

The Spanish Autonomous Parliaments participation in the European decision making process

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José Tudela Aranda

1. Introduction

The Kingdom of Spain joined the EU in 1986. Despite the deep crisis that has hit Spain in the past years, the period 1985–2014 has undoubtedly been the most politically stable, socially dynamic and economically successful period in Spain's modern history.

In the context of the management of the current crisis, which confirmed the executive's domination over the legislative, and accelerated the progressive loss of confidence by citizens in democratic institutions, parliaments have had to redefine their role not only with regard to EU Affairs, but also within the domestic political system. At the beginning of the economic crisis, in the spring of 2008, only 35 per cent of those polled mistrusted the national parliament, but this percentage had increased to 85 per cent by 2012. Although indicators for public confidence in the EU are currently at their lowest point since accession, Spanish public opinion has been traditionally pro-European. There is yet no party with a Eurosceptic position in the parliaments, and the political debate within the parliaments continues mainly consensus oriented with regard to European affairs.

Most existing work on the European activities of Spanish subnational actors concentrates on the AC's governments underlining the shortfalls of inter-institutional cooperation in Spain, because of the lack of a cooperation culture among the different tiers of government, deficits of the domestic cooperation and coordination mechanisms or because of asymmetric preferences regarding the involvement in European affairs. Nevertheless, this seems no longer consistent with recent developments. Not at least because of the increasing dynamic of intergovernmental cooperation at the domestic level, a better coordination for indirect and direct participation at the European level among the different tiers of government as well as an increasing involvement of subnational parliaments in EU affairs.

In Spain all 17 Autonomous Communities (ACs) have a parliament with legislative powers and a wide scope of political and administrative responsibilities. Because of the lack of domestic mechanisms for their participation, most Spanish subnational parliaments traditionally didn't participate in European affairs. However, since the beginning of the nineties of the past century, they play a major role in implementing European decisions. Furthermore, of course, subnational parliaments play an important role in controlling the activities of subnational governments.

The Treaty of Lisbon has been considered by the subnational parliaments as an important step towards their formal participation in European affairs. Nevertheless, nowadays there is a common understanding that these high expectations have not been met. After a first euphoric period, the participation of subnational parliaments in the Early Warning System (EWS) of the Treaty of Lisbon has become an administrative process carried out by legal advisers. In this sense the Lisbon Treaty has not fulfill the aspirations of (some) subnational parliaments in order to play a more important role in European affairs. Furthermore, the current economic and financial crisis represents a new challenge, and several sub-governments have reduced their administrative capacity and representation in Brussels.

2. Short Framework –The representation of Spanish subnational interests in European affairs

In general terms, the literature on the activities of the ACs differentiates between internal and external participation in European affairs. While internal participation mainly concentrates on inter-governmental relations at the horizontal level or with the central government, the external participation refers to the activities, of the ACs at the European level. Moreover, at the European level we can distinguish between direct activities, when ACs participate

individually (e.g. the Committee of Regions), and indirect activities, when ACs participate in the name of other ACs or within the Spanish government delegation (Castellá, 2008: 38).

Essential institutions for the internal participation in EU affairs of sub-national actors in decentralized and federal countries are traditionally the territorial chambers or specialized parliamentary commissions on European affairs. The Spanish State of Autonomies lacks a permanent institutionalised representation of regional interests at the national level. The Spanish Senate is a territorial chamber made up of 266 members of which only 58 are appointed by the sub-national Parliaments. Therefore, the Senate does not possess real participation or veto rights for sub-national governments in central institutions. Notwithstanding this, the national parliamentary level has some impact with regard to the articulation of the positions of ACs.

The debate on the sub-national participation in the Council of Ministers of the EU has been pushed forward not only by the sub-national governments, but also through claims of the political groups in the national Parliament (Roig Molés, 1999:222). In addition, the Congress of Deputies-Senate European Affairs Committee (EAC) has a remarkable role as consensus builder between political and territorial interests for the EU policy of the central government (Closa, Heywood, 2004). The role of the EAC has been even more reinforced in the context of the ratification of the Lisbon Treaty (Kölling, Molina, 2014). Since 2010, the sub-national governments can appear before the EAC in order to inform about the expected impact of EU initiatives, and the EAC has to deliver a report on this hearing to the central government.

