

## Executive parliamentary control

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Spanish entry into the EC has meant a transfer of sovereignty to EC bodies. It is expressly recognized in Article 93 of the Spanish Constitution, which recognized the possibility of international treaties which transfer the exercise of competences derived from the Constitution to an international body or institution. Within the area of competences transferred to the EC, this power of transfer originated in a modification of the functions of the Spanish Cortes. As seen in the recent practice of both Houses, the main activity in relation to EC matters has been government control and legislative activity has been secondary. Furthermore, government control in EC bodies is ultimately based on the fact that, under Articles 93, 94 and 96.2 of the Spanish Constitution, only the Spanish Cortes has the power to ratify EC Treaties.

It cannot be stated, in principle, that the executive has had any material strengthening after entering the EC. What has mostly been done during this short span of time since Spain was admitted to the EC in January 1986 has been to build mechanisms for parliamentary control, using the earlier experience of the other Member States. These mechanisms, firstly, operate on the legislative process, to incorporate EC rules (Directives) into Spanish statutes; secondly, through the control of Spanish government representatives in EC institutions; thirdly by the implementation of EC decisions by the public authorities for which the Spanish government is responsible. Out of these, the second is the most relevant, since it permits the exertion of influence on the negotiations carried out in Brussels between governments – and their respective administrations.

### **Characteristics of parliamentary control**

The first thing to take into account is that, from the parliamentary perspective, the period considered in this chapter (the third legislature) is characterized by the existence of a Socialist majority government (Partido Socialista Obrero Español) and by a greatly divided opposition (six parliamentary groups and three groups of deputies). This meant the lack of

a specific dialectical relationship between the government and the opposition, with the government complaining that it did not have a valid interlocutor, and the opposition complaining that the executive was trying to reduce the institutional and political relevance of Parliament. As a consequence, there was an important reduction in the efficiency of the parliamentary control then being constructed.

In reviewing the activity developed by the Spanish Cortes regarding the exercise of parliamentary control during the third legislature (between July 1986 and September 1989), it is possible to emphasize several characteristic traits. First of all, from a legislative perspective, the Spanish Parliament limited itself to debating and approving, always at the initiative of the government – in other words, by means of the introduction of a corresponding draft law – the regulatory measures needed to adapt internal law to the European ordinances. Approximately half a dozen laws were discussed and voted upon, without making any parliamentary modification. Second, it is remarkable that an annual debate on the EC was not established in the early years, though the general aspects of integration in the EC were considered among the topics dealt with in wider political debates. This happened in 1986 during the Government Investiture debate, in the 1987, 1988 and 1989 ‘State of the Nation’ debates, and in that on the ‘State of the Autonomies’, held in 1987 in the Senate.

Yet none of the House sessions during the period under consideration had any general debate on problems and prospects of European integration, nor were sectoral discussions caused by questions or motions. That is, there was no parliamentary action that would have allowed parliamentary control of any general policy guidelines and decisions pursued by the executive, though the opposition tabled some such proposals in both Houses, which were rejected.

There were, however, an important number of oral and written questions, and interpellations and motions subsequent to interpellation, presented to the government, both in the plenary sessions and in the committees of both Houses. The fact that at least one third of these questions posed general or institutional problems should be underlined. As we shall see, the EC Mixed Committee predominates in the parliamentary control carried out by the committees.

Informative sessions were the most important parliamentary control activities. Indeed, the main base of parliamentary control has been the information given by the main players, whether on their own initiative or that of the Houses. The most important event was that when the President of the government informed the plenary meeting of the Congress of Deputies about the EC summit meeting for Heads of State, held at the end of the first Spanish term of Community Presidency. These events institutionalized control over an act which, owing to the importance of the decisions taken by it and to its influence on Spanish politics, has great public significance. Among other events, the informative sessions developed within the EC Mixed Committee were also important.

## The EC Mixed Committee

The committee was created by the Law of 27 December 1985, on the basis of delegation by the government for the application of EC law (Article 5). It was conceived in accordance with the experience of some EC Member States, such as the UK and Denmark, where special committees had been established to follow-up on EC legislation. Following a proposal from the members of the opposition, a reform to the law was approved in July 1988, which reinforced its composition and functions.

