Karolina Ristova Asterud
President of the Committee for European Issues
Within the Parliament of the Republic of Macedonia

THE ROLE OF THE PARLIAMENT IN THE HARMONISATION OF THE MACEDONIAN LEGISLATION WITH EURPOEAN UNION LEGISLATION: CIRCUMSTANCES AND CHALLENGES

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1. INTRODUCTION

Where the participation of the Parliament in the approximation of our legislation with EU legislation is concerned, regardless of whether it concerns economy related laws or other areas, the experience could so far be characterised as:

a) **– undefined, unanalyzed, and even ignored** (it is therefore good that I received the invitation to speak about this topic, and I am absolutely satisfied that where the process of Euro-integration is concerned, the legislative authority is slowly but surely receiving attention, instead of focusing only on what should be done at a Government level and only mentioning the Parliament to the effect that: "yes, it adopts laws, and has a significant role, but nothing more than that".)

b) **– spontaneous** – it has been the practice until now that the Government as the main initiator of laws that concern harmonisation with EU legislation (which is normal everywhere) in its explanations had either a superficial approach with general formulations that refer to harmonisation, or a diverse approach, which will be explained later on in the text, and the parliamentary majority had the role (previously but also currently, in most of the cases) to give its blessing to the law, and the opposition to challenge it, even though neither had a real insight in the European aspect of things.

c) – **initial, almost pioneer's steps** in creating its legislative role in the process for EU-integration.

2. STRUCTURE

I have divided the discussion on this topic, into three parts:

First, I will talk about the internal structure of the roles with the legislative process regarding the harmonisation of our legislation with EU legislation;
Secondly, I will highlight the constitutive aspect of the harmonisation process of the legislation;
Thirdly, the procedural aspect of the process.

3. THE ROLES OF CERTAIN WORKING BODIES IN THE PROCESS OF HARMONISATION OF OUR LEGISLATION WITH EU LEGISLATION

It should first of all be noted that there are two working bodies that have a role to play in this process within the Parliament. Those are: the Legislative Committee and the Committee for European Issues (hereinafter the "CEI") The Committee for Internal Affairs also has a certain role to play concerning the ratification of international Treaties including Treaties with the EU, which subsequently become part of the internal legislation, and which can be subject to further internal legal development, however the process of ratification automatically takes place with full reliance on the Government i.e. the executive authority that signed them. Nevertheless, monitoring the enforcement of the Treaties led by the Stabilisation and Association Agreement, falls within the CEI competence.

In April 2003, when the CEI was established, (based upon a model of such commissions/committees in other national parliaments), one of the powers it received, was the authority to review the issues regarding the compliance of laws. Through the same decision (regarding the establishment of the Parliament's working bodies) the Legislative Committee was also given the same authorisation. This situation created a dilemma and its effectiveness as a solution can also be queried, because it practically covers the same authorisation (it is specific of the current structure of the working bodies, that several working bodies can review the same draft law, but from a different perspective). Comparative experiences have shown that in some National Parliaments only the CEI has this particular competence, whereas in other parliaments, this competence is divided into two sectors (as it is the case in our country). The Legislative Committee as a Committee with a long parliamentary tradition as supervisor of the hierarchy of laws and the process of legal drafting in the Parliament, will be able to respond to such a challenge in the context of harmonisation of the legislation with EU legislation (both on a political as well as on a professional level) while the CEI should be more involved in a general monitoring of the process through particular draft laws. For example, it accordingly participates in certain areas - explanation and information about the EU legal sources used, examination of the principal legal issues, suggestion of recommendations regarding the harmonisation process, which could not necessarily be undertaken by the Legislative Committee.

Therefore, the reports that are prepared by the Legislative Committee accordingly contain a concluding statement on whether the particular law is or is not in compliance with the EU, while the CEI prepares a report which in a narrative from contains the statement made by the proposer about the European aspects, other issues and the discussion that took place, all this with a purpose of providing a working, and complementary informative material for the parliamentary plenum.