Moreover, the institutional framework for cooperation and coordination between the central Government and the AC's governments in European affairs has expanded over the past 20 years. The Conference of Presidents is one example. This Conference has been created in 2004, and represents the highest political level for multilateral cooperation between the State and the Autonomous Communities. It consists of the President of the Central Government and the Presidents of the seventeen autonomous communities and

the cities of Ceuta and Melilla. Over the past decade, the Conference of Presidents has held five meetings. Nevertheless, there have been criticisms related to the organization of the meetings, the level of institutionalization and the impact of the Conference. Furthermore, the Conference of the governments of the Autonomous Communities was an initiative arising from the regular meetings of the 6 ACs which reformed their Statutes of Autonomy between 2005-2007. However, the Conference of the Governments of the ACs was not institutionalised, and its work depended largely on the initiative of some of its members. After the regional elections of 2011, no more meetings were convened.

Within the internal participation mechanisms, the Conference for European Union related Affairs (CARUE) traditionally has assumed a central role. The CARUE is an inter-administrative body with the objective of fostering cooperation, consultation and deliberation between the central government and the ACs. Already in 1992, the Conference was institutionalized and its position and functions were reformed in 1997. The CARUE adopted various important agreements which enabled the involvement of the ACs in European affairs, and established the necessary framework (e.g. participation in the formations of the Council of Ministers, or the establishment of two Councillors for the ACs at the Spanish Permanent Representation to the EU). However, the number of meetings has been uneven, marked by peaks of activity and periods of inactivity. Over the past few years the Conference has lost relevance as the central body in which matters related to European affairs could be discussed on a broader basis between the central government and the ACs.

Since the late nineties, cooperation between the central government and the AC's governments has been progressively assumed by sectorial conferences (*Conferencias Sectoriales*). Sectorial conferences are multilateral cooperatives bodies between the central government and the ACs for specific policy sectors (e.g. health or the environment). Each sectorial conference establishes a specific framework for cooperation between the administrative levels, which includes procedures for the exchange of information, and documents related to EU affairs. Recent studies on mechanisms of intergovernmental relations in

Spain show how sectorial conferences have become decision-making bodies which reach common agreements on shared-cost programmes and coordinate policies in various sectors (Leon, Ferrín, 2011; Colino, 2013; Kölling, 2015).

The sectorial conferences also assume an increasing role in the participation of the governments of the AC's on EU affairs, whether this is for the coordination of a common position, or in order to determine the representation of the ACs in the specific Council of Ministers meetings. In this sense, the sectorial conferences ensure the daily functioning of the cooperation between the central state and the ACs in European affairs. In fact, the definition of joint common positions before Council meetings has been reinforcing intrastate relations in EU policy making. Currently, there are about 40 sectorial conferences working with varying intensity on a wide area of topics. However, it is the sectorial conferences (or their Advisory Councils) related to EU Affairs which meet with the highest frequency.

With regard to external participation, since 2005 the ACs also participate within the Spanish delegation at four formations of the Council of the EU, and also since 1997, in the committees of the Commission. The representatives of all ACs at the Council of the EU and the committees of the Commission are appointed within the specific sectorial conference, and participate on behalf of all Autonomous Communities. The representative is responsible for the coordination and consultation process with all ACs and the national government before, during and after the Council-meetings.

The indirect participation of the ACs in community institutions is coordinated by two Councillors for ACs affairs at the Permanent Representation of Spain to the EU (REPER). Both Councillors frequently participate in the meetings of the ACs in Brussels in order to facilitate the search for common positions in advance of Council meetings, offering an overview of the negotiation positions at a European level and the position of the central government.

The direct participation of the ACs at the European level is mainly coordinated through their Brussels offices. Similar to sub-national governments from other

Member States the offices of the ACs differ in size and in the objectives of their activities. Although most of the new Statutes of Autonomy recently reinforced these delegations in Brussels with an explicit recognition, during the economic and financial crisis the majority of ACs reduced the resources available for European affairs or moved into the Spanish Permanent Representation to the EU.

