Democratic progress, citizen's empowerment at the European level

Klaus Welle: I recently had an inspiring lunch with Luuk van Middelaar, the speechwriter of Herman Van Rompuy. Afterwards I started reading his book 'The Passage to Europe'. The introductory chapter is most interesting. He is saying there that in fact we have three 'Europees' which exist in parallel and all of them are embodied in one of the major institutions of the European Union.

We have what he called 'the Europe of States', of course represented by the Council, the Council of Ministers.

We have 'the Europe of Citizens' represented by the European Parliament.

And we have what he calls - these are not my own words - 'the Europe of Offices' which - he says - is the European Commission. Personally, I would bet that the Commission could easily find a nicer description of its own role.

Van Middelaar also tells us that there is a scientific trend, a scientific discipline on each side.

So, the Council, of course, likes to refer to international relations theory, and there everything results from relations between states.

The Commission is based on functionalism and administrative science. So they are the 'experts' and they 'produce' very positive outcomes.

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The Parliament is basing itself on constitutionalism which focuses on citizens and their role in the institutional setup.

So, I am very grateful to RAND Europe that I haven't been asked to speak about the Europe of the Offices, neither about the Europe of States but rather about potential progress for democracy and the citizens' empowerment.

If we think about the role of a parliament, I think that we can identify three major functions.

The first one is to elect the Executive. When you go and vote for the parliament, it is very nice that you think about the parliament, the legislative outcome that may result, etc... But most of the time, you are thinking about the Executive you are going to have as result of the election of the new parliament. This is surely the case in Germany for next Sunday elections: the German people will - yes - think about the German Bundestag, but in their mind they are at the end thinking about
Merkel or Steinbrück. So, the election of the parliament is very closely linked to its capacity to get an Executive in place.

The second function, of course, is to legislate.

And the third function is to have scrutiny over the Executive.

So, I would like to comment on those three functions. I am not going to be describing what we are doing because you know very well what we are doing but I will rather try to explain what I think is new. What is new or what is coming up. Where we are right now in our institutional development and what can we expect to happen? Where we are going to from the situation which is developing at present?

I believe that in all these three major functions - to elect the Executive, to legislate and to scrutinize - we are seeing major developments right now, which are changing and will be changing the way citizens relate to the European institutions.

I. The election of the Executive

This is one of the few areas in the Lisbon Treaty which has never been put in practice yet, because the Lisbon Treaty came into force on the 1st of December 2009. So, it came into force after the last procedure to get the European Commission into office. So, people are now finding out - to their astonishment - that in fact, the Lisbon Treaty has very much changed the legal basis for the process on how to get the European Commission into office. This is not a strange, recent idea which is now being discussed. This is in fact what has been ratified by 28 Member States when they adopted the Lisbon Treaty.

So, what is different this time?

First, as I said, the legal basis is different.
To start with, Herman van Rompuy has to consult with the European Parliament over his proposal for the President of the European Commission. That is laid down in the Declaration 11 which is added to the Treaty and which has not been - up to now - put into force. How exactly he is going to consult - we don't know. That is something to be discussed between Herman Van Rompuy and the European Parliament.

Then, the President of the European Council will make his proposal and the European Council will vote, but 'based on the outcome of the European elections'. So, what is the outcome of the European elections? We can interpret it in different ways. But this is the first time that there is a legal obligation. It is the first time that the European Council is not completely free but it is constrained to take into account the 'outcome of the European elections'.

And last, and not to be neglected, the European Parliament elects the Commission's President. That is not the language you found in the Treaties before the Lisbon Treaty. This is a brand new language. It is not the European Council that elects the Commission's President. It is the European Parliament that elects the Commission's President with a qualified majority. Or does not elect him or her...

So, we have three different elements which show us that we are preparing for the election of the Commission's President and the coming into office of the new Commission on a completely renewed legal basis. And the fact that three times those who negotiated the Lisbon Treaty - and those who ratified it - put into the Treaty that one has to look at the European Parliament is a very important signal which will change the procedure. How exactly, we will have to find it out in practice... But very considerably, that is for sure.

Secondly, what has changed, compared to five years ago, is that the need for democratic legitimacy has dramatically increased. We have now a completely different need for legitimacy. Why?
Because, European citizens have understood now that the European Union is not touching on their lives just on the fringes or through the accumulation of some minor pieces of legislation. Of course if you add the 20-50-100 minor changes in legislation, you may have an impact at the end. This is how the system was working in the past. But this time is different. Because major changes are now discussed at European level, that may affect citizens in a very concrete fashion, and sometimes very drastically.

That is something that citizens in the programme countries - but even citizens in countries like Spain or Italy, which are not programme countries - are very much aware of. They know that there are strong expectations from the European Union
level which have and will have a very direct impact on their economic and social living conditions. It means, for instance: working time, pension regimes, social security networks. So, if the European Union and the European institutions are intervening directly on those kinds of issues, then the European Union and its institutions need a different degree of legitimacy.