The FIRST problem out of a series of problems that I would like to mention even though it has not been raised at a formal level (bearing in mind that we are still at the initial phase), is that there is a discrepancy in the understanding by the Parliament and some of the members of the Parliament, as well as by some of the

professional departments of the Parliament, due to the fact that identical competence is bestowed upon two different working bodies.

The CEI is entitled to give its opinions and recommendations to other working bodies concerning the legislative process as well as regards other aspects of the parliamentary dimension of European integration, but it is my personal impression that this might be a problem: since there is no sufficient understanding on the role of this Committee, i.e. that it should have a central and important role in the Parliament in the process of Euro-integration, there is no awareness as regards the comparative experiences, and there is a resistance to acknowledge this role. We are now in a situation where the CEI exists, but the old routine continues, and few really understand that this is a "Committee above all Committees" where Euro-integration is concerned, with specific competencies, with a coordination role in practically all aspects of the parliamentary process and it is a major parliamentary engine which in some countries has a status regulated by the Constitution (Germany for example). We are however still at the beginning, and I believe that a clearer understanding of the comparative experiences through seminars, training and strengthening of the human resources of the CEI as well as of the Parliament in the future shall remedy this situation...

On a professional departments' level, formally there exists a separate Unit for Harmonisation of the Legislation with EU Legislation, however it is not equipped with staff, which creates a large vacuum in the accomplishment of the role of the Parliament in harmonising the legislation, and it considerably affects the Legislative Committee to complete its role in this process.

4. CONSTITUTIVE ASPECT OF THE HARMONISATION OF LEGISLATION (METHODOLOGICAL AND OTHER CHALLENGES)

A.) This aspect, as well as the procedural one is the weak point of the legislation process as it is now established. Namely,

- Although the proposers of the laws have the obligation to explain their proposal of the draft law, or the draft itself, with respect to the harmonisation of that particular law with EU legislation, there are no regulations on what the statement should contain.

- This also happens even when the Government proposes an adoption of a law and this is very interesting because of the following reasons. Notwithstanding the fact that all of the Ministries at a governmental level are obliged to fill in a harmonisation statement (as well as harmonisation correspondence tables, etc.), when they (formally the Government) send the law to the Parliament we do not have a harmonised approach between the Ministries insofar as the statement and explanation of the harmonisation of the law with the EU legislation is concerned. In our review of a series of laws from different areas, we have noted the following:

a) certain ministries provide only general formulations of amendments in order to achieve harmonisation with European legislation and the Stabilisation and Association Agreement, etc. and do not refer to the respective EU legal sources .
b) certain ministries go into more detail, and list certain or all of its EU legal sources but on the other hand, they do not give a detailed explanation of the sources or the sections of the law (which are reconciled/approximated with the EU legislation).
c) certain ministries incorporate a vague statement within the general text, whilst others place it in a separate sub-section/title.
d) The most interesting issue is that we had one case when reviewing several legal projects from the same Ministry , each legal project having a different approach/ style in each of the legal texts;
e) The legal sources of the EU are differently read / quoted / interpreted. The delegates (as well as the professional services) do not therefore know what the actual meanings are …
f) Only representatives or trustees are present at the sessions of the CEI, without individuals from the sectors for European integration who directly work on approximation.

With regard to this issue, it was agreed that the CEI should provide recommendations to the Government (one of the specific competencies of the CEI is to give direct recommendations to the Government, which unlike other countries are only considered to be recommendations and not mandatory guidelines for the Government. But I believe that the Government itself will not reject or ignore them in practice).

B.) This problem is even more complex when we take into account the other legislation proposers: the delegates and 10,000 citizens as proposers of new laws (cases of citizens as proposers of legal initiatives are however very rare). As mentioned above there is a department for approximation and harmonisation of the national legislation with the legislation of the EU within the Parliament. But this department is not properly staffed and it is urgently needed to produce a strategy on how to staff it with lawyers who are familiar with the domestic laws and the laws of the EU. Thus when a delegate or group of delegates wants to act as an initiator of a law, there will be an individual in this department who may provide answers to the delegate in the specific field in question–i.e. to inform him/her about the EU legislation and what is necessary for approximation of the national legislation (some training for the delegates with regard to the legal sources of the EU as well as training for the competent services/departments is therefore necessary).