After two decades of active interest, all governments of ACs have developed the necessary administrative capacities for carrying out their European activities. However, especially in some ACs, it is necessary to strengthen the organisation and administration of European affairs, in order for the ACs to be more efficient.

3. The participation in European affairs of Spanish subnational parliaments

3.1. Internal and external participation

During the past few years the participation of the ACs in European Affairs has shown great differences concerning the resources dedicated by the ACs to this field, and concerning the intensity of their involvement. The participation in European affairs of Spanish subnational parliaments is also determined by the asymmetric institutional and political capacities that the parliaments have at their disposition. Furthermore, there are decisive differences regarding the objectives, scope and operation which the ACs have with the European Union.

Similar to the activities of the AC governments, we can differentiate between the internal and external participation in European affairs. The internal participation mainly concentrates on the control function of the Parliament regarding the activities of their governments, and on inter-parliamentarian relations at the vertical level, while the external participation, concentrated in the EWS, is oriented towards direct contacts to other subnational parliaments (e.g. CALRE) or the institutions of the EU (Castellá, Kölling, 2015).

With regard to the internal participation, there are several relations between the national Parliaments and every subnational Parliament, which are established at the constitutional level, or established by the legislator. In this sense, subnational parliaments can initiate legislative proposals for constitutional amendments, and for ordinary laws (Article 87.2 and Article 166 SC). Furthermore, reforms of the Statutes of Autonomy are negotiated in both Houses of the national Parliament, with representatives of the regional Parliaments, before their definitive approval.

Concerning the horizontal cooperation, since 1983 the Conference of Presidents of Spanish regional Parliaments (COPREPA), which was institutionalized in 1997, has held annual meetings. Although the conference lacks a permanent office, it has been considered a useful mechanism for the exchange of information, experience and concerns.

Regarding the external participation, most Spanish subnational Parliaments participate in the meetings and activities of the CALRE, which is considered to be an important network for the development of cooperation between subnational Parliaments in other EU Member States. In this sense, we could mention the CALRE's proposal to create a coordinating body between the European Affairs Committees of regional Parliaments with legislative powers, following the COSAC model. Additionally, in order to gain information, the subnational Parliaments work with already existing services, such as the regional offices in Brussels.

3.2. Institutional and administrative capacities

According to, and also given the increasing European activities of the ACs governments, all Spanish subnational Parliaments have created specific committees for European affairs in order to fulfill their commitment to control the activities of their governments. While these committees did not meet very often

during the 1990s, these meetings have been more frequent in the recent years. In most of the meeting sessions the EWS was discussed¹.

The European Affairs Committees are generally assisted by several staff members (one or two legal advisers and administrative staff) who may be either specifically assigned to this mission, or belong to the general staff of the regional Parliament. These staff members have the task of preparing the analysis on subsidiarity scrutiny, however, in reality, the clerks assume a proactive role, and their preparatory work has been decisive due to the technical character of the procedure.

3.3 The participation of sub-national parliaments in the Early Warning System (EWS)

As a consequence of the Early Warning System (EWS) established in the Treaty of Lisbon, since 2009, the sub-national Parliaments have been able to send reports to the Committee on European Affairs of the national Parliament. According to the regulation on subsidiarity and proportionality, in Article 5(3) and Article 12(b) TEU, as well as Protocol No. 1 and No. 2, subnational Parliaments can participate in the EU legislative process, and in pre-legislative consultations of the Commission. Through the principle of subsidiarity established in the Treaty of Lisbon, the sub-national Parliaments have become active in the monitoring process of the EWS. The new rules related to the EWS were incorporated by the Act 24/2009 of December 22, amending Act 8/1994 of May 19, related to the Joint Committee for European Union Affairs.

As already mentioned, the subnational Parliaments are not directly represented in the Joint Committee. However, some members of the Senate are appointed by the subnational Assemblies. Also, the regional parties have their representatives in the national Parliament.