The committee consists of a variable number of representatives, agreed upon by the Cortes, to guarantee the presence of all parliamentary groups. The President of the Congress of Deputies takes over the presidency of the committee, and normally delegates this function on the First Vice-President of the Congress. Voting is carried out by the weighted vote system, unlike other standing committees which use single votes.

The Congress of Deputies and the Senate have different material and formal powers; an example of this is the fact that only the lower House has powers to demand political responsibility of the government. This committee, however, has given equality to both Houses in EC affairs, and Deputies and Senators have the same powers and faculties. The only difference lies in the number of members assigned by each of the Houses (which, during the third legislature, was fifteen Deputies and ten Senators).

The committee was born through the need to establish a specific parliamentary mechanism to control the legislative activity of the government quickly and efficiently, in the form of short-term incorporation of all EC Directives in force at the moment of Spain's entry – bearing in mind that the process of entry compelled the government to do just that. For this reason, it was established that its functions were, basically, to consider, for the purposes of the provisions of Article 82.6 of the Constitution, the Royal Legislative Decrees issued in application of the derived (secondary) EC legislation. To fulfil this task, the committee prepared a report on fifteen Legislative Decrees, later approved by the plenary meetings of both Houses. Its competence was not considered as determinant or influential in the application of EC law. Rather it had an exclusively informative nature, following up on executive development of EC regulations.

The committee was also granted certain powers of control: thus, it must be informed by the government of draft EC legislation which might affect matters subject to reservations under Spanish law; the government must send any information on EC institutions relative to the application and implementation of Spanish membership of the EC; it must be informed by the government of the lines which inspire its policy within the EC; its function is also to translate any conclusions it prepares to the competent standing committee and, finally, at the beginning of each period of sessions, it must prepare a report of any actions carried out during its previous period.

At first, it seemed as if the major function of the Mixed Committee was the distribution or translation of government information to the relevant

standing committees of each House, for parliamentary control to be exerted from there. It was not generally considered to be an important committee, in perpetual competition with the other parliamentary committees, especially with that for foreign relations. From its beginning, however, it was the centre of relations between the government and the Parliament in matters of EC policy, an instrument to generate parliamentary debate on every EC project. The Socialist government used it as its main means of communication with the Parliament. The opposition used it as its main device for government supervision. It has, in fact, taken the form of an atypical, and very important, committee, because its action encompasses the totality of government policies.

Because of its growing importance, there arose a need for reform, to increase its powers. It has, on one hand, been granted advisory functions (to the government), allowing it to prepare reports on draft legislation presented by the European Commission to the Council of Ministers, and it may, moreover, submit to the House any report it deems to be of special interest, in matters within its competence. This activity provides the committee with an *ex ante* control on European legislation. These powers, which it may exert at will, were not implemented during the third legislature. Furthermore the committee was granted powers in relation to the European Parliament and the national parliaments of the other EC countries, under the terms analysed below.

The committee held regular meetings. There was only a meeting of general information during the second legislature. During the third legislature, however, there were thirty sessions, averaging more than one meeting a month and, in the latter two years, a trend towards more frequent meetings.

Among the committee's activities, the most important is that of putting questions to the government. Over twenty-nine oral questions have been counted. They were all posed after 1988, and their contents have always been of a sectoral nature. The main activity of the committee, however, has been the holding of informative meetings (twenty-eight of them during the third legislature). As a rule, these meetings have given most of their attention to general issues, substantively because over one third of appearances have been from the Ministry of Foreign Affairs and the State Secretary for the EC, the two authorities with a more general and greater power in EC matters. With the exception of four appearances of administrative officers at their own request, and of the regular, institutionalized appearance of the Secretary of State for the EC, *every* appearance has taken place upon request from the opposition groups. It is also worthy of note, finally, that the Mixed Committee has experienced a growing interest in obtaining information from the government on current negotiations, or on the basic action lines of the Spanish government for future negotiations. In other words, the committee has been locating its field of action half-way between *ex post* and *ex ante* control of the executive action within the EC Council.