Of course, there is also the problem of the non existence of a Legal Resource Centre for EU legislation (there is no library or electronic access to the official journal of the EU, EU Bulletin EUROLEX, etc. (as is the case with other national Parliaments), except what is available on the official web site of the EU. Trained human resources are therefore necessary for the proper operation/utilization of the legal sources of the EU.

5. POTENTIAL PROCEDURAL PROBLEMS IN THE PROCESS OF APPROXIMATION OF LEGISLATION WITH THE EU LEGISLATION

Due to time constraints, I will not talk about the details of the procedural provisions, but this procedural aspect, is a substantial problem.
This problem may be divided into two points:

The first point is what I call the European Dimension:
-there is no specific identification of the legal projects which are subject to the approximation procedure, nor is there a procedure which, for example, will notify the Legislative Committee and CEI that such laws are within the parliamentary process, or the presidents and counsellors of the Committee who do not get the packages of legal texts. For example, the counsellor of the CEI does not receive them. Therefore, for each legal text that I receive, it is left to my professional discretion, as President of the CEI, to review the statement and determine if the proposer has made his/her proposal with respect to the approximation needs. Identification of the laws that will entail harmonization with EU legislation will also be determined through the publication of the laws in the Official Gazette.

-there is no procedural liability for each proposer of the law related to the issue of what the statement (for a legal text which needs to be approximated with the EU legislation) should contain (there is no parliamentary version of the "approximation statement").

-there is no guideline for uniform quotations of the legal sources of the EU by the law proposers;

-there is no obligation for the production of an annual statement related to all laws which require approximation;

-although there are some general procedural provisions related to the availability of the parliament material to the general public, there is still no willingness nor initiative for that (but maybe, to some extent it is an issue of the limited material resources). There is therefore a need to provide more comprehensive materials and better access of the general public to the legislative materials as well as other materials related to the Parliament dimension (for example: statements and reports of the Delegation for cooperation with the European Parliament are not put on the web site of the Parliament. The CEI is doing so with regard to some of its key documents);

-development of the procedural provisions for determination of the Agenda and for the procedures for adoption of the laws through which the laws that provide for approximation and harmonisation of national legislation with the EU legislation will have priority/advantage in the reviewing process, and in some cases will be able to pass through the accelerated/fast procedure.

The second point is the length of the procedure for the adoption of the laws. The basic model for the adoption of the laws does not differ from other parliamentary democracies, with a uni-cameral, one-house parliament (adoption through several phases i.e. proposal for adoption of a law/draft- law/proposal of the law) and other forms of accelerated procedures (short procedure, urgent procedure, etc.) However, what is different and

specific in comparison to all other European parliaments (there are almost no guidelines in other European countries, and I have read most of them) is that as a rule, there is no model for time limits of the discussions/ speeches of the delegates (in any phase of adoption of the legal texts) except for rare exceptions (speeches of the parliamentary majority to be limited up to 10 minutes or up to 15 minutes for the coordinators on some specific issues, but that is possible only by ad- hoc voting prior to the commencement of the discussions on the specific issue), and procedurally only in a limited number of cases (responses, corrections, etc.) .

Furthermore, there is no limitation on the number of times one delegate may apply to speak during the material discussion on the specific item/law and there are many other situations of imbalance in the principles of the parliamentary discussions. The final effects are: long discussions, a legal text to be reviewed for several days (for example the Law on transformation of the Energy Industry which is in compliance with the implementation of the Stabilisation and Association Agreement and Euro integration took almost three days to review), very frequently repeated discussions, having one delegate discussing the same issues several times (the President cannot limit this nor he can close the discussion if there are delegates who applied to speak). This results in another problem, that of the slow pace of the process of harmonisation of our legislation with that of EU and of course and of no less significance, increased pressure on the resources of the Parliament, especially in the light of the greater number of legal projects linked with the approximation and harmonisation process, which will also make the process of European integration more expensive.