According to the established procedures, after receiving the European Commission's draft legislation, the Joint Committee sends all drafts of European

¹ For example, in Aragón 15 out of 20 meetings during the previous legislative term, added to all meetings in the current term addressed issues related to the subsidiarity control.

legislative acts to the regional Assemblies², regardless of the existence of an ACs competence affected by the draft act (Art. 6 Act 24/2009). This is a general provision that grants to each subnational Parliament the decision to intervene. Once the subnational Parliaments receive the draft act by email, they may draw up a report, if they consider that either the principle of subsidiarity is violated or that their competences are affected. The report shall be submitted to the Joint Committee for European Union Affairs within four weeks. In case the Joint Committee decides to prepare a report on the violation of the principle of subsidiarity, it 'should' incorporate the list of regional opinions and their references to be consulted. In consequence, the Joint Committee may also ignore the content of these reports. In this case, no justification or motivation has to be provided (Fernández Allés 2011, 4). In practice, the published reports and reasoned opinions incorporate only a brief mention of the arguments of the subnational assemblies, with the general substance of their replies, without specifying anything more (Rubio de Val 2012, 89). If the Joint Committee decides not to prepare a report, the regional reports have no relevance at all.

The adopted EWS procedure requires the activation of some kind of selection scheme, given the severe time restrictions under which the subnational parliaments have to develop their opinions. In practice, a filter has been established by the subnational parliaments stating that they will be involved if, and only if, the competences of their community are affected (Martín 2013, 59).

3.4 Parliamentarian procedures

The 2009 Spanish law does not provide internal proceedings for the participation of subnational parliaments in the EWS, and it is up to the ACs to adapt and specify their regulations. Some ACs have included provisions regarding their role in the EU decision-making process, stating their right to be consulted within the EWS in their Statutes.

If we examine the Statutes, we can see two groups, relating to this issue. On the one hand, the Valencian Statute of Autonomy, which was the first reformed

² Art. 6.2 Protocol No 2 Lisbon Treaty does not force national parliaments to send every draft European legislative act to the regional parliaments, but it allows for discretion.

Statute, states that the AC will participate in the monitoring mechanisms of the principle of subsidiarity, as provided by the EU Treaty, without any kind of reference to the powers of the AC. The Andalusian Statute contains a similar provision. On the other hand, the Catalanian Statute of Autonomy, which was adopted later, is more specific, and states that the Parliament will take part in the monitoring mechanism related to those draft EU acts that affect the competences of Catalonia. Later on, the new Statutes of Aragón, Castilla y León and Navarra, included similar provisions. Finally, other provisions have been more ambiguous: The Statute of the Islas Baleares states that the Parliament can be consulted within the framework of the monitoring system for the principle of subsidiarity. And the Statute of Autonomy of Extremadura provides that the State will inform the Region of all the EU draft acts that may affect the competences of the AC, without even mentioning the monitoring of the principle of subsidiarity. The rest of the ACs haven't started the reform process of their Statutes of Autonomy yet, or have withdrawn the project from the legislative process.

In order to structure and improve the procedures, some AC Parliaments have amended their standing orders, regardless of whether or not their Statute of Autonomy included a specific provision on their involvement in the monitoring mechanism. Other AC Parliaments have passed speaker, Bureau rules, or decisions with the same goal. There is no uniform regulation regarding which internal body is responsible for preparing the opinion in each subnational Parliament. Some Parliaments have delegated this function to a specialized committee (European Affairs), and others to sectorial committees. Because of the lack of time, some Parliaments have chosen not to vote on the reports in plenary sessions, and to leave the decision on preparing an opinion, or not, to their European Affairs committees.

However, not all subnational Assemblies have amended their standing orders to include such mechanisms. In some cases, an internal rule of the President, or Bureau, was considered sufficient. The Parliament of the Community of Madrid adopted a rule providing that all draft acts sent by the Joint Committee will be submitted to the Chairman of the Committee of European Affairs. The Bureau of

the committee will eventually appoint a reporting body, and ask the Regional Government to submit its opinion within five days. Once the report has been drafted, the committee will vote on it, and, if approved, send it to the Joint Committee.

Although, the Parliament of Aragon is one of the most active parliaments in the process of monitoring the principle of subsidiarity, it has not modified its procedure. It prepared a proposal for a rule, but decided to accumulate more experience in the process, in order to improve the procedure, and regulate it afterwards (Rubio de Val 2012:84).