Faced with the loss of legislative function of the Houses in EC matters,

the opposition has demanded that the committee becomes a body of advice prior to government adoption of decisions within the EC. The opposition also requested that the Mixed Committee be notified of EC draft legislation, before the Council approves it, and rejected the idea that the committee's main task should be, as it first was, one of *a posteriori* control on the basis of government-supplied information. The executive, in turn, has always maintained that the speed required by EC agreements made it impossible to seek parliamentary support or authorization for each decision that had to be taken, which would have resulted in paralysis. At any rate, this question has been determined by the majority nature of the Socialist government, which has allowed the implementation of *ex post* parliamentary control.

The Spanish parliamentary model, in any case, is framed within the general rule under which Assemblies, through the creation of specialized bodies, are endowed with the right to information on draft European legislation and allowed to make recommendations to the government. It is, really, a matter of capacity for influence, and it never has had a genuine power of veto or the obligation to make a decision in a specific sense. The influence may be politically important, but it can never block any negotiations which the executive may have entered into in Brussels.

On one hand, a shaping and strengthening of parliamentary control is under way, through the progressive institutionalization of general debates in the Chamber of Deputies and the implementation of a specialized follow-up committee for government action in EC matters. On the other hand, however, the capacity of the Spanish Cortes to condition the decision-taking capacity of the executive within the EC has not yet developed sufficiently to compensate for the decrease in its own legislative competence. Thus, Spain's entry into the EC has brought about a net loss of parliamentary control over the birth and adoption of decisions dealing with the transferred areas of power.

### **Control of competences transferred by the Autonomous Communities**

One aspect to be particularly taken into account is that of parliamentary control of the exercise of competences transferred by the Autonomous Communities to the EC; that is, those competences which, according to the Spanish Constitution and the Autonomy Statutes belonged to the regional bodies prior to Spain's access to the EC.

It is well known that any power exerted by the EC means a correlative loss of power of the Member States. In States of a composite structure, within which there exist autonomous bodies, the loss of functions affects equally the central power and the autonomous powers; its measure depends on the internal distribution of power. Thus, in order to analyse parliamentary control in such States, it is necessary, before anything else, to determine

to what extent the regional bodies participate in the shaping of EC-related decisions and their execution.

Under Title VIII, Article 149.1.3rd, the Spanish Constitution establishes that foreign relations are dealt with by the State, and Article 93 specifies that the government and the Cortes must guarantee the observance of international or supranational law. That is the reason why direct intervention of an Autonomous Community in international decisions or in the performance of international agreements is not possible, nor can their parliaments control EC policies. On the other hand, the Autonomy Statutes only establish the right of the Autonomous Communities to be informed of international treaty and agreement negotiations; they may also request the State to enter into treaties or conventions on matters of interest to the Autonomous Communities.

All of this leads to the conclusion that the central government has exclusive competence over State foreign relations, even though this does not prevent the participation of the Autonomous Communities in shaping its will. Besides, when taking part in EC decision-making processes, the general interest of Spain must always take priority over particular territorial interests. The incidence of EC integration on the distribution of competences between the State and the Autonomous Communities has been a constant concern in parliamentary debates. The Socialist executive has always maintained that integration should not affect the balance of decentralization, which the Spanish regional model has acquired with great difficulty.

A Resolution was approved in the 1987 'State of the Autonomies' debate, proposing the establishment of procedures to facilitate Autonomous Community participation in shaping the will of the State in matters bearing on the constitutional and statutory distribution of competences. Such procedures should allow, as well as guarantee, the necessary coordination between the State and the Autonomous Communities, so that the Spanish government may assure the fulfilment of some of Spain's international commitments. This topic was also mentioned in the 1988 and 1989 'State of the Nation' debates. The model of central government-Autonomous Community relations, however, has yet to be defined and, with it, the control of activities which affect territorial interests.

