and impose negotiating positions binding on the Danish government<sup>7</sup>. Going back, as part of the system, the principal addressee of the information documents forwarded by the government (Commission initiatives, additional information, progress on the legislative

process in the Council, regular reports) is the committee for European affairs. The committee is also competent to conduct a political scrutiny of the European documents and to make recommendations or take stands on the conduct of the representatives of the government in the Council of Ministers of the EU. The committee for European affairs in that way undertakes the position of representation of the plenum, practically becoming 'downsized plenum' (5., page 189) and can adopt binding decisions on the government. In Germany, for example, the European affairs committee can be mandated in specific cases to represent the plenum of the Bundestag.

➤ *Decentralised systems (document-based systems)* where the political assessment of the European documents is shared by the specialised committees of the parliament (Belgium in the House of Deputies, the Czech Republic, France, Ireland, Italy, Luxembourg, Malta, Great Britain, the Netherlands). Despite the stronger influence of the specialised committees, the European affairs committees still have an important role in such systems, too. First, their task is to select from the myriad of EC papers the relevant ones and to assign them to the relevant specialised committees. Second, they coordinate the activity of the parliament in the area of European affairs. Third, they take the role as an interface between the government and the specialised committees. In the bulk of the states that acceded to

<sup>7</sup> Idem 6

the EU in 2004, as well as Italy, the European affairs committees mainly perform work in the field of the transposition of the *acquis communautaire* into the domestic law and are less involved in the European legislation making. The specialised political activity is contributed by traditional committees of parliaments. Nevertheless, they cannot commit the plenum of the parliament while the European affairs committee in a centrally organised system can, and they are only entitled to table reports and recommendations to the plenum. In the decentralised systems, the lead actor in the making of the ultimate decision is the plenum of the parliament.

The advantage of the *central systems* compared to the decentralised one is that the activities of the parliaments that have implications in the European law-making process is concentrated in a single place which means that a closer connection can be made between the parliament and the government of a country. The centralised systems are also characterised by a greater degree of flexibility regarding the tasks they are supposed to fulfil in order for them to be able to influence the decision-making process in the Council, both from a time perspective and from a political point of view.

*Decentralised systems* present the advantage that a member of parliament specialised in a national field can capitalise on his/her competence easier in identical or similar European areas by his/her work in the specialised committees. That is very important with a view to the future implementation of EU norms into national legislations.

#### **4. Right of the parliaments to adopt positions on European topics**

This right is enshrined in the legislation of the member states, in some even by the constitution, in the rest being regulated by ordinary laws, and takes various shapes:

- *Consultation of the parliament:* in the majority of countries the obligation to ask the parliament to produce a point of view before every meeting of the Council where final decisions are to be made is not stated in the law. In Austria, Denmark, Germany<sup>8</sup> and Sweden, the government must consult the parliament, and, should it fail to do so or should it not wait for a position to be adopted by the plenum of the legislature, while the latter has manifested such an intention, it is considered in principle that the government has breached the constitution and the law. In Great Britain, although there are no legislative provisions to that effect, a resolution of the House of Communes adopting the code of conduct of its representative in the Council establishes the 'parliamentary reserve' on European projects (5., 128-129). In France we can find a similar situation: the government voluntarily recognises the right of the parliament to a 'réserve d'examen parlementaire', according to which the government agrees, in the Council, to a draft only after the parliament has finishes examining it. (5., 113-115).
- *Binding parliament positions:* only the representatives of the Austrian government in the

<sup>8</sup> Art 23, para.3 in the Constitution of the Federal Republic of Germany (*Grundgesetz fuer die Bundesrepublik Deutschland*, Bundeszentrale fuer Politische Bildung, Bonn, 2001)

Council can be mandated by the Nationalrat. Positions adopted by the European affairs committees or by the plenum of the parliaments of the other member states are legally binding only on the representatives of those states in the Council of the EU. However, this latter category are not totally independents from the will of the parliaments. The strongest position in relation to the executive is with the Danish Folketinget, that enjoys broad privileges in European affairs and that is underlain by spontaneous coalitions formed among the numerous parties represented in the parliament plus the often political alignments where the government finds itself in a minority. A similar situation can be also found in the Scandinavian countries. In Germany, the government can be made defend a Bundestag position only in the beginning of the debates in the Council. But there is no such statutory obligation in that respect (4., page 20). A failure of the government to act on the recommendation of the parliament can be politically punished, possibly by a constructive non-confidence vote cast against the chancellor, but it has never happened so far. The situation of the French and British parliaments should be looked at in the particular constitutional context of those countries. In France, because of the weak position of the parliament compared to the government the parliament cannot issue binding positions on the government, therefore the extent to which the

latter chooses to comply with the parliament recommendations is given by mere political calculations revolving around the topic at issue. In the UK, thanks to the tight relations between the parliamentary majority and the government, the House of Commons does not enjoy an independent power to oblige the government. An interesting situation can be found in the Benelux states, where the parliaments have waived their rights to binding the government to their positions for European integration political considerations.

The mandating of the representatives in the Council of Ministers of the EU is not the 'secret weapon' of the parliaments in imposing their own point of view in Europe, as it may seem, because, after the enlargement of the qualified majority voting to the detriment of the unanimity rule in the Council, countries pursuing singular positions can no longer influence final decisions, even if they are bound to the positions of their national parliaments. According to Peter M. Huber, in such situations, 'the constitutional decision for a people's sovereignty can be subjected to pressures'. (4., page 11).