3.5 First evaluation after five years of EWS

Besides the different regulations between ACs, there is an asymmetrical experience in subnational parliamentary participation. The participation of Spanish subnational Parliaments in the EWS has been uneven. According to a recent study by Castella and Kölling, for the first period observed (01/2011-12/2011) we can distinguish a small group of very active subnational Parliaments³, compared to a larger, less active, or even inactive group⁴. Finally, there is a group acting more selectively⁵. For the second period analysed there are only two subnational Parliaments that remained very active, while all others drastically reduced their activities within the EWS.

The entry into force of the Treaty of Lisbon, in 2009, and the statutory reform processes that had already begun in 2006, created a political environment in which the Autonomous Communities institutionalised common practices. Subsequently, the subnational Parliaments gained a new and stronger role in European affairs. It is important to underline that this new role was not a specific demand of all Spanish subnational Parliaments, but the result of an external process in which the same rules for all Member States, notwithstanding their territorial organisation, were established.

³ Aragón, Castilla y Leon, País Vasco

⁴ Andalucía, Galicia, La Rioja, Islas Baleares and Asturias, Madrid, Navarra and Comunidad Valenciana

⁵ Canarias, Cataluña, Cantabria, Extremadura, Castilla-La Mancha and Murcia

Most subnational Parliaments considered the possibility of participating in the EWS as a way of parliamentary involvement that generated interest because of its innovative character, apart from the concrete results achieved so far. We can confirm the increasing interest of most subnational Parliaments in the European legislative process goes beyond the mere control of the principle of subsidiarity, and aims to present to the European institutions their views on issues that may directly affect their interests and responsibilities.

After the first euphoric period in which several Parliaments drafted reports on almost all EU draft legislative acts sent to them, the Spanish subnational Parliaments are now more selective. However, an improvement in the horizontal coordination mechanisms, and closer collaboration with their respective governments could increase the effectiveness of the procedure. If the workload is not reduced, this could lead to an increasing lack of interest in European issues.

4. Conclusion

The interest of most subnational Parliaments in the European legislative process goes beyond the mere control of the principle of subsidiarity, and aims to present to the European institutions their views on issues that may directly affect their interests and responsibilities. Nevertheless, the participation of Regional Parliaments in the pre-legislative phase of consultations could be improved.

After more than three years since its implementation, we can conclude that the EWS is successfully in place in all subnational Parliaments. However, several critical points should be raised. There are issues that could be improved, either by better regulation or by better practices. Compared to the internal systems of other decentralized EU Member States, the Spanish provisions are some of the least favourable for promoting the interests of the subnational assemblies. According to some commentators, the Spanish procedure mainly restricts itself

to the principle of information than actual participation of the subnational Parliaments in European affairs.

To sum up, the Spanish regional Parliaments have not yet fully taken advantage of the possibilities offered to them to participate in the European legislative process. However, they can already be considered as young political actors in EU affairs. To form a definitive judgement on this matter will need more time. Today, the main objective is to explain to the citizens that European affairs are of paramount importance to them. The subnational Parliaments can, and should, play a very important role in this respect.

References

Alonso de León, Sergio (2012) 'Regions and subsidiarity in the European Union; a look at the role of the Spanish and other regional Parliaments in the monitoring of compliance with the principle of subsidiarity', *European public law*, Vol. 18, issue 2, pp. 305-321.

Beltrán, S. (2010) 'La aplicación de los acuerdos que regulan la participación de las Comunidades Autónomas en el Consejo de la Unión Europea (variaciones o desvaríos sobre un mismo tema)', *Revista General de Derecho Europeo*, issue 22, Iustel, pp.1-28.

Consejo de Estado (2008) *Informe sobre la inserción del Derecho Europeo en el ordenamiento español*, 14/02/2008.

Castellà Andreu, J.M. (2008) 'Las comunidades autónomas en Bruselas: la dimensión externa de la participación autonómica en la unión europea', *Revista d'Estudis Autònòmics i Federals*, issue 6, pp. 37-91.