And thirdly - and I think that is absolutely in the logic of the different legal base that we will be having - European political parties have decided to put forward lead candidates on the European level for the European election. According to my information, all European political parties except one, all major political parties affiliated to them, will present themselves a lead candidate at European level. Those lead candidates will compete with the ambition to take the office of Commission's President.

This is a completely different scenario to the usual one in which citizens where asked to vote first and told just afterwards what might be the potential consequences of their vote. This is absolutely new. It means citizens will have a choice. If you are unhappy with the direction of politics, you do not just have to become sceptical about the European Union system but you have the possibility to go for a different kind of policy. And your vote will not only be reflected in the Parliament but also in the European Executive. And that is completely new.

Fourth - and this may be new too - we will have a different process in the European Parliament after the European elections. I cannot imagine that when finally Parliament votes on a candidate proposed by the European Council for Commission's President, it is just a vote on a CV, it is just a vote on a person. I believe that it will have to be a vote on a political programme, on what initiatives we can expect in the next five years. This was started in some fashion already five years ago. President Barroso submitted his own political programme to the
European Parliament which was one of the pre-conditions for Parliament to approve the Commission. I think that it is a process which could become much more detailed and specific next time around with candidates that have been presented for a popular vote.

So, we see that on the first function of Parliament - which is getting the Executive to take its position - we see a complete change of the picture, based on a new Treaty, based on a new economic and social reality, based on a new practice in the European political parties.

II. Legislation

Let's have a look on the second function of parliament: legislation. What will change in legislation?

First, my feeling is that between the institutions we have an increasing understanding that we need what we call in our technocratic language 'programming'. We could also call it something easier which means 'we sit together at a table and discuss what we want to do together'. Where is this impression of mine coming from? Let's have a look forward.

If my information is correct, we have now about 400 pieces of legislation pending but we know that before the elections we can maximum pass a 100 something. So, which 100 are we going to pass? Whose 100 are we going to pass? The 100 which the Council would like? The 100 which the Parliament would like? The 100 which the Commission would like? How we are discussing the issue? How are we finding out what is getting on a space within an agenda which is increasingly tight? So, there is a necessity to talk.
For after the elections, the necessity to talk is even bigger because the experience shows from past legislatures that if you do not talk and prepare, you lose about 12 months. Unless you talk and prepare, you can very easily end up having completely lost the time of the first rotating presidency after the elections - which would be in this case the Italian presidency - because very little legislation can pass, the Parliament is in constitution, Members have a fresh look and you lose the next Presidency basically as well. So, the question is: can we afford to lose 12 months for legislation in the economic and social situation in which the European Union finds itself - yes or not? And if not, then we should discuss between the Council, the Parliament and the Commission.

The best thing is that this is foreseen and written in the Treaty. If you look into the Treaty you find a very interesting sentence in Article 17 of the Treaty which reads: '... the European Commission initiates the annual and multiannual programming of the Union... - that part is known - ...with the view to reach inter-institutional agreement'. So, in fact there is even a Treaty obligation which forces the three institutions to talk. But we haven't yet found a way and the mechanism to do it. Maybe this was not a problem in the last years. But if we don't manage to do it in a proper way, we will pay a heavy price in the months and years to come.

The second thing which is new and there I would like to refer to our own efforts, is that at least the Parliament is rediscovering the concept of the cost of non-Europe. With impact assessment we have been focusing very much on the cost of European regulation. Or if you want an image - we have been putting the foot on the breaks and decided not to legislate because it was too costly, economically, socially and environmentally. But if we are un-ideological about the impact assessment, then it is also true that there might be areas which are under-regulated. And the best examples which we are having for this are of course financial markets. Financial markets were dangerously under-regulated and the fact that financial markets were dangerously under-regulated did cost the European taxpayers and citizens very, very dearly.
So, if we want to be balanced on impact assessment, we cannot only look at the costs of regulation. We also have to look at the cost of non-regulation in certain areas.

That is why within Parliament, when setting up the new Directorate for Impact Assessment we do not only have a unit which is checking the quality of the impact assessments of the European Commission but we are also having a unit which is working on cost of non-Europe. We are providing our Members with studies, with arguments about what could be potential benefits and savings if we were to have common European solutions in specific areas.

Is this a revolutionary idea? - Not at all. It is not at all a revolutionary idea. We are basically going back to the *Cecchini Report* of 1992, a very long time ago. We knew already in the past that there is such a thing as cost of non-Europe. But we have forgotten about it or we have forgotten to talk about it. So, we insist that there is not only one foot on the breaks for European regulation but that there is also the possibility for the gas pedal. Because if you only use the break, you are unbalanced, you are potentially putting danger on European citizens.