##### ***5. Ex-post control and political accountability of the government***

The control of the action of governments in the Council of the EU is done, in the majority of parliaments, by *traditional ways*, namely by interrogating the ministers and by interpellation debates. The non-confidence vote – another traditional control tool, does not play a major role in punishing the government for a conduct in the Council against the position of the parliament. Nevertheless,

it can be noted that in those member states where the parliament can withdraw its political endorsement for individual ministers and not from the whole of the government only the positions of the ministers in the EU Council are quite consistent with the positions of the parliaments, not only for legal considerations, but rather for political considerations.

Apart from traditional methods, *governments are under a duty to report* on the outcomes of the negotiations in the Council, while accounting for their position in the negotiations. The reporting takes place repeatedly, and is done to the parliamentary committees on European affairs.

**In conclusion**, the position of the national parliaments of the EU member states on their participation in EU decision making processes has been strengthened especially after the adoption of the Treaty of Maastricht by introducing various constitutional or legal mechanisms. The manner of involvement in the EU also presents important differences.

The involvement of national parliaments as a plausible guarantee of democratising and legitimating the action of the European supra-national bodies is however a process that grows together with the EU institutional framework and needs an ongoing adjustment of the national structures and mechanisms through which national parliaments can have a national influence on governments or an external influence, directly upon EU fora.

### **C. The Romanian Parliament in the context of the EU integration process**

Our country officially lodged its EU accession application on the 22<sup>nd</sup> of June 1995, but negotiations proper only commenced early in the year 2000 (10., page 277).

As far as the implication of the parliament in the accession process is concerned, in 1995 the Committee for European Integration of the Romanian Parliament was established<sup>9</sup>, a special committee working under its own regulations but enjoying the same privileges as the standing committees. It is a mixed committee of the parliament, therefore it comprises both deputies and senators – currently 35 members. The chairperson of the committee is elected by majority, direct and open voting by all members of the committee, and is nominated by the political groups in the parliament. The chairman is assisted by two deputy chairpersons and by two secretaries.

The European Integration Committee has played a major role in Romania's accession to the EU through the many contacts it has initiated with European bodies, mainly with the European Parliament and with COSAC, by an active commitment to the accession talks and by expediting the approximation of the Romanian legislation with the European requirements and standards (6., page 191).

During that time, the European Integration Committee has acquired an important baggage of expertise in the monitoring of the accession process and in using EU pre-accession funds, as well as in the field of the European parliamentary diplomacy<sup>10</sup>. Although all that experience is valuable, circum-

<sup>9</sup> Resolution of the Parliament of Romania no. 8 of 28 June 1995

<sup>10</sup> Valeriu Ștefan Zgonea (Deputy): *Role of the Committee of the Romanian Parliament for European Integration*, Presentation within the 'Techniques of transposition of European Law' Programme, 22.03.2005

stances are bound to change after our country's accession to the EU on the 1<sup>st</sup> of January 2007. The *Parliament of Romania* will need to undergo a change of functions and roles, to turn from a 'monitor' of the deliverance on integration commitments into a 'modulator' of the EU primary and secondary legislation. In the EU, as shown above, there are various practices and opportunities for the involvement of the national parliaments, but, bore option for one or another, domestic realities must be scrutinised. In my opinion it would be recommendable for the Romanian Parliament to:

- Adopt a *special law* regulating the involvement of the houses in the European decision-making process and legislation development, c l early specifying its rights and the obligations incumbent on the government, while also indicating the national mechanisms for the implementation of the two protocols to the Treaty establishing a Constitution for the European Union, related to the national parliaments (The Protocol on the Role of National Parliaments in the European Union and the Protocol on the Application of the Principles of Subsidiarity and Proportionality), and of the early warning system pertaining to the latter.
- Give the *committee for European integration a central role* in receiving the EU documents from the government and from the European Commission, in selecting and forwarding them to the specialised committees of the parliament and in processing the results and the recommendations that should be then presented to the plenum of the two chambers. In essence, I suggest that the Romanian Parliament should

follow the *centrally organised system* in contributing to the European legislative process. For a more effective co-ordination the chairpersons of the specialised committees or other members appointed by them should attend the sessions of the European integration committee following the model of the Baltic states; the same should apply to the future Romanian members of the European Parliament;

- *Mandate*, whenever the situation so requires, *the European integration committee* to act on behalf of the two houses of the parliament, considering the difficult process of decision making and prolonged debates preceding it, that is a common practice in the Romanian Parliament. This 'downsized plenum' plus a few other things – for example the members of the commission should be recognised integration specialists – are bound to achieve an effective involvement of the parliament in the drafting of European policies while strengthening its position before the government.;
- *Appoint national representatives of Romania to the European institutions* (the European Commission, the European Court of Justice, so on and so forth) thus strengthening its position in front of the government;
- *Organise regular public debates in plenary sessions in the chambers* on the occasion of the six-month reporting by the government, to present the Commission multi-annual legislation drafting pipeline, the accession of new states to the EU, or whenever there is a European matter of relevance to Romania. By such debates the

public opinion can be better informed and rendered aware of existing European topics, and the approval rate of such EU-stemmed measures could go up.

The adoption of such measures calls for a serious assessment, debates on proposals made and a consensus among the political parties, a process

that is already behind the schedule. We can only hope that our parliament realises the importance of its active commitment in the European Union and undertakes the role as a democratic legitimating binder between the Romanian people and the European supra-national bodies.

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