The activity developed by the Senate in controlling EC policies which affect territorial interests has not been very relevant. The way the Senate is organized nowadays, the House may not represent the Autonomous Community interests, even though the Constitution has defined it as a House of territorial representation. However, in matters of mediating between the State and the Autonomous Communities, the upper House has the advantage that it is the only one that bears the general representation of territorial interests, since there are representatives of different parties from each Autonomous Community. In the model of the 'central executive-regional executive' relationship, however, there is only a relationship between the government and the majority or governing party in each Autonomous Community. Thus, a reform of the Senate is proposed, for it

to become a House of Autonomous Community participation. This reform should be centred on the reinforcement of Autonomous Community representation and an enlargement of the Senate legislative powers.

The incapacity of the Senate to channel the participation of the Autonomous Communities has led to an intensification of direct contacts between the national executive and the Autonomous Communities, although this relationship has not completely crystallized. All the parties have reached an agreement on several aspects. First of all, on the need to create a two-way information channel which allows the opinion of the Autonomous Communities about EC draft legislation which affects their interests to be heard; second, on the need to have a committee to organize relationships between the Autonomous Communities and the government, and of the Communities among themselves; third, on the fact that the State should defend the Autonomous Communities' points of view (and interests) in Brussels; and, finally, on the specification of terms in which the Autonomous Communities communicate with EC organizations and the establishment of channels of information between the EC committee and the Autonomous Communities, to prepare and present plans and projects to the latter.

Since 1986, a government proposal to sign an agreement between the State and the Autonomous Communities establishing cooperation procedures has existed. It is an agreement, not a law, because what is sought is to create an instrument without regulatory rank, based in consensus, which sets the rules of the game. Basically, procedures should consist of sectoral committees (already reflected in the Autonomous Process Law), formed by a meeting between the relevant minister and the corresponding councilman of each Autonomous Community, and in which the regions may express their opinions. A 'horizontal' cooperative body is also deemed necessary between the government and the Autonomous Communities, to complete the sectoral committees, because there are matters which they cannot reach. Finally, in accordance with the German model, the creation of an 'Autonomous Community Observer' is proposed. This would be a single person who acts before the EC Standing Representative Committee, taking care of the flow of information, and being, in effect, the Autonomous Communities' speaker; the virtue of such an observer, states the Government, is the unification of the positions of all the Autonomous Communities. The whole proposal is, thus, a question of generating a consultative mechanism to allow the Autonomous Communities to participate at domestic level in the drawing of general guidelines of the EC policies. This agreement was at first rejected by some of the Autonomous Communities, which would have preferred to establish a direct relationship with the EC institutions, notwithstanding the fact that relations in the EC are established between States (though some Autonomous Communities have found their own representation in Brussels through limited liability companies). The creation of the EC Regional Consultative Council has achieved some satisfaction for those Autonomous Communities which wished to have a personalized voice.

In practice, the Minister for Public Administration has been the one in charge of coordinating State and Autonomous Communities administrations. There also are some already established and operational sectoral conferences, where every Autonomous Community is represented. It is doubtful, however, whether these conferences give sufficient attention to the goal of participation of the Autonomous bodies in shaping the State will and in allowing the supervision of EC regulations by the Autonomous Communities. The national opposition has been pointing out that only consultation takes place at these conferences and no genuine negotiations are within their scope. Furthermore, EC regional policy for Spain is arranged around the Regional Development Plan (1989–93), which only affects the less developed regions. The government sends the plan to the EC after it has been examined by the Public Investment Committee of the Ministry of Internal Revenue (the most important sectoral conference). In other cases, the bases of the 'Community aid', provided by Article 92 of the Treaty of Rome, are the projects prepared by the Autonomous Communities, which the government simply transfers to the EC.

All of the foregoing shows that, first, Spain's entry to the EC has had an important effect on the framework of relations between the central government and the Autonomous Communities, due in large measure to the fact that the Spanish Senate is not able to represent territorial interests. Second, that the transference of competences from the Autonomous Communities to the EC has not yet been balanced by the appearance of procedures allowing the territorial bodies to participate in the preparation of any EC decision which may affect them. As a result of this, it might be stated that Spain's entry into the EC has meant a reduction of parliamentary control over decisions affecting regional interests.