The third change which I would like to mention in the area of legislation is building up of content capacity. Because it is all fine to have rights under the Treaty, but in daily life, if you don't have the content support, which is supporting you in your legislative activity as a legislator, it means that your rights are on paper. In our case, we are one of the two branches of the European Legislative - the Parliament. On the other side we have the Council of Ministers. But the Council of Ministers has behind itself the knowledge of 28 Member States, the knowledge of 28 Ministries on any issue. If we, the Parliament, we want to be an equal partner to the Council, we also have to provide our Members with enough content capacity, knowledge, expertise, so that they can really be equal partners, and not only on paper.
That is why in the past years we have very much strengthened our Committee Secretariats, our Policy Departments, and our assistance to Members. We have built up a new Directorate on Impact Assessment, completely through reallocation of resources from empty posts in the translation services.

We are now showing how content rich we are through a new web application which is called 'Think tank'. At the end it is true: one of the functions which we are having is to be a think tank. There is so much content produced within the institution which has been very well hidden. We are now putting it in front.

As of the 1st of November 2013 we will start our new General Directorate which is called the European Parliamentary Research Service. And the Bureau has decided last Monday to nominate Anthony Teasdale as a General-Director of this service, who is very closely linked to the ESPAS process. This Directorate-General will bring together our content capacity in a dedicated service supporting all our Members.

III. Scrutiny on the Executive

The third pillar is scrutiny. From my point of view, scrutiny is an absolute growth area. Why is this the case?

- Because, as I said, the European Union is taking decisions of a completely different dimension than in the past. But who is taking the responsibility for it?

I give you one example. The first decision on Cyprus was taken on Sunday night in the European Council. On Monday night you didn't find a single person in Europe who was still ready to take the responsibility for that decision. Within 24 hours everybody had disappeared. But that decision was a decision that brought Cyprus to the brink of collapse. It had major effects on that country. But who was taking responsibility?
So, we are very happy also that we have managed last week to agree on an inter-institutional agreement with the European Central Bank, on its new functions in banking supervision, because it is absolutely fair and correct for the European Central Bank when it comes to monetary policy to remain independent. But concerning this second new function - banking supervision it has to be available for scrutiny.

What does banking supervision mean? It means: you can force a bank to recapitalize, you can ask them to change their management or in the final consequence you can ask them to close down. These are no minor decisions. These are decisions which can have a major impact not only on individual citizens but on the future of whole countries. So, for those kinds of decisions there has to be people responsible, and there has to be other people who can scrutinize them. This is why we are very happy about the agreement that was done with the mediation of President Schulz and President Draghi and that has allowed the legislation on banking supervision to pass last Thursday, which is quite far-reaching.

The third point under scrutiny I would like to mention is amending legislation. We are increasingly in this situation that we are not legislating for the first time in the policy field but that we are amending legislation. When we are amending legislation we are in a very different situation because there is experience with this legislation which is already in place. So, how can we make this experience with legislation already in place available for the political process?

There are different possibilities. The Commission is investing heavily there, but for us it is important to make this readable, understandable easily for our Members to put it in the political proposals. So, we are establishing a dedicated unit in the Directorate for Impact assessment with exactly that function to review what is already available and make it available in short and comprehensive form for our Members for the political process.
I also believe that we can learn something from the American example here. In the United States you have the Government Accountability Office. The Government Accountability Office started off as the American Court of Auditors. They have about 3000 staff, but nowadays 2/3 of their staff is in fact working on the basis of a joint work programme with Congress and checking whether spending programmes have worked, whether legislation has worked or not. And they are entitled not only to check on the federal level because they are the Court of Auditors but also on the level of the States. And that is the crucial and critical information you will need to get.

So, we are very encouraged by the fact that the European Court of Auditors is more and more going into the area of performance audits, which are going far beyond the error rate. They are doing performance audits which provide information for the legislator - Council and Parliament - whether legislation has been working, whether spending programmes have been working. So, if this is aligned with the annual legislative and work programme of the European Commission we have a wonderful tool without any additional cost to the taxpayer that allows us to understand better where legislation of spending programmes have not been working.

I would also like to mention that I believe that the two Committees: the Committee of the Regions and the Economic and Social Committee can be very helpful in this regard. They have already established their networks in the Member States with economic and social organisations, with regional and local entities in order to provide them with the feedback on how the legislation is working. If this exercise is linked to the Annual and Legislative Work Programme of the Commission, if it is timed together with the annual and legislative programme of the Commission, if it is brought forward in time to the committees and the Council this could become a wonderful tool which facilitates the legislative process and brings us additional expertise, again without any additional burden for the taxpayer.
Last but not least, I would like to say that having studied the issues a bit we have decided to have a closer look at the functioning the select committees in the United Kingdom House of Commons.

So, this was an overview on where I think the system could be moving in the next steps. We can see that the system is moving forward very quickly. This, by the way, has always been the special strength of the European Parliament because we started with very little and after 60 years we have developed quite a bit. Our motto could be: 'we have no chance but we use it' or we could also say: 'there is the constitution and the constitutional reality, and we are ready to move forward together, and further develop the European Union'.