Castellà Andreu and Kölling, M. (2014), Sub-national parliaments as political actors in EU affairs: Case study on Spain, in Gabriele Abels and Annegret Eppler (eds), *Subnational Parliaments in the EU Multi-Level Parliamentary System: Taking Stock of the Post-Lisbon Era*, Baden Baden: Nomos Verlagsgesellschaft. (forthcoming)

- Carroll, W.E. (2011) 'The Committee of the Regions: A Functional Analysis of the CoR's Institutional Capacity', *Regional and Federal Studies*, vol. 21, issue 3, pp. 341-354.
- De Castro Ruano, J.L. (2012) 'El sistema de alerta temprana para el control de la subsidiariedad: su aplicación al Parlamento vasco', *Revista CIDOB d'afers internacionals*, issue 99, pp. 93-111.
- Carmona Contreras, A. (2012) '¿Hacia la europeización de los parlamentos autonómicos? Reflexiones al hilo del mecanismo de alerta temprana', *Revista d'Estudis Autonòmics i Federals*, issue 16, octubre, pp. 141-176.
- Fernández Allés, J.J. (2011) 'El Parlamentarismo español ante el sistema de alerta temprana sobre el principio de subsidiariedad: a propósito de la V Conferencia sobre subsidiariedad 2011', *Revista General de Derecho Constitucional*, issue 11, pp. 1-29.
- González Pascual, M. (2012) 'Los parlamentos regionales y el mecanismo de alerta temprana (su aplicación en el Parlamento vasco)', *Revista Vasca de Administración Pública*, issue 93, mayo-agosto, pp. 37 - 64.
- Kölling, M.; Serrano Leal, C. (2012) *La participación de las CCAA en el diseño y la negociación de la política de cohesión para el periodo 2014-2020*, Universidad San Pablo, CEU, DT, Nr. 59.
- Kölling, M.; Molina, I. (2013), OPAL Country Report: The Spanish Parliament and EU affairs, Internet: http://www.opal-europe.org/tmp/Country%20reports/Country%20report_Spain.pdf (20 February 2014)
- Martín Martínez, M. M. (1995), El control parlamentario de la política comunitaria, *Revista de Instituciones Europeas*, vol. 22, issue 2, pp. 445-474.
- Martín Núñez, E. (2013), 'The scrutiny of the principle of subsidiarity by autonomous regional parliaments with particular reference to the participation of the Parliament of Catalonia in the early warning system', *Perspectives on Federalism*, vol. 5, issue 2, pp. 51-73.
- Martín y Pérez de Nanclares, J. (2010) 'Comunidades Autónomas y Unión Europea tras la entrada en vigor del Tratado de Lisboa. Sobre los riesgos de una reforma del Estado Autonómico sin reforma de la Constitución', *Revista Española de Derecho Europeo* issue 33, pp. 45-90.

Navarro Méndez, J.I. (2011) 'Mitos y realidades del control del principio de subsidiariedad por los parlamentos autonómicos españoles', *Comunicación presentada a las XVIII Jornadas de la AELPA*, Parlamento de Galicia, September.

Osés Abando, J. (2013), 'Early warning and regional parliaments: in search of a new model. Suggestions from the Basque experience', *Perspectives on Federalism*, vol. 5, issue 2, pp. 74-88.

Pons, X., Campins, M., Castellà, J.M. and Martín, E. (2012): *La acción exterior y europea de la Generalitat de Catalunya*, Barcelona: CEI-Marcial Pons.

Palomares, M. (2011) 'La participación del Parlamento de Cataluña en la aplicación y el control del principio de subsidiariedad', *Revista de Derecho Comunitario Europeo*, issue 38, enero/abril, pp. 19-58.

Rubio de Val, C. (2012) 'El control de subsidiariedad por los parlamentos autonómicos: la participación de las Cortes de Aragón en el sistema de alerta temprana', *Cuadernos Manuel Giménez Abad*, issue 4, pp. 84 -105.

Vara Arribas, G. (2011) 'El control de subsidiariedad por los Parlamentos regionales: recomendaciones para una estrategia europea', *Cuadernos Manuel Giménez Abad*, issue 2, pp. 24-32.

Legal sources

Act 8/1994 of 19 May 1994, governing the Joint Committee for the European Union.

Act 24/2009 of 22 December 2009 modifying Act 8/1994 of 19 May.

Act 38/2010 of 20 December 2010 modifying Act 8/1994 of 19 May.

Resolution of the Bureau of the Congress of Deputies and the Senate adopted on 27 May 2010