### **Supranational parliamentary control**

It is obvious that national parliaments have little capacity to control EC institutions, although there is a very clear awareness that constant supervision is absolutely necessary. The traditional 'democratic deficit' refers to the fact that the members of the EC Council, which bears the real EC legislative power, are only subject to national parliamentary control as members of the cabinets. In other words, they are only controllable at individual levels, never collectively before the European Parliament or any other representative body. This has become worse through the Single European Act, which, by increasing the possibility of a majority decision being adopted, has reduced the individual importance of Ministers in the European Council of Ministers. This is the reason why new forms of control are proposed to complement those operating at the domestic level. These are based, first, on the European Parliament, because it is understood that it is only possible to control a supranational body from another organization of the same nature;



and, second, in the cooperation between national parliaments of the Member States.

Even though, originally, the European Parliament control activities were thought of in relation to the committee, in practice the Council has become their subject. The Council and, more specifically, the Foreign Affairs ministers, have been given the obligation to answer any oral and written questions addressed to them. Some oral questions, subject or not to a debate, allow for a resolution to be presented afterwards by a committee of five Delegates or by a political group. Another control instrument is the annual general report that should be submitted by the Council, after which oral questions may be debated. Furthermore, since the 1983 Stuttgart Summit, each Council Presidency must submit its programme at the beginning of the period of mandate and a report at the end.

At the EC level, the organization of parliamentary control is based on the European Parliament Resolution of 16 February 1989, adopted after the Seeler report. It proposes close institutional cooperation, supported on several elements, among which periodic contacts between national parliaments and MEPs might be mentioned, as well as the creation in each national parliament of a specialized committee or subcommittee on the EC, in charge of establishing relations with the European Parliament and with other national parliaments; and periodic contact between European Parliament Presidents and political groups, at national and EC levels.

Relationships between the Spanish Cortes and the European Parliament were not originally well founded, because there was no mandate compatibility between the European Parliament and the Spanish Parliament. The two groups of elected politicians became specialized and this, logically, led to a certain lack of communication between those groups. However, the need to narrow relationships between Spanish MEPs and national parliamentarians has already been made obvious and, according to criteria adopted by the European Parliament, it has already been implemented in the EC Mixed Committee.

Since the 1988 reform, not only has this Mixed Committee been granted the power to hold meetings with Spanish delegates to the European Parliament, but it may also establish cooperation with the European Parliament institutions. As a complement to these functions, the committee has also been empowered to maintain a relationship of mutual information and cooperation with the existing committees of national Parliaments of the other EC Member States corresponding to its own. During the third legislature, there have been several opportunities for this. Thus, since October 1988 working meetings between the committee and Spanish MEPs have been institutionalized. In October 1988 the committee held working meetings with the Spanish Community Committees and, in September, met with the Foreign Affairs Committee of the Second House of the Dutch Parliament (Tweede Kamer). In January 1989, the committee, chaired by the President of the Congress of Deputies, attended the monthly Plenary Session of the European Parliament in Strasbourg, on behalf of the Spanish Cortes.

During the third legislature, there were several contacts between Standing Committees of the Congress of Deputies with groups from other national parliaments of EC members and the European Parliament. Specifically, the Foreign Affairs Committees held three meetings, the Agriculture, Cattle and Fisheries Committees held one, the Defence Committees had one meeting, and the Community Affairs Committees held three.

### Conclusion

To conclude, it is necessary to specify that parliamentary control in EC matters in Spain is as yet an unfinished process. This process is based on several pillars: first of all, on the complementarity between national parliamentary control and that generated by the relationship between the national parliaments of the Member States among themselves and with the European Parliament; second, and in connection with domestic parliamentary control, to foster greater consultative parliamentary intervention, prior to decision making; third, to promote the institutionalization of general debates in the lower House, which would enable important general policy agreements – taken at the highest EC level – to reach the maximum possible public audience; finally, to construct a new representative body for territorial interests, with consultative powers.

First steps have been taken to formulate an apparently complete control system, although it is not yet possible to state that the transfer of power from national representative bodies to EC institutions has been sufficiently or fairly compensated.

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